



# The Exciting Dynamics of State and Local Government



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If you have comments, suggestions, or corrections for this textbook, please send them to [palsave@palni.edu](mailto:palsave@palni.edu).

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# Case Study Chapter 1

GREGORY SHUFELDT

## Chapter 1 Case Study: Fifty States, Fifty Democracies?

In April 2023, Representatives Justin Jones and Justin Pearson, two African American Democratic members of the one-hundred-person legislative chamber, were expelled from office by overwhelming majorities. Jones was removed by a vote of 72–25, while Pearson was removed by a vote of 69–26. They were removed for “knowingly and intentionally [bringing] disorder and dishonor to the House of Representatives” as part of their peaceful protests against gun violence.<sup>1</sup> A third Democrat, Representative Gloria Johnson, a White woman who also participated in the protests, was not expelled, short one vote of the necessary two-thirds threshold required. Almost all the votes followed party lines, as Republicans held a supermajority with seventy-five of the one hundred seats.<sup>2</sup> Representative Jones offered, “What the nation is seeing is that we don’t have a democracy in Tennessee.”<sup>3</sup>

Tennessee is not alone in making headlines for a potential undemocratic turn. North Carolina “is no longer classified as a democracy,” according to headlines from one

1. Zhou, “Tennessee Legislature’s Expulsion.”
2. Ballotpedia, “Tennessee General Assembly.”
3. Beauchamp, “Study Confirms It.”

of the authors of the [Electoral Integrity Project](#) (EIP).<sup>4</sup> The study cites the degree of gerrymandering, or the drawing of legislative lines to give the Republicans (in this instance) an unfair advantage, and how the state implements voter registration and election administration among other challenges. The EIP was no fan of Tennessee, either, ranking the state forty-ninth out of fifty in electoral integrity.<sup>5</sup>

However, political scientists have somewhat in the past and are starting, more and more, in the present to assess and compare how the states are faring in the basic functions of democracy.<sup>6</sup> The [Elections Performance Index](#) from the Massachusetts Institute of Technology and Pew Research Center empirically assesses how states administer elections and finds many of them lacking.<sup>7</sup> More broadly, political scientists are increasingly focusing on “democratic erosion” or “democratic backsliding” in the United States as states seem to be getting less, not more, small-d democratic.<sup>8</sup>

This significant state variation ought to make one

4. Matthews, “Political Scientist”; Reynolds, “North Carolina.” But see Gelman, “About That Bogus Claim.”

5. Flavin and Shufeldt, “Comparing Two Measures.”

6. Key, *Southern Politics*; Hill, *Democracy in the Fifty States*.

7. Pew Charitable Trusts, “Elections Performance Index: Methodology.”

8. Foa and Mounk, “Danger of Deconsolidation”; Fishkin and Pozen, “Asymmetrical Constitutional Hardball”; Huq and Ginsburg, “How to Lose a Constitutional Democracy”; Varol “Stealth Authoritarianism”; Waldner and Lust, “Unwelcome Change”; Levitsky and Ziblatt, *How Democracies Die*; Flavin and Shufeldt, “State Pride and the Quality of Democracy”; Flavin and Shufeldt, “Citizens’ Perceptions of the Quality of Democracy in the American States.”

question how well the country and each of the fifty states are doing at meeting the promise of small-*d* democracy that started in places like Jamestown, Virginia—where a five-day meeting in August 1619 is considered the birthplace of American democracy.<sup>9</sup> Others point to and romanticize the town hall meetings of New England that predate the founding of the country and are still practiced today.<sup>10</sup>

However, no state is perfect—each has more and less democratic components. How can one country and fifty states possibly represent more than 345 million Americans? This debate today, and one you will embark on by reading this book, is the same debate the founders had almost 250 years ago—how best to set up a democratic government. We have organized the remaining chapters against two considerations:

- Supreme Court Justice Louis Brandeis famously wrote, “It is one of the happy accidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”<sup>11</sup>
- Others paint a less optimistic view, identifying that states have become laboratories *against* democracy or laboratories of autocracy.<sup>12</sup> Political scientist Jake Grumbach proposed a novel way to empirically assess how democratic each of the fifty states is today. In his book

9. Vinson, “Birthplace of American Democracy.”

10. Bryan, *Real Democracy*; Zimmerman, *New England Town Meeting*; Zuckerman, “Mirage of Democracy”; Perry and Rathke, “In Vermont, ‘Town Meeting.’”

11. *New State Ice Co. v. Liebman*, 285 US 262 (1932).

12. Pepper, *Laboratories of Autocracy*; Grumbach, *Laboratories Against Democracy*.

*Laboratories Against Democracy: How National Parties Transformed State Politics*, the two states that were the least democratic...were Tennessee and North Carolina.

The variation across the fifty states is exciting. As we will discuss throughout the book, the rules and political institutions vary in meaningful ways. States differ considerably, choosing divergent public policies. When should we consider these just differences of opinion? When should we consider that states have gone too far in limiting the rights of their citizens? Each chapter will begin with a short case study written by the editors providing just one example highlighting how states can serve as laboratories of democracy or autocracy across the remaining eleven substantive chapters written by six distinct authors.

In their assessment of democratic backsliding in the United States, Steven Levitsky and Daniel Ziblatt challenge the reader, “Few societies in history have managed to be both multiracial and genuinely democratic. That is our challenge. It is also our opportunity. If we meet it, America will truly be exceptional.”<sup>13</sup>

## Critical Thinking Questions

What does it mean for a country to be a democracy? Are there degrees to democracy? Can a state be more or less democratic?

What are the necessary and sufficient conditions (or minimal requirements) that make a country a democracy?

13. Levitsky and Ziblatt, *How Democracies Die*.

What sort of previous knowledge, values, and political opinions are you bringing with you as you begin to read this textbook?

# I. An Introduction to State and Local Government

GREGORY SHUFELDT

## *Chapter Summary*

This chapter provides an introduction to the unique rights and responsibilities of state and local governments. Many students are familiar with the federal government, as they were introduced to it as early as grade school, but they are not used to thinking about state governments, what they do, and how the states can vary (and the ways in which they cannot) from other states. This chapter frames the exciting nature of state and local politics by comparing two competing visions for democratic governance: States serve as laboratories of democracy or laboratories of autocracy. We encourage students to begin to think about both the magnitude of influence state policies have and the range of differences we can see across the fifty states in our nation.

## *Student Learning Objectives*

Upon completion of this chapter, students should be able to:

1. Explain the difference between politics and political science.
2. Identify the role of politics, comparisons, and cultural differences in state governments.
3. Understand the role that differences in historical context, economic development, racial/ethnic/religious background, and other cultural components play in the unique identity of a state.
4. Assess the value in comparing state governments and local governments, with an emphasis on the impact behavior and institutions have in the resulting policy.
5. Analyze why state political comparisons emphasize measurable, objective characteristics.
6. Apply state political comparisons to current salient issues, such as K–12 education or election laws.

### *Focus Questions*

These questions illustrate the main concepts covered in the chapter and should help guide discussion as well as enable students to critically analyze and apply the material covered.

Which concept, laboratories of democracy or

autocracy, best describes how state and local governments promote democratic governance?

What is the essential difference between political science and politics?

What makes the study of state and local government different from the study of the federal government?

How does the comparative method help political scientists understand and assess differences across state governments?

## What Makes the Dynamics of State and Local Government Exciting?

We cannot imagine a more exciting time to study state politics.

If you are predisposed to optimism, state and local governments are able to function and produce public policy in accordance with the majority in more instances much more frequently than the federal government is able to do. If you are predisposed to cynicism (or reality, per some), state and local governments reveal the worst impulses of human nature.

With hints of optimism and pessimism, this is the point of view offered by this textbook. It celebrates the diversity and inclusion—while illuminating the ugliness of prejudice and exclusion—fundamental to the beauty and complexity of being fifty different states under one nation. This tension is not new, and we are not the first to observe it.

Supreme Court Justice Louis Brandeis (after which Brandeis University is named) famously remarked, “It is one of the

happy accidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”<sup>1</sup>

States have been and continue to be at the vanguard of public policy, a **laboratory of democracy**. They often serve as the breeding ground for policy experimentation that leads to national changes. As you will read in the following chapters, it was states that gave women and racial minorities the right to vote before the federal government. States sought to legalize same-sex marriage before the federal government intervened in *Obergefell v. Hodges*. States set a more generous minimum wage than the state floor. States have innovated to reduce the costs of voting by introducing convenience voting measures like vote by mail, early voting, and same-day registration. We have seen states elect women, people of color, and members of the LGBTQ+ community to offices high and low.



**Figure 1.1 – Supreme Court Justice Louis Brandeis**  
Source: “[Brandeis, Louis D. Justice](#)” by [Harris & Ewing](#), photographer / [Public Domain](#).

States innovate and design policies that diffuse to other states or become the framework for federal legislation. For example, current federal policies that govern diverse policy realms like education, health care, and social welfare all started as state plans. Likewise, by requiring balanced budgets, states have been at the forefront of limiting the amount of money the government can

1. *New State Ice Co. v. Liebman*, 285 US 262 (1932).

collect, requiring the government to be responsible stewards of taxpayers' money.


Yet at the same time, states are not delivering on the promise of democracy—far from it, as the quality of democracy varies considerably across the fifty states.<sup>2</sup> Better said, they are **laboratories of autocracy** or “laboratories against democracy.”<sup>3</sup> Whether through the tyranny of the majority that James Madison and the Federalists feared at the founding of the country or through political leaders exploiting and abusing the powers available to them, states also serve as bulwarks to or the antithesis of progress. At one moment in time (and yet again, today) states thought that federal laws were merely suggestions and they could pick and choose which to follow—leading to the ultimate result of secession and the Civil War. It was states that upheld injustices such as Jim Crow laws that ensured segregation under the mantle of “states’ rights” under one-party Democratic rule.<sup>4</sup> This is not a relic of centuries or decades past—today, it is states implementing Jim Crow 2.0, banning books, and imposing a White Christian Nationalist viewpoint of America on an increasingly diverse country.

We encourage you, the readers, not only to think about different states’ approaches to issues and matters of public policy today, to consider which is most fair, just, or equitable, but also to consider how democracy works in each state. In short, to make normative arguments about how you believe government (and state and local governments, specifically) should work. While we anticipate readers will center their reading based on their specific home state, we encourage you to take a broader, comparative lens. Consider how other states approach these challenges to evaluate both the benefits and disadvantages of how states work to address

2. Hill, *Democracy in the Fifty States*.
3. Pepper, *Laboratories of Autocracy*; Grumbach, *Laboratories Against Democracy*.
4. Key, *Southern Politics*.

these pressing issues. Each chapter is accompanied by a case study that highlights this conflict between laboratories of democracy and autocracy.

And so we want to properly set the stage for what is to come. You are studying state and local government and politics in an unprecedented era. Never before, including during the Civil War, has the country faced a time when competition between two major parties is intense, ideologically polarized, and national in scope.



One or more interactive elements has been excluded from this version of the text. You can view them online here: <https://pressbooks.palni.org/theexcitingdynamicsofstateandlocalgovernment/?p=42#oembed-1>

**Figure 1.2 – Polarization in Congress Explained**

**Source:**Business Insider. “This 60-Second Animation Shows How Divided Congress Has Become over the Last 60 Years.” YouTube, 2016. <https://www.youtube.com/watch?v=tEczkhfLwqM> / Embedded with the [Standard YouTube License](#).

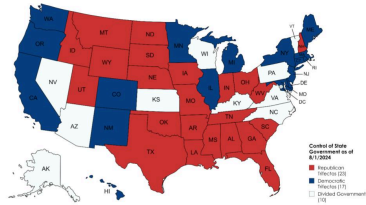
Nationally, the two parties are very evenly divided, which has made working together the exception, not the rule.<sup>5</sup> Since 1950, the House of Representatives has changed hands seven times (i.e., gone from Republicans controlling the House to Democrats after an election or vice versa). However, four of these instances have happened in the last fifteen years. Likewise, which party controls the US Senate has changed ten times, three of which occurred in the last fifteen years. In November 2024, it was possible for both chambers to flip—but in the opposite direction for the first

5. Lee, *Insecure Majorities*.

time in our country’s history—as Democrats had a chance to retake the House of Representatives, while Republicans had a good opportunity to retake the Senate.<sup>6</sup> Ultimately, Republicans won control of both chambers.

While the two parties are competitive nationally, this competition obscures or masks the general absence of competition at the state and local levels. While control of Congress is tightly contested, this is not the case in individual districts. For example, more than 60 percent of all 435 seats for the House of Representatives now are routinely and safely won by the same party by more than 10 percent (i.e., at least 55 percent to 45 percent).<sup>7</sup> At the state level, the absence of competition is even more stark. More than 82 percent of Americans live in a political trifecta state, where one political party controls both chambers of the state legislature and the governorship. Forty states are currently under one-party control: twenty-three Republican trifectas and seventeen Democratic trifectas.<sup>8</sup>

We end this section with a paradox utilizing data from the Pew Research Center.



**Figure 1.3 – Control of State Governments**  
**Data Source:** [Ballotpedia](#). “[State Government Trifectas](#).” n.d. Map made by author.

6. Kane, “House, Senate Elections.”

7. Abramowitz, “Redistricting and Competition.”

8. Ballotpedia, “State Government Trifectas.”

Americans have dismal views toward the federal government:<sup>9</sup>

- 63 percent report having little to no confidence in the future of the US political system.
- 72 percent report that the political system is working either not too well or not at all today.
- 80 percent report feeling angry or frustrated with the federal government.
- 72 percent report unfavorable opinions of Congress.
- 54 percent have an unfavorable view of the Supreme Court.
- 22 percent of Americans trust the federal government to do what is right just about always or most of the time.<sup>10</sup>
- More than 60 percent report negative opinions toward Joe Biden and Donald Trump.<sup>11</sup>

However, Americans report more positive views toward their state and local governments:

- 51 percent report that their state's governor is doing a good job.
- 73 percent of Republicans think their Republican governor is doing a good job.
- 72 percent of Democrats think their Democratic governor is doing a good job.
- 50 percent have a favorable opinion of their state government.<sup>12</sup>
- 70 percent of Republicans have a favorable opinion of their Republican state government.

9. Pew Research Center, "Americans' Dismal Views of the Nation's Politics."

10. Pew Research Center, "Public Trust in Government."

11. Gracia and Copeland, "Biden, Trump Are Least-Liked."

12. Copeland, "Americans Rate Their Federal."

- 72 percent of Democrats have a favorable opinion of their Democratic state government.
- 61 percent have a favorable opinion of their local government.
- 63 percent of Republicans and 64 percent of Democrats have favorable opinions of their local government.

Yet here comes the paradox. These mismatched views do not manifest in political knowledge or participation. Americans consistently report higher levels of trust in but lower levels of knowledge of state government than federal government.<sup>13</sup> They report greater feelings of political efficacy, or the belief that the government will listen to them, but lower rates of voting and participation.

Why might that be?

## How Do Political Scientists Approach the Study of State Government and Politics?

**Politics** frequently is defined as “who gets what, when, and how.”<sup>14</sup> In politics, there are winners and losers. We ascribe “right” and “wrong” to different points of view, public policies, and behavior. This is not a politics textbook; this is a textbook for students of **political science**.

Political science is an academic discipline engaged in the rigorous scientific study of politics and government. It is a social

13. Conlan, “Federal, State, or Local?”; Lyons, Jaeger, and Wolak et al., “Roots of Citizens’ Knowledge”; Wolak and Palus, “Dynamics of Public Confidence”; Rosen, “Americans Don’t Know”; Wolak, “Why Do People Trust”; Rogers, “What Americans Know.”

14. Lasswell, *Politics*.

science dedicated to generating knowledge to better understand political thought, behavior, and institutions. Political science in the United States largely is divided into four broad subfields. The two most relevant for our purposes here are comparative politics and American politics. Comparative politics seeks to make comparisons across countries in political behavior and institutions. American politics seeks to examine political behavior and institutions within the United States.

State and local politics is a subfield within American politics. It marries the richness of comparative politics within the context of the United States. Within the American Political Science Association, the professional organization for political scientists, State Politics and Policy is an organized [section](#) to connect scholars with this common interest. It hosts an annual conference and produces quarterly issues of [State Politics & Policy Quarterly](#).

While not specific to state politics in the United States, another academic, peer-reviewed journal frequently dedicated to scholarly questions about state politics is [Publius: The Journal of Federalism](#). **Federalism** is the system of government that we have in the United States where power is divided and shared between the national and state governments.

These two journals are frequent landing spots for state politics research. You will note that articles from both of these outlets appear repeatedly throughout the rest of this textbook. However, the study of state politics is versatile in that it engages in both of the two dominant strands within American politics—political behavior and institutions. As a result, work on American state politics appears in many general political science journals.

It addresses questions regarding **political behavior**—the political opinions and participation of individuals and groups. This includes political knowledge, public attitudes, political participation, and so on. State politics engages in the study of formal **political institutions**—the formal branches of government and the rules that govern them. Finally, scholars of state politics also explore

**mediating institutions**—the groups and entities that connect individual political behavior with formal institutions like political parties, interest groups, and the media.

The study of state politics possesses at least two advantages over the broader study of American politics in general. The first is the ability to overcome the “small N” problem. The small sample size associated with the study of national politics and the federal government makes some research questions unanswerable or at least extremely difficult to answer. For example, at any one moment in time, the country has only one president. Famously, this is an N of 1. However, there are fifty governors, which allow political scientists to test hypotheses about the executive branch.

For us, this is what makes the study of state and local government so exciting. We have fifty states and more than ninety thousand government units to utilize to draw conclusions to answer research questions that interest us. Here, Washington, DC, and the fifty states are our **unit of analysis**, the level that we are utilizing to test our hypothesis.

The second problem the study of state politics is able to overcome is the ability to draw conclusions based on ample variation. In national politics, we do not have the ability to look at a counterfactual. How might the party of the leader of the executive branch affect how they address a public health crisis like the COVID-19 pandemic? Political scientists might be able to draw conclusions between the end of Donald Trump’s presidency and the beginning of Joe Biden’s, but both served as president during very different moments in time that prevent political scientists from truly drawing a one-to-one comparison. There was no variation in March 2020; likewise, there was no variation in March 2021.

In the subsequent chapters, there are some examples of potential questions that cannot be answered to the same extent at the national level compared to the state and local levels.

In Chapter 6, for example, we can explore the relationship between judicial selection methods and the demographic breakdown of the Supreme Court. We cannot truly answer this

question at the federal level, since all nine US Supreme Court justices are appointed by the president and approved by the Senate. There is no variation. At the state level, however, state supreme court justices are appointed or elected depending on the state. Thus, we have the variation necessary to test a hypothesis about how the selection process impacts the diversity of the bench.

For another example, Chapter 7 will examine how minorities fare in states with direct democracy, where citizens are able to directly vote on public policies. At the federal level, we are unable to test hypotheses about whether minorities (whether in terms of gender, race, sexual orientation, etc.) fare better or worse in representative versus direct democracies. The United States is one of the rare advanced industrial democracies without a process for citizens to vote on a national referendum. At the state level, however, about half of all the states have opportunities for citizens to vote via initiative or referendum.

Each subsequent chapter has a similar type of research question that can only be examined due to the variation and comparability of looking at multiple states. While some scholars of state politics utilize **case studies**—in-depth examinations of a single geography, political actor, or institution—to draw broader themes and generalizations, this approach is restricted to the same limitation questions faced at the national level. We have only one president at a time, only one party controls the House of Representatives, and so on. If we restrict our analysis to a single state, we lose the ability to make comparisons.

In the study of state politics, political scientists utilize the **comparative method**. By drawing comparisons across the fifty states, political scientists are better able to understand the relationship between two or more variables. States (state political actors, state political institutions, citizens living within states, etc.) are the units of analysis, the cases used for comparison.

Within the comparative case study method, there are two dominant approaches to identifying the nature of relationships

between an **independent** and **dependent variable**.<sup>15</sup> Table 1.1 walks through the logic of these two different approaches.

**Mill’s Method of Difference (Most Similar)**

	<b>Independent Variables</b>	<b>Dependent Variable</b>
State A	A B C D E F	Y
State B	A B C D E X	-Y
Since X is the only variable that both State A and State B do not have in common, we can posit that F is associated with or is the cause of Y.		

**Mill’s Method of Agreement (Most Different)**

**Table 1.1 – The Comparative Method**  
*Table made by author.*

	<b>Independent Variables</b>	<b>Dependent Variable</b>
State A	A B C D E F	Y
State B	A V W X Y Z	Y
Since A is the only variable that both State A and State B have in common, we can posit that A is associated with or is the cause of Y.		

But first, a dependent variable is a variable whose value relies on or is contingent on the value of another variable. It “depends.” Some may choose to think of a dependent variable as an outcome or consequence. The value depends on the value of the independent variable. The independent variable is the variable that a researcher either manipulates or does not change. The value is “independent.” While political scientists rarely are comfortable talking in terms of causation, for the purposes of understanding this concept, some may consider dependent variables the “effect.” If a dependent variable is thought of as an effect, then the independent

15. Mill, System of Logic.

variable is the “cause.” Take for example, state variation in the minimum wage, the dependent variable is a state’s minimum wage, and the independent variables are party control of state government, the presence of the ballot initiative, and the cost of living in each state.

The two dominant approaches were developed by John Stuart Mill. The first approach is called the **method of difference**, often also called a “most similar” design. Here political scientists would consider two or more states with many similarities (independent variables) but that have different outcomes (dependent variable). By isolating the common variable these states have that is different, researchers would be able to identify this as the likely factor. For example, take Missouri and Indiana. Both are relatively similar in that they are both Midwest states and have comparable costs of living. The Republican Party has enjoyed considerable success controlling both chambers of the state legislature and the governorship. Likewise, the demographics of the two states are similar in many respects. However, Missouri voters are able to collect signatures to put an initiative on the ballot (which they did), while Indiana does not have any form of direct democracy. Therefore, with confidence, we can attribute this policy difference between two similar states to this key variable they do not share.

The second approach from Mill is called the **method of agreement**, also known as the “most dissimilar” design. In this approach, political scientists would compare states that have considerable differences in most key variables of interest (independent variables) but have the same outcome (dependent variable). By identifying the one or key variable that the states have in common, political scientists can attribute the shared outcome to this variable.

To pick a different policy topic as an example, marijuana legalization is another policy where state variation is tied to the use of the ballot initiative. Missouri has a low cost of living and a Republican-controlled state government. California has the highest cost of living in the country and a Democratic-controlled state

government. The one thing (and perhaps one of the few things) these states have in common is that citizens are able to utilize the initiative. In California, voters legalized marijuana in 2016, while Missouri voters did so in 2022.<sup>16</sup>

## What's Next?

Here is how the rest of this textbook is organized.

First, we establish the foundation of state government through the next two substantive chapters. In Chapter 2, federalism, where power is divided and shared between the national and state governments, is explored in more detail. First, the chapter will examine how federalism compares to other systems of government like unitary and confederate models. Then students will learn about how the relationship between states and the federal government has evolved (or devolved) from the time of the Articles of Confederation to today. While the US Constitution provides some broad parameters, much of the nuance for how the levels of government ought to work together is ambiguous and subject to vigorous debate.

Chapter 3 first contrasts the US Constitution with fifty state constitutions. By relying on a constitution, the government is restricted in some ways compared to countries without any formal limits. Given the variations in state constitutions, the power of self-government looks different within a federal system for citizens of each state. While there are significant similarities between the two levels, state constitutions vary in considerable ways and have been revised repeatedly over the nearly 250-year history of the United States.

16. Ballotpedia, “Marijuana Laws and Ballot Measures.”

Next, the textbook shifts its focus to political institutions. Chapter 4 addresses state legislatures. While the legislative branches at the federal level and state legislatures have many similar structures, the diversity across fifty state capitols provides leverage and opportunities to examine a host of features. For example, states vary in the size of their legislative chambers, whether state legislators are subject to term limits, and the length of their terms in general. Utilizing 7,500 state legislators compared to only 535 members of Congress (435 Representatives + 100 Senators) makes drawing conclusions about how the people's branch can better resemble the people more meaningful.

In Chapter 5, we turn our attention to the state executive branch with a particular emphasis on governors. States vary in which statewide executive positions are elected and the roles and responsibilities of each office. The powers of the governor vary considerably—with some having a significant amount of autonomy and playing a significant role in the legislative process, while others are more limited in scope.

Next, Chapter 6 engages the last of the three branches of government, the judicial branch. Given the US Supreme Court's decision in *Dobbs v. Jackson* to overturn nearly fifty years of precedent since *Roe v. Wade* protected a woman's right to an abortion, state courts have had their hands full unpacking this new legal framework. While the Supreme Court receives the vast majority of public (and scholarly) attention, most criminal and civil cases start and end within the state judicial system. As such, this chapter helps highlight state variation in how judges are selected and make decisions across the fifty states.

Chapter 7 describes an institutional feature available in slightly more than half of the states. Direct democratic institutions, such as the initiative, the referendum, and recall elections, provide voters with a more hands-on opportunity to influence government compared to the institutions solely available to a representative democracy. As such, this chapter provides a modern opportunity to relitigate many of the debates that shaped the founding of the

country. How can democratic institutions promote majority rule while upholding minority rights? This chapter plays a vital role as a point of transition between the other formal political institutions and citizen engagement and the mediating institutions that connect citizens with their government.

In Chapter 8, we identify the various types of and opportunities for political participation. While voting is the most common form of political participation, it lags in state and local elections. This chapter examines how states facilitate and hinder voter participation through the different ways elections are administered across the fifty states. Chapter 9 extends these themes by adding how campaigns—whether from the perspective of the candidate, political party, or voter themselves—experience the different ways elections are conducted at the state and local levels.

In Chapters 10 and 11, we turn our focus to mediating institutions. In Chapter 10, we first explore the role of political parties. More than 82 percent of all Americans currently live in a state where one party dominates, possessing a trifecta where a single party controls both branches of the state legislature and the governorship.<sup>17</sup> In part, political parties now lack much of the local flavor or character that aptly described them for much of our country's history. Most states are now broadly considered to be “red” states or “blue” states, with little in between.

In Chapter 11, our attention turns to interest groups and the media. Interest groups play an interesting role in state government, where they can provide citizens an opportunity to level the playing field but simultaneously produce inequitable outcomes by allowing those with more—whether it be money, influence, or information—to dictate the outcomes for everyone. Likewise, the media has the potential to serve as an advocate and watchdog for voters—but also plays a role in further polarizing many Americans into opposing camps of us versus them.

17. Ballotpedia, “State Government Trifectas.”

Finally, in Chapter 12, we conclude by turning our attention inward toward local governments. In the United States, there are more than ninety thousand different levels of government. Many of them are local; whether it be counties, municipalities, or school boards, these bodies of government play a preeminent role in the life of every American—even though they receive the least amount of attention and voter participation.

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# Case Study Chapter 2

GREGORY SHUFELDT

## Chapter 2 Case Study: Texas and Modern-Day Nullification

The United States utilizes a federal system of government, where power is divided between the national government and the states. Due to the ambiguity within the Constitution, the relationship between these two levels of government is rife with controversy. One area where there frequently is clarity is that federal laws have supremacy over state laws. From time to time, however, states have sought to push the boundaries of what they are able to accomplish under the mantle of states' rights. Today, Texas is at the forefront of that fight.

In 2023, the Texas legislature passed Senate Bill 4, which directs Texas police to arrest anyone crossing into Texas from Mexico illegally.<sup>1</sup> Texas enacted a makeshift barrier throughout the Rio Grande, using razor wire and fencing to prevent illegal crossings. When the Department of Homeland Security directed Texas to remove it so that federal border agents could do their jobs, three migrants drowned in the river while federal agents were denied access.<sup>2</sup> Even though the supremacy clause (Article VI,

1. Hesson, "Texas to Arrest Migrants"; Wiessner, "US Judge Blocks Texas Law"; Wiessner and Hesson, "US Court Keeps."

2. Epps, "It's Not Just the Border."

Clause 2) clearly states that federal laws are the “supreme law of the land,” Texas Governor Greg Abbott sought to relitigate the relationship between states and the federal government. Texas, not the US Constitution, is “the supreme law of the land and supersedes any federal statutes to the contrary,” said Abbott.<sup>3</sup>

Abbott carries on the legacy of former Vice President John C. Calhoun, who championed the cause of nullification, the idea that states have the ability to refuse or ignore federal laws they believe to be unconstitutional. This perspective believes that the country was formed as a compact between states, and thus the federal government belongs to the states. This idea, called compact theory, has routinely been rejected by legal scholars and the Supreme Court as unconstitutional and is generally viewed as abhorrent by posterity. The US Supreme Court consistently has ruled that immigration policy is the purview of the federal government and has struck down state actions, most recently in the 2012 case *Arizona v. United States*.<sup>4</sup>

The federal government sought to block the law, suing the state of Texas. The Supreme Court heard this case, *United States v. Texas*, however, opting to let it stay in effect while the judicial proceedings played out. Currently, Senate Bill 4 remains blocked by an injunction from the Fifth Circuit Court of Appeals. A resolution in this specific case is likely imminent, while the idea that states can choose to ignore federal laws they disagree with persists as a fringe constitutional theory; how states and the federal government should work together is likely to remain a contentious issue.

3. Barrón-Lopez and Khan, “Border Standoff.”

4. Milhiser, “Supreme Court’s Confusing New Border Decision.”

## Critical Thinking Questions

Should the United States be thought of as formed with the consent of the people or with the consent of the states?

What policy topics do you believe should be addressed by the federal government? By the states? By local governments? Which topics require all three?

What should states be able to do when partisan gridlock at the national level prevents meaningful legislation on important policy topics like immigration?

# 2. The Impact of Federalism

GREGORY SHUFELDT

## *Chapter Summary*

Federalism as a concept is influential in virtually any political science topic, but it is paramount to the study of state and local governments. While the federal government garners more attention from most people, state and local governments play a vital role in the everyday lives of their citizens. State governments are often viewed as limited in their scope because of the supremacy clause, but the balance of power between federal and state governments is neither static nor uniform across time or public policies. This chapter will delve into the tug-of-war that is power between the states and federal governments, highlighting historical challenges, changes over time, and emerging battles that illustrate the conflict today.

## *Student Learning Objectives*

Upon completion of this chapter, students should be able to:

1. Identify differences between federal, confederal, and unitary systems of government.
2. Describe the historical context and competing motivations that shaped the founding of the United States.
3. Identify differences between the Articles of Confederation and the US Constitution.
4. Compare and contrast the perspectives of the Federalists and Anti-Federalists as they relate to the ratification of the US Constitution.
5. Describe how the US Constitution outlines the relationship between the federal government and the states.
6. Identify differences among expressed, implied, police, and concurrent powers.
7. Analyze the changing dynamics of federalism, including the evolution from dual federalism, cooperative federalism, regulated federalism, and New Federalism.
8. Contrast the current relationship between the federal government and the states with previous eras of federalism.
9. Evaluate both the advantages and disadvantages associated with federalism.

### *Focus Questions*

These questions illustrate the main concepts covered in the chapter and should help guide discussion as well as enable students to critically analyze and apply the material covered.

How does federalism differ from confederal and unitary models of government? How are states different in terms of power and autonomy in each of these systems?

Why does the United States rely on a federal system of government to divide and share powers between the federal and state governments?

What are some of the benefits that federalism offers relative to other governments? What are some of the disadvantages?

How has federalism changed over time? What incites these changes? What impact do these changes have?

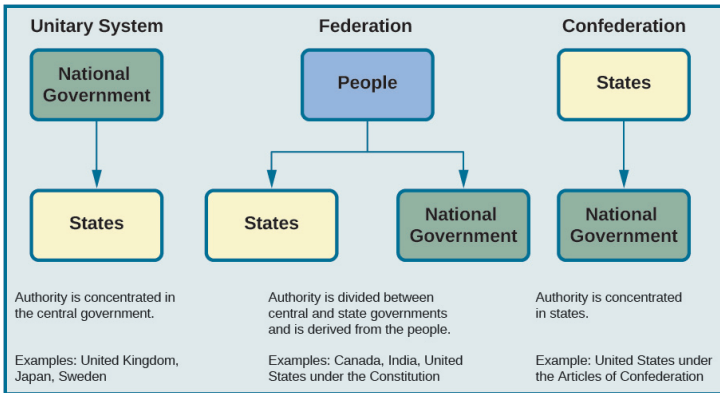
## What Is Federalism?

At its heart, **federalism** is about power sharing. It is a system of government where power is divided and shared between a national government and regional governments. The US Constitution articulates some parameters of the relationship between states and the federal government but leaves ample room for ambiguity and debate. First, before engaging in the nuance of American federalism, it is perhaps easiest to understand federalism by comparing it with other systems of government.

First, a **unitary** system of government is an institutional arrangement where power is centralized within the national government. State and local governments possess very limited independent power. National governments give or specify what type of powers are available to state and local governments. Current examples of unitary governments include China, Cuba, France, and Israel. Historically, this model of government is most common as autocracies (rule by a single individual such as a monarch or dictator) and oligarchies (rule by a small group such as the military, religious leaders, or wealthy individuals) tend to concentrate power at the national level rather than share it.

A **confederate** or confederal system of government is an institutional arrangement that concentrates the majority of power at the state or subnational level. These local governments hold supremacy over the national government in all areas unless explicitly enumerated otherwise. In the United States, the country adopted a confederate model during the Articles of Confederation, and the Southern states utilized this model when forming the Confederate States of America during the Civil War. Switzerland is perhaps the most common example of a long-lasting confederacy, as their cantons (a rough equivalent of US states) held significant autonomy until the mid-nineteenth century. The European Union (EU) is sometimes referred to as having confederate characteristics, as each member state (country) maintains sovereignty but works together to further mutually beneficial policies on behalf of the continent.<sup>1</sup> Currently, however, no countries utilize a confederate model.

1. Elazar, “From Statism to Federalism”; Elazar, “New Europe.”



**Figure 2.1 – Models of Government**

Source: “[[The Division of Powers](#)]” by Glen Kutz and Sylvie Waskiewicz, In *American Government 3e*. OpenStax / [CC BY](#).

## Which Model of Government Has America Experienced?

America has experience with all three models of government. First, the United Kingdom (then Great Britain) held supreme power over its colonies, including the original thirteen American colonies, as part of a unitary system. In the mid- to late eighteenth century, Britain incurred significant debts fighting multiple wars, including the War of Austrian Succession and the Seven Years’ War, more than doubling their national debt.<sup>2</sup> Britain did not implement an income tax system until after the Revolutionary War, when they were fighting (again) with France. As a result, the primary means of raising revenue relied on tariffs and duties. Britain levied many new taxes on the colonies, such as the Townshend Acts, the Stamp Act,

2. Lanskey and O’Loughnan, “300 Years.”

and the Tea Act. While the amount of taxation was relatively modest in many respects, many of these new policies advantaged British merchants and businesses at the expense of the colonies—creating an unfair competitive advantage amid concerns of “no taxation without representation.” Without the ability to vote for their own elected officials, voice their displeasure directly to King George III, or enjoy representation in British Parliament, the colonists agitated for change.



J O I N, or D I E.

**Figure 2.2 - Join or Die  
Revolutionary-Era Image**  
Source: “[JOIN, or DIE](#)” by Benjamin Franklin, uploaded by DonkeyHotey on Flickr / [Public Domain](#), [CC BY](#).

This experience with a perceived tyrannical monarch and unresponsive national government informed how the newly freed colonists chose to set up their first government. Under the **Articles of Confederation**, the country’s first constitution that governed America from 1781 to 1789, the states created a “league of friendship,” where “each state

retains its sovereignty, freedom, and independence and every power, jurisdiction, and right, which is not by this confederation expressly delegated to the United States, in Congress assembled.”

Each state was to be sovereign and had supremacy over the new federal government, which was created to be intentionally weak. The national government bore little resemblance to our current system of government, as there was no president or executive branch and Congress existed of a unicameral (single) chamber, where each state possessed one vote regardless of population. This is in contrast



**Figure 2.3 – Articles of Confederation Poster**  
Source: [“We Tried Small Weak Federal Gov’t” by Martha Soukup on Flickr/CC BY.](#)

to our current bicameral legislature consisting of the House of Representatives, where representation is based on population, and the Senate, where representation is equal among states. To pass legislation, the legislature required a two-thirds vote—an unthinkable threshold for today’s polarized Congress. To amend the Articles of Confederation, it needed to be unanimous, with all thirteen states voting in agreement.

The federal government was reliant on state governments for funds and was unable to regulate interstate commerce or do much of anything regarding conflicts between the states. States were able to create their own currency, and the federal government was unable to compel states (or their citizens) to pay taxes. Each state was largely left to its own devices to pay off any remaining debts from the Revolutionary War, as documented in “Cabinet Battle #1” from *Hamilton: An American Musical*.



One or more interactive elements has been excluded from this version of the text. You can view them online

here: <https://pressbooks.palni.org/theexcitingdynamicsofstateandlocalgovernment/?p=44#oembed-1>

**Figure 2.4 – Hamilton Video**

**Source:** Miranda, Lin-Manuel. “Cabinet Battle #1” from HAMILTON.” YouTube, 2020. <https://www.youtube.com/watch?v=TZ1drFwVT24> / Embedded with the [Standard YouTube License](#).

For example, the state of Massachusetts increased and implemented new taxes by nearly 500 percent. Many residents, especially farmers, were unable to afford these new taxes and had little power to prevent the state from seizing their land upon foreclosure. This led Daniel Shays, a former captain in the Continental Army, to lead an armed insurrection of many fellow soldiers and farmers who were yet to be paid for their service during the Revolutionary War.

Shay’s Rebellion laid bare the fragility and shortcomings of this new government. The federal government was unable to pay its debts. The state was unable to raise a militia and relied on private contributions to end the unrest. After Shay’s Rebellion, two clear responses capture the tension about how to balance too much and not enough government. George Washington wrote that “mankind left to themselves are unfit for their own government.”<sup>3</sup> Whereas Thomas Jefferson offered that “the tree of liberty must be refreshed from time to time with the blood of patriots and tyrants.”<sup>4</sup> These divergent responses mirror the ensuing debate about whether and how to replace the Articles of Confederation.

3. Washington, “From George Washington to Henry Lee, Jr.”

4. Jefferson, “Thomas Jefferson to William Smith.”



Figure 2.5- *Shay's Rebellion Marker*

Source: "[Appalachian Trail 2012](#)" by John Hayes on Flickr / [CC BY](#).

## How Should the Articles of Confederation Be Replaced?

As a result of the failures of the Articles of Confederation, each state sent representatives to Philadelphia in 1787 with the purpose of revising the document. Instead, they opted to propose an entirely new model of government. The Constitutional Convention sought to provide a new road map for how to find a balance between two divergent experiences: a tyrannical central government with limited opportunities for participation and an impotent central government unable to meet the needs of its citizens.

The founders proposed a new constitution that sought to balance this tension in at least three critical ways. The first method is to ensure a **separation of powers**—intentionally dividing the

power of government across different political institutions. Rather than concentrate power with just a single monarch or with a single body of Congress, the new Constitution created the legislative, executive, and judicial branches as three coequal branches of government.

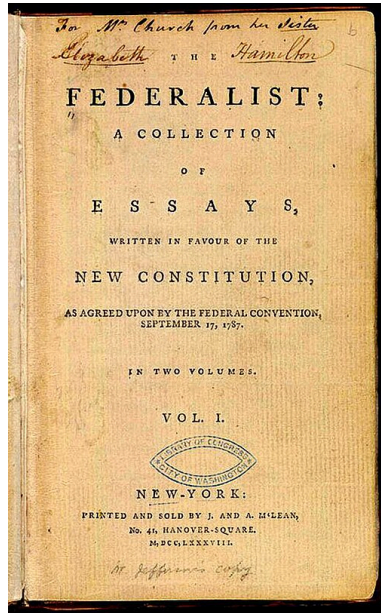
The second method, closely related to ensuring a separation of powers across the three branches, was to design a system of **checks and balances**. Each of the three branches of government at the federal level has the ability to affect the workings of the other branch to prevent power from becoming too concentrated with any single institution. For example, the president can veto legislation passed by Congress. Congress can override a presidential veto with a two-thirds vote. The president gets to appoint judges to the Supreme Court, but the Senate has the ability to approve these judges based on their power to advise and consent.

Separation of powers and checks and balances create a tension—they make autonomous government bodies (e.g., a legislature responsible for passing legislation) while also making them dependent on one another (e.g., the president is able to sign or veto said legislation).

All fifty states, as described in Chapter 3, mirror similar concepts of separation of powers and checks and balances in their state constitutions. The third way that the founders sought to balance the tension between excessive democracy and a tyrannical government was by moving from a confederal to a federal system. In many respects, the ensuing fight to ratify the Constitution between the Federalists (who supported ratification) and the Anti-Federalists (who opposed ratification) previews one of the longest-lasting questions that has governed our politics for more than two centuries: What is the right way to think about how the federal government and the states should relate to one another?

In order to ratify the new Constitution, at least nine of the thirteen states needed to approve it. In an attempt to get the state of New York to ratify the Constitution, Alexander Hamilton, James Madison, and John Jay wrote a series of eighty-five essays as *The Federalist Papers* under the pseudonym “Publius.”<sup>5</sup> These essays are perhaps the clearest articulation of the different perspectives on how the Constitution improves upon the Articles of Confederation.

In the most famous of these essays, Madison wrote in [Federalist#10](#) about curing the “mischiefs of faction.” In a purely majoritarian system, one faction, or group organized around a common goal, would impose their preferences upon the minority. Madison identifies two ways to cure or control against factions. The first is to limit the causes of factions—namely, liberty. He writes that “liberty is to faction what air is to fire.” As long as Americans are free, it is in our nature to organize among ourselves to identify and pursue common interests. Curtailing liberty is unacceptable to Madison; thus the second way to address factions is preferable. Rather than remove the causes of factions, the



**Figure 2.6 – The Federalist Papers**  
Source: [“The Federalist: A Collection of Essays, Written in Favour of the New Constitution, as Agreed upon by the Federal Convention, September 17, 1787” by Publius \(Alexander Hamilton, John Jay, James Madison\) / Public Domain.](#)

5. Hamilton et al., Federalist Papers.

solution is to design a system of government that limits the effects or consequences of factions.

The Federalists supported the Constitution because it provided more power to a centralized national government, whereas the Anti-Federalists opposed a strong central government. These opposing camps differed along three important debates all engaged in different respects in [Federalist#10](#).<sup>6</sup>

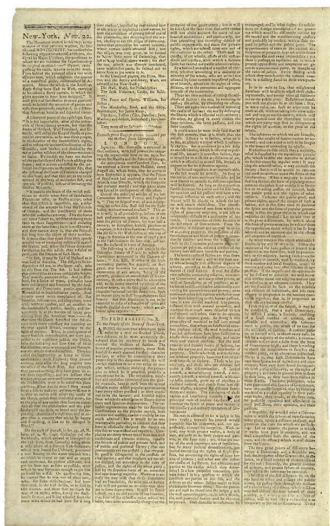


Figure 2.7 – Federalist #10  
Source: “[Federalist No. 10: “The Same Subject Continued: The Union as a Safeguard Against Domestic Faction and Insurrection”](#) by James Madison. New York Daily Advertiser, November 22, 1787. Courtesy of National Archives / [Public Domain](#).

The first difference is about how best to understand representation. Anti-Federalists preferred a **delegate model** of representation. In this approach, elected officials should resemble and be an accurate depiction of what the (majority of) people want. The best way to do this is to have the government closer to the people. Smaller state governments are more likely to resemble and be responsive to their citizens than a larger republic. The Federalists preferred a **trustee model** of representation. In a representative democracy, elected officials ought to promote the common good rather than simply mirror the

passions of a majority. In the words of Revolutionary-era British (Irish) politician Edmund Burke, a “representative owes you, not his industry only, but his judgment; and he betrays, instead of serving

6. Ginsberg et al., We the People.

you, if he sacrifices it to your opinion.”<sup>7</sup> By moving away from a confederacy, elected officials will prioritize what is in the best interest of the country—not just their state.

The second difference is about the fear of tyranny. Both the Federalists and Anti-Federalists were concerned about an abuse of power but feared different groups. The Anti-Federalists were afraid of governmental tyranny—specifically, the tyranny of the minority. They feared the country would devolve into an oligarchy, where power would be concentrated in the hands of the few. Even more concerning was that the addition of the executive branch would hinder the people’s ability to govern and could return the country to a monarchy. The Federalists feared tyranny of the majority, or what would occur with mob rule. To prevent a pure democracy or more majoritarian system that was hyperresponsive to the majority, the Constitution included several components adding distance between the people and the government. For example, only members of the House of Representatives were directly elected by the people. Senators were elected by state legislators until the passage of the Seventeenth Amendment, and the president is still elected by the Electoral College to this day.

As for the third difference between the two camps, while both Federalists and Anti-Federalists sought to limit the power of government, they differed on how to best approach this. The Anti-Federalists wanted the Constitution to specifically enumerate the powers available to the federal government. Akin to a confederal system, the Anti-Federalists wanted all powers not specifically mentioned in the Constitution to be the domain of the states. The Federalists preferred flexibility and to give the national government the resources to respond to new or pressing issues. Key provisions, like the necessary and proper clause, gave the federal government the ability to grow beyond what was explicitly enumerated in the Constitution. Ultimately, in order to gather enough support to ratify

7. Burke quoted in Kurland and Lerner, *Founders’ Constitution*.

the Constitution, the Bill of Rights was added, enumerating key limits on the federal government.

## What Does the Constitution Say About Federalism?

The word *federalism* does not appear anywhere in the US Constitution. Yet the tenets of the concept are readily apparent in most of the seven articles or sections of the Constitution. In Article I, Section 8, the Constitution spells out the **expressed powers** available to Congress—that is, powers that are enumerated or specifically written. The Constitution enumerates seventeen specific powers for Congress, including the ability to collect taxes and regulate commerce that were not specified as part of the Articles of Confederation.

The newly created executive branch was bestowed with only five expressed powers (military, diplomatic, executive, legislative, and judicial), largely concentrated in Article II, Sections 2 and 3. To ensure that too much power is not concentrated in the hands of a single person, Congress holds a significant ability to impact the president's expressed powers. For example, while the president serves as the commander in chief of the military, Congress has the sole authority to declare war. While the president can make treaties, appoint Supreme Court justices, and veto legislation, Congress has the ability to override a presidential veto or confirm the president's treaties and appointments via the Senate's power of advice and consent.

Article III of the Constitution, while noticeably shorter than both Articles I and II, addresses the judicial branch. It provides a framework to govern the relationship between the federal government and the states by vesting “the judicial power of the United States...in one supreme court” (Section 1) and giving the

Supreme Court the authority or jurisdiction to be the ultimate arbiter in cases of conflict between states (Section 2). This is an important distinction, as it helps establish that the federal government has supremacy over the state governments.

Article I, Section 8, Clause 18 is called the **necessary and proper clause** or **elastic clause**. Congress is given the power “to make all laws which shall be necessary and proper for carrying into execution the foregoing powers.” It is from this clause that the concept of **implied powers** is derived—that the power is implied or inferred based on other expressed powers.

The classic example of implied powers comes from the Supreme Court case *McCulloch v. Maryland* (1819).<sup>8</sup> Article I of the Constitution gives Congress the ability to collect taxes and borrow and coin money. Nowhere in the document, however, is the ability to start a bank enumerated. Yet Congress did indeed charter a bank (twice). In *McCulloch*, the Supreme Court ruled that Congress’s creation of the bank was constitutional because *necessary* does not need to mean *absolutely necessary* or *essential*, only that it stems from or derives from expressed powers.<sup>9</sup> This sparked a considerable amount of controversy, including a presidential veto by Andrew Jackson, who believed Congress was exceeding its constitutional power. Opponents of a broad interpretation of the elastic clause argue that Congress is able to collect taxes, borrow money, coin money, and so on without creating a bank. Therefore, it was not necessary according to this point of view.

8. Oyez, “*McCulloch v. Maryland*.”

9. Epstein and Walker, *Constitutional Law*.

**Reserved powers** derive from the Tenth Amendment, which states, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” The inclusion of the Tenth Amendment was a compromise between the Federalists, who wanted the federal government to maintain a degree of flexibility, and the Anti-Federalists, who feared too much power becoming concentrated at the national level. As a result of this, states have wide latitude to utilize their **police powers**—powers to coerce or regulate citizen behavior. Historically, states—not the federal government—were responsible for policy domains like education, health care, criminal codes, and morality.



**Figure 2.8 – McCulloch v. Maryland Quote**  
**Source:** [“Famous Case Quotes, Supreme Court Building, United States Supreme Court, Washington, D.C., by Ken Lund on Flickr / CC BY-SA.](#)

The Tenth Amendment ensures we maintain our system of federalism, as power is divided between the federal government and the states. This is part of the reason why **concurrent powers**, powers that belong to multiple levels of government at once, exist. Perhaps the most prominent example of a concurrent power is the ability to tax.

QUARTERLY STATEMENT				EARNINGS STATEMENT			
Bank Connection 323 Sowerhole Drive, Durham, NC 27705							
EMPLOYEE INFO		EMPLOYEE ID		CHECK NO.		PAY PERIOD	
EMPLOYEE NAME		EMPLOYEE ID		CHECK NO.		PAY PERIOD	
John Doe	12345	12345	12345	12345	12345	12345	12345
DATE	AMOUNT	DEBIT	CREDIT	DATE	AMOUNT	DEBIT	CREDIT
12/01/2023	1500.00	40	800.00	FICA MED TAX	8.75	75.00	
				FICA RET TAX	37.50	248.00	
				FED TAX	80.00	810.00	
				NC ST TAX	34.80	210.00	
				HEALTH	176.50	1080.00	
				DENTAL	38.25	235.00	
				RETIREMENT*	800.00	5040.00	
YTD GROSS	YTD DEDUCTIONS	YTD NET PAY	CURRENT TOTAL	CURRENT DEDUCTIONS	NET PAY		
6,400.00	2,200.00	2,900.00	800.00	315.25	284.75	*Excluded from federal taxable wage	

**Figure 2.9 – Example of Pay Stub**  
**Source:** [“Example Paystub” in Personal Finance: Analyzing a Pay Stub, by Kelli Keefe on OER Commons / CC BY-NC.](#)

While the first three articles of the Constitution articulate the powers available to the legislative, executive, and judicial branches, the fourth article deals with how states relate to one another and the country as a whole. Article IV, Section 1 is referred to as the

**full faith and credit clause.** It says that states ought to give “full faith and credit” to the “public acts, records, and judicial proceedings of every other state.” Marriage licenses—and the topic of same-sex marriage, specifically—help illustrate this core concept of state relationships. Opposite-sex couples enjoyed recognition of their unions regardless of where the marriage occurred. For example, a couple married in Illinois that relocates to Indiana is still married in the eyes of the state of Indiana. The state recognizes the marriage from Illinois as valid. The couple does not have to “remarry” now that they live in Indiana.

As states began to reconsider their positions as support for same-sex marriage increased, the federal government intervened. In 1996, Congress (controlled by the Republican Party at the time) passed and President Bill Clinton (a Democrat) signed the Defense of Marriage Act (DOMA) into law with significant bipartisan support.<sup>10</sup> This law codified marriage as a union between one man and one woman. It also allowed states to refuse to recognize same-sex marriages performed in another state.

In 2013, the Supreme Court struck down DOMA in *United States v. Windsor*.<sup>11</sup> The Court, however, did not offer Article IV as the reason to strike down DOMA. The Court ruled that the federal government was discriminating against same-sex couples and that marriage was an example of a police power for states, not the federal government, to regulate. This is an important distinction, as public opinion and case law toward marriage equality have changed drastically in the ensuing decades since DOMA was passed. Just two years later, the Supreme Court went even further in *Obergefell v. Hodges*.<sup>12</sup> In a 5–4 decision, the Court ruled that states are required to allow same-sex marriages and recognize same-sex marriages performed in other states. The majority opinion argued that bans

10. Rudin, “Gay Marriage, DOMA.”

11. Oyez, “United States v. Windsor.”

12. Oyez, “Obergefell v. Hodges.”

on same-sex marriage violated citizens' due process and equal protection rights guaranteed by the Fourteenth Amendment.

While many advances have been made toward LGBTQ+ equality, debates about federalism have the potential to dismantle much of the recent progress made by advocates.<sup>13</sup> In his concurring opinion in *Dobbs v. Jackson*, which indicated that the Constitution does not provide women the right to terminate a pregnancy via an abortion, Supreme Court Justice Clarence Thomas went even further than the majority opinion by arguing that the Constitution does not guarantee a right to birth control, interracial and same-sex relationships, or marriages.<sup>14</sup> These rights or policy areas ought to be the domain of state governments, not federally protected, according to Thomas. Out of fear that the Supreme Court might follow Thomas's lead and overrule further precedents, Congress passed, and President Joe Biden signed, the Respect for Marriage Act.<sup>15</sup> The bill, which received bipartisan support in both the House of Representatives and the US Senate, is viewed as a contingency if *Obergefell* were to be overturned but as a modest improvement over DOMA. While states would be not compelled to recognize same-sex or interracial marriages within their own state, they must give marriages performed in other states full faith and credit.

13. Lindevaldsen, "Same-Sex Relationships"; Strasser, "Marriage, the Constitution"; Strasser, Challenge of Same-Sex Marriage.

14. Oyez, "Dobbs v. Jackson."

15. Shear, "Biden Signs Bill."



**Figure 2.10 – White House Pride**  
**Source:** [P20221213AS-3092](#), [White House is seen lit up in rainbow colors, Tuesday, December 13, 2022] (Official White House Photo by Adam Schultz), by Biden White House Archived on Flickr / [United States government work](#).

Article IV, Section 2 of the Constitution is referred to as the **privileges and immunities clause**. This section of the Constitution is designed to bind the citizens of each state into a single union.<sup>16</sup> Promoting national unity as a single country rather than just an agreement between states was an important priority for the Federalists. This passage of the Constitution allows citizens to

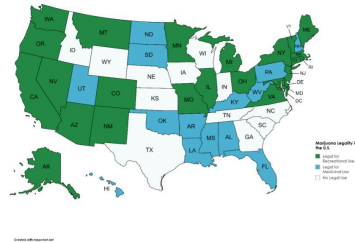
freely engage in interstate travel and prevents states from discriminating against residents of other states.<sup>17</sup> A good modern example is the significant diversity in state laws related to recreational and medicinal marijuana. As will be discussed in more detail in Chapter 7, states have utilized the initiative to first implement medical marijuana policies before moving on to legalizing recreational marijuana. While marijuana remains federally illegal, almost half of the states have legalized it for recreational purposes. A resident of Indiana is unable to purchase marijuana legally, but if they travel to neighboring Michigan or Illinois, they would be able to do so. Since it is legal in Illinois and Michigan, the behavior is also legal for the nonresidents of these states. However, conflicting court cases are at odds about whether residency requirements to sell marijuana are constitutional or not.<sup>18</sup>

16. Legal Information Institute, “Overview of Privileges and Immunities.”

17. Gross and Upham, “Common Interpretation.”

18. Johnson, “Court Upholds Wash. Residency”; Toma, “License to Sell.”

Article VI, Section 2 of the Constitution speaks to the relationship between states and the federal government. The **supremacy clause** states that the “Constitution, and the Laws of the United States...shall be the supreme law of the land.” If there is ever a conflict between a state law and a federal law or the US Constitution, the federal government takes supremacy over state governments.



**Figure 2.11 – Marijuana Legalization by State**  
 Data Source: Adapted from Wikipedia. “Legality of Cannabis by U.S. Jurisdiction.” [https://en.wikipedia.org/wiki/Legality\\_of\\_cannabis\\_by\\_U.S.\\_jurisdiction](https://en.wikipedia.org/wiki/Legality_of_cannabis_by_U.S._jurisdiction). Map made by author; information accurate as of August 2024. Note: Marijuana also is legal for medicinal use in states where it is legal for recreational use.

As described, twenty-four states have legalized marijuana for recreational purposes, and thirty-eight have legalized medical marijuana as of July 2024. The Drug Enforcement Agency and the federal government, more broadly, have not intervened; state laws legalizing marijuana for recreational purposes are in conflict with existing federal law.<sup>19</sup> While the Biden administration proposed moving marijuana from a Schedule I to a Schedule III drug, it remains illegal at the federal level.<sup>20</sup>

With perhaps the exception of the Sixteenth Amendment, which gave Congress the ability to collect income taxes, no new expressed powers have been added to the Constitution. The **Bill of Rights**, the first ten amendments to the Constitution, was a prerequisite necessary to ensure it was ratified by at least nine states. These amendments were viewed as further protection

19. Adler, Marijuana Federalism; Sacco, Lampe, and Sheikh et al., “Federal Status of Marijuana.”

20. Miller et al., “US Poised to Ease Restrictions”; Peltz and Whitehurst, “What Marijuana Reclassification Means.”

against encroachment from the federal government. Utilizing a process called **selective incorporation**, the US Supreme Court has applied each of these amendments on a case-by-case basis to also be applicable to each of the states.

Yet the power of the federal government has grown considerably over the past two hundred years. Without a clear expansion of expressed powers, a constant tension between implied and reserved powers exists between states and the federal government. Outside of national security interests, few policy domains are exclusively the purview of the federal government. Nor are there many public policies that are exclusively addressed at the state and local levels. Today's federalism is marked by the interconnected and interdependent relationship between states and the federal government.

## How Has Federalism Changed Over Time?

Political scientists typically think of how federalism has changed by dividing time periods into different eras.<sup>21</sup> This first era of federalism is called **dual federalism**, often called “layer cake” federalism. As Figure 2.12 depicts, each layer (or level of government) is distinct and separate. The federal government was responsible for building a national infrastructure to promote commerce. This involves both foreign affairs and work with the Indigenous population. The Tenth Amendment ensured that the majority of work was done at the state level.

21. Grodzin, American System.

**Table 2.1 – Eras of Federalism**  
**Table made by author.**

<b>Era of Federalism</b>	<b>Time Period</b>	<b>Characteristics</b>
Dual federalism ("layer cake")	1789–1930s	Distinct functions and responsibilities for federal and state government. Very little interaction between levels.
Cooperative federalism ("marble cake")	1930s–1960s	States still retain significant autonomy and power, but the federal government increasingly works closely with state governments.
Regulated (coercive) federalism	1960s–1970s	Federal government sets national standards and asserts dominance over states in most policy domains.
New Federalism	1970s–present	Era of devolution as power is returned to the states to address many policy domains.

The founding era is marked by conflict between two diametrically opposed views. As previously described, the Federalists advocated for a stronger federal government holding supremacy over the states. The Anti-Federalists wanted as much power as possible to remain with states and local governments. Politics for much of the last more than two hundred years has mirrored this debate between whether more power should be with the federal government or the states.

The first two presidential administrations of George Washington (even though he was not a member of a political party) and John Adams helped establish an energetic and expanding national government. Chief Justice John Marshall, arguably one of the most important and powerful Supreme Court justices who served our country, helped usher in a series of landmark decisions like *McCulloch v. Maryland* and *Gibbons v. Ogden* that provided the federal government sufficient flexibility to expand the utilization

of the necessary and proper clause and commerce clause, respectively.<sup>22</sup>

In spite of this foundation that established national supremacy, much of our country's early history is characterized by states doing the bulk of the governing. The Washington and Adams administrations were followed by a series of Democratic-Republican presidencies (Jefferson, Madison, Monroe). This "Era of Good Feelings" was ushered in as the Federalist Party collapsed and partisan tensions declined so much that President James Monroe ran virtually unopposed for reelection in 1820.

In the 1830s, John Marshall was followed as chief justice by Roger Taney, who possessed a broad understanding of the Tenth Amendment and was a fervent supporter of **states' rights**, the belief that power belongs with the states amid federal encroachment.<sup>23</sup> Similar to Taney, John C. Calhoun, who served as vice president under President Andrew Jackson and as a senator from South Carolina, thought the Tenth Amendment gave the states significant latitude. The idea of **nullification**, or that states held the power to reject or ignore federal legislation if they felt it was unconstitutional or objectionable, is most often associated with Calhoun. While the view of the Federalists (or nationalists) largely prevailed over the views of Taney or Calhoun, states still enjoyed considerable autonomy for the first century and a half of the country's history.

22. Oyez, "Gibbons v. Ogden."

23. Epstein and Walker, *Constitutional Law*.

Dual federalism is the longest era, lasting from the founding until the early twentieth century. When the Great Depression hit and destabilized the world economy in the late 1920s and 1930s, almost one out of every four Americans was unemployed, and many more struggled to make ends meet.<sup>24</sup> Republican



**Figure 2.12 – Layer Cake and Marble Cake Federalism**

**Source:** “[[Dual Federalism vs. Cooperative Federalism](#)]” by Glen Kutz and Sylvie Waskiewicz, In *American Government 3e*. OpenStax / [CC BY](#).

President Herbert Hoover remained steadfast that the federal government had little role to play and was unwilling to mobilize national resources to address these pressing problems. Many Americans who lost their homes migrated, looking for work, and settled into “Hoovervilles,” or makeshift camps named after the president and his lack of intervention. The 1932 election of Franklin Delano Roosevelt over Hoover marked the end of dual federalism as the federal government implemented a series of new social programs aimed to alleviate suffering known as the **New Deal**.

The rise of Roosevelt’s New Deal policies reflects a clear shift into the second era of federalism called **cooperative federalism**, also known as marble cake federalism. Unlike a layer cake, where the levels of government remain separate, the federal government and the states become more interdependent. The New Deal policies created an unprecedented level of new agencies and programs that attempted to address many pressing challenges, such as fighting unemployment, poverty, and homelessness.

24. Franklin D. Roosevelt Presidential Library and Museum, “Great Depression Facts.”



**Figure 2.13 – New Deal Quote**

**Source:** [“First Term Room – New Deal Pledge” by Tim Evanson on Flickr / CC BY-SA.](#)

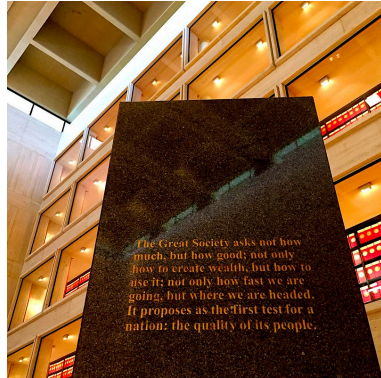
Three notable programs that were started during this era include unemployment insurance, Social Security, and Aid to Families with Dependent Children (AFDC). The federal government dispersed money to the states to provide financial support to those seeking and unable to find jobs,

disabled and retired Americans, and families living in poverty. These programs are examples of **categorical grants**, where Congress allocates money to the states on the condition that states utilize the funds to carry out specific programs.

States still maintained a great deal of flexibility and autonomy after the New Deal. As a result, the fifty-state landscape exhibited significant diversity—simultaneously a strength and weakness of federalism to be discussed momentarily. In particular, the blatant discrimination faced by African Americans in the South led many to question whether states, left to their own devices, would provide for their citizens. In the 1960s, the relationship between the federal government and the states moved into an era known as **regulated or coercive federalism**.

Continuing the legacy of Roosevelt’s New Deal, President Lyndon B. Johnson sought to promote a “Great Society” through a series of initiatives focused on education, social welfare, and civil rights. This included a slew of new federal policies and programs like Medicare and Medicaid as well as the Civil Rights Act of 1964 and the Voting Rights Act of 1965.

No longer was the promise of federal money enough to incentivize state participation in federal programs. In addition to providing financial support, the federal government implemented more top-down standards that states were expected to follow. While no cake metaphor exists for the third era of federalism, to continue the use of food imagery, the federal government increasingly was



**Figure 2.14 – Great Society Quote**  
Source: “[LBJ Presidential Library 7](#)” by [CG iPhoneography on Flickr](#) / [CC BY-NC-SA](#).

using a stick (penalties) in addition to the carrot (funding). While many critics felt the federal government overreached, one skeptic noted, “The federal government has not encroached on state government. State government has defaulted.”<sup>25</sup>

The increase in the size and scope of the federal government produced an inevitable backlash as conservatives enjoyed considerable success railing against the problem of “big government.” Under the administration of Republican Presidents Richard Nixon and Ronald Reagan, the country was ushered into an era of **New Federalism**. New Federalism is characterized by the process known as **devolution**, where the federal government returned or delegated authority to state and local governments.



*One or more interactive elements has been excluded*

25. Patterson, “New Deal and the States.”

— from this version of the text. You can view them online here: <https://pressbooks.palni.org/theexcitingdynamicsofstateandlocalgovernment/?p=44#oembed-2>

### **Figure 2.15 – Ronald Reagan’s Inaugural Address**

**Source:**“Reagan: Government Is Not the Solution to Our Problem Government IS the Problem.” Inaugural Address 1981. YouTube, 2009. <https://www.youtube.com/watch?v=6ixNPplo-SU> / Embedded with the [Standard YouTube License](#).

A key aspect of devolution is changing the funding mechanism for many federal programs from categorical grants to **block grants**. Rather than giving funds that states must spend on specified programs, block grants provide states significant autonomy and flexibility in how they spend federal resources. In 1996, Bill Clinton signed the Personal Responsibility and Work Opportunity Reconciliation Act, a major welfare reform act. In doing so, Clinton said he was going to “end welfare as we know it.” It replaced the categorical grant for AFDC with a block grant program called Temporary Assistance for Needy Families (TANF). States were able to utilize funds for cash assistance, job training, childcare, and other social welfare needs. Initially, this flexibility led to clear partisan divisions as states controlled by the Democratic Party spent significantly more of their TANF funds on cash assistance than states controlled by the Republican Party.<sup>26</sup> Today, that partisan pattern is less noticeable, as each state has the autonomy to identify how best to utilize these funds, with many deprioritizing direct cash assistance. For example, Illinois ranked fiftieth, spending just 4 percent of TANF funds on cash assistance (\$45 million) in 2021,

26. Winburn, Brown, and Gligor et al., “State Partisan Dominance.”

whereas neighboring Wisconsin spent \$82 million, or 15 percent of their funds, on direct cash assistance.<sup>27</sup>

The increased reliance on block grants is also associated with the federal government providing less funding for many of the same programs compared to prior years. The changing relationship between the federal government and states also led to a rise in accusations regarding **unfunded mandates**, where the federal government introduced a new standard or requirement for states to meet without providing the necessary and sufficient levels of funding.<sup>28</sup> Frequently pointed-to examples include the Americans with Disabilities Act and No Child Left Behind.<sup>29</sup>

## How Would You Describe Our Current Era of Federalism?

These four eras (dual, cooperative, regulated, and New Federalism) are generally agreed upon, but no consensus exists as to whether the relationship between the federal government and the states still fits within New Federalism or whether we have moved into a new era. This is due in part to the idiosyncratic and dysfunctional nature of American politics over the last twenty to thirty years.<sup>30</sup>

Politics since the 1990s is perhaps best characterized as being highly polarized and nationally competitive. Starting with the 1994 elections, party control of the House of Representatives and US Senate has changed hands five and six times, respectively. In the

27. Center on Budget and Policy Priorities, “State Fact Sheets.”

28. Posner, *Politics of Unfunded Mandates*.

29. Jones, “Federal Court Responses”; McGuinn, “National Schoolmarm.”

30. Bromley-Trujillo and Dichio, “State of American Federalism.”

thirty years prior (1964–1994), Democrats controlled the US House of Representatives exclusively, and the Senate alternated only twice. Meanwhile, the two parties have also shared the presidency, as Democrats have controlled the White House 60 percent of the time compared to 40 percent for the Republicans over the last thirty years.

The federal government has implemented significant new national programs under both Republican and Democratic administrations in recent years. During Republican George W. Bush’s presidency, Congress passed many significant pieces of federal policy, including those related to education policy (No Child Left Behind), the war on terror (the PATRIOT Act and creation of the Department of Homeland Security), and the initial response to the 2008 Great Recession (Troubled Asset Relief Program). During Democrat Barack Obama’s presidency, he continued the federal government’s active involvement to end the recession (the American Recovery and Reinvestment Act and bailing out the auto industry) and expanded the role of the federal government in health care (the Affordable Care Act). During both types of administration, the US Supreme Court issued decisions enabling the federal government to consolidate power and also made decisions giving more power back to the states.

Likewise, both parties have sought to take advantage of the opportunities to innovate at the state and local levels as the need arises. While many typically associate support for a stronger federal government with a Democratic perspective today, Democrats have sought to pursue federal policy when in power but utilize the states to attain policy innovation, especially during periods when Republicans control Congress or the White House, as part of what some call “progressive federalism.”<sup>31</sup>

States are able to marshal their resources to oppose the

31. Gerken, “New Progressive Federalism”; Miras and Rouse, “Partisan Misalignment.”

federal government. This has been referred to as “uncooperative federalism”—a dynamic increasingly at play during the presidencies of Barack Obama, Donald Trump, and Joe Biden.<sup>32</sup> States are not innocent bystanders but active collaborators and opponents of the federal government. Others have called this a patchwork system where polarized parties and institutions navigate the varying levels of government to enact “partisan federalism” or “fragmented federalism.”<sup>33</sup> At the federal level, increasing polarization and gridlock have provided states with an opportunity to govern in a more partisan direction without much opposition.

Forty of the fifty states are currently **state government trifectas**, where one political party controls both chambers of the state legislator and the governorship.<sup>34</sup> More than 82 percent of all Americans live in a state where a single party is largely unchecked to pursue their desired public policy. This also makes the process of **policy diffusion** easier, as states and local governments are influenced by and adopt the policies of nearby jurisdictions.

32. Bulman-Pozen and Gerken, “Uncooperative Federalism”; Polimedio and Souris, “Why Federalism Is Hard.”

33. Bowling and Pickerill, “Fragmented Federalism”; Bulman-Pozen, “Partisan Federalism.”

34. Ballotpedia, “State Government Trifectas.”



example, states prevent municipalities from raising their minimum wage, implementing gun-free zones, allowing individuals to use the bathroom that matches their gender identity, and so on.

## What Are the Strengths and Weaknesses of Federalism?

The COVID-19 pandemic taught many Americans some valuable lessons, but it also highlighted many of the strengths and weaknesses inherent in federalism.<sup>38</sup> During the pandemic, the federal government was able to mobilize national resources to the states, create and distribute an influx of capital as stimulus checks, and marshal the necessary resources for the widespread dissemination of a vaccine. At the same time, the global lockdown shuttered the economy, competition between states for personal protective equipment (PPE) led to supply shortages and skyrocketing prices, and voters struggled to hold politicians accountable amid endless finger-pointing.

The gravity of the pandemic highlighted many of these trade-offs for American voters, but how they assess the strengths and weaknesses of federalism are not unique to the coronavirus. This balancing act is true in policy areas such as education, social welfare, environmental regulations, and so on. Comparing federalism to unitary or confederal systems of government reveals many similar themes of strengths and weaknesses.<sup>39</sup> They mirror many arguments about the virtues and drawbacks of giving more

38. Burdyk, “Fauci”; Selin, “How the Constitution’s Federalist Framework”; Steinmetz-Jenkins, “What the Pandemic Has Taught Us.”

39. Rozell and Wilcox, *Federalism*; Nivola, “Why Federalism Matters.”

power to the national government or reserving power to the states. The following paragraphs illustrate four points and counterpoints frequently made about federalism.

The first major strength of federalism is that it promotes innovation. Supreme Court Justice Louis Brandeis called states laboratories of democracy. He wrote, “It is one of the happy accidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”<sup>40</sup> Many federal policies start off as state policies. The Affordable Care Act (Obamacare) is based on a policy from Massachusetts. Our current welfare program, TANF, utilizes a Wisconsin policy as its basis. Sometimes, states are well ahead of the federal government, such as Wyoming, which granted women the right to vote more than fifty years before the ratification of the Nineteenth Amendment.

On the other hand, Judge Brandeis also identified that the flexibility states possess to innovate also puts them in competition with one another, often leading to a “race to the bottom.”<sup>41</sup> While many think of competition as a net positive, it also has the potential to lead to negative consequences. For example, after AFDC was replaced with TANF (and the program was changed from categorical grants to block grants), states gained greater flexibility and control over their programs. As a result, states reduced the level of benefits they provided to families living in poverty.<sup>42</sup> This concept applies to states competing against one another to provide the lowest level of labor and environmental protections, attract businesses via tax incentives, and even incentivize professional sports teams to relocate to their state.

Another strength of federalism is that it promotes

40. *New State Ice Co. v. Liebman*, 285 US 262 (1932).

41. *Liggett Co. v. Lee*, 288 US 517 (1933).

42. Schram and Soss, “Making Something Out of Nothing,” 67–88.

flexibility. Rather than a “one-size-fits-all” approach that would occur in a unitary model (or under a stronger federal government), federalism gives state governments the ability to develop and implement policies closer to the preferences and needs of their citizens. For example, the minimum wage is established at the federal level at \$7.25 per hour, but thirty-four states currently have minimum wages higher than the federal floor. Given that the cost of living is different across the states, this system of government allows states to respond to the economic reality of their states, so a state like Washington can have a minimum wage as high as \$16.28 per hour.<sup>43</sup>

The ability that states possess to develop policies closer to the preferences of their citizens, however, neglects the increasing interconnectedness of the fifty states and the broader global community. This concept is referred to as “spillover.” Markets are becoming more, not less, global as advances in technology and communication increasingly make states interdependent upon one another. Issues such as a public health crisis, like the coronavirus, or pollution do not adhere to state boundaries. If Illinois passes stringent antidumping policies in the Mississippi River, the policies of Minnesota, Wisconsin, and Iowa will affect Illinois, regardless. Few policy areas have consequences that are confined to a single state.

A third argument made in favor of federalism is that it provides a “school of their citizenship.” Federalism, it is argued, provides more opportunities to practice democratic citizenship and responsiveness. Americans have the opportunity to participate in local, state, and federal elections. Even with the size of the country, many Americans have access to at least one level of government that is likely to be responsive to their needs. In a unitary or confederal model, citizens would be subject solely to whether they agree with the current ruling power. Today, many rural Americans are

43. National Conference of State Legislatures, “State Minimum Wages.”

represented by Republican politicians—even if they live in a Democratic state or if Democrats control the federal government. Vice versa, many urban Americans are represented by Democratic politicians and feel some degree of representation even if they live in a Republican state or if Republicans control the federal government.

However, this introduces a great deal of complexity for most Americans unable to navigate the nuances of federalism. Unitary models of government benefit from simplicity and uniformity. In the United States' federalist model, we have more than ninety thousand units of government (e.g., states, counties, cities, school districts). This has the potential to create confusion and hinder democratic accountability. For example, which level of government is responsible for education policy? The national government and the US Department of Education? State governments and bureaucrats? Local school boards? In federalism, each of these levels of government has an important role to play. This makes it more challenging to hold any individual elected official responsible for education policy. In a unitary model, something more similar to a “one-size-fits-all,” top-down approach ensures that policies look similar across communities and that standards are not dependent on geography.

A fourth argument made in favor of federalism compared to other models of government, specifically unitary systems, is that it is better able to limit government and preserve personal liberties. Dividing powers, by the Constitution (and the Tenth Amendment, specifically), ensures that too much power is not concentrated at the federal level. However, a federalist system also ensures that too much power is not concentrated in the hands of states or local governments. By codifying a power-sharing agreement between governments and putting additional protections in place, like separation of powers and checks and balances, liberty is better protected. The Bill of Rights ensures that core, inalienable rights are protected from intrusion.

Yet federalism (like a confederal system) creates the

potential for the government to discriminate against its citizens. The American South, in particular, disenfranchised and stripped African Americans of their rights for generations. Today, many states are leading the charge in discriminating against their citizens based on sexual orientation and gender identity. While not as blatant as in the past, states create policies discriminating against racial and religious minorities. As Madison warned in *Federalist #10*, state governments possess more ability and opportunities for the “tyranny of the majority.”<sup>44</sup>

True to its definition, power is shared within federalism. It is imperfect, but it is far from static. The “promise and practice of federalism are frequently at odds.”<sup>45</sup> As the first 250 years of this experiment have shown, change is one of the few constants.

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# Case Study Chapter 3

LAURA MERRIFIELD WILSON

## Chapter 3 Case Study: Constitutional Change in Alabama

In 2022, voters of the state of Alabama were presented with an unusual opportunity to adopt an entirely new state constitution—something their state had not done in over 120 years. Drafting a new constitution would enable the state to address the challenges of the current one, specifically eliminating the provision that prevented local governments from making changes autonomously and instead requiring voters of the whole state to approve those changes in amendment form. What this meant, then, was that if voters in a small city wanted to change a local tax issue, the referendum had to be placed on a state ballot, and all voters within the state of Alabama got to decide on this local tax issue in a small city they most likely did not reside in. This helped the White majority maintain the status quo but resulted in very inefficient and arguably discriminatory practices.

While the US Constitution has incurred only minor changes in its two-hundred-plus years of life, many states have significantly revised their constitutions with constitutional conventions, some more than once. Alabama was no different, having approved its sixth state constitution in 1901. This document was flawed in more ways than one. Several policies included racist language and segregationist policies intended very clearly to disenfranchise and

discriminate against African Americans. Miscegenation (later determined unconstitutional by *Loving v. Virginia* in 1967) and racial segregation (challenged effectively with *Brown v. Board* in 1954) were embedded in the Alabama Constitution of 1901. Issues of democratic participation were included too, such as poll taxes and literacy tests, though rendered null and void by the Twenty-Fourth Amendment to the US Constitution and the Civil Rights Act of 1964.

In addition to requiring all local government changes to go through referendums to voters from the entire state, it included a new amendment for each of these approved changes. This led the document to have 977 amendments. It was the longest written constitution of any US state and exceeded the length of any written constitution worldwide.

All these issues led, after decades of criticism and pushes for a new constitution, to the referendum to voters to choose to adopt the Alabama Constitution of 2022. The new constitution eliminated all the Jim Crow policies and racial language, which, even voided because of national policy, remained in the old constitution as an ugly reminder of the state's past. It also addressed the needless involvement of voters on local issues outside their residency: Local provisions are embedded in the constitution and do not require statewide voters' approval. Now the current constitution better represents the will of the people and aligns with best practices of efficiency. The constitution can still be changed through either a constitutional convention or proposals from the state legislature. In both circumstances, the proposed changes must be approved by a majority of voters to take effect.

## Critical Thinking Questions

We have a tendency to think of constitutions as being foundational documents that should not need to be changed. Alabama's Constitution of 1901 included several problematic elements that needed to be addressed and revised. What are other examples of circumstances or issues that might require a change in a state constitution?

Review your state constitution, focusing on the elements that differ from those in the US Constitution. What do you notice that state constitutions include that the federal constitution does not? Why do you think that is the case?

In this chapter, you will learn about the primary components of state constitutions and some of the differences between them and the federal constitution, such as the inclusion of local government. Because authority over local government is given to the states, some states retain that power, making local governments dependent on the state for changes, while other states provide local governments with "home rule" that enables them to make their own decisions. What might be a benefit and a disadvantage of each approach?

# 3. Fifty State Constitutions

LAURA MERRIFIELD WILSON

## *Chapter Summary*

Readers are more likely to be familiar with the US Constitution than state constitutions, like their familiarity with federalism, which provides a great opportunity to learn about and explore the differences within the fifty state constitutions in our country. This chapter will begin by outlining the concept of constitutionalism—the idea that constitutions exist to limit government power and authority—before offering an overview of the similarities readers can find in all constitutions (such as an establishment of powers, an outline of each branch of government, etc.). It will then highlight the ways state constitutions can be revised and invite readers to engage in a case study comparison observing this difference from the US Constitution, which was influenced by the state constitutions that predated it.

## *Student Learning Objectives*

Upon completion of this chapter, students should be able to:

1. Assess the various roles and functions of state constitutions.
2. Identify the essential components of state constitutions.
3. Compare and contrast state constitutions to both the US Constitution and those across other states with regard to rights, powers, and policy.
4. Understand the various processes of constitutional change including popular initiatives, legislative proposals, constitutional conventions, and constitutional commissions.
5. Analyze the role of constitutionalism in current policy discussions.
6. Recognize the complicated relationship between federal and state constitutions under federalism.

### *Focus Questions*

These questions illustrate the main concepts covered in the chapter and should help guide discussion as well as enable students to critically analyze and apply the material covered.

How do state constitutions serve both the state government and the people?

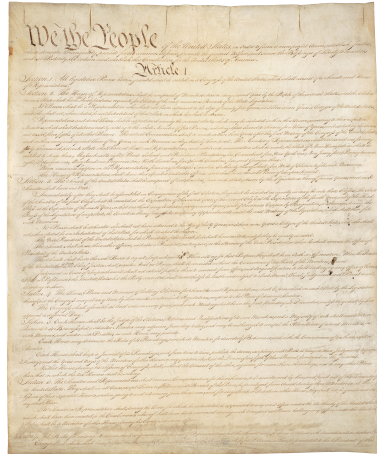
In what ways do state constitutions differ from the US Constitution but also from other state constitutions? How is the relationship between a state constitution and the US Constitution complicated through federalism but resolved through the supremacy clause in Article VI of the US Constitution?

Why are there several replications of powers in the state constitutions that seem redundant to the US Constitution? Why are there components such as local government, taxation and finance, and debt structure that are unique to state constitutions?

What role do salient political debates, such as those about abortion or guns, play in conversations about state constitutions? How could state constitutions address these issues, and how would that be different from state statutes or federal laws?

# What Are the Roles and Functions of State Constitutions?

Just as the United States is governed by the US Constitution at the federal level, so too are states organized, in process and procedure, by their own individual state constitutions. Every state in the United States utilizes a written constitution.<sup>1</sup> Though their length and detail vary greatly, these documents serve as the foundational text for the system of laws in the state.<sup>2</sup> They not only provide the basis for the law and organization of government but also reflect the values and unique culture that are distinctive in each state.<sup>3</sup>



**Figure 3.1 – Constitution of the US**  
**Source:** [“Constitution of the United States, page 1”](#) by Constitutional Convention, In . Wikimedia Commons / [Public Domain](#).

A constitution in the broad sense is a legal document that outlines powers and prescribes policies for the government and the people.<sup>4</sup> It provides several key functions that are necessary for state governance, establishing the “rules of the game” through which laws and policies are made and communities are governed. State constitutions create an organization of government including

1. The White House, “State and Local Government.”
2. Hardin, “Why a Constitution.”
3. Tarr, Understanding State Constitutions; Long, “State Constitutions,” 1739.
4. Elazar, “Principles and Traditions.”

the balance of powers and roles of the three branches of government, outline processes and procedures, organize the division between state government and local governments, and reaffirm the rights of citizens.<sup>5</sup>

The organization of government is outlined in the state constitutions, denoting the branches of government and distributing powers among them. All state constitutions divide power among the executive branch, legislative branch, and judicial branch, just as the US Constitution does.<sup>6</sup> The individual offices included, requirements to run, powers and authority given, and limitations of tenure (and process for removal) are different in comparison to the federal constitution and also can vary from state to state. The role of the secretary of state at the state level is quite different compared to the position of the same name at the federal level, and not every state has this office or prescribes to it all the same powers. Generally, the requirements to run for office are less restrictive at the state level, but these can also vary depending on the office itself; while a candidate for attorney general likely needs to have a law degree, a candidate seeking a seat in the state legislature may simply need to be of voting age and have proof of residency. The balance of power between the branches of government is outlined in the state constitutions as well, a topic we will describe in greater detail in “What Are the Essential Components of State Constitutions?” Finally, the limitations of tenure—length of term in office, the presence of term limits, and self-succession—are all noted in the constitutions. This includes forcible removal from office and impeachment proceedings.

State constitutions provide an overview of the processes for lawmaking and procedures for government, essentially serving

5. Bulman-Pozen and Seifter, “Democracy Principle,” 859; Brennan, “Bill of Rights and the States,” 535.

6. Fairlie, “Separation of Powers,” 393.

as a “rule book” for how things are done at the state level.<sup>7</sup> These include things like whether elements of direct democracy (like initiatives, referendums, and recalls) are available to citizens and how often and when the state legislature meets. While this element of constitutions can feel banal, it is essential to prescribe rules for process and procedure so lawmaking occurs with conflict only in the elements of the laws themselves and not in disputes about the sequence of authority or process. The constitution divides power and details the steps for creating new laws as well as changing the constitution itself, oftentimes providing multiple options or pathways, all with clear detail to avoid confusion or ambiguity.

Because state governments control the creation of local governments (local governments were intentionally omitted from the US Constitution as a recognition that their existence is a reserved power left to the states), the state constitutions also include definitions and procedures of rule for local governments.<sup>8</sup> Most states have county governments, which are typically all prescribed the same powers and act as the administrative arm of state governments, providing the same functions as the state government but at a closer level to citizens (offering birth/death certificates, marriage licenses, and driver’s licenses, for example).<sup>9</sup> States also control the designation of cities through the administration of charters (discussed in greater detail in Chapter 12). What constitutes a city, in terms of both population qualifications of the city and subsequent funding benefits from the state, is determined by the states and outlined in constitutions. As noted later in this chapter in “What Are the Essential Components of State Constitutions?” these can vary widely across states.

Finally, state constitutions serve as limitations of powers of governments and affirmations of power to the people. They outline

7. Hardin, “Why a Constitution.”

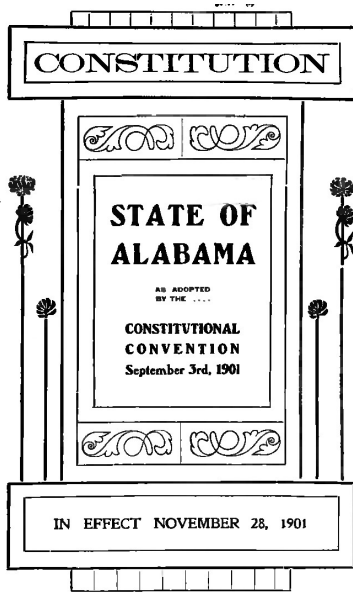
8. Krane, Rigos, and Hill et al., *Home Rule in America*.

9. Libonati, “State Constitutions and Local Government,” 11.

and detail the power that the state government has as a way to restrict it, so there is no blank check or assumption through ambiguity that the government has latitude to expand authority. The government's autonomy and reach are checked by the limits written into the state constitutions. Thus, state constitutions are an affirmation and recognition of the power to the people from their government. The essence of **constitutionalism** is a restriction of government to provide and secure the power of the people, and by outlining what government can and cannot do in the constitution, we recognize all that is left is the power given to the citizens, a power they have over and separate from their state government.<sup>10</sup>

10. Sartori, "Constitutionalism"; Grimm, Constitutionalism.

# What Are the Essential Components of State Constitutions?



**Figure 3.2 – Alabama State Constitution of 1901**  
Source: “[Alabama State Constitution of 1901](#)” by Constitutional Convention, State of Alabama, In . [Wikimedia Commons](#) / [Public Domain](#).

State constitutions embody many elements similar to the US Constitution. They open with a preamble, some with language nearly identical to that of the US Constitution’s preamble. They include a separation of powers, components of checks and balances, and a bill of rights. But they also differ in adding components on local government, debt limitation, and taxation and revenue structure. State constitutions are more impervious to change compared to the federal constitution, meaning they are often longer in length and detail because they include policies that are widely excluded from the US

Constitution.

**Table 3.1 – 50 State Constitutions**  
*Table made by the author.*

<b>State</b>	<b>Date of Constitution</b>	<b>Number of Constitution</b>
Alabama	2022	7
Alaska	1959	1
Arizona	1912	1
Arkansas	1874	1
California	1880	1
Colorado	1876	1
Connecticut	1965	2
Delaware	1897	4
Florida	1969	6
Georgia	1983	10
Hawaii	1959	1
Idaho	1890	1
Illinois	1971	4
Indiana	1851	2
Iowa	1857	1
Kansas	1861	1
Kentucky	1891	4
Louisiana	1975	11
Maine	1820	1
Maryland	1867	4
Massachusetts	1780	1
Michigan	1964	4
Minnesota	1858	1
Mississippi	1890	4

Missouri	1945	4
Montana	1973	2
Nebraska	1875	1
Nevada	1864	1
New Hampshire	1793	2
New Jersey	1948	3
New Mexico	1912	1
New York	1895	4
North Carolina	1971	3
North Dakota	1889	1
Ohio	1851	2
Oklahoma	1907	1
Oregon	1859	1
Pennsylvania	1874	5
Rhode Island	1987	1
South Carolina	1889	7
South Dakota	1889	1
Tennessee	1870	3
Texas	1876	7
Utah	1896	1
Vermont	1793	3
Virginia	1971	7
Washington	1889	1
West Virginia	1872	2
Wisconsin	1848	1
Wyoming	1890	1

## Preambles

The preamble opens the state constitution with a sense of purpose and an explanation of the role of the document. It serves in a way as a “thesis statement” for the constitution, addressing why the constitution was created and the role it plays in establishing the system of state government.<sup>11</sup> Many state preambles allude to unalienable rights in recognizing God, divine providence, or higher authority. The Indiana State Constitution of 1851 denotes, “We, the people of the state of Indiana, *grateful to Almighty God* for the free exercise of the right to choose our own form of government, do ordain this Constitution.”<sup>12</sup> Michigan’s Constitution of 1963 adopted similar language, stating, “We, the people of the State of Michigan, *grateful to Almighty God* for the blessings of freedom, and earnestly desiring to secure these blessings undiminished to ourselves and our posterity, do ordain and establish this constitution.”<sup>13</sup> The Hawaii State Constitution of 1978 opens with “We, the people of Hawaii, *grateful for Divine Guidance*, and mindful of our Hawaiian heritage and uniqueness as an island State, dedicate our efforts to fulfill the philosophy decreed by the Hawaii State motto, ‘Ua mau ke ea o ka aina i ka pono.’”<sup>14</sup> The difference in an explicit reference to God in the Indiana and Michigan preambles compared to Hawaii’s more broadly construed “divine guidance” can be traced to their unique state cultures and the type of religion that is most influential in the states themselves.

11. Tracz, “Towards a Preamble-Based Theory,” 95.

12. “Indiana State Constitution of 1851.” Emphasis added.

13. “Michigan State Constitution of 1963.” Emphasis added.

14. “Hawaii State Constitution of 1978.” Emphasis added.

## Separation of Powers

All state governments include executive, legislative, and judicial branches, each outlined and described in their state constitutions. The powers of lawmaking are defined for each, following a similar structure to the responsibilities of the federal branches of government. However, the power is not always as equitably distributed as we see in the American national government, with the president, Congress, and the Supreme Court holding roughly the same amount of authority in checks and balances.<sup>15</sup>

In state governments, many constitutions intentionally set up a system to create a slightly more powerful state legislature with a slightly less powerful executive branch.<sup>16</sup> Historically, this was a concern of the colonists, who remembered with fear a powerful governor system (led by governors appointed by the British government) and restricted rights of state legislatures (selected by the colonists).<sup>17</sup> The imbalance of power between one individual in the **executive branch** (governor) and a larger body of many individuals in the **legislative branch** (the state legislature) exacerbated the concern of ceding too much authority to the governor. One easy way to prevent the governor from having too much power was to create other executive offices; the more other positions that existed and the more power they had, the less power was given to the governor by default.<sup>18</sup> Making these positions selected by popular election further diluted the power of the governor. If they were appointed by the governor, the governor could place preferred candidates, likely from the same party and

15. Colantuono, “Revision of American State Constitutions,” 1473.

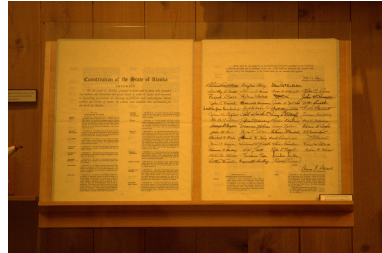
16. Tarr, “Interpreting the Separation of Powers,” 329.

17. Sturm, “Development of American State Constitutions.”

18. Dometrius, “Changing Gubernatorial Power”; Blair, “Gubernatorial Appointments.”

aligning with the governor’s own ideological and policy preferences. If these positions were elected, it was up to the people to decide, and the state executive branch could resemble a divided government with public officials from both major political parties.<sup>19</sup>

There are some limitations to this distribution. For example, though governors are generally given less authority on one hand, a majority of state legislatures are considered moderately or less professionalized, meaning that they are not in session for long periods of time and thus are actively present and making laws for just a few months out of each year.<sup>20</sup> That does curb



**Figure 3.3 – The Constitution of Alaska on display in the Seattle University School of Law library in January 2023.**

Source: “[Constitution of Alaska](#)” by Lethargilistic, In . [Wikimedia Commons](#) / [CCO](#).

their power, particularly when the state legislature is out of session and can only be called back to a special session by the governor. Who can run for office in these positions, how long they can serve, and what power the offices have are all denoted in the constitution.

The **judicial branch** remains the law of the land, and the state supreme court is the court of last resort. State constitutions do denote the organization of the justice system, including the names and types of courts, the process for bringing forth a case and appealing a case, and the requirements to serve and powers given to those on the bench.<sup>21</sup>

The **separation of powers** also includes components of **checks and balances** similar to those detailed in the US

19. Tarr, “Interpreting the Separation of Powers,” 329.

20. Mooney, “Citizens, Structures, and Sister States”; King, “Changes in Professionalism.”

21. Durham, “Judicial Branch in State Government,” 1601.

Constitution. The governor can veto legislation (depending on the state, several types of vetoes can be utilized), the state legislature can override vetoes, and the state supreme court interprets and determines the constitutionality of both laws and executive decisions.<sup>22</sup> There can be additional restrictions of power (not necessarily checks) among offices within the branches. As the executive branch includes not only the governor but often several key elected officials—such as the lieutenant governor, secretary of state, attorney general, treasurer, and auditor—the definitions of power and limits for each are included in the state constitution as well.

## Bill of Rights

All fifty state constitutions include a bill of rights within the document. At the federal level, this inclusion illustrated the resolution of a disagreement between Federalists (who wanted a strong federal government) and Anti-Federalists (who favored strong state governments). The Bill of Rights incorporates the first ten amendments to the US Constitution added in order to appease the Anti-Federalists and endear them to ratification. They believed there was too much power allocated to the federal government and not enough given to the states. For state governments, the concern about rights is centered more on the people and used as an assurance of constitutionalism—namely, that the government has clearly limited authority.

Some states adopted their state constitutions before the US Constitution and included these measures as precautionary checks on government involvement to ensure the rights of the people. But even in state constitutions drafted well after the

22. Williams, “Evolving State Legislative and Executive Power.”

ratification of the US Constitution, the inclusion of a bill of rights served as an important guarantee that these individual rights were promised and protected not just by the federal government but by the state governments as well.<sup>23</sup> Before the Civil War, the rights given to the people in state constitutions were seen as separate guarantees of rights, different from those protected in the federal constitution. For instance, the protection of freedom of speech, notably defined in the First Amendment of the US Constitution, is often replicated, even verbatim, in state constitutions, but the protection was added so an individual was guaranteed freedom of speech from both the federal *and* the state governments. After the Civil War, the Bill of Rights became broadly applied to state governments too through a concept called selective incorporation.

Still, many state constitutions provide far more protections for the people relative to the ten amendments in the US Constitution. Some state constitutions included the prohibition of slavery long before it was outlawed by the federal government. Others still had slavery enshrined in their state constitution, though the supremacy of the federal government and the passage of the Thirteenth Amendment to the US Constitution means the state's constitution is rendered moot on that issue (up until 2022, Oregon, Alabama, Vermont, and Tennessee permitted slavery; as of 2023, Louisiana still includes it in its state constitution).<sup>24</sup> Some include provisions for eminent domain (Alaska and New Hampshire), equal rights (Texas), morality and piety (New Hampshire), the right to hunt or fish (Utah), and suspension of laws (Texas).<sup>25</sup> Salient political issues like abortion have increasingly been litigated through the states. State constitutions approach privacy rights differently, and

23. Countryman, "Why a State Bill of Rights?," 454; Brennan, "Bill of Rights and the States," 535.

24. Radde, "Louisiana Voters Rejected."

25. "Constitution of the State of Alaska"; NH.gov, "State Constitution"; "Texas Constitution"; "Utah Constitution."

thus some states have enshrined the right to an abortion within their state constitution, whereas others have prohibited it. While many are duplicates of the federal constitution, there are several passages in the bill of rights at the state level that extend what is protected at the federal level, such as the writ of habeas corpus, the freedom of speech, the right to bear arms, and the right to a trial by jury.

## Local Government

The inclusion of local government is one of the unique features in state constitutions that is not found in the US Constitution. **Federalism** outlined in the US Constitution describes the relationship of separate and shared powers between the federal and state governments without referencing local government. The creation of local governments is one of the reserved powers given to states, and thus they are denoted in state constitutions.

While there are several different types of local governments, the most essential and common include county governments and city governments. Both of these are outlined in the state constitution. County governments provide state functions at a more localized or decentralized level, serving as the administrative arm of the state, while city governments are created by a charter proposed by its residents and generated by the state government.<sup>26</sup> Cities operate differently, under a charter given to them by the state and with differences across cities or other forms of local governments as decided by the state. Definitions of what constitutes a “city” compared to a “town” or a “village” depend on the state constitution and usually consider population qualifications and involve funding benefits.

26. Libonati, “State Constitutions and Local Government,” 11.

Unlike the balance of power in federalism, where both states and federal governments exercise power and neither can unilaterally dissolve or change the other's power, city governments are solely responsible to the state and can be created, destroyed, or changed only through the states (with an important exception to autonomy provided to the city but, worth noting, deriving from the state). **Dillon's Rule** enables local government to have power given explicitly by the state, necessarily and fairly implied, and essential to local government.<sup>27</sup> **Home rule** allows city governments to have much more authority and jurisdiction; this concept is included in state constitutions but notably varies, as some states restrict home rule and give cities very little autonomy, while others use it widely and apply it broadly.<sup>28</sup>

## Debt Limitation

There is famously no passage for restricting **debt** or requiring a **balanced budget** in the US Constitution. Yet many state constitutions do include some measure of restriction. A balanced operating budget means that the credits brought into the state (largely through taxes) are equal to or exceed the debts incurred by the states (meaning the costs). Many states receive funding from the federal government; less-affluent states may use this as a greater proportion of their overall state budgets. Several states have adopted some form of a balanced budget, utilized to prevent credits from extending beyond budgets.

Budgeting at the state level, particularly when restrictions on debt are in place, can be challenging and complicated. Most budgets are based on previous fiscal years, with an expectation that

27. Briffault, "Home Rule, Majority Rule," 1011.

28. Krane, Rigos, and Hill et al., Home Rule in America.

the credits and funding from the previous year will be similar to the upcoming one. This assumption is not always correct, though, and in times of mass migration, the population base can fluctuate widely. People left New Orleans in droves after Hurricane Katrina, sending the population plummeting and decimating the tax base at a time when the local government desperately needed funding to repair damaged infrastructure and rehome individuals. Before the housing crisis in 2008/2009, people swarmed to communities in the Sunbelt, like Las Vegas, which provided an increase in taxed income but also meant a sudden stressed demand for more infrastructure and services that were not needed just years before.

## Taxation and Finance

States rely heavily on **taxes** to fund programs and services they provide, but how states tax differs. Some states use individual income tax, which exemplifies a progressive tax in which individuals pay a different percentage of their income based on predetermined brackets. Those who make more will pay a higher percentage, while those who make less pay either smaller portions or potentially even none at all. The principle of equality illustrated in this approach is that individuals give what they are able to as determined by the state constitution and that those who are able to give more do while those who are not able to do not.

Sales tax is another way for states to capture funding, using a broad tax across the board on sales purchases. This is a type of regressive tax structure, because everyone pays the same percentage or proportion on their purchase regardless of their own income or means. The tax can differ based on items or goods purchased, so sometimes a luxury tax (on diamonds or jewelry, for example) may be higher than a clothing purchase. Property tax is also critical to funding state and local governments, notably public schools. Some states have property tax caps or restrictions, making

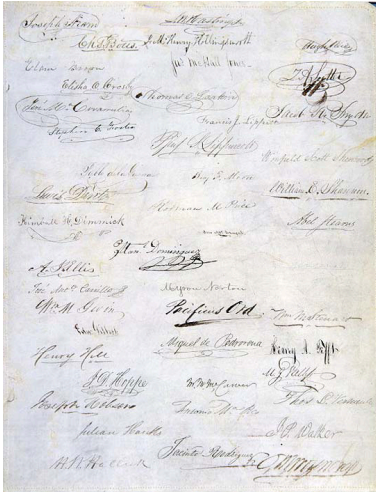
this source of revenue vital in funding the increasing expenses associated with education.

A few states tax groceries, a controversial approach because of its impact on the severely impoverished (everyone has to eat and thus buy groceries, but the impact on a less-affluent household would be proportionately significantly higher and more burdensome compared to a more affluent household). States may also tax gasoline and then earmark such funding for the improvement of roads; this is also done with lotteries in which proceeds are dedicated to funding public education.

States have control over the organization of their own tax structure. Some states may choose to emphasize progressive taxation, while others prioritize regressive taxation. Neither is necessarily better or worse but rather reflects an ideological preference for what is fair and equal. Proponents of a progressive tax believe it is fair and equal because it requires those who make or have more to give more. Those who support a regressive tax believe it is fair and equal because it is a flat amount paid by all across the board. These preferences are reflected in policies, as some states have a progressive, graduated income tax, while a few states choose not to tax income at all. In states that do not have an income tax, other methods of taxation and financial acquisition are utilized to support the state budget for public services.

Not all of these taxes are constitutionalized, but the ways in which a state funds its work are essential to the laws and included in the state constitution.

# How Is the US Constitution Supreme, and What Is Its Relationship to States?



**Figure 3.4 – Signatures on the California Constitution of 1849.**  
Source: “[California Constitution \(1849\) signature page](#)” by [Pre-statehood government of California](#), In . [Wikimedia Commons](#) / [Public Domain](#).

The Constitution of the United States of America is the formative legal document governing the nation. It features many of the same components we see in state constitutions and highlights federalism as our system of government. Through this system, the federal government is given some powers through the US Constitution, and the state governments are given some powers. Some additional powers are shared. Federalism enables both levels of government to share power by having some autonomy on certain issues while also overlapping and concurrently

sharing power on others. Importantly, neither level of government can unilaterally change the power and authority of the other level of government without its consent. The federal government cannot strip power away from the states unless they choose to give it; likewise, the states cannot usurp federal powers unless it is agreed upon.

The powers given to the federal government are known as delegated or enumerated powers. These were essential to the founding fathers of the US Constitution, particularly after the tumultuous experiment with a confederation-style government under the Articles of Confederation immediately after the

Revolutionary War. The confederation system gave a tremendous amount of power and authority to states while allowing a very weak and dependent federal government. The delegated powers are those that belong to the federal government with the expressed intention that only it may act on those particular issues. These include declaring war, establishing formal relationships with foreign nations, coining currency, and creating peace. Found in Article I, Section 8 of the US Constitution, these formally outline the federal government's powers.

The US Constitution keeps power specifically for the states too, aptly titled reserved powers. These allow states to do several things, including the creation of their own state constitutions to organize their own governments. The powers are noted broadly in the Tenth Amendment, the final amendment in the Bill of Rights, which was added to appease the Anti-Federalists and enable the ratification of the US Constitution. While the confederation government was a failure for the colonies, the Anti-Federalists remembered clearly the tyrannical rule of England under colonial rule and were wary of a distant government imposing its will on the people. The reserved powers are not explicitly noted in the Tenth Amendment but rather referred to as follows: "Any powers that are not specifically given to the federal government, nor withheld from the states, are reserved to those respective states, or to the people at large." These typically include the establishment of schools, the organization and management of local governments, marriage laws, and professional licensing.

Though these powers come from the US Constitution, they are integral to the establishment and legitimacy of state governments and their constitutions. The state constitutions allow for differences in state culture, values, ideology, and priorities.<sup>29</sup> Even so, through the **supremacy clause** in Article V, *McCulloch v. Maryland* (1819), and even the US Civil War, the preeminence of

29. Long, "State Constitutions," 1739.

the federal government and its authority when in conflict with the states has been confirmed.<sup>30</sup> The state constitutions remain the law of the land for the state, but the states themselves are limited in their reserved powers given to them through the US Constitution.<sup>31</sup>

The dynamics of federalism are ever changing and have evolved historically with various court decisions, laws, and critical events that change our understanding and emphasis on the relationship between the federal and state governments. These changes are described in greater detail in Chapter 2. The power given to states and their constitutions via federalism, however, ensures that states have legal authority and the right to govern themselves (in ways that do not conflict with the federal domain).

## How Do Constitutions Change?



**Figure 3.5 – Constitution Rock on Utah State Capitol grounds**  
Source: "[Constitution Rk 4401](#)" by [Chris Light](#), In . [Wikimedia Commons](#) / [CC BY-SA](#).

Just as the US Constitution has undergone periodic changes, so too are state constitutions eligible for updates, edits, and additions. In fact, while the Constitution at the federal level has been changed just twenty-seven times (if including the Bill of Rights as a change to appease the Anti-Federalists), state constitutions generally undergo far more frequent changes. Notoriously impervious to calls for reform, the Alabama State Constitution of 1901 was so wrought with issues that the document incurred over

30. Newmyer, "John Marshall, McCulloch v. Maryland," 875.

31. Gardner, "Interpreting State Constitutions."

one thousand amendments before it was ultimately scrapped by voters in 2022 in favor of a new constitution.

Before selective incorporation, state constitutions included many duplicate provisions to ensure the liberty of citizens from the state governments as well as the federal government.<sup>32</sup> These were discussed earlier in the chapter in the “Bill of Rights” section. But state constitutions also tend to be longer because they incur far more changes than the US Constitution and are widely considered to be easier to change.<sup>33</sup>

Policies are more prevalent in state constitutions for several reasons. Whereas the founding fathers were cautious about including policies directly within the Constitution, leaving the document to be broadly applicable but also notably ambiguous, the voters and legislators who can change state constitutions want to see certain policy preferences constitutionalized. To have a policy enshrined in the state constitution makes it more fundamental than the other legislation and statutes. Laws are even easier to change than state constitutions, so for policies deemed critical to state governance, there is a vested interest in constitutionalizing them.

Interest groups recognize the value of this approach as well and are active in not just proposing and drafting model legislation but offering similar services to suggest constitutional changes. Though interest groups have to work with legislators and voters and through the political system, the appeal for an interest group to constitutionalize their policy can far outweigh the challenges it poses. Just as states serve as laboratories for democracy, cultivating policy innovation and experimentation, they provide an opportunity for interest groups to work at a lower level of government, gain traction, build roots, and expand from state to state or even up to the federal level. Not all policies pushed by interest groups will work

32. Israel, “Selective Incorporation Revisited,” 253.

33. Hammons, “Was James Madison Wrong?”; Grad, “State Constitution,” 928.

in all states, as more conservative states will be more interested in pursuing policies that align and vice versa. But interest groups can find success in influencing state government more easily and effectively than at the federal level, and being able to cement one's policy preference in the state constitution is a great example of such success. One study published by *USA Today* in 2019 found that some organized interest groups even draft model legislation and peddle it to lawmakers for their approval and adoption.<sup>34</sup> Ten thousand bills over eight years were found to be near exact duplicates of such model legislation. Though this does not directly violate any laws, the concern with plagiarized policies is that they may not be written or tailored to the particular needs and challenges of a community; rather, they may just be pursuing an interest group's agenda that does not serve the larger good.

Finally, state constitutions tend to be longer because there are more methods for changing a state constitution relative to the US Constitution, thus making it easier to do. The methods of change vary in terms of size and scope of change. Procedurally, state constitutions also vary in the role groups play in initiating the change.<sup>35</sup> Not all states employ all methods, but all state constitutions utilize at least one way in which the document can be amended.<sup>36</sup> The four types of constitutional change include legislative proposals, popular initiatives, constitutional conventions, and constitutional commissions:

1. The **legislative proposal** is a mechanism for changing state constitutions that follows the state legislature proposing changes, and then voters either confirm or reject that proposal

34. O'Dell and Penzenstadler, "You Elected Them."

35. Colantuono, "Revision of American State Constitutions," 1473; Williams, "Are State Constitutional Conventions Things of the Past," 1.

36. Permaloff, "Methods of Altering," 217.

in a referendum. This approach is best for small changes, like individual amendments, and may be used when the state legislature believes the issue at hand needs to be addressed through the state constitution rather than the state statutes. The proposal that comes from the legislature still must go to voters for their approval before it is effective. Forty-nine out of fifty states employ this as an option for constitutional change.<sup>37</sup> Delaware is the sole exception, as their method for legislative proposal does not require voter approval.<sup>38</sup>

2. The **popular initiative** is a tool that incorporates the influence of direct democracy with constitutional change. The recommended change comes from the people, with a substantial percentage of voters (as determined by the state) signing off to signify their support for the proposal.<sup>39</sup> Once the initiative has enough signatures and has been verified, it is placed on the ballot for voters to either approve or reject through a referendum. In this method, both initiatives and referendums are used. This approach is best for smaller changes, similar to the legislative proposal, because it is focused on one particular issue in the initiative. Seventeen states presently provide this option for constitutional change.<sup>40</sup>
3. The **constitutional convention** involves a more significant overhaul of the state constitution, either a complete rewrite or enough changes to warrant a larger convening beyond what could reasonably be accomplished through the popular initiative or the legislative proposal. The constitutional convention is called by the legislature and then brought to voters for support. If they approve, the state legislature then

37. Dinan, "Constitutional Amendment Processes."

38. Holland, Delaware State Constitution.

39. Dinan, "State Constitutional Initiative Processes," 61.

40. Dinan, "Constitutional Amendment Processes."

acts as the constitutional authority in crafting a new guiding document or making major changes to the current document. All the changes must go through the voters in a referendum before they can take effect. Forty-four of fifty states offer this tool as a way to change the state constitution.<sup>41</sup>

4. The **constitutional commission** operates similarly to a convention in tackling substantial issues that would be tedious to address through either the legislative proposal or the popular initiative options. It differs, though, in the composition of stakeholders. Whereas the convention utilizes members of the state legislature to draft the new constitution, the constitutional commission includes leaders outside the state legislature to review, edit, and make recommendations. These changes must be approved by the voters before taking effect. Florida and New Mexico both exercise this option for changing their state constitutions.<sup>42</sup>

Though there is more than one way a state constitution can be changed, the effect and success of each method are not equal. State constitutional changes that are proposed through popular initiative are the least likely to be successful in front of voters.<sup>43</sup> This is largely because the matter placed in a referendum to the voters requires an “approve” or “reject” response with no opportunity for small changes or minor edits. Voters are presumably writing the initiatives and may lack the legal understanding or respect/view of authority from other voters. Likewise, the legislative proposal has a higher likelihood of success because it involves a recommendation coming from the state legislature in which, at least in theory, it has been deeply debated and robustly tested before making its way to the referendum ballot for voters’ judgment.

41. Ballotpedia, “Constitutional Conventions on the Ballot.”

42. Little, “Need to Revise,” 475; Smith, New Mexico State Constitution.

43. Dinan, “Constitutional Amendment Processes.”



One or more interactive elements has been excluded from this version of the text. You can view them online

here: <https://pressbooks.palni.org/theexcitingdynamicsofstateandlocalgovernment/?p=46#oembed-1>

### **Video 3.1 – “It’s a Thick Book”**

**Source:** Lehe, Lewis J. “It’s a Thick Book.” YouTube, 2020. <https://www.youtube.com/watch?v=1n8dLdAIL3Q>. Embedded with the [Standard YouTube License](#).

## **Conclusion**

State constitutions are an essential part of governance at the state level. They provide structure and organization, process and procedure, and frame the general rights and responsibilities given to involved entities. They embody the concept of constitutionalism, providing a limited outline for government to restrict its powers while ensuring the liberty of individuals. While they intentionally duplicate some of the rights found in the US Constitution, state constitutions additionally include many other rights not incorporated at the federal level. This allows them to guarantee the protection of individual liberties and also employ protections that are specific to the state’s culture or values.

All the primary components of a state constitution look like the US Constitution, with the exception of addressing local government, debt limitation, and taxation and finance. State constitutions allow for wide variation among themselves too, though they generally follow the same organizational structure and may include several comparable or even identical elements. Because

the US Constitution delegated some powers to the federal government in Article I, Section V but reserved other powers to states through the Tenth Amendment, there is often tension between the rights and responsibilities of the two levels in various policy matters.

State constitutions are prone to interest group influence and more policy than the federal constitution. It is easier to change and edit state constitutions because there are four different ways they can be amended. These documents are critical in the operation of state government but go even further in reinforcing constitutionalism and establishing and reaffirming individuals' rights over the government's.

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# Case Study Chapter 4

LAURA MERRIFIELD WILSON

## Chapter 4 Case Study: Unicameral, Nonpartisan State Senators in Nebraska

State legislatures resemble the legislative branch at the federal level (Congress) in many ways. They have representatives from different districts (or states, as in the US Senate) who are selected by voters in that district, they have committees that focus on specific issues to improve policymaking, and they are elected for short terms in which they serve in office. In most states, they are also partisan like members of Congress, and they are also bicameral like Congress, meaning there are two chambers of the assembly. Those last two features, however, are not true in the legislative branch of Nebraska.

The Nebraska Legislature is the sole legislative body in state government for the Cornhusker State. The unicameral (only one chamber) assembly has forty-nine seats for representatives who are known as “senators,” making it the smallest legislative branch in the nation. The state senators are selected through single-member district elections, which means the state is drawn into forty-nine districts, and only candidates who reside in a district may run in that district, while voters may only cast a ballot in their district of residence.

Nebraska’s legislative branch is unique in its nonpartisanship as well. It is the only state that does not have partisan elections for its legislators, meaning the party

label that accompanies candidates running for state legislative office in all other states is not listed on the ballot or used in campaigns. It is important to note that this does not mean the candidates do not have partisan preferences or are apolitical; they likely prefer one of the two dominant political parties and align closely to that party's platform, but the election for the state legislature itself does not include partisanship.

When the state was first settled in 1867, Nebraska did have a bicameral legislature that mirrored the other states. Like other states, though, the bickering and dissension between the two assemblies meant legislation regularly stalled and legislators regularly vented frustrations with the standstill. Proposals to eliminate one assembly and transition to a unicameral legislature were discussed for two decades before ultimately passing via constitutional amendment in 1934. The timing of the proposed change seems to have been influential in its success. Deep in the Depression, voters saw this as an opportunity to cut government costs and share their dissatisfaction with the previous legislative session. US Senator George Norris (R-NE) served as a champion of the effort three years prior to its approval, inspired by his visit to Australia and his witnessing of what he believed was a much more effective unicameral legislature.

State legislatures all provide the legislative function of creating policy for state governments, but the variety among them in several different institutional, political, and cultural features makes them unique to their own state. Nebraska is the only legislative body that is unicameral and nonpartisan. Arizona, New Jersey, South Dakota, and Washington all use multimember districts to select their legislators in the lower chambers (typically known as the state house), so voters can choose more than one person to represent their district for that chamber. Sixteen states

have adopted term limits so their legislators can only serve for so many years in office before being term-limited out. Wyoming limits its state legislatures to serving twenty and forty days in session, depending on whether the year ends in an odd or even number, making it among the most part-time legislatures still in the United States. The variety among the state legislatures illustrates the differences we see in the states themselves and underscores how the state legislatures are responsive to and reflective of their own state cultures as well as their state constitutions.

## Critical Thinking Questions

Nebraska voters decided to change their state legislature from a bicameral organization to a unicameral one based on their dissatisfaction with the original arrangement. What are some potential benefits that a unicameral institution would provide? What might be some of the challenges or disadvantages that could arise?

This case study highlighted several institutional differences (bicameral/unicameral, partisanship, term limits, professionalization, term length, single-member/multimember districts, etc.) that vary across states. What role do each of these differences play in state legislative functions? What about in the relationship between voters and their state legislators?

Research your own state and note the institutional features of your state legislature. Based on what you learned about Nebraska's and other states', which do you think would be better for effective policymaking?

# 4. State Legislatures

RHONDA WRZENSKI

## *Chapter Summary*

As readers learned in Chapter 3, state legislatures are often afforded more power than their legislative counterparts at the federal level, where the balance of power is generally equitable. This chapter explores what legislators do with that power and who can become legislators. Students will also consider how differences in legislative professionalism influence political outcomes. How do factors like session length and salary affect who becomes legislators and the kinds of policies they make? A case study comparison will emphasize the degree of representation in state legislatures. Students will gain insight into the demographic distributions within legislatures and evaluate the general lack of diversity of legislators who serve.

## *Student Learning Objectives*

Upon completion of this chapter, students should be able to:

1. Identify the role of state legislatures in making state policy, passing the state budget, providing agency oversight, approving gubernatorial appointments, and offering constituency services.
2. Recognize the characteristics of state legislatures such as term length and chamber size and how these compare between the states and with the legislative branch at the federal level.
3. Evaluate key characteristics of state legislators (e.g., occupation, sex, race, sexual orientation) and compare lawmakers to the constituents they serve.
4. Assess institutional differences between state legislatures across the country (including professionalization, salary, staff, and session length).
5. Understand the fundamentals of lawmaking, including the process through which a bill becomes a law.

### *Focus Questions*

These questions illustrate the main concepts covered in the chapter and should help guide discussion as well as enable students to critically analyze and apply the material covered.

How have term limits impacted the behavior of state legislators in expected and unexpected ways?

What are the general characteristics of individuals serving as legislators, and why are some features more beneficial for serving in the state legislature?

How does a bill become a law?

What role do state legislatures play with the other branches of government and other outside political actors, like interest groups?

Why does professionalism matter in state legislatures? What differences might we expect to see in legislation from a part-time state legislature with citizen legislators compared to a professionalized legislature?

## What Does a State Legislature Do?

State legislatures have a variety of responsibilities to perform within our democracy, and the most prominent are lawmaking, passing the state budget, **interbranch oversight** (i.e., checking the power of the executive branch and reviewing its operations), and serving constituents. Keep reading to learn what each of these functions involves.

### Lawmaking

The central purpose of state legislatures is to make and pass the

laws that will be enforced and interpreted by the other branches of state government. State legislatures are the policymaking workhorses within each of the fifty states. They often serve as the testing grounds for controversial policies where the federal government may have yet to pass a national law or to impose a judicial ruling or where the issue may have been deemed one better addressed by the individual states versus a federal mandate. For example, prior to the 2015 US Supreme Court ruling in *Obergefell v. Hodges*, which legalized same-sex marriage nationwide and ruled statewide bans unconstitutional, states made their own policies on whether to legalize same-sex marriage.<sup>1</sup> In some states, domestic partnerships or civil unions were permitted as an alternative to legal marriage, while in other states laws or amendments were passed to state constitutions either banning or legalizing the practice.<sup>2</sup> However, if the federal mandate in *Obergefell v. Hodges* were overturned by a subsequent US Supreme Court ruling, the policy landscape would return to the legal landscape set by the states.

In other cases, states may weigh in on issues that are deemed too politically polarizing by members of Congress given that one political party often controls both chambers of the state legislature and even the governorship, making policy easier to navigate through the legislative process.<sup>3</sup> For example, in 2024, only Pennsylvania had **divided legislative control**, where one party holds a majority of seats in the state house and a different party holds a majority of seats in the state senate.<sup>4</sup> In addition, as of 2025, fewer than one out of every five states exists under a framework of **divided state partisan control**, where at least one chamber of the state legislature and the governorship are controlled by different political

1. Pew Research Center 2015.

2. Pew Research Center 2012.

3. Parry et al. 2022.

4. National Conference of State Legislatures 2024.

parties.<sup>5</sup> Contrast this with the condition of **unified government** (i.e., where the same party controls the state house, the state senate, and the governorship). How unified or divided state governments are can have consequences for legislative productivity and policy creation. For example, research by Hicks and Smith found that legislative productivity, as measured by the total number of bills enacted, is far greater under unified legislative control.<sup>6</sup> Other scholars have pointed to policy differences between states dominated by Republican lawmakers and those with Democratic **supermajorities** (i.e., a classification generally used when the majority party holds enough seats to override a gubernatorial veto without any help from members of the opposing party).<sup>7</sup> For instance, one group of researchers found that the policy response to the COVID-19 pandemic varied by which party was in control of the state government. States under Republican leadership tended to implement fewer mitigation efforts, which resulted in higher COVID-19 infection rates and deaths in 2021.<sup>8</sup>

Finally, the US Constitution has reserved some powers specifically to the states like conducting elections. As such, state legislatures make decisions regularly around provisions like whether voters are automatically registered to vote when they turn eighteen, whether felons can have their voting rights restored after completing their prison sentences, and whether voters can register to vote on Election Day, can vote early, or can vote by mail.<sup>9</sup>

State governments also write bills on everyday operations pertaining to transportation, education, health care, public welfare, parks, and police protection, among other areas. Although these areas may not always generate headlines, they provide services that

5. National Conference of State Legislatures 2024.

6. Hicks and Smith 2009.

7. Lieb 2023.

8. Guss et al. 2023, 100–107.

9. Brennan Center for Justice 2023.

citizens rely on and use regularly, from public education to public roadways. Please refer to the section “How Does a Bill Become a Law?” to see how state laws are made. Chapters 8, 12, and 13 will also provide more insight into what areas of everyday life are affected by state legislation.

## Passing the State Budget

When lawmakers pass **bills** (i.e., drafts of laws) pertaining to these everyday operations, they also need to concentrate on how they will be funded. In other words, another critical task of state legislatures is to provide **appropriations** (i.e., when lawmakers determine what will be spent in a given fiscal year on the programs and agencies of government that require funding to operate). State governments are also responsible for allocating a portion of funds to support the operation of federal programs like Medicaid within the state and for performing other services like snow removal in the winter or pothole repair in the summer.

With a few exceptions, most states operate their fiscal years from July 1 through June 30 and are required to balance their **budget**.<sup>10</sup> As you read about in Chapter 3, this requirement is often due to provisions within a given state’s constitution. Balancing the budget means state legislators must balance their incoming revenue from taxes and fees with outgoing expenditures.<sup>11</sup> Since states cannot anticipate the timing of natural disasters or recessions, many work to protect themselves from the fiscal impact of these events by setting aside **rainy-day** or **budget stabilization funds** (i.e., a fund where states can place year-end surplus revenue, if present, to offset the need to increase taxes or cut spending

10. Center on Budget and Policy Priorities 2022.

11. Center on Budget and Policy Priorities 2022.

in an economic downturn).<sup>12</sup> States with healthy balances in these accounts tend to have higher government credit scores by credit rating agencies such as Moody's and S&P Global and may be seen as more fiscally secure by investors. In contrast to most state governments, the US Constitution does not contain a balanced budget provision, so Congress can accrue a **deficit** (i.e., when government spending exceeds projected revenue from taxes or other sources of income).

State budgets are passed by state legislatures either yearly or every two years. State legislatures share budgetary responsibility with the state executive branch. The process begins when state finance agencies, such as the Bureau of Motor Vehicles or the Department of Natural Resources, give a forecast of potential revenue for the upcoming fiscal year. This gives the governor an idea of how much the state government will collect from fees and taxes, and this information helps the governor create a budget proposal. In crafting this proposal, governors review and take into consideration the funding requests by state agencies. In addition, the governor will consider their own legislative priorities and those of citizens in their state who may voice their own needs by calling, sending letters, or emailing the governor's office or using an interest group to advocate on their behalf. The governor then submits their budget proposal to the state legislature for consideration, at which time the legislature will hold committee hearings on the budget and provide opportunities for public comment or critique.<sup>13</sup>

Ultimately, differences between the state house and state senate versions of the budget bills will be worked out in a **conference committee** (i.e., a committee that resolves differences between the state house and the state senate versions of the same bill), and once both chambers pass the budget it will be submitted to the governor to either sign or **veto** (i.e., when the governor rejects

12. Urban-Brookings Tax Policy Center n.d.

13. Center on Budget and Policy Priorities 2022.

a bill proposed by the state legislature).<sup>14</sup> If the governor signs the bill, the process concludes. Alternatively, if the governor vetoes the bill, the legislature can attempt to override the action, generally with a **supermajority vote** (i.e., a two-thirds or three-fifths vote of the chamber membership) required.<sup>15</sup> If state legislators cannot muster the votes needed to override the governor's veto, they will need to work with the governor to make further amendments and modifications to the legislation to address the governor's objections and to pass a newly approved budget for the governor to sign.

## Executive Branch Oversight, Approving Executive Appointments, and Impeachment

The state legislature not only has a role in passing a budget to fund the operation of state agencies; it also is charged with overseeing them and ensuring they are functioning properly. This shared function is the result of the division between the legislative branch, which is responsible for the creation of legislation, and the executive branch, which is tasked with its implementation. It is the role of the state legislature to ensure that the laws they passed are being implemented correctly and that there is no abuse or misappropriation occurring. As such, legislatures can hold hearings, conduct investigations, provide evaluations, or audit bureaucratic agencies and officials in the performance of their duties.<sup>16</sup>

Although these duties are important to ensure the effective operation of government, they tend to initiate pushback from **lobbyists** (i.e., individuals who work to influence public officials) and **interest groups** (which are groups of individuals that organize

14. Center on Budget and Policy Priorities 2022.

15. Center on Budget and Policy Priorities 2022.

16. Smith and Greenblatt 2020.

around specific concerns or causes to try to influence public policy); those benefiting from the policies, programs, or laws currently in place; or even from government bureaucrats.<sup>17</sup> Pushback is logical if agency budgets are threatened or the necessity of a program is questioned in the wake of an audit, investigation, or hearing. The potential for resource cuts or employment losses can spur lobbyists or interest groups into action to defend the threatened industries or agencies. Others may push back against oversight because they prefer the status quo to the uncertainty a change in policy or procedure might bring. In addition, given that several states have term limits, performing ongoing oversight can be challenging, as lawmakers turn over, retire, or run for office elsewhere.

Besides overseeing government agencies, the state legislature is also responsible for checking the powers of the executive in two critical ways. First, in some cases, the state legislature can confirm the **appointments** or nominations of the governor to key executive or judicial positions. Depending on the official, these confirmations can require approval by either house, both houses, or only the state senate.<sup>18</sup> The positions a governor can submit nominations for vary by state, as some key executive officials are elected by the people across most states (e.g., attorney general, treasurer, secretary of state), while others are subject to a gubernatorial appointment.<sup>19</sup> These differences will be discussed further in Chapter 5. In other cases, there is no role for the legislature in the approval process, as the appointment is approved by a council, departmental board or commission, or agency head.<sup>20</sup>

Second, the legislature can impeach the governor in every state except Oregon, where there are no provisions for impeachment. The power to initiate the impeachment process

17. Smith and Greenblatt 2020.

18. National Governors Association n.d.

19. National Governors Association 2021b.

20. National Governors Association 2021b.

resides in the state house in every state apart from Alaska, Nebraska, and Oklahoma. In these states, this power is exercised by the state senate. Once the impeachment process has been initiated, states vary somewhat on who conducts the impeachment trial, although roughly 90 percent of the states provide for the state senate to exercise this power. This is much like Congress, where the lower chamber (i.e., the US House) brings the articles of impeachment, and the upper chamber (i.e., the US Senate) conducts a trial around those changes. From there, as with the federal government, the threshold to convict is high and generally requires a supermajority vote.<sup>21</sup>

## Serving Constituents

Through lawmaking, budget approvals, and oversight of the executive branch, the ultimate function of state legislatures is to serve the people who live in the districts that state legislators are elected from (i.e., their **constituents**). The United States was founded on the principle of representative democracy, and as such, legislators depend on the votes of those in their district to get elected. To stay in office, legislators know they must maintain ties to their community, help constituents solve problems with the government, and stay attuned to their policy wishes and needs. Legislators would be wise to consider the needs of their constituents and the communities they come from when creating and passing laws and deliberating on public policy.

Legislators also devote staff resources to responding to constituent emails, letters, and phone calls. They act as an intermediary between the people and bureaucratic agencies that citizens may need help to navigate or to resolve conflicts with.

21. National Governors Association 2021a.

For instance, they may assist a small business owner struggling to understand or comply with regulations around opening or operating their business. As another example, in the previous section (“Executive Branch Oversight, Approving Executive Appointments, and Impeachment”), you read about executive oversight, which can be another mechanism for constituent service. Through this process, citizens can bring complaints to state legislators when they are having trouble with the way laws are being enforced or believe an agency is not acting in good faith. State legislators may even help citizens navigate bureaucratic requirements or public policies enacted by different levels of government by directing them to the proper place for assistance, thereby reducing confusion and possibly expediting the time frame for resolution. Lawmakers may also work to secure grants or government funding for special projects in their district that could provide benefits to the citizens they serve. All this work helps the elected official claim credit come election time, but it is also expected of lawmakers, who have a duly elected responsibility to serve and help others.

## What Are the Characteristics of State Legislatures?

At the state and federal levels, powers are divided between three branches of government (i.e., the legislative branch, the executive branch, and the judicial branch). This division was built into the United States Constitution and into our state constitutions to create a system of **checks and balances** (i.e., where each branch is given the means to limit the actions of the other branches) and to ensure a division of power among the various branches of government. At the federal level, the legislative branch (i.e., Congress) is made up of two chambers: the US House of

Representatives and the US Senate. The state level mirrors this **bicameral** (i.e., two-chamber) arrangement. Across most states, the larger chamber is referred to formally as a state assembly or a state house, and the smaller chamber is referred to as the state senate.<sup>22</sup> Each chamber is composed of officials elected by the public. Forty-nine of the fifty states follow the federal legislature's bicameral structure, with Nebraska being the only exception. Nebraska does not have a state house and conducts all legislative business within one chamber, a forty-nine-member state senate. This makes Nebraska the only **unicameral** (i.e., one-chamber) state legislature in the United States with all others operating as bicameral institutions. Nebraska is also unique in that it is a nonpartisan legislature, which means the party affiliation of a state senate candidate will not appear on the ballot, and the state senators will not be identified with party labels once in office.<sup>23</sup>

Although the structure is similar between the legislative branches of the federal government and state governments, there are some marked differences. Across the US, state house membership ranges from just forty elected officials in Alaska to a whopping four hundred in New Hampshire, while chamber size in the state senate ranges from twenty elected officials in Alaska to sixty-seven in Minnesota.<sup>24</sup>

22. The White House n.d.

23. Official Nebraska Government Website n.d.

24. National Conference of State Legislatures 2021a.

**Table 4.1 – 50 State Variation in Chamber Size and Legislative Term Length**

**Data Source: National Conference of State Legislatures, 2024.**  
**“Number of Legislators and Length of Terms in Years.” Table made by author.**

State	Senate		House		Total
	Number	Term	Number	Term	Number
Alabama	35	4	105	4	140
Alaska	20	4	40	2	60
Arizona	30	2	60	2	90
Arkansas	35	4	100	2	135
California	40	4	80	2	120
Colorado	35	4	65	2	100
Connecticut	36	2	151	2	187
Delaware	21	4	41	2	62
Florida	40	4	120	2	160
Georgia	56	2	180	2	236
Hawaii	25	4	51	2	76
Idaho	35	2	70	2	105
Illinois	59	4	118	2	177
Indiana	50	4	100	2	150
Iowa	50	4	100	2	150
Kansas	40	4	125	2	165
Kentucky	38	4	100	2	138
Louisiana	39	4	105	4	144
Maine	35	2	151	2	186
Maryland	47	4	141	4	188
Massachusetts	40	2	160	2	200

Michigan	38	4	110	2	148
Minnesota	67	4	134	2	201
Mississippi	52	4	122	4	174
Missouri	34	4	163	2	197
Montana	50	4	100	2	150
Nebraska	49	4	NA	NA	49
Nevada	21	4	42	2	63
New Hampshire	24	2	400	2	424
New Jersey	40	4	80	2	120
New Mexico	42	4	70	2	112
New York	63	2	150	2	213
North Carolina	50	2	120	2	170
North Dakota	47	4	94	4	141
Ohio	33	4	99	2	132
Oklahoma	48	4	101	2	149
Oregon	30	4	60	2	90
Pennsylvania	50	4	203	2	253
Rhode Island	38	2	75	2	113
South Carolina	46	4	124	2	170
South Dakota	35	2	70	2	105
Tennessee	33	4	99	2	132
Texas	31	4	150	2	181
Utah	29	4	75	2	104
Vermont	30	2	150	2	180
Virginia	40	4	100	2	140
Washington	49	4	98	2	147

West Virginia	34	4	100	2	134
Wisconsin	33	4	99	2	132

Also, in the legislative branch of the US federal government (i.e., Congress), US House members serve for two-year terms, and US Senators serve for six-year terms. The US House has 435 members allocated based on state population, and the US Senate has two senators per state for a total of 100 senators. However, at the state level, chamber size varies greatly among the states, and term lengths vary somewhat as well. Apart from Alabama, Louisiana, Maryland, Mississippi, and North Dakota, where state house members serve four-year terms, all other officials hold office for two years at a time.<sup>25</sup> Twelve state senates also have two-year terms for their senators, but the majority of state senates use a four-year term instead. This means that just like in the federal legislature, most states' legislative branches consist of a larger state house where elected officials serve shorter terms and a smaller state senate where elected officials serve longer terms. However, in roughly one-third of the states in the US, state house and state senate officials hold office for the same length of time.<sup>26</sup>

It should be noted, however, that several states (please refer to Figure 4.1) set **term limits** in the state house and state senate, which means that a state representative or state senator is not permitted to serve more than a certain number of years (typically eight to twelve) either consecutively or over their lifetime.<sup>27</sup> This is a deviation from the US Congress, where term limits were deemed unconstitutional after a 1995 ruling in the US Supreme Court case *U.S. Term Limits, Inc. v. Thornton*.<sup>28</sup> In this case,

25. National Conference of State Legislatures 2021a.

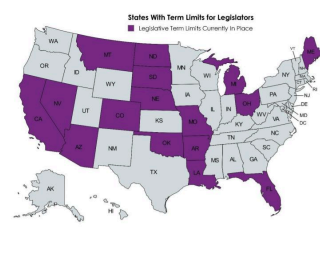
26. National Conference of State Legislatures 2021a.

27. National Conference of State Legislatures 2023a.

28. Congressional Research Service 2023.

the US Supreme Court ruled on whether state voters in Arkansas could alter their state constitution to set limits on the tenure of US House and US Senate members from their state. The US Supreme Court ruled that the stipulations for holding federal office spelled out in the US Constitution prohibited states from adopting different qualifications.<sup>29</sup> Thus, only an amendment to the US Constitution could create limits on the total number of years a member of Congress is permitted to serve. However, as you will read in Chapter 5, many states do set restrictions on the number of terms a governor can serve.

Term limits were instituted in some states largely during the early to mid-1990s with the idea that they would enhance demographic diversity, increase electoral competition, and produce greater turnover as long-serving legislators would be pushed from office.<sup>30</sup> Term limit advocates hoped new officeholders would provide fresh policy solutions. They also



**Figure 4.1 – States with Term Limits for Legislators**  
**Data Source: National Conference of State Legislatures. 2024. “[The Term-Limited States.](#)” Map made by author.**

hoped more **open seats** (i.e., an election in which the current officeholder [an **incumbent**] is not on the ballot and seeking reelection) would reduce the advantage of incumbents, thereby helping more women and minorities take the place of seats routinely occupied by White males.<sup>31</sup> However, research has shown either that term limits have not increased legislative diversity or that the relationship is complicated by other factors like the voting

29. Oyez n.d.

30. Schraufnagel and Halperin 2006.

31. Schraufnagel and Halperin 2006.

strength of the minority population in a given state.<sup>32,33</sup> In addition, some scholarship has found that term limits have actually decreased voter turnout, perhaps due to the loss of incumbent name recognition.<sup>34</sup>

Contrary to the hopes of reformers, term limit opponents feared their implementation would reduce legislative productivity in a lawmaker's final term and alter power dynamics. Research has provided evidence to support each of these concerns. For example, Fourinaies and Hall found that lawmakers who can no longer seek reelection will sponsor fewer pieces of legislation, will be less active in committee, and will have higher rates of absenteeism during **roll-call votes** (i.e., recorded votes on bills, amendments to bills, etc.).<sup>35</sup> As another example, Moncrief and Thompson found that term limits have shifted the power structure by enhancing the influence of lobbyists and interest groups within the lawmaking process and increasing the influence of the governor and executive agencies relative to the legislative branch.<sup>36</sup> These outcomes may be attributed to the loss of policy expertise and lawmaking experience among officeholders in term-limited legislatures.

## Who Can Be a State Legislator?

Although state legislators often reflect the communities they come from in terms of their personal party affiliation or even their religious affiliation, this is where the similarities tend to end. State

32. Carroll and Jenkins 2001.

33. Caress et al. 2003, 183–195.

34. Nalder 2007, 187–210.

35. Fourinaies and Hall 2021, 662–676.

36. Moncrief and Thompson 2001, 394–411.

legislatures across the US have a disproportionately high percentage of male state legislators compared to the populations they serve.<sup>37</sup> In addition, elected lawmakers are more likely to be White as opposed to another race or ethnicity.<sup>38</sup> As such, state legislatures do not reflect the broader populations they serve in terms of demographic features. The underrepresentation can be quite stark. For instance, African Americans make up less than 10 percent of the roughly 7,500 state legislators serving in the US, and only 13 Republican state legislators were Black in 2021.<sup>39</sup> Meanwhile, African Americans constitute roughly 13.5 percent of the total US population according to Census estimates.<sup>40</sup> As another example, in 2025, women made up just 32 percent of all state legislators across the United States even though they represent 50.4 percent of the total United States' population according to Census estimates.<sup>41,42</sup>

However, these averages can gloss over the broad variation in gender and race across the fifty state legislatures. Currently, women make up just 9.7 percent of the total seats in the state legislature in West Virginia, while in Nevada more women serve than men, with women making up 61.9 percent of all state legislators.<sup>43</sup>

37. Rayasam et al. 2021.

38. Rayasam et al. 2021.

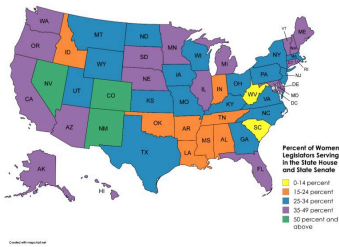
39. Smith 2021.

40. United States Census Bureau 2023.

41. United States Census Bureau 2023.

42. National Conference of State Legislatures 2025.

43. National Conference of State Legislatures 2025.



**Figure 4.2 – Women in State Legislatures**

**Data Source: National Conference of State Legislatures. 2025. “Women in State Legislatures for 2023–2025.”**

<https://www.ncsl.org/womens-legislative-network/women-in-state-legislatures-for-2023-2025>. Map made by author.

In recent years, organizations have begun to track the number of known LGBTQ members in state legislatures, and estimates by the LGBTQ Victory Institute are that there are, as of 2023, currently 226 openly LGBTQ state legislators in office. Their report concluded that LGBTQ representation has increased 18 percent since 2022 and that this is the largest number of state legislators that has ever served within the community. Yet even

here, LGBTQ state legislators make up only 3 percent of the roughly 7,500 state legislators in the United States.<sup>44</sup>

The presence of public officials from underrepresented groups in state legislatures can lead to the introduction and passage of public policies that matter to women, families, children, and minorities.<sup>45</sup> It can also boost turnout in elections, increase feelings of trust in the government, and decrease feelings of political alienation if citizens see themselves reflected in the governments that are supposed to represent them.<sup>46,47</sup> Racial and ethnic minorities, women, and members of the LGBTQ community who see themselves reflected in political institutions may maintain higher levels of political engagement or activism, may show more interest

44. LGBTQ Victory Institute 2023.

45. Bratton 2005.

46. Rocha et al. 2010, 890–907.

47. Sanchez and Morin 2011, 483–508.

in the political process, or may even decide to run for office if they see politics as a profession that is open and welcoming to them.<sup>48</sup>

Besides demographic characteristics, state legislators tend to be retired or to serve in professions that have more flexibility and are more receptive to temporary absences. In some states, especially in less professional legislatures, state legislatures are in session for only a few months out of the year. As we will explore in the next section, the pay lawmakers receive in some states may also require that they have a profession outside of being a state representative or senator to support themselves and/or their families. As such, many state lawmakers are lawyers, business members, real estate agents, educators, health care professionals, or farmers.<sup>49,50</sup> These careers may afford a state legislator the job flexibility necessary to serve for part of the year while still procuring an income to supplement their legislative salary. Given the costs of running for office, especially in more professional state legislatures, legislative candidates may find it easier to pursue public office if they have personal wealth or a network of volunteers or donors to assist in their campaign efforts. As such, state lawmakers may have more advanced education or may occupy higher income thresholds than the average citizen they serve.

## What Are the Institutional Differences Between State Legislatures?

Just as legislatures vary regarding the term length of state lawmakers, the presence or absence of term limits, the degree of

48. Campbell and Wolbrecht 2006, 233–247.

49. Caress et al. 2003, 183–195.

50. Smith and Greenblatt 2020.

diversity among its membership, and the number of seats in each chamber, they also vary concerning the level of professionalism. Since the 1960s, many state legislatures have experienced increasing **professionalization** as time spent in session has grown and salaries or staff sizes have increased at least slightly.<sup>51</sup> The most basic categorization of state legislatures is that they are citizen, hybrid, or professional.<sup>52</sup> A **citizen or part-time legislature** is one characterized by a “short length of session, high turnover in membership, low salaries and minimal staff and facilities.”<sup>53</sup> A **professional or full-time legislature** will meet for roughly nine to twelve months out of the year, and it will tend to see less turnover as members desire to be reelected, have higher levels of job satisfaction, and have more resources to assist them in activities they can advertise and claim credit for during election years.<sup>54</sup> Lower rates of turnover are a result of these state legislatures offering more staff assistance and higher salaries relative to other chambers across the United States.<sup>55</sup> In a professional legislature, lawmakers will tend to see service as a desirable full-time career due to the number of months they are in session and given that their salaries curtail the necessity of holding another job to support themselves and their families.<sup>56</sup> This means that professional legislatures may attract more “qualified” legislators with histories of political service or with advanced degrees. A **hybrid legislature** is a composite of citizen and professional legislatures and may offer more benefits in some areas and fewer in others or may be somewhere in the middle of the spectrum on things like session

51. King 2000, 327–343.

52. Gray, Hanson, and Kousser 2018.

53. Chaffey 1970, 180.

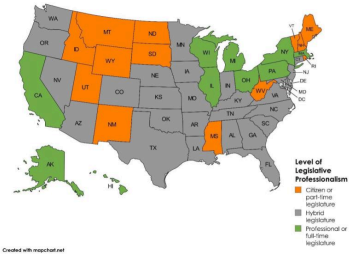
54. Squire 2007, 211–227.

55. National Conference of State Legislatures 2021b.

56. National Conference of State Legislatures 2021b.

length, with sessions lasting roughly four to five months out of the year.<sup>57</sup>

Due to the characteristics of professional legislatures, these institutions may tend to act as a more coequal branch with the executive and will tend to have more institutional expertise and staffing to balance that of the governor's cabinet relative to citizen legislatures. In addition, these legislatures have more staff to devote to lawmaking and constituency



**Figure 4.3 – Legislative Professionalism**  
**Data Source: National Conference of State Legislatures. 2021b. “Full- and Part-Time Legislatures.” Accessed June 1, 2024. Map made by author.**

contact and more time to work on debating and passing bills given that they are in session for most of the year.<sup>58,59</sup> This may allow professional legislatures to tackle more policy issues, address more complex policies, or be better aligned with statewide public opinion than those legislatures that are citizen in nature and meet for very brief windows of time.<sup>60,61</sup> In addition, professional legislatures may see less demand for interest groups and the information that lobbyists provide as they can generate their own information using their enhanced staff resources and lengthier sessions to conduct independent research.<sup>62</sup> While citizen legislatures may lack some of these institutional advantages, their part-time nature necessitates that state legislators spend more months out of the year actively

57. National Conference of State Legislatures 2021b.  
 58. Squire 1993, 479–491.  
 59. Squire 1998, 23–32.  
 60. Squire 1998, 23–32.  
 61. Maestas 2000.  
 62. Berkman 2001, 661–679.

living and working in their districts. This may help them stay more attuned to the citizens they serve and the problems they face, especially if they are, at times, handling constituent requests for aid personally due to a lack of staff. Citizen legislatures are also composed of lawmakers who, unless already retired or independently wealthy, must have occupations elsewhere. As such, the public may feel more connected to these governing bodies and may see them as less elitist. They may even be less cynical about their motivations for holding office given the lower salaries and the necessity of time spent away from the state capital.

## How Does a Bill Become a Law?

As was discussed in the section “Passing the State Budget,” lawmaking is a key function of state legislatures across the United States. Every year, state legislators consider tens of thousands of bills, but most will not make it through the gauntlet that is the lawmaking process. Some bills may be introduced multiple times over the years before they are successfully passed into law, and others will never be signed into law even after repeated attempts at passage. Besides the state budget that must be passed yearly or biennially, ideas for legislation can originate from interest groups and the lobbyists that act on their behalf, concerned citizens in a lawmaker’s district, the wishes of the governor or other agency heads, or the personal interests and concerns of the state legislators and their staff.<sup>63</sup> States also get ideas for legislation from the laws that are passed in other states. It is not uncommon for policies to diffuse from one state to the next, especially in response to the laws of and rulings by federal government institutions, such as

63. Smith and Greenblatt 2020.

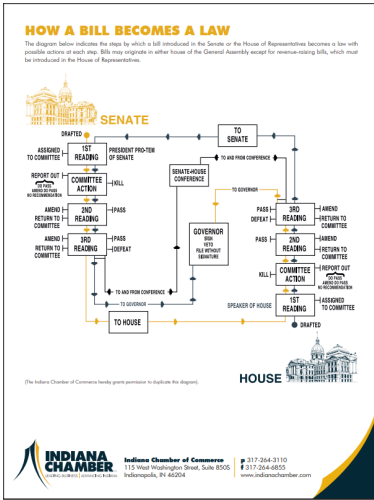
with the recent Supreme Court ruling in *Dobbs v. Jackson Women's Health Organization* that effectively overturned a woman's right to an abortion.<sup>64</sup> The rapid diffusion of public policy can also be the result of pressing public policy needs like the public health crisis spurred by the COVID-19 pandemic or inflationary and other economic pressures that have caused the price of groceries and housing to go up significantly in a short period of time.<sup>65,66</sup> In addition, interest groups and organizations like the American Legislative Exchange Council (ALEC), which you will read more about in Chapter 11, work with lawmakers across the US to disseminate policies on a range of issues. These organizations are credited with providing drafts of bills or "**model legislation**" that state legislators can modify and introduce during the legislative session. Interest groups can also play an invaluable role in providing information and testimony around legislation, especially in states where term limits can reduce the expertise of lawmakers or where short sessions and a lack of staff can limit the time to research or draft legislation.

The legislative process tends to follow roughly the same procedural steps across the entire United States. However, it is important to note that there is variation across the states in many areas, such as the total number and policy focus of committees in the state legislature, the degree of power exercised by party leaders within the state legislature, rules around how many bills can be introduced, procedures for legislative debate, and so forth. This chapter will use Indiana's lawmaking process as a quick and general guide to how a bill becomes a law.

64. Guttmacher Institute 2023.

65. Young 2020.

66. Gordley 2022.



**Figure 4.4 – How a Bill Becomes a Law**  
**Source: “How a Bill Becomes Law” by Indiana Chamber of Commerce / Permission to duplicate granted.**

To begin the process, there must be an idea for a piece of legislation from some individual or organization such as a lawmaker, an interest group, a constituent, or the governor. Then this idea must have a **sponsor**, which is a technical term for a state representative, or a state senator, or in some states, a committee that supports this idea and is willing to bring it for consideration by other lawmakers. Once a sponsor is secured, the bill must be drafted or created. From there, the bill may then be introduced

and called for a first reading, where it will be read by title.<sup>67</sup> At this point, either the chamber leadership can elect not to assign it to a **committee** (i.e., a group of state legislators who are tasked with considering and making recommendations concerning bills), effectively killing the bill, or they can assign it to a committee for further review.<sup>68</sup> Legislative leadership may elect not to assign the bill to a committee for a host of reasons ranging from the issue being too polarizing to the matter needing further study. If the bill is assigned to a committee, the committee will then decide whether to act on it. This decision may reflect the broader agenda of the majority party and the committee chair or fiscal realities. If they

67. Indiana State House Tour Office n.d.

68. Indiana State House Tour Office n.d.

decide to act, the committee will hold public hearings and gather information on the proposed legislation.<sup>69</sup>

After the committee has completed its work on the bill, it may either **table the legislation** (which postpones or ends consideration of the bill) or vote it out of committee. If a majority of the committee votes against the bill, it will be killed and will not proceed. Alternatively, if the bill is favorably voted out of committee and scheduled for a second reading, members in the **house of origin** (i.e., the chamber where the bill originated—either the state house or the state senate) can then offer **amendments** or proposals to alter (e.g., add language, substitute language) the bill. Votes are then taken for approval of the amendments and then of the bill itself. If the bill passes favorably, it may then be scheduled for a third reading in the house of origin, where amendments can again be offered and where the final bill will then receive another vote with everyone present. If the bill passes on a third reading, it will be sent to the other chamber (in all but unicameral Nebraska) to undergo the same steps in the legislative process.<sup>70</sup>

If amendments are made to the bill in the other chamber and the text of the bills is no longer the same, a conference committee will work to resolve the differences.<sup>71</sup> A conference committee may be composed of the relevant committee chairs, ranking committee members, or members of the party leadership. States vary as to the size and makeup of these conference committees. If one chamber agrees to the other chamber's amendments or if the bill has not been changed in the other chamber, then the bill can go directly to the governor for their signature.<sup>72</sup> The governor can then either sign the bill into law, veto the bill, or do nothing, and the bill will become law without

69. Indiana State House Tour Office n.d.

70. Indiana State House Tour Office n.d.

71. Indiana State House Tour Office n.d.

72. Indiana State House Tour Office n.d.

their signature.<sup>73</sup> If the governor vetoes the bill, the legislature can attempt to override the veto with a **simple majority vote** (i.e., one more than half of those voting) or with a supermajority vote depending on the state in question.<sup>74</sup> If the legislature can override the veto or if the governor signs the bill, then it will become law within the state.

## Conclusion

This chapter reviewed the inner workings of the state legislature, from the roles and responsibilities performed by state lawmakers to how laws are made across the states. In addition, this chapter explored the many ways that state legislatures vary, from chamber size and term length to the level of diversity and professionalism within the chamber. These institutional differences can have important consequences for who represents you, for the types of laws you must follow, and for the power dynamics in play among the different branches of government. In the next chapter, you will explore these interbranch relationships even further as you examine the powers and responsibilities of the governor, the qualifications they must meet to be elected, and the conditions under which they serve the public.

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74. Indiana State House Tour Office n.d.

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# Case Study Chapter 5

LAURA MERRIFIELD WILSON

## Chapter 5 Case Study: Wisconsin's Line-Item Veto Power

Governors enjoy veto power as part of their involvement in the legislative process at the state level. They can choose to veto bills they disagree with through several different means, including a pocket veto (failing to sign a bill into law after a short period following the legislative adjournment, thus vetoing it) and a line-item veto (striking down certain provisions in a bill and vetoing those specific components). As governor of Wisconsin, Tony Evers racked up many vetoes during his tenure but garnered national attention for his prolific line-item veto that challenged the division of powers between the branches of state government.

In 2023, the Wisconsin state legislature passed its state budget and sent it to the governor's desk for a signature. The Republican-dominated legislature suggested austere measures to education funding, which is typically the largest single portion of state budgets. Evers, who requested more in his budget proposal as governor, was dissatisfied with the state legislature's version and decided not to sign it into law. Instead, he utilized a creative approach to the line-item veto, striking down a few numbers and words to change the phrase "For the limit for the 2023–24 school year and the 2024–25 school year, add \$325 to the result" to "For the limit for 2023–2425, add \$325 to the result." This clever change eliminated seven words, four

digits, and one hyphen to dramatically change the impact of the language, resulting in education funding increases for the next 402 years. In addition to that particular passage, Evers dramatically reduced the proposed tax cuts and vetoed a provision that would have eliminated jobs in the University of Wisconsin system focused on promoting diversity, equity, and inclusion. Evers argued that the value of these positions and increased funding to K-12 would help further the state's progress and improve educational and economic outcomes.

Because of the unusual edits (eliminating a hyphen and a few digits to change "2024-25" to "2425"), this veto attracted national attention. In fact, Wisconsin's partial veto is an outlier; while many states allow for line-item vetoes, no other state empowers their governor to strike single characters, and likely for this very reason. But the line-item veto itself is not unusual. Forty-four states give their governor this special legislative power. Evers applied it 51 times in the budget from the state legislature, and even then, he was far from besting the record 457 times a Wisconsin governor has used a line-item veto (set by Tommy Thompson in 1991). Unlike the standard veto, the line-item option allows governors to accept some passages of the bill while eliminating others. Strategically, it is more flexible than a traditional veto, enabling governors to "pick and choose" what they approve and oppose. It is also more frustrating for state legislatures, who then are left to try to override vetoed provisions with a supermajority, often easier said than done.

Increased party polarization, stressed state budgets, and strife in shared power in divided government may all be factors in why this friction between the legislature and the governor came to a head. But state constitutions intentionally gave the executive branch veto authority with a recognition of the role it plays in the policy process. The governor's responsibilities in implementing the laws and overseeing the state bureaucracy provide them with unique

insight into the needs of the state. The veto option allows them to challenge the decisions of the legislature through an important procedural check. The separation of powers may be occasionally rife with conflict, but it is an essential tenet of American democracy and state government.

## Critical Thinking Questions

The use of the line-item veto has been challenged in court; in 2020, three that Evers issued were overturned and determined unconstitutional by the Wisconsin State Supreme Court. What is the constitutional question that arises from this institutional mechanism? Do you believe the vetoes described in the case study would be upheld or overturned in the courts today?

What powers does the governor have in your state? Review the state constitution and research what legislative powers with regard to vetoes the governor is given. Then compare this to the authority provided to the state legislatures. How does this differ?

All states provide governors with some veto power. How would the outcome of this case have been different if the governor applied a traditional veto to the entire budget?

# 5. Governors and the Executive Branch

LAURA MERRIFIELD WILSON

## *Chapter Summary*

Governors are often viewed as the most identifiable political leaders in a state, usurping the highest leaders in the legislative and executive branches and the heads of the political parties. Their formal power, however, can be limited depending on their powers in appointments, budgeting, and vetoes. This chapter begins with an overview of the chief executive, exploring the formal and informal powers while comparing the candidates who have gubernatorial ambitions to those who seek power in the statehouse.

## *Student Learning Objectives*

Upon completion of this chapter, students should be able to:

1. Understand the organization and structure of the executive branch.
2. Identify the key positions and their responsibilities within the executive branch, including the governor, lieutenant governor, attorney general, secretary of state, auditor, treasurer, comptroller, and public service commissioner.
3. Evaluate the power of a governor on the basis of elected executive positions and appointed executive positions.
4. Assess the characteristics of those who serve in the governor's office, including how they are different from individuals who serve in the state legislature.
5. Analyze the different executive and legislative powers of a governor and consider the impact these distinctions make on policy.

### *Focus Questions*

These questions illustrate the main concepts covered in the chapter and should help guide discussion as well as enable students to critically analyze and apply the material covered.

How do governors work with (and sometimes against) state legislatures in functions that both institutions share? What impact do institutional

differences (i.e., full time versus part time, term limited versus non-term limited) have on their power?

What role do other positions in the executive branch play in state government?

Why do governors tend to be weaker than state legislatures in policymaking authority?

What can the selection of a position in the executive branch (elected by the people or appointed by the governor) tell us about the power and authority of the governor in the state?

How do governors play a role in lawmaking and influencing the budget?

What makes campaigns and elections for governor more expensive, more desirable, and more competitive compared to other state government races?

## Overview of the Executive Branch

The executive branch at both state and federal levels is tasked with the implementation of the laws, a tremendous undertaking given the vast responsibility of government in the twenty-first century. In many ways, the executive branch at the state level mimics its counterpart at the national level. The governor serves as the chief executive, just as the president does, and they exercise control of the bureaucracy in addition to their own staff and cabinet.<sup>1</sup> Some

1. Abney and Lauth, "Governor as Chief Administrator."

positions within the executive branch at both levels even share the same name and are given similar duties: for example, the attorney general represents the government in lawsuits, and the treasurer is responsible for the government's funds.

While there is some overlap between titles and responsibilities, a quick review of the state executive branch reveals many differences between the federal and state governments but also variations among states. The secretary of state role exists in federal and state government, but their responsibility is quite different; at the federal level, they lead diplomacy and are deeply involved in international relations, while at the state level, their primary responsibility lies in running elections. All states employ a governor but not all utilize the role of lieutenant governor. For states that do not have a secretary of state to run elections, that responsibility is given to the lieutenant governor. These distinctions can be quite confusing, but distinguishing among the powers, responsibilities, and officers within the executive branch gives us a greater understanding of the challenges but also the power that is unique to the executive relative to the legislative or judicial branches.

## What Is Executive Power and Authority?

The **governor** serves as the chief executive for the executive branch, instantly giving them a higher level of authority and status, particularly with regard to informal power, compared to the legislative branch (as discussed in Chapter 4) and the judicial branch (coming up next in Chapter 6).<sup>2</sup> Neither the state legislature nor the state court system has a single leader with seemingly as much

2. Hamman, "Career Experience."

power as the governor. Though the different manifestations of power will be explored more later in this chapter (in “What Are Executive and Legislative Gubernatorial Powers?”), the broadest understanding of executive power is derived from the constitution and from the governors themselves.

The constitutional power of the governor outlines the rights and responsibilities of the office itself. These powers are given to anyone who occupies the office and do not vary from governor to governor, with the rare exception of constitutional changes (discussed in Chapter 3).<sup>3</sup> The power of the governor as chief executive does vary slightly across states, but there are some notable constants.

Typically, governors and the executive branch as a whole are given slightly less power through the state constitution than is the legislative branch.<sup>4</sup> This is notable because the federal government’s separation of powers is proudly “balanced” between each of the branches. No such presumption exists in the states. The explanation for intentionally creating a slightly stronger state legislature and a slightly weaker governor and executive branch is rooted in the history of American government, particularly in the colonial era.<sup>5</sup> When governors were both royal appointees and given substantial power, the colonists recognized their own limited rights and never forgot the challenges of having powerful and appointed chief executives. Though some positions within the executive branch are appointed (a discussion we will elaborate on later in “What Are Executive and Legislative Gubernatorial Powers?”), the former-colonists-turned-founding-fathers of state constitutions deliberately constructed executive and legislative bodies that were elected and thus responsive to the people. These are sometimes

3. National Governors Association, “Governors: Powers and Authority.”

4. Dinan, *American State Constitutional Tradition*.

5. Tarr, *Understanding State Constitutions*, 72.

also referred to as “nonunified” executive branches.<sup>6</sup> (The debate between elections and appointments in filling roles in the judicial branch, with good arguments for both, will be addressed in Chapter 6.)



**Figure 5.1 – South Carolina Governor Nikki Haley Giving Address at a Public Event in 2014**  
Source: “[South Carolina Gov. Nikki Haley joins U.S. military service members and community business partners ...](#)” by Staff Sgt. Jorge Intriago/United States Air Force on Wikimedia Commons / [Public Domain](#).

In addition to having slightly less power than their legislatures, governors are given traditional authority over the bureaucracy and the implementation of the laws.<sup>7</sup> They oversee the executive branch, including appointments for key leadership positions, and in states where they do use judicial appointments, governors play a role in nominating candidates to the bench.<sup>8</sup> This oversight

underpins the justification for executive orders, which enable a governor to make policy proclamations of limited authority in the name of fully executing the laws. This allows governors one way to fulfill their own goals for leading the state while in office. They also are involved in the legislative process, promoting legislation that aligns with their objectives but also theoretically represents the interests of the entire state, differing from the primary legislative focus, which emphasizes district and constituent benefits. Appointments, and particularly the breadth and depth of offices in

6. Kousser and Phillips, *Power of American Governors*, 17.
7. Tarr, *Understanding State Constitutions*, 156; National Governors Association, “Governors: Powers and Authority”; Woods and Baranowski, “Governors and the Bureaucracy.”
8. McLeod, “Party on the Bench.”

which positions are appointed by the governor, demonstrate an essential constitutional power.

Another **formal power** listed in the constitution for governors is introducing the state budget.<sup>9</sup> This is a shared responsibility, much like appointments and passing legislation, because the governor requires collaboration with the state legislature in order to complete it. After all, it is the legislature that must pass the budget through both chambers in order for it to make it to the governor's desk again for signature. The governor has some latitude in the budgeting process, though, especially in considering statewide needs and interests and major initiatives that align with their own agenda and match or reinforce the goals of the legislature. Depending on the legislative and budgeting cycle, the governor can indicate the important points of the state budget in the annual state of the state address and in appeals to the public. These signal to the constituents what the priorities are and what the governor deems most important. Internally, the governor must work with the leaders in the legislature to advocate for their budget items and work to align goals across both branches of government.<sup>10</sup>

Finally, the last major constitutional power of governors lies in their ability to approve or kill legislation, a vital step in the policymaking process at the state level. When both chambers of the legislature have passed a bill, it lands on the desk of the governor. Governors can sign the bill into law, and the process, from a creation perspective, is complete (the real work in implementation, though, has just begun for the executive branch). But what happens when a governor disagrees with the bill? Governors have veto power, which gives them the authority to reject a bill in its presented form, forcing the state legislature to either redress the bill to accommodate the governor's wishes, override the veto with a supermajority of

9. Council of State Governments, Book of the States.

10. Kousser and Phillips, Power of American Governors.

legislative support in both chambers, or abandon the bill entirely to revisit at another time or in a different way.<sup>11</sup>

**Veto power** can vary and will be discussed in this chapter later in greater detail (see “What Are Executive and Legislative Gubernatorial Powers?”). But this formalized power protects the executive branch from an overpowering legislature and offers an important institutional check in the lawmaking process.<sup>12</sup>

In addition to the formal powers that are given to every person who occupies the governor’s office, each governor has the opportunity to utilize **informal power** unique to their own circumstances and personality. Informal powers are those that are not outlined in the constitution or statutes but exercised by the individual in office—meaning, of course, that these can vary widely across administrations. Examples of informal power can include unique personal background or circumstances, charisma or personality, and outreach.

Though many candidates who seek the governorship have some prior political experience, they often have other life experiences that may help them separate themselves from their opponents. Politics tends to be dominated by lawyers, and mastery and understanding of the law are certainly helpful in holding public office, especially in a role that is responsible for the law’s implementation.<sup>13</sup> Every experience can lend itself to public service, despite the initial obvious relevance. Jesse “The Body” Ventura was a wrestler before he successfully ran to serve as governor of Minnesota; Arnold Schwarzenegger likewise had a storied career in film and bodybuilding before voters selected him to serve as their governor in California. Both men understood the importance

11. McGrath, Rogowski, and Ryan et al., “Power of Institutional Design,” 31–47; Wilkins and Young, “Influence of Governors,” 557–575;

Kousser and Phillips, *Power of American Governors*.

12. Herzik and Wiggins, “Governors vs. Legislatures,” 841.

13. Carsey, *Campaign Dynamics*.

of performance and connecting with an audience, two qualities that are useful in politics.

Increasingly, we have seen more candidates from other professional backgrounds run for governor, even newcomers to politics who have not held an elected office before declaring their gubernatorial candidacy. This will be discussed in more detail later in the book (Chapter 9). Many governors have presidential aspirations as well, using the highest executive office at the state level as a platform to run for the highest executive office at the federal level. One advantage these candidates have is their experience with unilateral executive skills and collaboration with legislative branches through their role as governor.<sup>14</sup> Governors from larger states or those who are well known on their own accord tend to be more successful as well.

Some governors are notably charismatic, well regarded in public speaking, or especially personable. These characteristics are all widely subjective among voters, but aligned with the right circumstances (partisanship of the electorate, resonance of salient issues, mobilization of support, etc.), they can aid a governor in their efforts.<sup>15</sup> An eloquent governor can harness their outstanding speaking skills to convince lawmakers to revisit their issue or address the public in a press conference to convey a particular message. Being able to effectively reach out or connect with voters is essential for any successful candidate, but governors who display an unusual ability to really resonate with their supporters can likewise leverage that relationship and translate it into policy support. Even if a governor is faced with an antagonistic legislature, public appeals to supporters, who can then put pressure on their representative, can be an effective outsider strategy.

14. Silver, “Governors’ Advantage.”

15. Jensen et al., “Combating COVID-19,” 101702; Barth and Ferguson, “American Governors,” 268–282; Carsey et al., “Strategic Candidates,” 269–298.

The governor is also the de facto chief of the party. Though the statewide political parties have organizations with actual party chairs, those individuals are typically only known widely to party insiders. They fulfill important administrative functions, but the governor serves in a more pronounced and visible role, so the office serves as a de facto name and face of the party as its most prominent statewide officeholder.<sup>16</sup>

The informal powers come with the person, not the office, so they change as often as the occupant of the position does. Learning how to productively utilize them, though, can prove to be an incredible advantage for a governor, working in other branches like the legislature but also with other offices in their own executive branch too.

## What Are Positions in the Executive Branch?

The governor does represent the head of the executive branch and is also seen as the de facto leader of the state as the political figure most recognized and associated with the state they represent. The executive branch, however, comprises many different positions, both elected and appointed (and even those that are hired as part of the bureaucracy). Some of these positions, such as the heads of agencies and departments within the executive branch, are appointed by the governor and thus report and respond to the person in that office. Many of the high-level statewide executive offices, though, are not necessarily appointed. As is true for many features of state government, the selection method and the actual offices and responsibilities associated with them do vary across the

16. Morehouse, *Governor as Party Leader*.

states. To better understand what these other executive positions are, we will review the most common statewide executive offices and explore their primary functions and how they are selected. When possible, details about the office are included to illustrate the wide range of diversity in how state executive branches are organized and operate.

## Lieutenant Governor

The **lieutenant governor** role is sometimes viewed as the state-level equivalent of the vice presidency from the national government. Indeed, some parallels exist, making this precursory comparison understandable. Some states elect their governors / lieutenant governors on the same ticket, as we do for the president / vice president; some states imbue a culture where the lieutenant governor is often seen as the next in line for the governorship broadly (and next in line legally in the unfortunate case of a succession plan in action); and finally, some state constitutions provide relatively little unilateral power to the lieutenant governor role, so their primary responsibility is to help campaign for and support the issues important to the governor.<sup>17</sup>

17. Briffault, “Skelos v. Paterson,” 675.

Assuming the lieutenant governor and the vice president were essentially the same role would be an oversimplification that ignores some of the unique characteristics of the position of lieutenant governor. First, not all states actually have this office. Forty-five out of fifty states do utilize a lieutenant governor; only Georgia, Tennessee, Texas, and West Virginia do not.<sup>18</sup> The amount of power and actual



**Figure 5.2 – Alabama Lieutenant Governor Albert Brewer Sworn in as Governor upon the Death of Incumbent Governor Lurleen Wallace in 1968**

Source: “[Albert Brewer oath of office](#)” by the Brewer for Governor Committee on Wikimedia Commons / [Public Domain](#).

constitutional responsibility of the office still varies among the forty-five states that do have it.<sup>19</sup> In a legal capacity, the lieutenant governor is the state’s next-highest officer and does follow the governor in the line of succession if the unfortunate moment arises. However, in less tragic circumstances, they represent the governor and stand in when the governor simply can’t, whether it is to welcome visitors at a state convention or to tour a factory that would benefit from the governor’s economic policy proposal.<sup>20</sup>

Like the vice president role at the federal level, lieutenant governors may also serve as the presiding leader over the upper chamber of the state assembly (typically known as the state senate).

18. Some states have recently added the role of a lieutenant governor, but it was not originally in their state constitution. Arizona voters approved this new post in 2022 to go into effect in 2026, while New Jersey created the position in 2005 with the first lieutenant governor elected in 2010.

19. Freedman and Thai, “Little Newspaper Coverage,” 82–100.

20. Winder and Hill, “Governor and the Lieutenant Governor,” 634–656.

At the federal level, the vice president provides this role to the US Senate. Generally, the lieutenant governor has the authority to preside, break ties in votes when needed, and conduct some manner of business in the chamber. The roles of the Senate president pro tempore and majority and minority leaders are also essential in conducting legislative business (discussed in Chapter 4).

While they do share succession and senate powers, lieutenant governors differ from their federal counterparts in their relationship to the governor. As noted earlier, not all run on the same ticket as the governor. Seventeen states elect their lieutenant governor separately from their governor. This provides the lieutenant governor role with more power and authority to act separately from the governor, perhaps even coming from a different political party, making their relationship even more interesting.<sup>21</sup> This can become especially complicated when the governor may leave the state for a certain period and the de facto actor in their absence is a lieutenant governor who may share a very different perspective from the governor and now has an opportunity to act on that view with executive power. These “divided executives” mean rivalries can run rampant and deep within the executive branch. It also dilutes the governor’s power and influence over their next-in-line colleague.

Some states give lieutenant governors broad policy power, convenient considering their role as the senate president.<sup>22</sup> They cannot singly author legislation, but they can identify advocates in the legislature to do that with them, and then lieutenant governors can employ their platform to rally support, both externally with the public and internally within the legislative branch, to pass the policy into law.<sup>23</sup> For states that do not have a secretary of state role, the

21. Briffault, “Skelos v. Paterson,” 675.

22. Lynch, “Problem with the Lieutenant Governor,” 87.

23. Winder and Hill, “Governor and the Lieutenant Governor,” 634–656.

lieutenant governor may also have the authority to oversee election administration, which is a large and important undertaking.

## Attorney General

Just as the post of lieutenant governor is held in the executive branch but integrally involved in the legislative branch through the state senate, the **attorney general** role straddles both the executive and judicial branches through its power.<sup>24</sup> The attorney general is the chief legal counsel for the state and is responsible for representing the state in lawsuits. They advise the state government in legal matters and lead the enforcement of state laws. This is in addition to upholding federal laws as well, since the attorney general is sworn to uphold the constitution of both levels of government and thus holds responsibility for the enforcement of both.

The position of attorney general is viewed as so vital to the policy process that all fifty states have it as part of their executive branch.<sup>25</sup> In most states, the role is selected through popular elections, like the governor's office. Only seven states do not offer elections for the attorney general; in those states, the position is determined by gubernatorial appointment (Alaska, Hawaii, New Hampshire, New Jersey, and Wyoming), judicial appointment (Tennessee), or legislative election (Maine).

Because of their leadership in law enforcement and representation of the state in lawsuits, the attorney general role is often viewed as very powerful, sometimes usurping the attention from and upstaging the lieutenant governor's role, particularly in the states where that position has relatively little unilateral

24. Marshall, "Break Up the Presidency," 2446.

25. Matheson, "Constitutional Status and Role," 1.

authority.<sup>26</sup> Depending on the state, the office of attorney general also can be in charge of the state's department of justice. To continue with the comparisons of federal offices, this would be equivalent to the relationship of the attorney general of the United States and their relationship with the US Department of Justice. Attorneys general serve as both political and legal actors and, as such, can use important and interesting lawsuits to leverage their own position in the public eye.<sup>27</sup>

It is important to note that the power of the attorney general's office can also be impacted by their own term and tenure power (much as we will see with the governor later in this chapter, in "What Are Legislative and Executive Gubernatorial Powers?").<sup>28</sup> Most states employ a four-year term, which mimics similar gubernatorial standards. Yet there is significant variation in other states between shorter terms (such as in Maine, which limits the attorney general to a two-year term) and longer ones (as we see in Tennessee with an eight-year term). Term length serves as a sort of deadline for occupants of the office, though only term limits and removal cease an incumbents' service.

## Secretary of State

The **secretary of state** role, much like that of the attorney general, is viewed as one of the more powerful posts in the executive branch. It has garnered significantly more attention in the last several election cycles compared to its more innocuous public perception in earlier history; this can be attributed to the increasing debates over voter

26. Citron, "Privacy Policymaking," 747; Marshall, "Break Up the Presidency," 2446.

27. Miller, "State Attorneys General," 1.

28. Earley, "Special Solitude," 561.

enfranchisement, security, fraud, and other claims that are reflected in the policies the office implements. Elections serve as an exciting example of shared powers of federalism in action, and the debates play out in policies such as the availability of early or absentee voting, the process of ballot access, the timing of voter registration, and the IDs needed (or not) to cast a ballot.<sup>29</sup>



**Figure 5.3 – Georgia Secretary of State Brad Raffensperger, Embroiled in the 2020 Presidential Election, 2022**

Source: “[Brad Raffensperger 2022](#)” by [Knight Foundation on Flickr](#)/ [CC BY-SA](#).

Because of this important role, most state constitutions do have a secretary of state office, with only three that do not. In Alaska, Hawaii, and Utah, the responsibilities typically designated to the secretary of state are instead assigned to the lieutenant governor, making that office a little bit more powerful than in the states that have a secretary of state. Inversely, in the three states that do not have a lieutenant governor, the office of the secretary of state is placed first in line in the order of succession. Additionally, three other states

(Massachusetts, Pennsylvania, and Virginia) employ a “secretary of the commonwealth,” which is the constitutional equivalent of the secretary of state.

At the federal level, the secretary of state is often seen as a leader in diplomacy and international relations. At the state level,

29. Montjoy, “Public Administration of Elections,” 788–799; Priest, “Secretaries Speak,” 71–74.

this is a great example of where an office might share the same name but is clearly different with regard to responsibilities. The secretary of state is in charge of elections, oftentimes serving as the chief election officer for the state. They are also responsible for overseeing businesses in the state, usually responsible for administering the Uniform Commercial Code. This extensive set of codes is a national standard that is used almost in its entirety by all the states as a way to universalize business transactions across states to make conducting business easier and more efficient. Finally, the office can also be responsible for notaries of the public and recordkeeping for official state records (both those of government, like executive orders, and also those for citizens, like marriage certificates).

## Auditor

**State auditors** provide an essential fiduciary function in state government, particularly valuable in the twenty-first century as states' roles, involvement, and budgets expand. They serve as auditors of state funds, which do not belong to them or their office but rather are the funds of and for the taxpayers.<sup>30</sup> This fiduciary responsibility is important, and auditors ensure that those funds are being spent appropriately and in accordance with the law.

Most broadly, the auditor's job is to examine accounts and identify and eliminate issues.<sup>31</sup> Sometimes, these can be malicious, such as abuse or fraud; other times, ill intent may not be at play, but issues involving waste and redundancies are also undesirable, and under their fiduciary responsibility to the public, the auditors

30. Council of State Governments, *Book of the States*. "Book of the States, Volume 53."

31. Schwartz, "Coping with the Effectiveness Dilemma," 511-526.

also work to detect these problems. Some of the processes auditors use to find issues and address them include auditing public financial statements, verifying compliance with regulations, and evaluating the performance and processes of programs. There are also independent external auditors who provide a similar function to ensure the legitimacy and accountability of the auditors, but these positions are privately operated, and they are not public officials in the executive branch.

The auditor is selected through either popular election, legislative appointment, or gubernatorial appointment. In cases in which the governor does get to select the auditor, the appointment process still involves the state legislature in either the initial nomination or subsequent confirmation. The role of the auditor requires specific professional training, making it more similar to the attorney general and less like the secretary of state or lieutenant governor.<sup>32</sup> There is also a keen interest in neutrality, a feature important in any elected office, but that does not mean they are necessarily apolitical.<sup>33</sup> Neutrality is particularly valuable for the auditor because of the office's vested fiduciary responsibility.

It is important to note here that some states also have a separate office known as the comptroller, discussed in the next section. In the states that do not have a comptroller, those responsibilities fall under the purview of the auditor's office.

## Comptroller

The office of the **comptroller** may be one that is less recognizable to readers, in part because it is less utilized in state governments. Only nine states presently use a separately elected comptroller,

32. Schelker, "Public Auditors."

33. Hornbeck and Malin, "State Auditors," 1047-1075.

and they tend to be larger states with greater populations, more professionalized state legislatures, and larger state budgets accompanied by greater state services. The states that have a comptroller (or controller, as the office is referred to in California) include California, Connecticut, Florida, Illinois, Maryland, New Hampshire, New Jersey, New York, and Texas.<sup>34</sup>

The comptroller generally serves a preaudit for expenditures from the state legislature, a particularly important and arduous task for those states with larger budgets, services, and legislative actions.<sup>35</sup> As noted, the auditor reviews receipts after the funds have been spent to ensure they have been spent in accordance with the law and statutes. The comptroller provides a similar oversight before the disbursement of funds. In a small state, there might be less demand for tasks, or they could be subsumed into the auditor's own office. For a large state with much more money and tasks at stake, requiring a preaudit before expenditures occur can ensure funds are not mismanaged and costly errors are caught before they are incurred.

## Treasurer

State **treasurers** are the chief custodians of the state government, dealing directly with the funds both coming in and going out. They are sometimes also referred to as the state's head bankers, though it is worth clarifying that they are still publicly elected officials.<sup>36</sup> Almost every state has a treasurer, with two notable exceptions. New York removed the office and transferred the treasurer's powers to the comptroller in 1926, and Texas did the same in 1996. In

34. Bentley, "New York State Comptroller," 761.

35. Hevesi, "Standards for Internal Control."

36. Bunch and Ferrara, "Factors to Consider," 32–51.

both these states, the comptroller thus holds more power and responsibility.

As the chief money manager, the treasurer has authority over investments, budget surpluses and deficits, and funds received and deposited. Like the roles of auditor and comptroller, the treasurer's office has a fiduciary responsibility to the public to manage funds wisely. This is particularly relevant in terms of investments; while there is additional oversight and transparency in making and reviewing the investments, it is a major responsibility of the treasurer to ensure that these are made in line with the law and in a prudent manner. When money is owed to the state, most often in the form of taxes, it is paid to the treasurer, and likewise, when money is given from the state, it comes from the treasurer.

Overseeing the state's budget surplus or deficit is a vital part of state treasury management.<sup>37</sup> Not all states have balanced budget provisions in their constitutions, and several factors can influence the variation in budget predictability from year to year. For example, states that budget biannually (once every two years) save some time in the budgeting process from going through it annually but also may struggle with accurate modeling in predicting what revenue will come in and what expenditures will go out, relying on two-year-old data.<sup>38</sup> The governor and legislature are ultimately responsible for the budget, but it is up to the treasurer to keep track of the surplus or deficit incurred.

37. Rubin, "State of State Budget Research," 46–67.

38. Warnick, "Impact of Shifting."

# What Are Executive and Legislative Gubernatorial Powers?

It is nearly impossible to discuss the powers of the executive branch without discussing its interactions with the other branches of government, especially the legislative branch. This is in part because the governor shares authority with the legislature in making laws, and the policymaking process cannot happen unilaterally without the involvement of both branches of government. Though the governor is an officer of the executive branch, they embody powers within both the legislative branch and the executive. These powers will be examined more here.

## Executive Powers

As the chief executive of the state, the governor holds some unilateral power and shared authority within the executive branch.<sup>39</sup> Many of the responsibilities of the governor are affected in some manner by the legislative branch, and these roles (passing legislation, passing the budget, and making appointments) are all described in the next section, “Legislative Powers.” The governor, however, still manifests some unilateral powers that are exclusive to the office. The governor addresses the public on an annual basis in the state of the state speech, they have the power to issue executive orders and clemency, and depending on the constitutional limitations, they can potentially succeed themselves in office through reelection (in some cases, indefinitely).

Delivering the state of the state address provides the governor with generally the largest platform for state politics to

39. Krause and Melusky, “Concentrated Powers,” 98–112.

showcase their successes and highlight their agenda. Much like the “going public” approach to public exposure, the annual speech *can* serve as the vehicle through which governors can directly reach out to their constituents and garner their support for the issues prioritized for the next year.<sup>40</sup> The impact of the address, however, should not be overstated. Not everyone will tune in to watch, and the audience is much smaller than the State of the Union for obvious and expected reasons. Viewers are more likely to already be paying attention to politics and following along with the major issues at stake.<sup>41</sup> This address does give the governor a unique opportunity to formally speak to all the institutions of state government (with the legislature and key leadership from the judicial branch present) and to connect directly with the public that does care enough to tune in and watch.

The governor also holds the authority to issue **executive orders**—an executive mandate that can sidestep the legislature and policymaking process when necessary. These orders are probably most often recognized when issued to respond to a crisis, whether it is a public health emergency like COVID-19 or a natural disaster.<sup>42</sup> In these cases, the executive order may be a



**Figure 5.4 – New York Governor Andrew Cuomo Fields Questions from the Press, 2016**

Source: “[Governor Cuomo’s Major Agenda Proposal](#)” by Metropolitan Transportation Authority on Flickr / [CC BY](#).

40. Kousser and Phillips, *Power of American Governors*, 171; Kernell, *Going Public*.
41. Wolak and Parinandi, “Does the Public Hold Governors Accountable?,” 1051–1064.
42. Gakh et al., “Governors’ Use of Executive Orders,” 489–495; Weissert et al., “Governors in Control,” 396–428.

necessary first step to triggering the release of funds or emergency powers granted exclusively during such times of crisis. Less notable but still important, executive orders may be issued to create agencies, boards, or commissions within the executive branch.<sup>43</sup>

In addition, governors have the ability to offer **clemency** for a crime. This may be through nullifying the consequences (a pardon), commuting a sentence, or issuing a reprieve or injunction on a sentence.<sup>44</sup> The process and power for each of these differs from state to state.

**Tenure power** includes both the lengths of terms and the ability to succeed oneself in office, serving as an institutional mechanism that enables the governor to expand their reach when few limits and broad authority to these powers exist. A governor has significant tenure power, for example, if they have longer terms and no term limits placed on their service. A governor who is limited to shorter terms and has tight term limits would have less tenure power. This has expanded in most states throughout history, particularly during the reforms to strengthen executive power.<sup>45</sup> Terms for governors in most states are four years (like the terms for the federal chief executive), but New Hampshire and Vermont have two-year terms.<sup>46</sup> Only Virginia prohibits a governor from self-succession, though historically, many of the Southern states had similar limits, reducing the power of governors and making two-term executives (with at least one different governor's term of service in between) quite challenging and uncommon. The limits

43. Cockerham and Crew, "Factors Affecting Governors' Decisions," 6-14.

44. Ridolfi and Gordon, "Gubernatorial Clemency Powers," 26; Drinan, "Clemency in a Time of Crisis," 1123; Harris and Redmond, "Executive Clemency," 2.

45. Tarr, *Understanding State Constitutions*.

46. National Governors Association, "Governors: Powers and Authority."

on terms vary. Thirty-seven states utilize term limits on their executives, with the most common limit reflecting the national model of a two-term (eight-year total) limit.<sup>47</sup> Some states include “pauses” for one term (Indiana, Wyoming, and Oregon) or two (Montana) to separate between their two consecutive four-year term limits. Proponents of these barriers argue that they allow for more competition and pressure governors to prioritize their agenda within the deadline of their own term limit.<sup>48</sup> Opposition arguments view these as artificial blocks that prevent voters from being able to reelect a candidate if they so choose.<sup>49</sup>

## Legislative Powers

Depending on the organization of the executive branch, governors may have relatively limited unilateral powers. Indeed, most of the powers we often associate with governors have shared elements with the legislature. The governor works with the legislature on budgets and legislation and also in terms of filling appointments. Because of this, the governor has legislative power despite serving as the head of the executive branch.

The budgetary process incorporates both legislative and executive branches of government because of the magnitude of the responsibility and the value of the input both branches can provide. The legislature writes bills that may have appropriations attached and will thus know how much they intend to spend and

47. Smart and Sturm, “Term Limits and Electoral Accountability,” 93–102.

48. Smart and Sturm, “Term Limits and Electoral Accountability,” 93–102; Klarin, Term Length.

49. Elhauge, “Are Term Limits Undemocratic?,” 83–201; Ferguson, “Governors and the Executive Branch,” 208–250.

what legislative responsibilities they are prioritizing. The governor is looking through a statewide lens, though, so they will see items related to the bureaucracy (including the agencies, departments, and commissions) and the needs of the full state that may not be as visible to the legislators. The governor proposes the budget, but both chambers of the legislature must pass it, making it an essential responsibility of both branches.<sup>50</sup>

The governor serves a similar role in the passing of statewide legislation. Though only a member of the state legislature can draft a bill, the governor has legislative liaisons working closely with and following the efforts of the legislature. If the governor has a strong working relationship and positive reputation with the legislature, they may be effective at convincing legislators to adjust bills to the governor's preference before the proposed legislation leaves committee, virtually ensuring the governor will proudly sign when it comes to their desk. Governors who do not enjoy such a bond with their lawmaking counterparts may struggle to exert meaningful influence and instead may have to utilize their right to veto legislation that they disapprove of.

These vetoes can take the form of **line-item vetoes** (striking down specific provisions) or **pocket vetoes** (intentionally failing to sign a bill into law within a certain period of time before the legislature adjourns).<sup>51</sup> Often the threat of a veto can be powerful enough, but depending on the partisan and ideological composition of the branches and even the personalities or approaches of the elected officials within them, the legislature can

50. Kousser and Phillips, *Power of American Governors*.

51. Carter and Schap, "Line-Item Veto," 103–118; Lauth, "Other Six," 26–49; McCormack and Reingewertz, "Politics, Partisanship," 3546–3559.

always override the governor's veto with a supermajority of support.<sup>52</sup>

**Appointments** illustrate another facet in which governors are subject to legislative approval, at either the beginning or the end of the appointment process. Some appointments begin with legislative recommendations, where the legislature brings the governor a short list of potential candidates and the governor makes their selections from there. Inversely, another process for appointments gives the governor the authority upfront to make the appointment and then the legislators the power on the back end to either confirm or deny.

These appointments can be wide ranging, from the chief justice for the state supreme court to a small board position on a relatively obscure state commission with relatively limited power and scope. Because of the expansive responsibilities of state government and the modern bureaucratic framework, a governor can have hundreds of potential appointments to fill annually. Many factors can influence whether the process is efficient and effective; it is worth noting, though, that relative to the periodic controversial national appointment that depicts the president at odds with the Senate, most gubernatorial appointments and legislative confirmations are fairly straightforward and subdued.

## Conclusion

The executive branch hosts a number of essential offices, including the chief executive, that all share the same objective: to help implement and enforce the laws of the state government. The

52. McGrath, Rogowski, and Ryan et al., "Gubernatorial Veto Powers," 571–598.

governor exercises formal powers of office that are outlined in the state constitution and state statutes, including those shared with the legislature, like appointments, passing legislation, and approving budgets. Governors also have informal powers that they bring to the office based on their own personalities, unique backgrounds leading to public service, approaches, or other characteristics that separate them from other elected officials and make them notable to their constituents.

Most of the power in the executive branch, however, is divided and delegated among several offices or branches. Matters of financial responsibility belong to the auditor, treasurer, and/or comptroller. Issues involving business and election operations fall under the purview of the secretary of state. Legal representation and action belong to the attorneys general. Governors who run on the same ticket as their lieutenant governors might expect that their constitutional subordinates help promote the gubernatorial agenda, but some states allocate more authority and power for this office to exercise.

The greatest limitations of the executive branch, however, lie in its shared and fractured powers. Authority is shared with the legislature on many issues so that the unilateral powers of governors seem limited in comparison. Governors, however, have the authority to issue executive orders, propose a budget, make appointments, and veto legislation, which cumulatively gives the office substantial power.

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# Case Study Chapter 6

LAURA MERRIFIELD WILSON

## Chapter 6 Case Study: Judicial Selection in Pennsylvania

Donors in Pennsylvania elections in 2023 contributed a whopping \$22 million to influence the election outcome. The spending broke statewide records for this race and also saw an increase in outside funding, which is when money contributed to a candidate or campaign comes from a person or organization outside of the state in which the race is held. The cost of the race itself is relatively low compared to other statewide elections, but what made this particular one interesting is that it was a partisan election for the Pennsylvania State Supreme Court.

The state of Pennsylvania holds partisan elections for its judicial branch on “off-election” years, fulfilling either six-year or ten-year terms depending on the specific court, eligible for reelection or “retention” until the judge reaches the state mandatory retirement age of seventy-five years old. Six other states host partisan elections for the judicial branch (Alabama, Illinois, Louisiana, New Mexico, North Carolina, and Texas), while thirteen states hold nonpartisan elections, five use gubernatorial appointments, two states (South Carolina and Virginia) give their legislature the power of appointment, and one state (Michigan) uses a special hybrid of nonpartisan general elections after an initial partisan selection process.

The variety across states with the selection of how

judges come to the bench highlights a particular division between some state approaches to the judicial branch compared to the federal process. The framers of the US Constitution intentionally created the courts as appointed positions for life because of their interest in ensuring neutrality. They famously had very little trust in the public (hence the establishment of the Electoral College to determine the presidency and the initial selection of senators by the state legislators and not voters). Empowering the president (responsible for nominations) and the US Senate (responsible for confirmations) with the appointment process affirmed that qualified individuals would be considered for the positions, and their lifetime appointment would make them impervious to political whims.

Some state constitutions shared the concerns of giving voters power in elections in the judicial branch, but the push of the Progressive movement and the interest in making judges accountable to the public led many states to adopt election processes for selecting the members of their judicial branch. Pennsylvania's State Constitution of 1968 provided elections for the commonwealth's unified judicial system (which was established in its previous constitution in 1874 as a change from appointments in the three previous state constitutions). Typically, judicial elections elicited lower voter turnout because voters were less familiar with the candidates and the roles of their office. In Pennsylvania, where the elections are held in off years, turnout is more likely to be lower, but the timing helps curtail down-ballot effects (or the impact voting for president may have on other races on the ballot) for executive or judicial branches.

Which approach to judicial selection is more democratic and compatible with the objectives of the judiciary? On one hand, providing voters with a say in their state government offices empowers them to have control

and authority, though their votes may be less informed by the justice system and more by partisan preferences. On the other hand, providing gubernatorial appointments or retention processes that give more power to other public officials removes voter impact with a more concentrated influence that will include its own biases and preferences. For the judicial branch in Pennsylvania, running competitive and expensive campaigns is key for a judge to earn their spot on the bench, just like elected office holders in the other two branches of state government.

## Critical Thinking Questions

While all states elect their legislature and their governor, some use alternative processes (appointment, retention, etc.) to select their judges. What makes the judicial branch different in this way, and why would some states use a different mode of selection for their executive and legislative compared to the judicial?

As the last paragraph in the case study noted, there are benefits and disadvantages to each system of selection in state judicial branches. Which process do you think is best, and which value (justice, equity, fairness, accountability, etc.) does it emphasize? Why do you think this method is preferable to the other options?

Research your state constitution to review how judges come to the bench in your state. What role do you see your state's process playing in policy, whether the discussions or decisions involve constitutionality?

# 6. State Judicial Systems

NICHOLAS LAROWE

## *Chapter Summary*

In the complicated dual-judicial structure, Americans are governed by two types of courts: the federal and the state. As each chapter on state institutions illustrates, few Americans know about the state judicial system, including the structure, process, and people involved. This chapter opens with a description of the implications of federalism on justice in our nation, then explains the general structure of state courts, trends in policymaking through the judicial branch, and the various ways in which judges come to the bench (appointments, elections, and hybrid processes). The impact of judicial decision-making will be a major focus, as salient issues such as transgender rights and abortion policy are decided in state courts even though they do not attract the same magnitude of attention as the federal court system.

## *Student Learning Objectives*

Upon completion of this chapter, students should be able to:

1. Identify the functions of the minor trial courts, major trial courts, and production-line-style justice in state government.
2. Assess the role that the judicial system plays in state policy.
3. Understand the different mechanisms for judges to get to the bench, including partisan and nonpartisan elections, gubernatorial appointments, and the appointment/retention-election process.
4. Compare the central components of judicial policymaking (such as needing standing to bring a case, passive judicial decision-making, and special rules of access) to policymaking through the legislative and executive branches.
5. Distinguish between common law and statutory law and their applications.
6. Analyze the impact of judicial federalism on salient policy issues.

### *Focus Questions*

These questions illustrate the main concepts covered in the chapter and should help guide discussion as well as

enable students to critically analyze and apply the material covered.

What are the basic components of a state court system? What role does each court play? What role do specialty/problem-solving courts play?

What are the various ways in which judges can come to the bench to serve in state judicial systems? Which do you feel is most appropriate and why?

What factors influence how judges make their decisions? Which model of decision-making is most persuasive to you?

What role do state courts play in protecting existing rights and recognizing new rights?

## Introduction

For many people, June is a month eagerly anticipated. For children, it marks the long-awaited end of the school year. For many couples, forever begins in June as they tie the knot. For Court watchers, June is the month when the Supreme Court hands down its most consequential rulings of the term, and their anticipation is mixed with glee or dread, depending on the case. On June 24, 2022, nearly fifty years after ruling that the Constitution protected a woman's right to an abortion, the Court in *Dobbs v. Jackson Women's Health Organization* [reversed itself and overruled](#) *Roe v. Wade*.

The decision sent shockwaves through society. Some celebrated; others mourned. Both supporters and opponents of abortion rights knew what came next: a battle at the state level. And it would be as it had been for the previous fifty years: Courts and judges would be in the thick of the action. Between the *Roe* and



**Figures 6.1, 6.2, and 6.3 – Pro-Choice and Pro-Life Activism**

Source: “[A person holding a sign that says never \[...\] again](#)” by Aiden Frazier, “[A group of people holding a sign](#)” by Harrison Mitchell, and “[Person holding red Stop Abortion Now signage](#)” by Maria Oswalt on [Unsplash / Unsplash License](#).

*Dobbs* rulings, state courts interpreted state abortion legislation guided by Supreme Court rulings such as *Roe v. Wade* and *Planned Parenthood v. Casey*. With the *Dobbs* ruling, abortion case law disappeared. Whether a right to abortion existed, or what abortion restrictions were permissible, was now no longer a federal matter. Judges in twenty-three states were now tasked with applying state constitutions to laws restricting or altogether banning abortion.<sup>1</sup> As of 2024, courts of last resort in twelve states have recognized a right to abortion in their state’s constitution.

As discussed in Chapter 2, an essential part of any description of the American system is that it is federal, with national and state levels of government. That means politics occurs at the state and national levels. Sometimes the issues and actions are clearly either state level or national; other times discussion and debate occur at both levels simultaneously.

More than that, state courts are largely responsible for the major judicial decisions that impact Americans. Many of the federal court cases come from divisions either among states or between the state and federal powers. At the state level, courts play a vital role in the formation of policy. As in *Dobbs v. Jackson* (2023), differences within states’ interpretations of constitutional limits can

1. Brennan Center, “State Court Abortion Litigation Tracker.”

dramatically change how we interpret constitutional rights and freedoms. More directly, one of the most significant functions of government is law and order, and much of that responsibility belongs to the state court system.

Courts have long been at the center of national and state politics and policy. During the first half of the twentieth century, as the country nationalized, the Supreme Court played a major role in policy debates over the size and scope of government during the Great Depression and the 1930s. In the 1960s during the civil rights movement, the Supreme Court broadened civil liberties for criminal defendants. But in the 1970s, as the Court (and the country) moved to the right, state courts became a site of significant political action. This **judicial federalism**<sup>2</sup> describes efforts by civil libertarians to broaden or win new rights in state-level **litigation**. In cases as various as same-sex marriage, **tort law**, **gerrymandering**, transgender rights, and abortion, state courts have been at the center of the action. Though rulings of the Supreme Court garner more attention and affect the entire nation, such cases are relatively rare; most of the action on the policy debates of the day takes place at the state level. Therefore, to understand the American political system, we must understand the court system. I open the chapter with a brief explanation of what the judicial branch does. I then cover the organization of courts, how judges are selected, and how they make the decisions they do. At the end of the chapter, I return to a discussion of judicial federalism, highlighting some contemporary policy fights and how state courts are involved.

## 2. Kincaid, “New Judicial Federalism.”

## What Does the Court System Do?

The judiciary or court system is the branch of government that interprets the laws that govern society and applies them to specific situations. The judiciary has two basic kinds of courts: trial and appellate courts. Trial courts determine matters of **legal fact**. They are tasked with determining what is true. Appellate courts determine **matters of law**. Their role is to look at previously decided court cases and assess whether the law was interpreted and applied correctly. Legal systems are organized in a hierarchy. At the bottom are trial courts. Above the trial courts are one or more levels of appellate courts.

Another organizing feature of legal systems is subject matter **jurisdiction**. In the United States, two primary kinds of law are **civil** and **criminal** law. Civil law concerns the rights and duties of individuals and is used to resolve disputes about these rights and duties. Criminal law has to do with punishing those who commit offenses (crimes) against society. Key to understanding a state's court or legal system is understanding subject matter jurisdiction, hierarchy, and whether a court decides matters of law or fact.

## What Is the Structure of State Courts?

The court systems of the fifty states are, to use a cliché, like snowflakes. Although they share significant similarities, no two are exactly alike. Typically, states will have two levels of trial courts: an appellate court, a state high court, and perhaps one or more courts created to handle specific areas of law. However, there is also

significant variation. Texas and Oklahoma have two high courts.<sup>3,4</sup> In New York, the “supreme” court sits below the court of appeals.<sup>5</sup>

If there were such a thing as an average state court system, it would look something like that in Virginia or Indiana. Virginia’s system has four levels: two levels of trial courts, an appellate court, and a state high court. Indiana’s legal system has four levels as well. However, Indiana also has specific courts for tax cases and probate cases and a small claims court for its most populous county, Marion County.

**Table 6.1 – Civil Versus Criminal Cases**  
*Table made by author.*

<b>Difference</b>	<b>Civil Law</b>	<b>Criminal Law</b>
<i>Who are the parties involved?</i>	Plaintiff vs. defendant	The people (the government) vs. a defendant
<i>What is the standard of proof?</i>	Preponderance of evidence	Beyond a reasonable doubt
<i>Where does the burden of proof rest?</i>	With the plaintiff	With the government
<i>What are some examples of each?</i>	Personal injury, property dispute, contract disputes	Murder, larceny, arson
<i>What are common penalties?</i>	Fines, injunctions, community service	Incarceration, injunctions, fines

3. Court Statistics Project, “Texas.”
4. Court Statistics Project, “Oklahoma.”
5. Court Statistics Project, “New York.”

## Minor Trial and Limited Jurisdiction Courts

At the lowest level in the legal system are trial courts. Trial courts are courts of “**original jurisdiction.**” They hear cases first and determine matters of legal fact. The vast majority of people who come into contact with their state court system do so at what is called the “minor” trial court level. Though the variation in state court systems and quality of recordkeeping makes summary claims difficult, Ohio provides a nice example. In 2022, Ohio recorded approximately 2.4 million trial cases; nearly 1.9 million of those cases landed in minor trial courts.<sup>6</sup> Contrary to how trials are depicted in popular culture, the experience at this level more closely resembles a trip to the department of motor vehicles and is sometimes referred to as **production-line** justice. Given the immense caseload and the low legal stakes, cases are processed quickly and relatively informally.

These courts handle low-stakes cases such as **misdemeanors**, traffic cases, and small claims **civil cases.**<sup>7</sup> They also handle preliminary hearings for more serious cases. Decisions of these trial courts can be appealed to trial courts of general jurisdiction and reheard from the beginning, or **de novo.**<sup>8</sup>

Sometimes included in this level are courts that deal specifically with **family, juvenile, and probate** cases and are thus called **courts of limited jurisdiction.** The jurisdiction of minor and limited jurisdiction courts is at the level of either city or county, and they are generally funded by the level of government they serve.

6. <https://www.courtstatistics.org/court-statistics/interactive-caseload-data-displays/csp-stat-nav-cards-first-row/csp-stat-overview>.

7. The upper limit to qualify for small claims court ranges from ,500 in Kentucky to ,000 in Tennessee.

8. Magleby, Light, and Nemacheck et al., *Government by the People*.

## Major Trial Courts

Beyond the seriousness of the case, major trial courts differ from minor trial courts in several ways. Unlike the production-line brand of justice in the minor trial courts, trials at the major level hear **felony** cases and look more like the trials of the popular imagination. They can involve juries and witnesses, and proceedings are recorded. Appeals from major trial courts go to appellate courts and are not reheard *de novo*. Appellate courts accept the legal facts as they have been determined by trial courts. They look at the interpretation and application of law and are discussed further in “Intermediate Court of Appeals.”

**Table 6.2 – Trial Versus Appellate Courts**  
*Table made by author.*

Trial Courts	Appellate Courts
<ul style="list-style-type: none"><li>•One judge</li><li>•Jury</li><li>•Lawyers present evidence</li><li>•Witness testifies before judge/jury</li><li>•Emphasis is on debating the facts of the case</li><li>•Most cases begin (and end) in trial courts</li></ul>	<ul style="list-style-type: none"><li>•More than one judge</li><li>•No jury</li><li>•Lawyers do not present evidence</li><li>•Witnesses do not testify</li><li>•Emphasis is on matters of the law (and process), not rehearing the facts of the case</li></ul>

## Intermediate Courts of Appeal

Appellate courts are courts that have appellate jurisdiction; that is, they review appeals from lower courts. Unlike trial courts, which determine matters of fact, appellate courts hear appeals about the legal process and interpretation of law. Also unlike trial courts, which accept witness testimony and other evidence to determine matters of fact, appellate courts read legal **briefs** from both parties,

listen to **oral arguments**, and then issue an opinion, or ruling, on the appeal.

Many appellate courts have both **mandatory** and **discretionary** jurisdiction; there are some kinds of appeals they must hear and others they may decide to hear or not. Those appeals they must hear are called appeals by right, and those over which the court has discretion are called appeals by permission. States with small populations, such as Wyoming, may have no intermediate appellate court but only a state high court. In other states, like Utah, there is a single appellate court below the state high court, where cases are heard by a small group, or panel (typically three), of judges who hear oral arguments. In larger states, the appellate courts are organized by geographic district. Our largest state, California, has six appellate districts.



One or more interactive elements has been excluded from this version of the text. You can view them online

here: <https://pressbooks.palni.org/theexcitingdynamicsofstateandlocalgovernment/?p=52#oembed-1>

### Figure 6.4 – How Cases Reach the Supreme Court

Source: Vox. “How does a case get to the Supreme Court.” YouTube, March 28, 2017. <https://www.youtube.com/watch?v=KEjgAXxrkXY/> Embedded with the [Standard YouTube License](#).

## State Courts of Last Resort

In most states, the highest court in the judicial system is called the supreme court. However, the organization and structure of state

court systems vary. Texas and Oklahoma have separate high courts, a supreme court (for civil cases), and a court of criminal appeals. Thus, such courts are typically called state high courts or courts of last resort. One of the most important roles they play in their state's legal system is to provide interpretive guidance on important matters of law or the state constitution. Lower courts are guided by the rulings of state high courts.

These high courts generally have both mandatory and discretionary appellate jurisdiction as well as original jurisdiction over a small number of cases, such as professional disciplinary matters, advisory opinions, and in some states, capital cases. In rare cases (.00036 percent in 2019), if federal law or the US Constitution is implicated, a case can be appealed from a state court of last resort to the United States Supreme Court.<sup>9</sup> Otherwise, rulings in state courts of last resort are the end of the line.

In one instance, such a case had a seismic effect on the criminal justice system. In 1963, the Supreme Court ruled in favor of [Clarence Gideon](#), holding that the Sixth Amendment's right to an attorney applied to felony cases in state court systems—where nearly 99 percent of all cases occur.<sup>10</sup> The ruling required retrials or the freeing of thousands of inmates in Florida alone.<sup>11</sup> Since a large majority of criminal defendants are indigent (the Department of Justice estimates that 80 percent cannot afford an attorney) and since access to an attorney was now a constitutional right, states were obligated to provide attorneys to indigent defendants. They typically did so by either hiring attorneys to serve as public

9. <https://www.scotusblog.com/2020/09/empirical-scotus-the-importance-of-state-court-cases-before-scotus/>.

10. <https://www.courtstatistics.org/court-statistics/state-versus-federal-caseloads>.

11. <https://www.floridabar.org/the-florida-bar-journal/gideon-v-wainwright-a-40th-birthday-celebration-and-the-threat-of-a-midlife-crisis/>.

defenders or entering into contracts with local law firms to do the job.

## Specialty and Problem-Solving Courts

Outside the “mainstream” judicial system in the state are two other kinds of courts that merit discussion: **specialty** and **problem-solving**. Such courts are created to help relieve the caseload burden, deal with difficult and technical bodies of law, and pioneer new methods of dealing with persistent social problems.<sup>12</sup>

Specialty courts are created to deal with some specific subject matter. Several states (e.g., Rhode Island and Nebraska) have worker’s compensation courts, and Oklahoma has a tax court. Though such courts have their own rules, litigation in these courts usually resembles that in the mainstream system; the process is adversarial and overseen by a judge.

In problem-solving courts, the goal is diagnosing and solving issues rather than adversarial litigation aimed at determining matters of fact. In jurisdictions with drug courts, for instance, users of illicit drugs are not punished; rather, their addiction is treated and progress is monitored.<sup>13</sup> In juvenile courts, judges may collaborate with social workers and law enforcement to determine the cause of a problem and devise a solution to help a minor child overcome their troubles. In community courts, low-level criminal and civil matters are handled through the paradigm of restorative justice and reconciliation involving community stakeholders rather than state punishment by government officials.

12. Bermann and Feinblatt, “Problem-Solving Courts,” 125–140.

13. Belenko, “Research on Drug Courts,” 1–58.

Shoplifters, for example, may be required to pay back what they stole and vandals to repair what they damaged.<sup>14</sup>

## What Is the History of State Courts?

The American court system resembles the English system, which is not surprising given America's origin.<sup>15,16</sup> However, colonial and then early state courts were adapted in several ways to the conditions of American life. In these early years, before separation of powers had developed as a concept, colonial courts played a major role in government: adjudicating cases and performing various administrative functions such as providing for local roads, issuing licenses, and collecting taxes.<sup>17,18</sup> In Kentucky, the chief official at the county level is a "[judge-executive](#)," one of the last living descendants of the old system.<sup>19</sup>

Shortly after gaining independence, the American reaction against legal and judicial abuses at the hands of English courts meant an increase in the power of supposedly more responsive and democratic state legislatures at the expense of state courts.<sup>20</sup> A

14. Coltri, *Alternative Dispute Resolution*.

15. Neubauer and Meinhold, *Judicial Process*.

16. Forty-nine of fifty states use a common law legal system inherited and adapted from the English system of common law. The exception is Louisiana, which has a hybrid common law and civil law system, reflecting both French and English influence.

17. Friedman, *History of American Law*.

18. Surrency, "Courts in the American Colonies," 253–276.

19. Kentucky Legislative Research Commission, "Fiscal Court."

20. Six of the twenty-seven grievances listed in the Declaration of Independence have to do with courts, judges, or trials.

particular sore point was the role courts played in debt collection. Shortly after the Revolutionary War, many veterans had not been paid for their service and were also in debt. In one case, popular anger at this state of affairs boiled over into armed intimidation of local judges and courts, temporarily shutting them down.

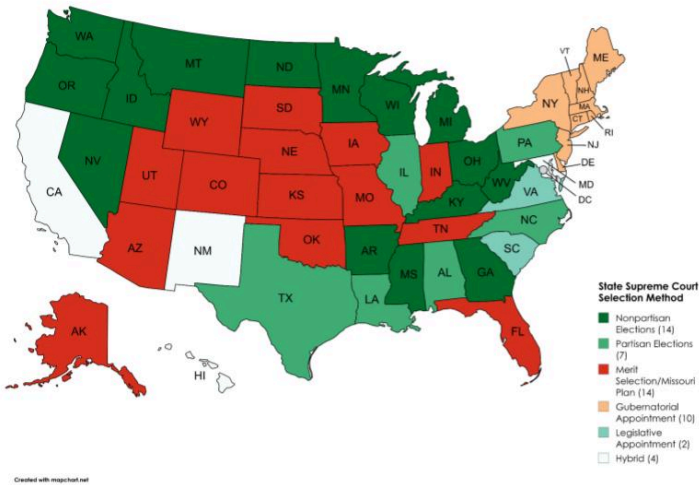


**Figure 6.5 – Shay’s Rebellion**  
Source: “[Appalachian Trail 2012](#)” by [John Hayes on Flickr](#) / [CC BY](#).

After the Civil War, dramatic changes in society, such as urbanization, the Industrial Revolution, and the rise of capitalism, required changes to a court system designed to serve a rural nation. New courts were created to handle a rising caseload. And juvenile and small claims courts were created to

deal with specific problems arising out of a changing society. The idiosyncratic nature of state systems and their sometimes haphazard adaptations at times produced unwieldy and complex court systems. In some states, courts had overlapping jurisdictions. There was no effective administrative organization, and legal interpretation often varied by judge.<sup>21</sup> Early in the twentieth century, many states underwent court reunification reforms to streamline, standardize, and better administer the judicial branch.

21. Glick and Vines, State Court Systems.



**Figure 6.6 – Judicial Selection by State**  
**Data Source:** Brennan Center for Justice. “Judicial Selection: An Interactive Map.” 2024. <https://www.brennancenter.org/judicial-selection-map>. Map made by author.

## How Are Judges Selected?

Judicial selection reflects two competing values: democratic accountability and judicial impartiality.<sup>22</sup> On the one hand, it seems that judges, like other officials, should be accountable to the people. Yet as interpreters of law, it is important that they do their job impartially, “without fear or favor.” Clearly, these values can be in tension, and the varied models of judicial selection reflect this tension. In some places and at some times, states opted for the accountability promised by judicial elections. At other times,

22. Council of State Governments, Book of the States.

reformers tried to make courts independent, removing politics from the process.

**Table 6.3 – Judicial Selection Method by Level of Court**  
**Data Source: Ballotpedia. “Judicial Selection in the States.” 2024.**

[https://ballotpedia.org/Judicial\\_selection\\_in\\_the\\_states#Overview\\_of\\_judicial\\_selection\\_methods\\_by\\_state](https://ballotpedia.org/Judicial_selection_in_the_states#Overview_of_judicial_selection_methods_by_state). Table made by author.

Method	Supreme Court (of 53)	Court of Appeals (of 45)
Partisan elections	8	9
Nonpartisan elections	13	16
Legislative elections	2	4
Gubernatorial appointment	5	3
Assisted appointment	22	15
Combination or other	1	9

At the state level, judges come to office generally through one of two methods: elections (partisan or nonpartisan) or appointment (gubernatorial or legislative), with a handful of states using some other plan. In states using appointment, the judges often stand in a **retention election** after a short period in office. If retained, the judge then sits for a much longer period before subsequent retention elections. Many states employ different processes at different levels; judicial selection in Indiana includes partisan elections, nonpartisan elections, and gubernatorial appointments.

## Election

Nearly 90 percent of state court judges come to office via election.<sup>23</sup> Nineteen states hold partisan elections, twenty-one hold nonpartisan elections, and three hold both partisan and nonpartisan elections.<sup>24</sup> In partisan elections, democratic accountability is at its strongest, and these first arose during the Populist Era encompassing President Andrew Jackson's tenure in office (1829–1837).<sup>25</sup> Such elections have increasingly become indistinguishable from other partisan elections as candidates fundraise, criticize their opponents, and since 2002, are allowed to make policy pledges.<sup>26</sup> Though typically disliked by legal elites, judicial elections are highly popular despite the fact that few people vote in them.<sup>27</sup>

At the turn of the twentieth century, Progressive reformers attempted to make judges more independent of partisan politics. In many states, judicial elections became nonpartisan and candidates ran for office without party labels, leaving voters to make decisions based on factors like name recognition or perceived gender.<sup>28,29</sup> In many cases, however, partisan influence is not far away. In Michigan, for example, candidates are chosen by political parties but then run in nonpartisan elections.<sup>30</sup> In low-information elections such as these, party identification is a useful cue for

23. <https://www.brennancenter.org/our-work/research-reports/judicial-selection-21st-century>.

24. Arizona, Georgia, and Indiana.

25. DuBois, *From Ballot to Bench*.

26. Hall and Bonneau, *In Defense of Judicial Elections*.

27. Geyh, "Why Judicial Elections Stink," 64.

28. McDermott, "Voting Cues," 270–83.

29. Canes-Wrone and Clark, "Judicial Independence," 21–65.

30. Wheat and Hurwitz, "Politics of Judicial Selection," 178–188.

confused voters,<sup>31</sup> and candidates often attempt to make their partisan affinity known one way or another.

## Appointment

Various appointment plans are another attempt to minimize the political element of judicial selection. Under this heading are several methods of judicial selection, but all share the basic features of candidate nomination and appointment. The most common plan, used in some form by nearly half the states, is the “Missouri” (Missouri was the first adopter in 1940) merit selection plan. As the name suggests, merit selection is a method of choosing judges that attempts to remove politics from judicial selection in favor of simply selecting the best candidate.

The specifics of merit selection vary slightly by state, but the basic outlines of a three-step process are as follows: First, a nominating commission composed of legal elites (judges, lawyers, law professors, and prominent lay members) scrutinizes applicants and recommends candidates. Second, the governor or legislature selects a candidate from the list. Typically, the chosen candidate will sit for a short term, usually one or two years. Third, after this short stint, they stand in a retention election, where voters are asked whether the judge should remain in office. Nearly always victorious, these judges then serve longer terms before the next retention election.<sup>32</sup>

31. Bonneau and Cann, “Party Identification,” 43–66.

32. Council of State Governments, *Book of the States*.

## Other Methods

There are simply too many other variations in judicial selection among the states and by the level of court to provide any kind of systematic discussion of selection methods beyond election and standard appointment schemes. It is perhaps best to note again the overwhelming variation and end the section with a few examples: In North Dakota, appellate court judges are selected by state high court justices; in New Hampshire, it is the governor who nominates and an executive council that must approve the nominees. These judges have a rare lifetime appointment, which is limited by a mandatory retirement age of seventy. Delaware requires an even partisan balance on their courts.<sup>33</sup> One could fill an entire book simply delving into the details of judicial selection in the states.

Seeing the variation in judicial selection, a question naturally arises: Which method is best? Those looking for a clear answer are destined to be disappointed. On the one hand, the campaigning involved in judicial elections helps inform the electorate about the candidates for office.<sup>34</sup> Americans tend to view judges more as policymakers than objective legal experts, so the opportunity to choose judges can enhance the perceived legitimacy of the judicial branch. However, campaign contributions reduce the perceptions of legitimacy.<sup>35</sup> Elected judges tend to be more punitive in their sentencing and are less likely to rule in favor of criminal defendants on appeal.<sup>36</sup> Whether this is an argument for or against judicial elections depends on the individual. On the other hand, there is evidence of a racial bias in punitive sentencing, which is a

33. Brennan Center, “Judicial Selection in the States.”;  
<https://www.brennancenter.org/judicial-selection-map>.

34. Hall and Bonneau, In Defense of Judicial Elections.

35. Gibson, Electing Judges.

36. Berry, “How Judicial Elections Impact.”

clear drawback of judicial elections.<sup>37</sup> And some research suggests that elected judges produce worse-quality work than appointed judges.<sup>38</sup>

Some had hoped that merit selection would lead to a more diverse and more apolitical judiciary. However, that does not seem to be the case. While merit selection leads to slightly more minority judges, judicial elections have produced more female judges. And as to the claim that merit selection removes politics from the process, critics question whether merit selection removes politics or merely shifts it to the selection of the nominating commission.<sup>39</sup> Even the retention elections used in appointive systems can become contentious, as three Iowa State Supreme Court justices lost their retention elections after they voted to legalize same-sex marriage in 2010.<sup>40</sup>

Thus, if elected judges are more responsive, appointed judges are more impartial. The public overwhelmingly prefers to elect its judges, but appointed judges may be of better quality. And political contention seems inevitable no matter the method of judicial selection. If there is an answer to the question “Which system is best?” it may depend on whether one prioritizes accountability or independence.

## How Do Judges Make Decisions?

How judges make it to the bench is an important aspect of state

37. Park, “Impact of Judicial Elections,” 998–1031.

38. Choi et al., “Professionals or Politicians,” 290–336.

39. Watson and Downing, *Politics of Bench and Bar*.

40. <https://www.nytimes.com/2010/11/04/us/politics/04judges.html>.

judicial systems. Once they are on the bench, court watchers turn their attention to judicial behavior—how and why judges rule as they do. A significant amount of attention and scholarship<sup>41</sup> focuses on judicial decision-making at the appellate and high court levels, as these decisions guide the legal interpretation and decision-making of lower courts in the legal system. However, the vast majority of cases begin and end at the trial court level, so we begin this section with a discussion of judicial decision-making in trial courts.

In any event, three sets of variables can explain the majority of what goes into judicial decision-making at all levels: judicial policy preferences, legal factors, and the policy preferences of other actors. First, judges have policy views that shape their decisions, whether consciously or unconsciously. Second, **statutory and common law, legal reasoning**, and case facts shape how a judge decides in a case. Third, in the governmental system of separation of powers, other actors have policy preferences that shape how court rulings are interpreted, applied, complied with (or not), debated, and reformed. The preferences and likely actions of others also shape how judges decide cases. The Supreme Court famously dropped its opposition to the policy initiatives of President Franklin Roosevelt after the popular president threatened to add several members to the Court. Yet these three sets of factors are not exhaustive, and other variables are discussed in “Trial Court Decision-Making” as well.

## Trial Court Decision-Making

Trial court decision-making is different from that of appellate courts in several ways. First, judges supervise civil or criminal cases and in many instances must make rulings more or less

41. E.g., Segal and Spaeth, Supreme Court.

instantaneously as issues arise during a case. Also, trial judges are the sole deciders on issues, whereas appellate judges typically work in panels of three or more. Furthermore, trial courts have their decision-making shaped by the rulings of state appellate and high courts.

Juries provide a critical function in the judicial process. The US Constitution provides for guarantees to a jury trial (Article III, Section 2), one that is impartial (Sixth Amendment) and available in civil trials (Seventh Amendment). Some courts utilize petite juries, which are smaller in size and are more likely to make efficient decisions, while other courts rely on grand juries, larger in number of members but also more comprehensive. Regardless of the jury size, the scope and mission remain the same: to provide a group of community members serving as a neutral arbitrator of justice.

Despite these differences, decision-making on trial courts is influenced in large part by the same variables as on appellate courts. Trial court decision-making is shaped by the text of the law and the facts at hand. While interpretation and application can vary in nuanced or unclear cases, the law and case facts significantly impact decision-making. Additionally, judges are trained in law school to reason by example, and analogy teaches them to apply underlying legal principles of law (e.g., fairness, equality) in cases where that principle is at play. When applicable, they also use **precedent**, which is a basic judicial technique to ensure fairness and stability in the application of law to facts. If there is no clear precedent or if there are conflicting precedents, judges may discard this tool.

*Van Orden v. Perry* (2005) provides an example of legal reasoning, the use of precedent, and how the use and application of precedent can be a matter of dispute—not to mention the federal nature of the system. In this case, a Texas trial court decided that a monument of the Ten Commandments in a public park was not a violation of the First Amendment’s ban on a government “establishment” of religion. On appeal, a majority of the United States Supreme Court agreed, ruling that the display served a “valid

secular purpose,” a public acknowledgment of the influence of religion, as they had previously ruled when they permitted a public display of a nativity scene (*Lynch v. Donnelly* [1984]). However, four of the nine judges disagreed, arguing that the presence of the monument constituted an endorsement of a specific religion, Christianity, and thus was an unconstitutional establishment of religion as they had decided in *County of Allegheny v. American Civil Liberties Union, Greater Pittsburgh Chapter*. Do you think such displays should be allowed, or do they constitute a government establishment of religion?

The policy views of trial judges matter as well. One of the most reliable indicators of how a judge will decide is their party affiliation.<sup>42</sup> In states that hold partisan judicial elections, like Texas, that party affiliation is explicit. In states that hold nonpartisan elections, judges may be affiliated with a party. In states with nonpartisan elections, parties might endorse judicial candidates. Even in states where judges are appointed, there is often a discernible ideological pattern in judicial rulings, consistent with the governor or legislative majority that appointed them.

Beyond legal factors and policy preferences, judges are but single actors in a wider political context. Judges do not enforce their own rulings, so the state legislature, governor, and public opinion shape judicial actions as well.<sup>43</sup> Legislatures can override statutory decisions by passing a law; if necessary, they can initiate amendments if the state constitution is implicated. Governors, as head of the law-enforcing branch, exert significant control over how, and even whether, a ruling is enforced. In many cases, public compliance is necessary for rulings to take effect. Judges are mindful that their political power rests on the respect they are afforded by other actors and hesitate to make rulings that go beyond what others are willing to accept. Even when the ruling

42. Carp, Stidham, and Manning et al., *Judicial Process in America*.

43. Epstein and Knight, *Choices Justices Make*.

came from the Supreme Court, as in *Brown v. Board of Education* (1954), it led to little desegregation in the Deep South until it was backed by the Civil Rights Act of 1964 and a supportive president.<sup>44</sup>

Finally, trial court judges often work in the same area where they grew up and were educated. Differences in local political culture can have an impact on decision-making as well. Some jurisdictions are known for particularly lenient or stringent rulings or perhaps are particularly favorable or hostile toward specific cases or parties. For example, the ethnic and religious demographics of Minneapolis and Pittsburgh produced distinct patterns of legal reasoning and decision-making.<sup>45</sup>

How much each set of variables matters is the subject of some dispute among those who study courts. There are generally three models offered to explain judicial decision-making: the legal model, the attitudinal model, and the strategic model.

## Legal Model

In this model of judicial decision-making, judges arrive at their conclusions by scrutinizing the plain meaning of the law, the facts of the case, and any relevant precedent. In this paradigm, judges are, as Chief Justice John Roberts argued in his confirmation hearings, “umpires” who simply call balls and strikes.<sup>46</sup>

Although the law, facts, and precedent certainly have some influence on how a case is decided, the legal model is generally criticized as idealized at best and perhaps simplistic and naive.<sup>47</sup>

44. Rosenberg, *Hollow Hope*.

45. Levin, *Urban Politics and the Criminal Courts*.

46. United States Courts, “Chief Justice Roberts Statement.”

47. Segal and Spaeth, *Supreme Court and the Attitudinal Model Revisited*.

First, the language of the law is not always clear. In such cases, do judges look to legislative intent or consult a dictionary and use the literal meaning of the law, or should judges attempt to apply the basic principles and purposes of the law to the facts before them? Furthermore, in many cases, the facts are equivocal, and reasonable judges could disagree as to which party deserves to win. The same goes for precedent; in many instances, there are enough cases decided so that a judge on either side of a case could find ample precedent to support their decision. Finally, if judges simply look to the law, facts, and precedent, why is it that judges seem to rule on cases in stable and predictable patterns? Such critiques led court scholars (if not judges) to discard the legal model in favor of a more “realistic” theory of judicial decision-making.<sup>48</sup>

## Attitudinal Model

The attitudinal model is a parsimonious explanation of judicial behavior, which holds that how a judge rules on a case is simply a function of their policy views. Judges, like any other political actor, have policy views and wish to advance those views. They do so by ruling in predictable ideological patterns on the cases before them. It would not be too much of an exaggeration to describe judges in this model as little legislatures of three, five, seven, or nine members. As court scholars Segal and Spaeth put it, “Rehnquist votes the way he does because he is extremely conservative; Marshall voted the way he did because he is extremely liberal.”<sup>49</sup> There is substantial empirical support for this model. Judges do in fact vote in predictable patterns. This theory is at its strongest when

48. Bybee, “Legal Realism,” 76.

49. Segal and Spaeth, *Supreme Court and the Attitudinal Model*.

the judges are at the top of the legal hierarchy, in either the state or federal judicial system.<sup>50</sup>

However, the attitudinal model has also come under criticism.<sup>51</sup> The fundamental weakness of the theory is that it is reductionist: While policy views are undoubtedly an important factor, they are not the sole factor in judicial decision-making. There are a number of instances of judges breaking their voting tendencies. In other cases, we see unanimous rulings on courts with established ideological divides. How can an explanation based solely on policy views explain such outcomes?

## Strategic Model

A third model of judicial decision-making synthesizes insights from both the legal and attitudinal models and incorporates an additional factor: policy preferences of other relevant actors. In the strategic model, judges hold policy views and wish to advance them. But rather than acting as single-minded partisans, they take into account the policy views of others, which are “constraints” on judges otherwise simply voting their preference on a case. One major conceptual insight of the strategic model is that judges—even state high court justices—are but single actors in a large political context that influences how (and sometimes whether) rulings will be interpreted and applied. These constraints are either internal or external to the court. The internal constraints are the law, case facts, precedent, and views of the other judges.<sup>52</sup> The law may be open to interpretation, but it is not completely malleable. And

50. Segal and Spaeth, *Supreme Court and the Attitudinal Model Revisited*.

51. Maltzman, Spriggs, and Wahlbeck et al., *Crafting Law*.

52. Maltzman, Spriggs, and Wahlbeck et al., *Crafting Law*.

judges must consider the views of their colleagues on the panel, as they all get to vote. Externally, judges must pay heed to the views of the governor, state legislature, and even public opinion, as discussed earlier.

## What Role Do Courts Play in the Policymaking Process?

When people think about government policymaking, what likely comes to mind is lawmaking by the legislature or the governor taking action or issuing an executive order. Or perhaps even administrative agencies passing and enforcing regulations. But as Alexis de Tocqueville observed, “There is almost no political question in the United States that is not resolved sooner or later into a judicial question.”<sup>53</sup> Since the earliest days of the nation, courts have been involved in the contention of politics.

Despite protests by judges that they merely interpret and apply the law, judges are policymakers. This may sound strange, but when judges apply a law to a specific set of facts, they issue a legally binding command or prohibition. If a trial court judge finds funding for local school districts inequitable, a funding increase is required. If a state court of last resort rules that an abortion restriction is permissible, the state is empowered to enforce restrictions. Though judicial policymaking differs in important ways from legislative or executive policymaking, their decisions have the force of law and create winners and losers. In those ways, courts can be considered “political.”<sup>54</sup>

However, courts are also distinct from the more purely

53. Tocqueville, *Democracy in America*, 257.

54. Neubauer and Meinhold, *Judicial Process*.

political legislative and executive branches. First, they have less control over the issues they do and do not hear. Unlike a legislator or governor, who can pick and choose which issues they want to prioritize, courts are passive decision-makers. They have to wait for others to bring a case or controversy to them. And unlike legislators or governors, courts have less ability to avoid issues they would rather not decide. So long as a case is properly before them, they must act. The requirements are that it must be a “live” (not hypothetical or resolved) dispute, the parties involved must be directly implicated, other avenues of resolution have been exhausted, and the issue is not more appropriately handled by the other branches. These requirements are collectively referred to as the “doctrines of access.”<sup>55</sup> Finally, while those in the legislative and executive branches are free to bring in any moral or political perspective or data or evidence they wish to the policymaking process, in court the process is far more structured regarding how arguments are made, what counts as evidence, and how issues will be decided.

I now return to discussing the role state courts play as policymakers and political actors, in particular since the judicial federalism movement of the 1970s.<sup>56</sup> In addition to the fears of civil libertarians that a more conservative Supreme Court would narrow or reverse past favorable rulings, another reason why policy fights moved to state courts has to do with the content of state constitutions. Many state constitutions contain more rights guarantees than the national Constitution does.<sup>57</sup> In 2016, Indiana joined nearly two dozen other states and adopted a right to hunt and fish.<sup>58</sup> In 2021, Maine added a constitutional right to food.<sup>59</sup>

55. Neubauer and Meinhold, *Judicial Process*.

56. Tarr, “State Constitutional Rights Federalism.”

57. Tarr, “State Constitutional Rights Federalism.”

58. Ballotpedia, “Indiana Right to Hunt and Fish.”

59. Coyle, “State Courts.”; <https://constitutioncenter.org/blog/state->

Thus, the rights the national Constitution protects can be thought of as a floor, so litigation of rights claims at the state level held much more potential for policy victories for advocates of various causes.

At the beginning of the era of judicial federalism, the action in state courts was the result of national trends and rulings: The fight to preserve or expand the rights of criminal defendants moved to state courts. In the 1990s and into the twenty-first century, state courts were involved in the debate over same-sex marriage as state judges grappled to apply their state constitutions to the question of whether the right to marry extended to same-sex couples. The last two states admitted to the Union were two of the first states to recognize claims of same-sex couples. In 1993, the Hawaii high court ruled that denying marriage licenses to same-sex couples violated Hawaii's equal protection clause.<sup>60</sup> In 1998, a superior court judge in Alaska ruled that absent a compelling state interest,<sup>61</sup> same-sex couples had the same fundamental right to marry as did opposite-sex couples.<sup>62</sup> It was only later, in 2015, that the Supreme Court held that marriage was a fundamental right that extended to same-sex couples.<sup>63</sup> As was the case in other issues, the Supreme Court ruling served to ratify an evolving national consensus bubbling up from the states rather than serving as a political trailblazer.<sup>64</sup>

In recent years, state courts increasingly have become the site of debate over an evolving array of questions regarding transgender rights. As of 2024, the Kansas state high court currently is weighing who decides, and on what basis, sex is determined

courts-voters-increasingly-turning-to-state-constitutions-to-protect-rights.

60. Baehr v. Lewin, 74 Haw. (1993), 530.

61. [https://www.law.cornell.edu/wex/strict\\_scrutiny](https://www.law.cornell.edu/wex/strict_scrutiny).

62. Brause v. Alaska WL 88743 (1998).

63. Obergefell v. Hodges, 576 US (2015), 644.

64. Rosenberg, Hollow Hope.

in official state records.<sup>65</sup> In Indiana, judges are grappling with a challenge to a state ban on gender transition treatments for minors.<sup>66</sup> And in Tennessee, courts have fielded a challenge to a state law requiring transgender students participating in school-sponsored athletics to play for a team that matches their sex at birth.<sup>67</sup> However these and other debates play out, state judges and courts will play a significant role in the process.

## Conclusion

Though courts are arguably the least understood branch of government, they play a vital role in both the “political” and legal systems of their states.<sup>68</sup> In a country of approximately 340 million people, state courts hear nearly one hundred million cases a year, ranging from family law to traffic tickets to the most serious crimes. Courts are also deeply implicated, whether they wish it or not, in policy debates, including school funding levels, abortion, and gay and transgender rights. Whether in small claims court or in the state court of last resort, judges are a part of the wider sociopolitical context. Some are elected; others are selected. They bring their own policy views and institutional concerns to the table and are keenly aware of the policy preferences of other major political actors. If we are to fully understand the political dynamics and policy outcomes

65. *Kansas v. Harper* (2023).

66. *K.C. v. Medical Licensing Board of Indiana* (2023).

67. *L.E. v. Lee* (2023).

68. <https://www.washingtonpost.com/archive/politics/1989/06/23/wapner-v-rehnquist-no-contest/3bbbd97f-8c38-4cd0-b24c-dd0290855f86/>.

in the fifty different states, understanding how state courts function and what makes judges tick is an essential piece of the puzzle.

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# Case Study Chapter 7

GREGORY SHUFELDT

## Chapter 7 Case Study: Ohio, Dueling Ballot Measures, and Abortion Rights

In June 2022, the US Supreme Court overruled almost fifty years of precedent in *Dobbs v. Jackson Women’s Health Organization* by overturning *Roe v. Wade*, which protected a woman’s right to an abortion. As a result of this historic reversal, states acted quickly to implement their own abortion policies.

As expected given the significant disagreement between the two parties on this issue, states have opted to pursue different directions. In the ensuing two years, fourteen states implemented total bans, while nine states enshrined and protected abortion rights in their state constitutions. The remaining twenty-seven states have some sort of restrictions or bans in place.<sup>1</sup> However, states that rely purely on representative democracy are producing policies very differently than states that afford their citizens the opportunity to participate in direct democracy.

In 2022, six states had ballot initiatives to address abortion rights. All six states affirmed the pro-choice position. California, Michigan, and Vermont protected abortion rights. Voters in Republican-leaning Kansas, Kentucky, and Montana rejected further restricting abortion

1. Guttmacher Institute, “State Bans on Abortion.”

rights. In 2023, Ohio became the seventh state to feature a ballot measure on the topic—but the Ohio state legislature sought to make it more difficult for their voters.<sup>2</sup>

During the 2023 legislative session, the Republican-controlled Ohio General Assembly introduced a legislative referendum to place Issue 1 on the ballot in a special election on August 8. Special elections, historically, have much lower rates of voter participation than general elections, which occur in November. Issue 1 proposed to do three things: (1) increase the requirements it takes to pass a constitutional amendment from a majority to 60 percent, (2) double the signature requirements for a measure to get on the ballot from half (44) to all (88) of Ohio counties, and (3) remove the opportunities for citizens to correct or add additional signatures during the “cure” period. These proposed revisions would make initiatives more costly and less available as a tool for Ohio citizens (excluding well-funded special interest groups). In spite of significant controversy and outside spending, 57 percent of Ohio voters rejected Issue 1.<sup>3</sup>

Why did the Ohio legislature want to make it harder for citizens to utilize direct democracy in their states? Well, because come that November, voters were going to consider a citizen initiative to amend the state constitution, also confusingly called Issue 1. This ballot measure would amend the constitution to allow citizens the right to “make and carry out [their] own reproductive decisions, including but not limited to decisions about abortion, contraception, fertility treatment, miscarriage care, and continuing pregnancy.” It overwhelmingly passed with 57 percent of the

2. Ballotpedia, “Abortion on the Ballot.”

3. Ballotpedia, “Ohio Issue 1, 60% Vote.”

vote—becoming the seventh state to protect abortion rights after the *Dobbs* ruling.<sup>4</sup>

Ohio voters would not have been able to protect abortion rights if the legislative referendum to raise the threshold to 60 percent would have passed. It took a herculean effort and a significant amount of organization and activism to protect the initiative. Ohio is not alone in attempting to diminish citizens' ability to utilize direct democracy. Many states are engaging in “direct democracy backsliding,” attempting to roll back and make participatory institutions like the initiative, referendum, and recall harder for citizens to utilize.<sup>5</sup>

More than half of the states give citizens the ability to directly place a measure on the ballot. The other states rely solely on their state legislature for representation. Abortion rights continue to remain at the forefront of the tension between states. In the 2024 election, at least seven states and perhaps as many as eleven will have abortion on the ballot.<sup>6</sup>

## Critical Thinking Questions

How might representation work differently in states with direct democracy compared to states without direct democracy?

4. Ballotpedia, “Ohio Issue 1, Right.”

5. Carter, Chapman, and Comella et al., “Politicians Take Aim”; Ballotpedia, “Difficulty Analysis”; Boldt, “Direct Democracy”; Matsusaka, “Direct Democracy Backsliding?”

6. Mulvihill and Kruesi, “Arizona and Missouri Join States.”

How difficult should the process be for citizens to utilize the initiative, referendum, or recall?

What consequences might there be if rights significantly vary from state to state?

# 7. Direct Democracy

GREGORY SHUFELDT

## *Chapter Summary*

The United States follows a model of representative democracy, where citizens elect public officials to make decisions on their behalf. Direct democracy is a unique institutional feature available in some states to engage constituents directly with policymaking. Roughly half of all states utilize mechanisms like initiatives, referendums, and recalls allowing voters direct input. This chapter discusses the differences between direct and representative democracy, differences in direct democratic institutions across the states, the origins of direct democracy, and arguments for and against direct democracy.

## *Student Learning Objectives*

Upon completion of this chapter, students should be able to:

1. Recognize the differences between representative

and direct democracy.

2. Compare and contrast among the three major institutions (initiative, referendum, and recall) of direct democracy.
3. Identify differences among the four major types of initiatives (statutory, constitutional, direct, and indirect).
4. Identify differences between the two major types of referendum (legislative and popular).
5. Explain the origins of direct democracy in the United States.
6. Analyze how state variation in the process of direct democracy is associated with state differences in the frequency of its use.
7. Evaluate both arguments in favor of and opposed to direct democracy.
8. Assess the educative effects of direct democracy.
9. Evaluate recent efforts by state governments to limit how citizens are able to utilize direct democracy.

### *Focus Questions*

These questions illustrate the main concepts covered in the chapter and should help guide discussion as well as enable students to critically analyze and apply the material covered.

In what ways have the founding fathers been successful in designing a government that limits the role of popular opinion in governance? How have those institutions they created to minimize the “passions of the people” changed or remained over time?

How are states different in their use of direct democratic institutions?

How difficult should the process be for an initiative, referendum, or recall to make the ballot?

What are some of the arguments in favor of direct democracy? What are some of the arguments against it?

## What Is Direct Democracy?

When Benjamin Franklin was exiting the Constitutional Convention, a woman by the name of Elizabeth Willing Powel asked him, “What have we got, a republic or a monarchy?” Franklin replied, “A republic if you can keep it.”<sup>1</sup> The United States was established as a **republic** or **representative democracy** where citizens play an active role in government by voting for representatives to make decisions in government on their behalf. While some argue that being established as a republic precludes being a democracy, that is a false contrast or a distinction without a difference.<sup>2</sup>

1. Miller, “Republic If You Can Keep It.”

2. Beauchamp, “Sen. Mike Lee’s Tweets”; Dobski, “American Is a

We're not a democracy.

– Mike Lee (@SenMikeLee) [October 8, 2020](#)

Democracy isn't the objective; liberty, peace, and prosperity are. We want the human condition to flourish. Rank democracy can thwart that.

– Mike Lee (@SenMikeLee) [October 8, 2020](#)

### Figure 7.1 Senator Mike Lee's Tweets

Source: [“We're not a democracy.”](#) and [“Democracy isn't the objective; liberty, peace, and prosperity \[sic\] are. We want the human condition to flourish. Rank democracy can thwart that.”](#) by Mike Lee (@SenMikeLee) on x.com (formerly Twitter). Embedded per <https://developer.x.com/en/developer-terms/display-requirements>.

To the extent the republican form of government in the United States is not considered a democracy, that is in contrast to a **pure** or **direct democracy**, a system of government where citizens vote directly on policies rather than indirectly through elected officials. Democracy has its roots in ancient Greece. The word *democracy* stems from the Greek word *demos* (which means “the people”) and *kratos* (which means “rule”)—literally, “rule by the people.”

The founding fathers chose to pursue a representative democracy rather than a direct democracy based on their concerns about human nature, mob rule, and tyrannical majorities. James Madison wrote, “If men were angels, no government would be necessary.”<sup>3</sup> Almost two centuries later, former British Prime Minister Winston Churchill famously remarked that “it has been said that democracy is the worst form of government except for

Republic”; Elvin, “Is America a Democracy?”; Keating, “Real Reason Why”; Thrush, “We're Not a Democracy.”

3. Hamilton et al., Federalist Papers.

all those other forms that have been tried from time to time.”<sup>4</sup> The founders certainly had these types of concerns in mind, as previously described in Chapter 2; the Constitution structured a government in an attempt to balance **majority rule with minority rights**. Through a system of separation of powers, checks and balances, and federalism, the Constitution was designed to ensure that too much power was not concentrated in a single institution or with a single elected official. Yet a republican form of government would best ensure the protection of rights and liberties.

At the time the Constitution was ratified, only members of the US House of Representatives were directly elected by citizens. Senators were indirectly elected by state legislatures until the passage of the Seventeenth Amendment in 1913. Supreme Court justices receive lifetime appointments without any direct citizen involvement in their nomination or retention. Even the process of amending the Constitution in Article V does not provide a direct way for citizens to participate. Twenty-six of the twenty-seven amendments to the Constitution have been ratified by receiving two-thirds support in each chamber of Congress and at least three-fourths of the country’s state legislatures. There is no process for a national referendum. Voting for the president is the only national vote citizens in the United States take, and even it remains an indirect vote based on the role of the Electoral College in electing the president. So while the federal government follows a representative form of democracy, significant state variation exists in the institutions of direct democracy.

#### 4. Churchill, “Worst Form of Government.”

# What Are the Different Institutions in Direct Democracy?

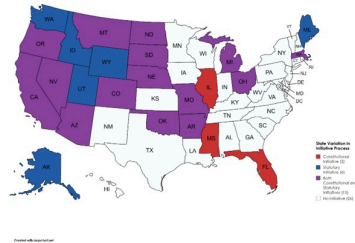
While citizens have no direct role or ability to vote for or against prospective amendments to the US Constitution, citizens of nearly every state have the opportunity to affect change to their state constitutions. In forty-nine out of the fifty states, citizens have some sort of role or mechanism to approve proposed state constitutional amendments.<sup>5</sup> Delaware is the sole exception, where the state legislature controls the process without direct voter participation. The rest of this discussion will extend beyond just state constitutional amendments.

The three major forms or types of direct democracy are the **initiative**, the **referendum**, and the **recall**. An initiative is a citizen-driven ballot measure to pass a new policy or to direct the state legislature to vote on said policy. A referendum, the most common form of direct democracy, is when citizens vote on a policy that has already been considered by the state (or local) government. A recall is a vote to remove an elected official before their term expires.

5. Ballotpedia, “Constitutional Amendment.”



The first type is known as a **direct initiative**. This form of direct democracy is what comes to mind for most when thinking about the initiative. Here citizens or organized groups create a measure that they would like to be placed on the ballot. This process involves collecting a sufficient number of signatures from registered voters throughout the state to qualify for ballot access. If the initiative successfully makes it



**Figure 7.3 – Initiative Process by State**  
**Data Source: National Conference of State Legislatures. “Initiative and Referendum States.” n.d.**  
<https://www.ncsl.org/elections-and-campaigns/initiative-and-referendum-states>.  
**Map made by author.**

onto the ballot, voters *directly* consider it by voting yes or no. This stands in contrast to an **indirect initiative**, where an additional step is involved. Prior to the initiative being placed on the ballot, it is first considered by the state legislature. If the legislature approves the initiative, it becomes law. If, however, the legislature rejects the initiative, then voters get the chance to vote on the measure to override the state legislature.

Of the twenty-one states with the statutory initiative, twelve of them utilize the direct initiative. Seven states possess the indirect initiative. Utah and Wyoming voters can utilize both the direct and indirect processes. Of the three states with only the constitutional initiative, Florida and Illinois directly place the ballot measure before voters.

In Mississippi, they have utilized the indirect initiative since 1992. However, the process in Mississippi has been in limbo since 2021.<sup>7</sup> The Mississippi Constitution, specifically section 273(3), requires that citizens seeking to place a measure on the ballot gather one-fifth of their required signatures from each of

7. Pittman, “Democracy Dies Blow by Blow.”

Mississippi's five congressional districts. After successfully submitting enough signatures to get a medical marijuana initiative on the ballot, the Mississippi Supreme Court struck down the measure, identifying that it failed to meet the signature requirements because Mississippi lost one of its five congressional districts due to redistricting after the 2000 Census: "Whether with intent, by oversight, or for some other reason, the drafters of section 273(3) wrote a ballot-initiative process that cannot work in a world where Mississippi has fewer than five representatives in Congress."<sup>8</sup> This 2021 decision is the second time the Mississippi Supreme Court has struck down the initiative, having done so previously in 1922, overturning the will of voters from 1914.

The 2024 election is poised to feature twenty-three statutory initiatives and thirteen constitutional initiatives. These thirty-four initiatives cover many diverse policy areas, including abortion, tax reform, raising the minimum wage, marijuana legalization, election reform, and changes to the initiative process itself.<sup>9</sup>

The citizen-initiative process is quite similar to the **popular referendum** process. Also known as a veto referendum, citizens initiate a process to create a ballot measure asking voters to consider approving or repealing a piece of legislation already passed by their state legislature. Twenty-three states possess veto referendums. Citizens enjoy a very high success rate (65 percent) of repealing legislation passed by state legislatures if they are able to make it to the ballot.<sup>10</sup> Some examples of recently repealed measures include the Maine state legislature attempting to repeal the use of ranked-choice voting and a Missouri law that attempted to make the Show-Me-State a right-to-work state.

8. Pittman, "Democracy Dies Blow by Blow."

9. Ballotpedia, "2024 Ballot Measures."

10. Ballotpedia, "List of Veto Referendum Ballot Measures."

**Table 7.1 – Success Rate of Veto Referendums, 1906–2022**  
 Data Source: Ballotpedia. “[List of Veto Referendum Ballot Measures](#).” n.d.  
 Table made by author.

State	Total Number of Veto Referendums	Number of Laws Upheld	Number of Laws Repealed
WA	39	8 (21%)	31 (79%)
OR	68	24 (35%)	44 (65%)
CA	50	21 (42%)	29 (58%)
AK	4	2 (50%)	2 (50%)
NV	2	2 (100%)	0 (0%)
ID	7	3 (43%)	4 (57%)
WY	1	1 (100%)	0 (0%)
MT	13	4 (31%)	9 (69%)
CO	14	4 (29%)	10 (71%)
UT	4	0 (0%)	4 (100%)
AZ	35	19 (54%)	16 (46%)
NM	3	2 (67%)	1 (33%)
ND	75	28 (37%)	47 (63%)
SD	46	13 (28%)	33 (72%)
NE	17	6 (35%)	11 (65%)

OK	20	8 (40%)	12 (60%)
MO	26	1 (4%)	25 (96%)
AR	9	1 (11%)	8 (89%)
MI	10	1 (10%)	9 (90%)
OH	13	2 (15%)	11 (85%)
MD	18	11 (61%)	7 (39%)
MA	22	12 (55%)	10 (45%)
ME	31	13 (42%)	18 (58%)

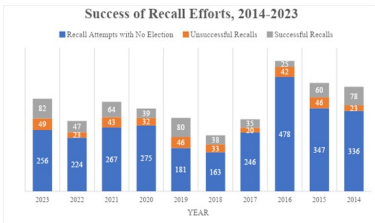
The other form of referendum is the **legislative referendum**. Rather than a process initiated by the voters, the state legislature poses the question for voters to consider. All fifty states possess the legislative referendum, with many required by law to put measures in front of voters to amend the state constitution or make tax reforms.<sup>11</sup> Voters across the fifty states saw more than one hundred referred ballot measures in 2024.<sup>12</sup> For example, California voters will vote on Proposition 3 to repeal a prior 2008 vote (Proposition 8) that defined marriage as a union between one man and one woman. The United States is one of the rare advanced industrial democracies to not have a national legislative referendum process.<sup>13</sup>

11. National Conference of State Legislatures, “Initiative and Referendum Overview.”

12. Ballotpedia, “2024 Ballot Measures.”

13. Qvortrup, Referendums Around the World.

The final institution of direct democracy is the recall. Twenty states have the ability to recall an elected official before their term expires. Seven states possess solely the recall with no other form of direct democracy in their state. Wanting to remove an elected official before their term ends is easier said than done, as most attempts at a recall never make it to the ballot. Through the first six months of 2024, 100 out of 164 attempts did not make the ballot. Out of the 64 that made the ballot, 38 were removed from office (i.e., the recall was successful), 6 quit (the recall had the intended effect), and 20 attempts were defeated (the incumbent remained in office).<sup>14</sup>



**Figure 7.4 – Success of Recall Efforts**  
**Data Source: Ballotpedia. “Political Recall Efforts.” n.d.**  
[https://ballotpedia.org/Political\\_recall\\_efforts](https://ballotpedia.org/Political_recall_efforts). Table made by author.

Compared to statewide office holders, more attempts (and more success) to recall elected officials happen at the local level. Members of school boards and city councils are more likely to face (and lose) recall compared to governors or state legislatures. Only two governors have ever successfully been recalled in US history. The most prominent

and recent successful recall was when California voters removed Governor Gray Davis in 2003. Davis, a Democrat, was first elected in 1998 with almost 58 percent of the vote. In 2002, he was reelected with 47 percent of the vote. However, less than one year after receiving a second term, Davis was recalled with 55 percent of the vote. He was recalled, in part, due to an energy crisis and budget deficit associated with the dot-com bubble burst.<sup>15</sup> In a subsequent

14. Ballotpedia, “Recall Overview.”

15. Wilson, “If This Thing Qualifies.”

election, he was replaced by actor Arnold Schwarzenegger.<sup>16</sup>

More recently, many partisan activists have sought to recall governors, such as Scott Walker in Wisconsin in 2012 and Gavin Newsom in California in 2021.<sup>17</sup> After expensive and nasty partisan battles, both Walker and Newsom were able to remain in office after unsuccessful recall efforts.

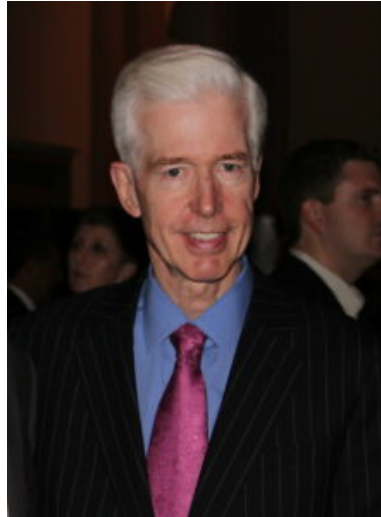


Figure 7.5 – Governor Gray Davis  
Source: “[Gray Davis](#)” by Neon Tommy on Flickr / [CC BY-SA](#).


## What Are the Origins of Direct Democracy in the United States?

The roots of direct democracy in the United States predate the official founding as an independent country by more than one hundred years. Many New England states, then colonies, began hosting regular **town hall meetings**. These participatory meetings facilitate a model of **deliberative democracy**, where citizens engage in open discussion before publicly voting on matters of civic interest. However, how truly open, inclusive, and participatory they

16. Ballotpedia, “Gray Davis Recall”; National Public Radio, “Gray Davis Reflects.”

17. Ballotpedia, “Scott Walker Recall”; Ballotpedia, “Gavin Newsom Recall.”

were is open to debate.<sup>18</sup> Rather than hiding behind the safety and anonymity of the secret ballot or behind the “too-big” mechanisms of government institutions, the town hall format “forced civility.” Today, these meetings occur annually as the sole method of governing. For example, the residents of Elmore, Vermont, voted in 2023 to keep their town hall tradition alive by more than a 2-1 margin.<sup>19</sup>



One or more interactive elements has been excluded from this version of the text. You can view them online here: <https://pressbooks.palni.org/theexcitingdynamicsofstateandlocalgovernment/?p=54#oembed-1>

**Figure 7.6 – New England Town Hall Meetings**

**Source:** ConcordNHTV. “Town Meeting Day: A New England Tradition.” YouTube, Mar 2, 2024. <https://www.youtube.com/watch?v=D61uQw7DeXI>. / Embedded with the [Standard YouTube License](#).

Outside of New England, states were slower to implement aspects of direct democracy into their state and local governments. Thomas Jefferson unsuccessfully proposed that Virginia voters should ratify the state’s 1775 constitution. Throughout the late 1700s and early 1800s, many states wrote or rewrote their constitutions

18. Bryan, Real Democracy; Zimmerman, New England Town Meeting; Zuckerman, “Mirage of Democracy.”

19. Perry and Rathke, “In Vermont, ‘Town Meeting.’”

and incorporated voter approval, especially for constitutional amendments.<sup>20</sup>

In 1848, Switzerland ratified a new constitution, moving the country from a confederacy to a federal system of government, as described in Chapter 2. As part of this new government, Swiss citizens were given the right to vote in popular initiatives, mandatory (legislative) referendums, and optional (popular) referendums.<sup>21</sup> While the US did not follow suit, Congress did require that all states admitted to the union after 1857 must provide voters the ability to ratify their state constitutions.

The late 1800s and early 1900s mark the period when political parties were perhaps the strongest in our country's history.<sup>22</sup> Jobs were allocated, and many public services were provided solely to partisan supporters based on a system of patronage. This Gilded Age was characterized by soaring economic growth, rapid urbanization, rising income inequality, and rampant political corruption, often at the hands of party bosses. As a result, many citizens sought change. The **Populist Party** became the first third party to win Electoral College votes since the end of the Civil War, when they carried five states and twenty-two Electoral College votes.<sup>23</sup> Four years later, many of the ideas of the Populist Party were consolidated into the Democratic Party's platform and William Jennings Bryan's nomination as president.

The **Progressive Era**, more broadly, included all sorts of "good government" reforms. States switched to the secret, or Australian, ballot rather than ballots printed and distributed by political parties. Patronage was replaced with a merit system as part

20. Initiative and Referendum Institute, "I&R Historical Timeline";

Initiative and Referendum Institute, "History of the Initiative."

21. Federal Department of Foreign Affairs, "Direct Democracy."

22. Sundquist, Dynamics of the Party System.

23. Dave Leip's Atlas of U.S. Elections, "1892 Presidential General Election Results."

of broader civil service reforms. The direct election of US Senators was added to the Constitution when the Seventeenth Amendment was ratified in 1913. Women were granted the right to vote when the Nineteenth Amendment was ratified in 1920. Parties began to utilize primaries to pick candidates for the general election.

During the Progressive Era, direct democracy began to spread across the United States. The Swiss model was replicated first by South Dakota in 1897. Returning to Figure 7.2, the vast majority of states that implemented direct democracy were geographically west of the Mississippi River. These states were more likely to experience competition between the two major parties (Democrats and Republicans) but also saw third parties (like the Populist Party) enjoy a good deal of success.<sup>24</sup>

24. Initiative and Referendum Institute, "I&R Historical Timeline"; Initiative and Referendum Institute, "History of the Initiative"; Smith and Fridkin, "Delegating Direct Democracy," 333-350.

**Table 7.2 – Year of Initiative Adoption by State**  
**Data Source: Initiative and Referendum Institute. “[IER Historical Timeline](#).” n.d.; Initiative and Referendum Institute. “[The History of the Initiative and Referendum Process in the United States](#).” n.d. Table made by author.**

<b>State</b>	<b>Year Approved</b>
South Dakota	1898
Utah	1900
Oregon	1902
Montana	1906
Oklahoma	1907
Missouri	1908
Maine	1908
Colorado	1910
Arkansas	1910
California	1911
Arizona	1911
Nebraska	1912
Idaho	1912
Nevada	1912
Ohio	1912
Washington	1912
Michigan	1913
Mississippi	1914
North Dakota	1914
Massachusetts	1918
Alaska	1956

Florida	1968
Wyoming	1968
Illinois	1970

Twenty of the twenty-four states that currently have the initiative added it between 1898 and 1918. Eighty-three percent of all the states with the initiative added it during that twenty-year window. Illinois was one of the last states to add the initiative in 1970. As previously described, Mississippi adopted the initiative for a second time in 1992, only to have the state supreme court rule it to be effectively impossible for citizens to gather sufficient signatures to get an initiative on the ballot.<sup>25</sup> While some progress has been made in adding the initiative or other forms of direct democracy to additional states, politicians seem unlikely and unwilling to give voters the chance to participate in direct democracy. As succinctly articulated by a Texas Republican explaining his party's shift from supporting to opposing direct democracy in the state, "If you're out of government, you're in favor of initiatives. If you're in government, they become not so appealing."<sup>26</sup>

## How Does the Initiative Process Work, and How Is It Different State by State?

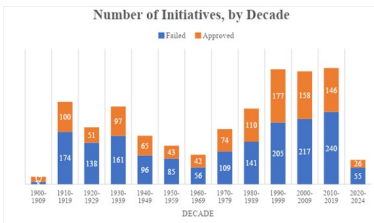
Having established that there is significant state variation in the existence of direct democracy across the fifty states, it is also worthwhile to dig deeper to examine further differences. Not all states utilize direct democracy at the same rate, and they have very

25. Pittman, "Democracy Dies Blow by Blow."

26. Crary, "US States Spit."

different rules and regulations governing its use. In 1978, California voters approved Proposition 13 by almost a 2-1 margin, drastically limiting future property tax increases and requiring supermajority support for additional tax increases.<sup>27</sup> This led many to call for a “taxpayer revolt,” which sparked many similar initiatives and referendums across the country.

As depicted in Figure 7.7, the last forty years have seen a significant growth in the number of ballot measures. However, the trend appears to be slowing down in the last few election cycles, as many states have passed legislation making it harder for initiatives to reach the ballot.



**Figure 7.7 – Number of Initiatives by Decade**  
**Data Source:** National Conference of State Legislatures. “Statewide Ballot Measures Database.” n.d. <https://www.ncsl.org/elections-and-campaigns/statewide-ballot-measures-database>; Initiative and Referendum Institute. “Direct Democracy Historical Database.” n.d. *Graph made by author.*

While the number of initiatives has risen over the last half-century, the use of the initiative is uneven across the twenty-four states that feature this institution. The five states that most frequently utilize the initiative (California, Oregon, Colorado, Washington, and Arizona) account for 53 percent of all initiatives in our country’s history. The top ten states account for more than 75 percent of all initiatives.

27. Ballotpedia, “California Proposition 13”; Hayward, “Tax Revolt Turns 20”; New, “Tax Revolt Turns 25”; Drum, “Happy 35th Birthday, Tax Revolt.”

**Table 7.3 – Number of Initiatives,  
1904–2024**

**Data Source: National Conference of State Legislatures. “Statewide Ballot Measures Database.” n.d. <https://www.ncsl.org/elections-and-campaigns/statewide-ballot-measures-database>. Table made by author.**

<b>State</b>	<b>Number of Initiatives</b>
California	501
Oregon	440
Colorado	397
Washington	342
Arizona	209
Missouri	206
North Dakota	205
Arkansas	186
Massachusetts	153
Montana	100
Oklahoma	99
Ohio	97
Florida	96
Michigan	95
South Dakota	86
Maine	81
Nevada	79
Nebraska	69
Alaska	59
Idaho	37
Utah	23

Mississippi	12
Wyoming	7
Illinois	1

In general, the states with the most use have the easiest time accessing it and are least hampered by the state legislature.<sup>28</sup>

Shaun Bowler and Todd Donovan created a six-point index for how difficult it is for an initiative to qualify for the ballot. Higher scores are associated with greater levels of difficulty. The general procedure for how the initiative process works is articulated in the following paragraphs with references made to Bowler and Donovan's index.<sup>29</sup>

28. Bowler and Donovan, "Measuring the Effect," 345-363.

29. The Council of State Governments, "How Ballot Measures Get on the Ballot"; Boldt, "Direct Democracy."

**Table 7.4 – State Variation in Ballot Qualification and Legislative Insulation**  
**Data Source: Bowler, S., and T. Donovan. “Measuring the Effect of Direct Democracy on State Policy: Not All Initiatives Are Created Equal.” *State Politics & Policy Quarterly* 4 (2004): 345–363. Table made by author.**

<b>State</b>	<b>Qualification Difficulty Score</b>	<b>Legislative Insulation Index</b>
Oregon	0	3
California	1	1
Colorado	1	4
North Dakota	1	3
Arkansas	2	2
Ohio	2	6
Michigan	2	3
South Dakota	2	4
Idaho	2	4
Utah	2	4
Arizona	3	3
Washington	3	4
Oklahoma	3	4
Montana	3	6
Missouri	3	6

Massachusetts	3	8
Nebraska	4	6
Maine	4	8
Nevada	4	5
Florida	4	6
Illinois	4	5
Alaska	5	6
Mississippi	5	7
Wyoming	6	9

The first item that is considered part of Bowler and Donovan’s index is whether the state allows both statutory and constitutional initiatives (0) or only one of the two types of initiatives (1). As previously discussed, the last three states to add the initiative (Florida, Illinois, and Mississippi) only add constitutional, and not statutory, initiatives.

Once an idea is generated—whether by active citizens, organized interest groups, or even the state legislature (in the instances of legislative referendums), a proposal is submitted to the appropriate state official for review. This preliminary filing includes draft language that supporters would like to see on the ballot.<sup>30</sup> In most states, two or more government officials or entities play

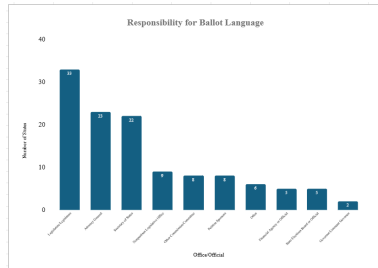
30. The Council of State Governments, “How Ballot Measures Get on the Ballot.”

a role in drafting the language that appears on the ballot and is distributed to voters. The most common elected officials are the state legislature (or some committee of the legislature), the attorney general, or the secretary of state.

Figure 7.8 – Responsibility for Ballot Language

Data Source: Boldt, A. “Direct Democracy in the States: A 50-State Survey of the Journey to the Ballot.” State Democracy Research Initiative, University of Wisconsin Law School. 2023. . Graph made by author.

<http://pressbooks.palni.org/>



**Figure 7.8 – Responsibility for Ballot Language**

**Data Source:** Boldt, A. [“Direct Democracy in the States: A 50-State Survey of the Journey to the Ballot.”](#) State Democracy Research Initiative, University of Wisconsin Law School. 2023. . Graph made by author.

[theexcitingdynamicsofstateandlocalgovernment/wp-content/uploads/sites/79/2025/07/Figure-7.8.png](https://theexcitingdynamicsofstateandlocalgovernment/wp-content/uploads/sites/79/2025/07/Figure-7.8.png)

Part of what the government reviews is whether the proposed policy is appropriate for the initiative. The second part of Bowler and Donovan’s index is whether there are substantive **subject restrictions**. Seven states (Alaska, Illinois, Massachusetts, Mississippi, Montana, Ohio, and Wyoming) have specific limits on the types of policies the initiative can and cannot address.<sup>31</sup> Some of these restrictions are making appropriations (dictating how state

31. Ballotpedia, “Subject Restrictions for Ballot Initiatives.”

money will be spent), modifying judicial proceedings, or infringing upon rights or liberties spelled out in the state's constitution.

Sixteen states also include **single-subject rules** as part of their initiative process.<sup>32</sup> This restriction limits initiatives to address a single policy area to prevent logrolling—that is, preventing groups from combining initiatives together in order to garner additional support. For example, groups in Missouri interested in raising the minimum wage and legalizing recreational marijuana would not be permitted to combine forces in a single initiative. Voters must consider each initiative on its own merit.

As part of the official review, the appropriate government representative drafts an official title and the summary language that would appear on the ballot. The process of drafting language can be contentious and litigious (i.e., end up being the subject of a lawsuit). Who is writing the ballot language often shapes whether the perspective is sympathetic to supporters or opponents, whether it is neutral, and how accessible or understandable the language is for the average voter.<sup>33</sup>

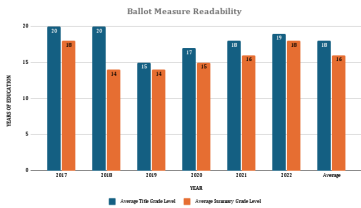
In recent years, Ballotpedia has started to assess the average grade level voters would need to possess in order to fully understand ballot titles and language.<sup>34</sup> The average reading level to understand the title (which averages 57 words) between 2017 and 2022 is eighteen (two years of postgraduate education). The average reading level to understand the summary on the ballot (which averages 193 words) is sixteen (a senior in college). As of the 2020 Census, only 38 percent of people over the age of twenty-five possess at least a bachelor's degree. While citizens with a college degree are more likely to vote than adults without a college degree

32. Ballotpedia, "Single-Subject Rule for Ballot Initiatives."

33. Fuller, "Why Are Ballot Measures So Darn Confusing?"; Lakoff, "Why Are Many Ballot Measures So Confusing?"; Elmendorf and Spencer, "Are Ballot Titles Biased?," 511-549.

34. Ballotpedia, "Ballot Measure Readability Scores, 2022."

and are overrepresented among regular voters, a substantial number of voters have no college degree.<sup>35</sup>



**Figure 7.9 –Ballot Measure Readability**  
**Data Source:** [Ballotpedia. “Ballot Measure Readability Scores, 2022.”](#)  
*n.d. Graph made by author.*

Once supporters have filed their proposed initiative, it has been reviewed by the appropriate government source, and the formal ballot title and summary are prepared, the next step in the process is collecting signatures to ensure that the measure has enough support to qualify for the ballot. The remaining four

components of Bowler and Donovan’s ballot access index are (1) whether the length of time supporters have to collect signatures is limited, (2) whether signatures must adhere to geographic distribution requirements, (3) whether the proportion of signatures required is at least 7 percent, and (4) whether the proportion of signatures required is more than 10 percent.

Of the twenty-four states that possess the initiative, fourteen of them have a **signature distribution requirement**.<sup>36</sup> With the exception of Colorado, four of the five states with the most initiatives over the last century do not require signatures to come from any specific geography within the state. This makes it easier for signature gatherers to concentrate on dense, urban populations or communities where support is more readily available. Florida, Missouri, Mississippi, and Nevada base their signature requirements on congressional districts throughout the state. As previously mentioned, Mississippi’s initiative is currently in flux, since the signature requirement warrants signatures from *five* congressional

35. United States Census Bureau, “Census Bureau Releases”; Hartig et al., “Republican Gains.”  
 36. Ballotpedia, “Signature Distribution Requirements.”



US Supreme Court case *Meyer v. Grant* for violating the First Amendment's protection of political speech.<sup>39</sup>

As a result, many organized interest groups, like the [Ballot Initiative Strategy Center](#) (BISC), exist to provide training, strategic advice, and assistance in utilizing paid signature gatherers. While states are unable to prevent signature gatherers from being paid, states do have considerable variation as to whether the signature gatherers must be state residents, whether they can be paid per signature, or whether they can impose other requirements on signature gatherers.<sup>40</sup>

Once the signatures are submitted and the state government reviews them to ensure that they are legitimate and meet any necessary distribution requirements, the next step in the process is determining when voters will get a chance to weigh in on the initiative. Some states require that ballot initiatives be placed on the ballot for the next general election, whereas other states are able to place initiatives on the ballot during either a primary or a special election.<sup>41</sup> As voter turnout is higher in general elections compared to primary or special elections and higher in presidential elections compared to midterm elections, the decision of when to allow voters the opportunity to vote is often a strategic choice.

Prior to the election, many states are required by law to provide additional information about any initiatives and referendums to voters. Of the twenty-four states that utilize the initiative, fifteen of them are required by law to either send a pamphlet with information about the initiatives to registered voters, publicly display the pamphlet, or make it available online.<sup>42</sup>

Finally, voters get a chance to weigh in and vote in favor of or in opposition to the initiative. Most elections in the United States

39. Oyez, “*Meyer v. Grant*.”

40. Ballotpedia, “Laws Governing Ballot Initiative.”

41. Boldt, “Direct Democracy.”

42. Boldt, “Direct Democracy.”

follow the **plurality rule**, meaning whichever candidate receives the most votes wins the election. This “first past the post” framework allows a candidate to win the election without receiving more than 50 percent of the vote. Since voters are given the choice to vote yes or no on an initiative, rather than voting on two or more candidates, direct democracy largely relies on **majority rule**: Whichever outcome receives 50 percent plus one vote is the winner.

However, some states utilize **supermajority rule**, some numerical requirement above a majority, to pass ballot measures.<sup>43</sup> These thresholds are frequently for approving constitutional amendments (whether initiated by citizens or the state legislature) but also for specific policy areas like taxation. In 2022, Arizona voters approved Proposition 132, which increased the majority requirement from a simple majority to 60 percent in order to approve any future tax increases. Another way that states require more than a simple majority to pass a ballot measure is by utilizing a different denominator to measure turnout. Some states do not simply use whether an initiative received 50 percent plus one vote of all votes cast in the given race but rather utilize the total number of registered voters in the state, the total number of votes cast for the highest office, or some other predetermined number. Proponents of these higher thresholds point to the fact that they prevent voters from abstaining on ballot questions and ensure that election outcomes reflect the preferences of all state voters, not just those who cast a ballot on a given question.

Given the states previously mentioned, it is imperative to highlight how much the initiative process varies from state to state. No two states are completely alike when it comes to how citizens are able to utilize the initiative or other forms of direct democracy. The process, however, surely matters. State differences in the rules governing direct democracy are part of the reason why a state like Wyoming has only seven initiatives in the last one hundred

43. Ballotpedia, “Supermajority Requirements.”

years while states like Oregon and California have more than one thousand combined.

## What Are the Arguments in Favor and Opposed to Direct Democracy?

Political scientists frequently debate the merits and shortcomings of direct democracy.<sup>44</sup> In this section, some of the more prominent arguments in favor of and opposed to the initiative will be considered.

The first major argument in favor of direct democracy is that it helps overcome the “sins of omission” of representative democracy.<sup>45</sup> Elected officials may be unwilling or unable to turn the public opinion preferences of their constituents into public policy. Given the polarization and gridlock at the national level, many activists turn their attention to the states (and the initiative) to pursue policy goals.<sup>46</sup>

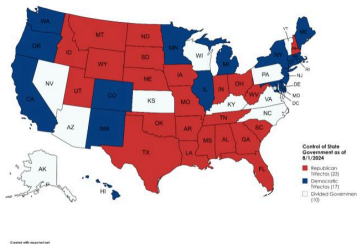
For example, Republicans have a trifecta, where they control both chambers of the state legislature and the governorship, in twenty-three states. Voters in these states elect and reelect Republicans to control all levels of government. However, when

44. Dyck, “New Directions,” 109–128; Smith and Tolbert, “Instrumental and Educative Effects,” 416–445; Lupia and Matsusaka, “Direct Democracy,” 463–482.

45. Donovan, Smith, Osborn, and Mooney et al., *State and Local Politics*.

46. Phillips, “Does the Citizen Initiative Weaken?,” 127–149; Ferraiolo, “State Policy Activism,” 378–402; Lacombe and Boehmke, “Initiative Process,” 286–305; Hicks, “Initiatives,” 471–494; Cummins, “Are Initiatives an End-Run,” 443–462.

given the opportunity to vote for individual policies, voters in these Republican-controlled states have used the initiative to raise the minimum wage, legalize recreational and medicinal marijuana, expand Medicaid, and protect abortion rights.<sup>47</sup>



**Figure 7.11 – Control of State Government by State**  
**Data Source: Ballotpedia. “State Government Trifectas.” 2024.**  
[https://ballotpedia.org/State\\_government\\_trifectas](https://ballotpedia.org/State_government_trifectas). Map made by author.

Voters via the initiative are also more likely than the elected branches of government to implement “good government” reforms. For example, nineteen of the twenty-one states that adopted term limits for state legislators during the 1990s and 2000s did so via the initiative.<sup>48</sup> Elected officials are less likely to vote themselves out of the job, but citizens are more than willing to do so.

The second major argument in favor of direct democracy is similar to the “sins of omission” in that the presence of the initiative, referendum, and recall acts as a (pardon the expression) “gun behind the door” and forces the elected branches to be more responsive. The rapid advancement of marijuana legislation at the state level is a perfect example. States first utilized the initiative to adopt medicinal marijuana policies and programs before expanding into recreational marijuana in both Republican and Democratic states.<sup>49</sup> Where the initiative was not utilized, it often spurred

- 47. Pott, “Why Republican Voters Support”; Simonovits, Guess, and Nagler et al., “Responsiveness Without Representation,” 401–410; Vollers, “Despite GOP Headwinds.”
- 48. Bowler and Donovan, Limits of Electoral Reform.
- 49. Mallinson and Hannah, “Policy and Political Learning,” 344–369; Hannah and Mallinson, “Defiant Innovation,” 402–423.

legislatures to act. While some studies disagree as to the extent that the mere presence of the initiative is associated with greater responsiveness, others point to evidence that suggests that the threat of the initiative forces legislators to act, leads policy to be more closely aligned with public opinion, and leads to the initiative being used more frequently only when the preferences of voters and elected officials diverge.<sup>50</sup>

The initiative plays an important role in agenda setting and shaping the contours of races between candidates for office.<sup>51</sup> After the Supreme Court struck down *Roe v. Wade* and a woman's right to have an abortion in *Dobbs v. Jackson*, many states utilized the initiative to enshrine abortion rights at the state level. Ten states had abortion-related measures on their ballot in the November 2024 general election.<sup>52</sup> Candidates often have to communicate with voters about where they stand on these initiatives. During the 2022 and 2024 cycles, many Republican candidates for office struggled with how to talk about the issue, balancing between downplaying, adjusting, or doubling down on their positions.<sup>53</sup>

One of the primary arguments against direct democracy is concerns about voter competence. To put it bluntly, are voters

50. Lascher, Hagen, and Rochlin et al., "Gun Behind the Door?," 760–775; Lewis, Schneider, and Jacoby et al., "Impact of Direct Democracy," 531–538; Boehmke, Osborn, and Schilling et al., "Pivotal Politics," 665–677; Simonovits, Guess, and Nagler et al., "Responsiveness Without Representation," 401–410.
51. Nicholson, *Voting the Agenda*; Smith and Tolbert, *Educated by Initiative*; Smith and Tolbert, "Instrumental and Educative Effects," 416–445.
52. Ballotpedia, "2023 and 2024 Abortion-Related Ballot Measures."
53. Rovner, "Republican Candidates Are Downplaying Abortion"; Rosenbaum, "Abortion Rights on the Ballot"; Steck et al., "Republican Candidates Downplay."

“dumber than chimps?”<sup>54</sup> While political scientist V. O. Key famously said, “Voters are not fools;” it is dubious to suspect that most voters understand the substance of all ballot measures.<sup>55</sup>

One of the reasons the founding fathers pursued representative democracy rather than democracy was their belief that elected officials would be better able to make decisions to promote the public good rather than just make self-serving decisions. Voters are less likely to be aware or knowledgeable of the various initiatives or referendums on the ballot, let alone make an informed decision.<sup>56</sup> Most voters need to rely on elite cues or endorsements from trusted interested groups, politicians, and political parties to inform how they believe they should vote on a ballot measure.<sup>57</sup>

When voters are uninformed heading to the polls or are unable to understand a ballot measure, they are more likely to default and vote no to preserve the status quo<sup>58</sup>—that is, when they decide to cast a vote at all. Voters experience “**voter fatigue**” and “**roll-off**” if the ballot is too long or they are uninformed about the various ballot measures facing them.<sup>59</sup> During the 2022 November general election, more voters cast a ballot for the highest office (whether that is a race for US Senate, governor, or some other office) than for any ballot measure. The median difference in the number of votes between the two types of contests was 70,936.

54. Lupia, “Dumber Than Chimps?”

55. Key, Responsible Electorate.

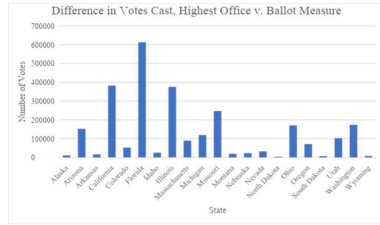
56. Nicholson, Voting the Agenda; Barth, Burnett, and Parry et al., “Direct Democracy,” 1015–1034.

57. Smith and Tolbert, Educated by Initiative; Lupia and Matsusaka, “Direct Democracy,” 463–482.

58. Dyck and Pearson-Merkowitz, “Ballot Initiatives,” 180–207.

59. Nicholson, “Political Environment,” 403–410; Wattenberg, McAllister, and Salvanto et al., “How Voting Is Like Taking an SAT Test”; Bowler and Donovan, Demanding Choices.

Even if voters are aware of and understand the ballot measures before them in any given election, which is often difficult given that the writing of official language is often intended to confuse, they may not be able to handle democracy à la carte. That is, by voting on some (but not all) legislation, citizens may send conflicting messages to their elected officials and produce unintended challenges. Voters, many of whom are symbolically conservative but operationally liberal, can hamstring elected officials by limiting the amount of revenue the government is able to collect while simultaneously approving new spending priorities.<sup>60</sup>



**Figure 7.12 – Roll-Off Voting**  
**Data Source: Ballotpedia. “2022 Ballot Measure Election Results.” n.d.**  
[https://ballotpedia.org/2022\\_ballot\\_measure\\_election\\_results#November\\_8](https://ballotpedia.org/2022_ballot_measure_election_results#November_8); US Elections Project. “2022 General Election.” n.d.  
<https://www.electproject.org/2022g>.  
**Graph made by author.**

The second major critique of direct democracy is, What if a majority of voters actually gets what they want? If the majority wins, who loses?

First, many express concerns that direct democracy has long abandoned the populist and progressive aims of those who established the institution.<sup>61</sup> The Supreme Court has repeatedly struck down attempts to regulate the amount of money spent supporting and opposing initiatives as a protection of the First Amendment.<sup>62</sup> As a result, interest groups and wealthy donors invest heavily, spending more than \$1.24 billion and \$1.10 billion in

60. Piper, “California’s Ballot Initiative System”; Grossman and Hopkins, Asymmetric Politics.

61. Gerber, Populist Paradox; Ellis, Democratic Delusions; Sabato, Larson, and Ernst et al., Dangerous Democracy?

62. Initiative and Referendum Institute, “I&R Historical Timeline.”

campaign contributions across more than one hundred different statewide ballot measures in the 2020 and 2022 elections, respectively.<sup>63</sup>

The pure majoritarian nature of direct democracy also poses the threat of “tyranny of the majority.” Without many of the features of representative democracy (e.g., separation of powers, checks and balances, federalism), there is little to stop majorities from imposing their will on minorities. Moreover, behind the anonymity of a secret ballot compared to an open roll-call vote on the floor of the state legislature, it is easier for the majority to impose policies and restrict the civil rights of minorities—whether they be rooted in terms of gender, racial or ethnic group, religious identity, or sexual orientation.<sup>64</sup>

That is not to say that these minority groups lose on every ballot measure. When a minority group is the target of a ballot measure, they generally find themselves outnumbered. Over the last thirty years, states have successfully passed ballot measures that ban same-sex marriage, implement anti-affirmative action proposals, restrict the rights of immigrants, and so on. However, on initiatives or referendums where policy preferences cut across demographic groups, members of the majority and historically oppressed or vulnerable groups win at similar rates.<sup>65</sup> As a result, it is argued that direct democracy works for “the many rather than the few.”<sup>66</sup>

The promise of direct or participatory democracy is that

63. Ballotpedia, “Ballot Measure Campaign Finance, 2022.”

64. Gamble, “Putting Civil Rights to a Popular Vote,” 245–269; Lewis, Direct Democracy and Minority Rights; Haider-Markel, Querze, and Lindman et al., “Lose, Win, or Draw?,” 304–314; Hajnal, Gerber, and Louch et al., “Minorities and Direct Legislation,” 154–177.

65. Hajnal, Gerber, and Louch et al., “Minorities and Direct Legislation,” 154–177.

66. Matsusaka, *For the Many or the Few*.

it promotes advantages even beyond the direct or instrumental benefits of the policies passed by the citizens.<sup>67</sup>

Living in a state with direct democracy is associated with all sorts of characteristics and virtues associated with democratic citizenship.<sup>68</sup> This includes higher levels of political knowledge and political efficacy, or the belief that citizens can enact meaningful change. Citizens living in states with direct democratic institutions also report higher levels of personal trust and trust in government. The health or quality of democracy also is theoretically higher, as citizens participate and vote in greater numbers in states with direct democracy.

Citizens living in states with direct democracy report being happier and more satisfied with their lives.<sup>69</sup> Arguably, more important as a democratic institution, the vast majority of citizens support direct democracy. A majority of Americans agree with statements like “A democratic system where citizens, not elected officials, vote directly on major national issues to decide what becomes law would be a good way of governing the country” or “Voters should have the right to propose and pass laws through a citizen initiative process.”<sup>70</sup>

While political scientists continue to weigh the benefits and shortcomings of direct democracy, these competing arguments

67. Pateman, *Participation and Democratic Theory*; Barber, *Strong Democracy*.

68. Bowler and Donovan, “Democracy, Institutions, and Attitudes,” 371–390; Smith and Tolbert, *Educated by Initiative*. But see Dyck and Lascher, *Initiatives Without Engagement*; Bernhard, “Does Direct Democracy Increase Civic Virtues?”; Biggers, *Morality at the Ballot*.

69. Radcliff and Shufeldt, “Direct Democracy,” 1405–1423.

70. Wike et al., “Representative Democracy”; Ballot Initiative Strategy Center, “11-State Ballot Initiative.”

have real-world consequences.<sup>71</sup> What citizens want, however, appears to be increasingly in conflict with their state government. Whether through legislation being considered by state legislatures or legislative referendums placed in front of voters, many states are attempting to roll back and make direct democracy more difficult to utilize.<sup>72</sup>

For these states, they have direct democracy if they can keep it.

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71. Donovan, "Promise and Perils"; Bowler and Donovan, "Enduring Questions."

72. Carter, Chapman, and Comella et al., "Politicians Take Aim"; Ballotpedia, "Difficulty Analysis"; Boldt, "Direct Democracy"; Matsusaka, "Direct Democracy Backsliding?"

n.d. [https://ballotpedia.org/Ballot\\_measure\\_readability\\_scores\\_2022#Historical\\_readability\\_scores](https://ballotpedia.org/Ballot_measure_readability_scores_2022#Historical_readability_scores).

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# Case Study Chapter 8

GREGORY SHUFELDT

## Chapter 8 Case Study: Oregon's Vote-by-Mail Experiment

In 1998, Oregon became the first state to implement vote by mail (VBM) for state elections.<sup>1</sup> While Oregon voters could cast a ballot via mail in many local elections since 1981, their ability to do so in statewide elections was challenged for many years. The state legislature previously passed a law to do so in 1995 that was vetoed by their governor. After previous efforts stalled, voters utilized the initiative to begin utilizing VBM in statewide elections by approving Measure 60 with 69 percent of the vote.<sup>2</sup>

Rather than having to identify and visit the polling location on Election Day, VBM is one of many convenience voting reforms that states are utilizing. Today, seven additional states and Washington, DC, have joined Oregon in holding all-mail elections.<sup>3</sup>

VBM is associated with higher rates of voter turnout, and in Oregon, implementing this approach also led to more voters participating in the Beaver State.<sup>4</sup> Oregon,

1. Camhi, "How Oregon Became the First."
2. Ballotpedia, "Oregon Measure 60, Vote by Mail."
3. National Conference of State Legislatures, "States with Mostly-Mail Elections."
4. Southwell and Burchett, "Effect of All-Mail Elections," 72-79;

on average, has one of the highest rates of voter turnout in the country. In the 2022 midterm elections, only 42 percent of eligible voters participated across the country. In Oregon, that number was 62 percent—the highest in the country.<sup>5</sup>

Not only does Oregon consistently enjoy high voter turnout, but its voting process is secure, with no evidence or reports of fraud—one of the incorrect assumptions or critiques of the approach.<sup>6</sup> A survey of Oregon voters confirms that it is extremely popular and that most are confident in how elections are run in their state. Voters enjoy it, and conducting elections entirely by mail is actually less expensive than in-person elections or utilizing both in-person and mail options. According to Oregon Secretary of State LaVonne Griffin-Valade, Oregon’s vote-by-mail system is the “gold standard with no widespread fraud to speak of.”<sup>7</sup>

In the United States, it is largely the responsibility of the states—not the federal government—to administer elections. Some states add additional restrictions, making the voting process more burdensome or unavailable to certain groups of residents, from Jim Crow laws in the American South after the Civil War to current efforts many label “Jim Crow 2.0.” In the other direction, states like Oregon are leading the fight to make it easier to vote. VBM is just one of the many innovations states are exploring to reduce the costs of voting, like early voting and same-day voter

Southwell, “Five Years Later,” 89–93; Southwell, “Analysis of the Turnout,” 211–217; Gronke and Miller, “Voting by Mail,” 976–997; Richey, “Voting by Mail,” 902–915.

5. McDonald, “2022 November General Election.”; US Elections Project, HYPERLINK "<https://www.electproject.org/2022g>" \h<https://www.electproject.org/2022g>.

6. Gronke, “Ballot Integrity.”

7. Shumway, “U.S. Supreme Court Won’t Hear.”

registration. Perhaps it should come as no surprise that voter turnout in states that make voting easier is routinely higher.

## Critical Thinking Questions

What factors might be associated with why rates of voter participation are so different across the fifty states?

If vote by mail is associated with higher rates of voter turnout, why do more states not change how they run their elections?

If you were in charge, how would you administer an election, or what laws would you put in place to maximize voter turnout?

# 8. Political Participation

GREGORY SHUFELDT

## *Chapter Summary*

Voting is the most commonly identified form of political participation; however, residents have many different ways to participate in their local communities and engage with their state government. This includes writing letters, protesting, getting involved with civic organizations, and requesting constituent services, among others. This chapter begins a series of chapters that focus on political behavior and engagement in state government, evaluating how constituents participate in state politics. It emphasizes how state variation in election administration shapes opportunities for citizens to participate in the political process.

## *Student Learning Objectives*

Upon completion of this chapter, students should be able to:

1. Describe how perceptions of civic engagement in the United States have changed over time.
2. Identify trends in different types of formal and informal volunteering.
3. Summarize the various ways in which individuals can politically participate in their state and local community.
4. Compare and contrast different types of institutional and extrainstitutional participation.
5. Explain how turnout varies based on the different types of elections voters experience in the United States.
6. Analyze inequities and differences in participation rates among key sociodemographic characteristics.
7. Apply the calculus of voting to describe the reasons why Americans choose not to participate in the political process.
8. Examine differences in election laws across states that might impact voter turnout and engagement.
9. Evaluate the relative merits of current election administration controversies and their relationship with voter turnout.

### *Focus Questions*

These questions illustrate the main concepts covered in the chapter and should help guide discussion as well as

enable students to critically analyze and apply the material covered.

In what ways can citizens become engaged politically beyond voting?

How well do the characteristics of the voting population mirror the diversity of the electorate?

How can states alter the calculus of voting for citizens?

What sort of election laws could a state pursue to promote voter participation?

## What Does Civic Engagement Look like in the US?

Alexis de Tocqueville famously remarked that America is a “nation of joiners.”<sup>1</sup> Civic life in the US has long been characterized by the richness and diversity of opportunities for Americans to get involved. Compared to other countries, the level of **civic engagement**, or participation and involvement in community and public life to achieve positive outcomes, has historically painted a flattering picture of a vibrant and flourishing democracy.

1. Tocqueville, *Democracy in America*.

This picture, like the famous Norman Rockwell print (Figure 8.1), depicted Americans who were active in the communities—whether through fraternal or service organizations like the Elks, Lions, Moose, Kiwanis, Knights of Columbus, Rotary Club, and so on; parent-teacher organizations; or organized labor unions and professional associations. In the 1950s, nearly 50 percent of all Americans reported attending church services *at least once a week*.<sup>2</sup> Everyday Americans found and sought opportunities to get involved.



**Figure 8.1 – Norman Rockwell’s *Freedom of Speech***  
Source: “[Save freedom of speech. Buy war bonds](#)” by Boston Public Library on Flickr / [CC BY](#).

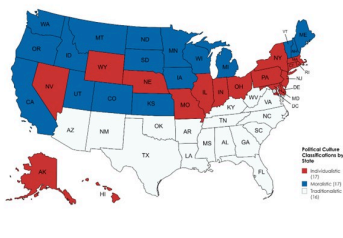
This era is romanticized as the height of **social capital**, where norms of trust and reciprocity flourished between relationship networks. Civic life produced **bonding** opportunities between individuals and communities of shared characteristics, interests, and demographics. However, these organizations also provided **bridging** opportunities, where cross-cutting relationships were formed across differences, often anchoring communities across class lines.<sup>3</sup>

Today, many would remark that the nature of civic life in America has changed (and perhaps not for the best). Once, Americans joined with one another and found opportunities to be together as a community—often joining bowling leagues as a classic

2. Newport, “In U.S., Four in 10 Report.”
3. Skocpol, *Diminished Democracy*.

example. Today, however, we are “bowling alone.”<sup>4</sup> Church membership and attendance have rapidly declined.<sup>5</sup> Today, Americans are more isolated and pursue individual forms of entertainment and fulfillment rather than through the community.

This narrative, however, overlooks the landscape of participation across the fifty states. Regions across the United States have their own distinct **political culture** or different perspectives about the ideal role of citizenship and views toward government.<sup>6</sup> Political scientist Daniel Elazar characterized states as fitting into one of three different political cultures based on early settling patterns and their initial orientations toward government. States with a **moralistic political culture**, primarily in the upper Midwest and West, place a premium on civic engagement and public life. Citizens ought to play a preeminent role in utilizing government to shape the public or the common good.



**Figure 8.2 – Political Culture by State**  
**Data Source: Elazar, D. *American Federalism: A View from the States*. 3rd ed. Harper and Row, 1984. Map made by author.**

If these subtypes of political culture are thought to be on a continuum, states with an individualistic political culture would be in the middle. States with an **individualistic political culture**, largely concentrated in the Midwest and mid-Atlantic states, tend to view government and political participation as a means to an end. If government can be used

to achieve the desired outcome, then civic engagement and political participation ought to be promoted. Otherwise, participation for the sake of participation is less than required. Finally, states with a

4. Putnam, *Bowling Alone*.  
 5. Jones, “Church Attendance.”  
 6. Elazar, *American Federalism*.

**traditionalistic political culture**, concentrated in the American South, place little value on political participation because the role of government is to preserve the existing social hierarchy and structures. A lack of involvement (by most) ensures that the status quo persists. For a longer discussion, see Chapter 10.

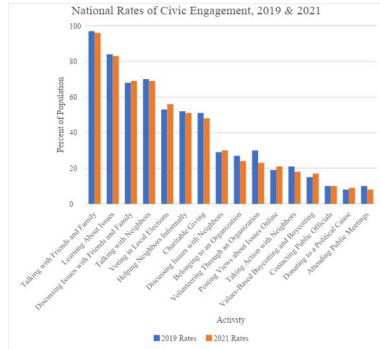
These cultures appear to be deeply ingrained. Citizens have many different forms of participation available to them, yet significant inequalities and hurdles exist that prevent full participation. In what ways do the choices made by state governments promote or hinder democratic citizenship and participation?

## What Are the Different Types of Participation?

Civic engagement is more than “just” politics. As such, participation takes many different forms. Much of that participation takes place through **volunteering**, or giving of time freely, in nonpolitical outlets.

Volunteering can occur through **formal** or **informal** outlets depending on whether it is done through an organization or independently. As Figure 8.3 shows, the overwhelming majority of Americans engage in informal activities like talking with friends, family, and neighbors or doing research to learn more about issues of public concern. Americans are more likely to report engaging in nonpolitical forms of civic engagement in general compared to overtly political or partisan forms of participation.

Much of what political scientists know about civic engagement and political participation is from individuals self-reporting their behavior in surveys and public opinion polls. This often leads to a **social desirability bias**, where respondents overreport favorable behaviors and opinions and minimize controversial or unfavorable behaviors or opinions. Behaviors like voting, for example, are viewed as socially desirable—so many people report that they voted when, in fact, they may not have.<sup>7</sup>



**Figure 8.3 – National Rates of Civic Engagement**  
**Data Source: US Census Bureau and AmeriCorps. 2021 Civic Engagement and Volunteering Supplement.**  
<https://americorps.gov/sites/default/files/document/CEV-Civic-Engagement-Rates-013024.pdf>. Graph made by author.

7. Bernstein, Chadha, and Montjoy et al., “Overreporting Voting,” 22–44.

**Table 8.1 – Highest Levels of Volunteering by State**  
 Data Source: US Census Bureau and AmeriCorps. 2021 Civic Engagement and Volunteering Supplement. <https://www.census.gov/library/stories/2023/01/volunteering-and-civic-life-in-america.html>. Table made by author.

Formal Volunteering		Informal Volunteering	
State	Volunteering Rate	State	Volunteering Rate
Utah	40.7	Montana	68.8
Wyoming	39.2	Nebraska	66.4
Minnesota	35.5	Maine	65.0
Maine	34.9	Delaware	63.9
Washington, DC	34.2	Vermont	63.9
South Dakota	34.2	Minnesota	61.9
Nebraska	33.9	Utah	61.6
Kansas	31.5	West Virginia	60.5
Montana	31.1	Iowa	60.3
Missouri	30.5	Pennsylvania	60.1

Broadly, political participation takes two dominant forms. The first is **institutional political participation**. This is participation through common, previously agreed upon formal channels to influence public policy and the political process. In our federalist system, the United States has more than ninety thousand different units of government. Moreover, a significant number of positions throughout these units of government are elected positions—from president to even, perhaps unbelievably at one moment in time, dogcatcher.<sup>8</sup> Behaviors that are passive, like displaying a yard sign

8. Bump, “Brief History.”

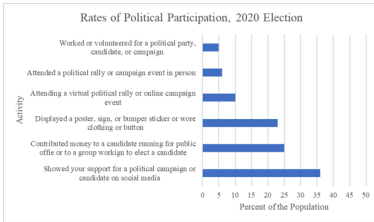
or posting something on social media, are more common than active behaviors.

More active features of campaigning and supporting candidates for office can take many different forms. Some pursue paid employment or internships for academic credit on political campaigns. Others volunteer by giving their time to support candidates and ballot measures, most frequently by engaging in door-to-door canvassing or by phone/text-banking potential supporters.

An increasing number of Americans give small-dollar donations online to candidates via websites like ActBlue and WinRed.<sup>9</sup> Ideologically polarized activists (liberal Democrats and conservative Republicans) are more likely to give and to give generously to multiple candidates—even candidates across the country.<sup>10</sup>

9. Piper et al., “How Online Donations Are Fueling.”

10. Barber, “Donation Motivations,” 148–159; LaRaja and Schaffner, Campaign Finance and Political Polarization; Bouton, Castanheira, and Drazen et al., “Theory of Small Campaign Contributions”; Pildes, “Small Dollars, Big Changes.”



**Figure 8.4 – Rates of Political Participation**

**Data Source:** Daniller, A., and H. Gilberstadt. “Key Findings About Voter Engagement in the 2020 Election.” Pew Research Center, 2020. <https://www.pewresearch.org/short-reads/2020/12/14/key-findings-about-voter-engagement-in-the-2020-election/>. Graph made by author.

An even smaller number of citizens play an active role in the public policy and governing process. Less than 10 percent of Americans report contacting an elected official or attending a public meeting. While citizens are able to testify at legislative committee hearings at state capitols throughout the country, few take advantage of this opportunity. Likewise, few attend formal “lobby days” at state capitols organized by

interest groups to bring attention to their policy priorities. Less than 2 percent of Americans have ever attempted to run for office themselves, arguably the most direct way to influence government.<sup>11</sup>

The most common form of political participation in the United States is voting in elections. Eighty percent of Americans believe that “voting in elections is very or somewhat important to be a good member of society.”<sup>12</sup> Unfortunately, that is not to say that 80 percent of citizens vote in American elections—far from it.

Americans are asked to cast a ballot more frequently than citizens of other countries.<sup>13</sup> Most offices in the US follow a **two-stage process** where candidates first vie in a **primary election** to determine which candidate will represent their political party in

11. Motel, “Who Runs for Office?”

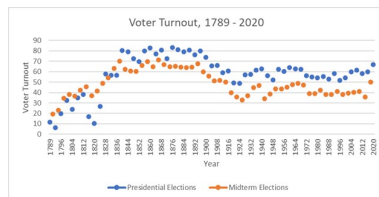
12. Wike, Silver, and Clancy et al., “What Makes Someone a Good Member.?”

13. Lopez, “Does America Vote Too Much?”

a **general election**, where voters ultimately determine which candidate is elected to serve in office.

At the federal level, voters participate in a **presidential election** every four years. More voters participate in this type of election than any others. Every two years, voters also participate in **congressional elections**, or as they are more typically known, **midterm elections**, since they occur in the middle of a presidential term. All 435 seats in the House of Representatives and one-third of the 100 US Senate seats are up for election in every congressional and presidential election.

Frequently, but not always, **state elections** occur at the same time as presidential and midterm elections. These elections are when voters elect their governor and other statewide officers as well as members of their state legislature among other offices. Five states (Kentucky, Louisiana, Mississippi, New Jersey, and Virginia) have their state elections in “off years.”<sup>14</sup> For example, while voters in most states voted for their governor in either November 2018 or November 2020, Louisiana voted for governor in 2019.



**Figure 8.5 – Voter Turnout, 1789–2020**  
Data Source: Bernstein, J., and A. Shannon. *Vital Statistics on American Politics*, 2017–2020 Edition. CQ Press, 2022. Graph made by author.

Louisiana is also a state that utilizes **runoff elections**. While most elections in the United States follow plurality rule—whichever candidate receives the most votes wins—Louisiana is one of a few states that utilizes majority rule. In order to win, a candidate must receive 50 percent of the vote. If no candidate receives 50 percent in the initial race, the top two vote-getters run in another election to determine which candidate wins. In 2019, incumbent Governor John Bel Edwards received a plurality of the vote in the October

14. Kuckuk, “Odd Ones Out”; Ballotpedia, “Off-Cycle Elections.”

election, winning 47 percent of the vote compared to 27 percent for the second-place finisher. However, since no candidate received at least 50 percent of the vote, the top two candidates faced each other in a runoff election in November 2019, where Edwards won reelection with 51 percent of the vote.

Finally, voters also participate in **municipal elections** for their town or city, where they elect mayors, city councillors, and so on. At an even more local level, voters participate in **school board elections** to elect the governing body for their local school district.

Given this volume, perhaps as a result, **voter turnout**—the percentage of eligible voters to cast a ballot—varies considerably based on the type of election. Sixty-seven percent of eligible voters cast a ballot in the 2020 presidential election between Joe Biden and Donald Trump. Yet only 46 percent participated in the 2022 midterm elections. As Figure 8.6 reveals, that sort of gap between presidential and midterm elections is common. Voter turnout in municipal elections is typically less than 30 percent, and school boards rarely have voter turnout above 10 percent.<sup>15</sup>

The second dominant form of political participation is **extrainstitutional** (or noninstitutional) participation. Some activists and organized interest groups utilize a strategic mixture of (1) inside strategies that utilize traditional forms of political participation to influence government and policymakers and (2) outside strategies meant to disrupt the status quo and apply pressure to enact change. Others pursue extrainstitutional forms of participation because they feel that institutional avenues are either unavailable to them or unlikely to be responsive.

Whether these are citizen-driven grassroots initiatives or “astroturf” campaigns facilitated by elites to give the appearance of mass participation, more and more Americans are engaging in

15. Devine, “Visualizing Voter Turnout”; Hajnal, “Why Does No One Vote?”

this type of activity. **Political protest** is the most common form of extrainstitutional participation and takes many different forms.

People express significant, vocal opposition by assembling large crowds, marching, picketing, holding signs, and so on. Some engage in civil disobedience, peacefully and intentionally breaking a law as a form of protest. Some protest using their pocketbook by either boycotting (intentionally refusing to patronize a place) or buycotting (intentionally choosing to patronize a place) retailers based on political views. For example, just related to LGBTQ equality, Chick-fil-A, Bud Light, and Target all have been protested and counterprotested.<sup>16</sup>

16. Greenfield, “Why Are People Mad?”; Liukonyte, Tuchman, and Zhu et al., “Lessons from the Bud Light Boycott”; Lewis, “Target Hit.”



**Figure 8.6 – Photos of Political Protest**  
 Source: [“Bans off my body”](#) by Gayatri Malhotra, [\[Black Lives Matter photo\]](#) by Colin Lloyd, and [\[Red for Ed strikers photo\]](#) by LaTerrian McIntosh on Unsplash / [Unsplash License](#).

Historically, few Americans engage in protests. While the decade of the 1960s is perhaps rightly romanticized as a time of activism, roughly 250,000 people attended the famous March on Washington led by Dr. Martin Luther King Jr. in 1963.<sup>17</sup> In contrast, between 2017 and the end of 2020, at least twenty-two million Americans (likely more) participated in some type of nonviolent protest as a conservative estimate.<sup>18</sup>

In response to Donald Trump’s inauguration as president, estimates place somewhere between three and five million Americans participating as part of the January 21, 2017, Women’s March by joining either the rally in Washington, DC, or organized events in many large cities throughout the country.<sup>19</sup>

State capitols have seen a significant number of organized and successful protests. For example, the “Red for Ed” movement led to teacher strikes and visits to capitols across many states. As a

17. National Park Service, “March on Washington for Jobs and Freedom.”

18. Crowd Counting Consortium.

19. Hartocoliis and Alcindor, “Women’s March Highlights.”

result, many teachers received raises, and class sizes were reduced in many instances.<sup>20</sup>

The largest protests in American history occurred during the summer of 2020 as part of the Black Lives Matter movement, as perhaps as many as 10 percent of the US population attended at least one protest during the summer of 2020 after the murder of George Floyd.<sup>21</sup>

Protest is not just a tool available to those on the political left. The Tea Party started off as a protest movement before becoming a more prominent faction of the Republican Party.<sup>22</sup> Every year, thousands upon thousands descend on Washington, DC, for the March for Life, a rally against abortion rights, even after the Supreme Court overturned *Roe v. Wade*.<sup>23</sup>

Protest can be effective in bringing attention to important issues and making the government responsive. Nonviolent protest has higher rates of success than political violence but is not always successful.<sup>24</sup> Based on research on nonviolent protests, campaigns that have more than 3.5 percent of the total population participating have never failed to bring about change.<sup>25</sup>

20. Burnette, “What Is #RedforED?”; Blanc, *Red State Revolt*; Mehta, “What Has and Hasn’t Changed.”

21. Buchanan, Bui, and Patel et al., “Black Lives Matter.”

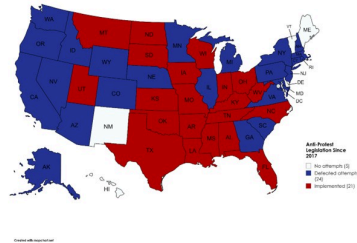
22. Blum, *How the Tea Party Captured*.

23. Diaz, “It’s Cold and Snowing.”

24. Chenoweth and Stephan, *Why Civil Resistance Works*; Tufekci, “Do Protests Even Work?”

25. Robson, “The ‘3.5% Rule.’”

State governments, however, are not passive observers of citizen protests. Since January 2017, twenty-one states have successfully implemented legislation making protests more difficult. This type of legislation has been proposed in forty-five of the fifty states as of August 2024. These proposals include levying stiffer penalties, expanding resources for police to confront protesters, and broadening the definition of what constitutes rioting, among others.<sup>26</sup>



**Figure 8.7 – Antiprotest Legislation by State**  
**Data Source: International Center for Not-for-Profit Law. “US Protest Law Tracker.”** n.d. <https://www.icnl.org/usprotestlawtracker/?location=&status=enacted&issue=&date=&type=legislative>. Map made by author.

The give-and-take between protesters and the protested surely will continue as the opportunities for institutional and extrainstitutional participation are shaped by this relationship. In theory, democratic government only works legitimately when it has the consent of the governed. To give that consent, broad participation is a prerequisite.

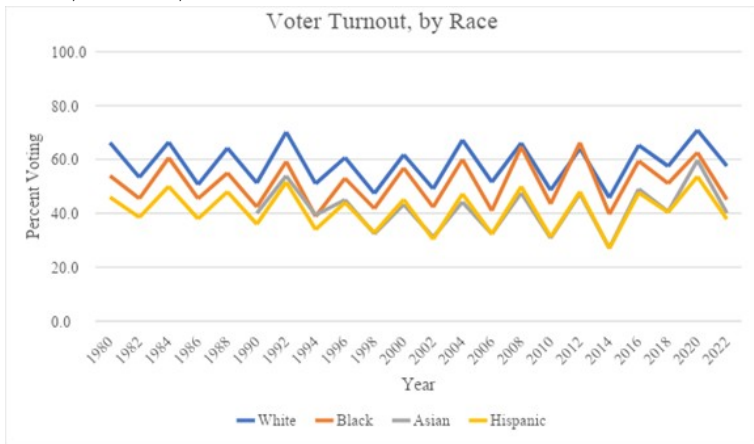
## Who Participates, and Why Don’t More People Participate?

Political scientist E. E. Schattschneider famously wrote that the “flaw in the pluralist heaven is that the heavenly chorus sings with a strong upper-class accent.”<sup>27</sup> In a representative democracy, there

26. Halliday and Hanna, “State Anti-Protest Laws”; Quinton, “Eight States Enact”; Gabbatt, “Republicans Push ‘Tsunami.’”  
 27. Schattschneider, *Semi-Sovereign People*.

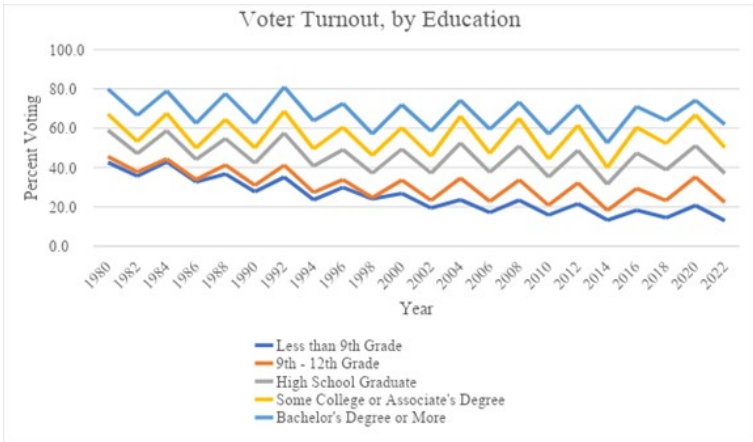
is an expectation that all interests are free to compete and that the government ought to be responsive to the majority, in general, or at least produce outcomes that are generally agreeable (i.e., pluralism).

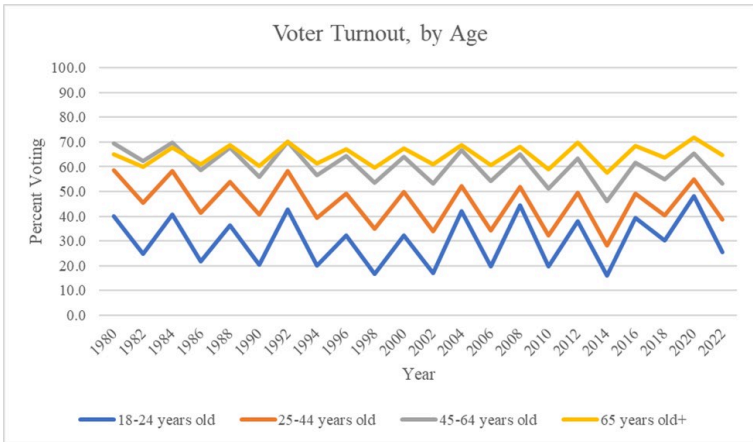
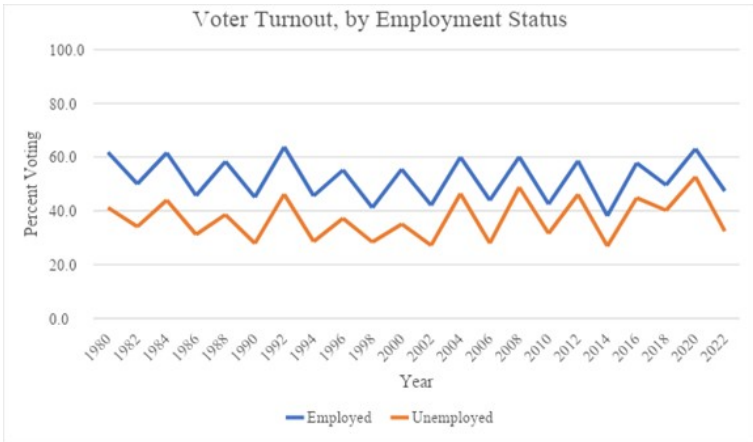
One of the reasons that Schattschneider argued about this flaw is because there is a bias in terms of who participates in American political life.<sup>28</sup> In general, those with more education and more income are much more likely to vote and participate in politics. As Americans get older, they are more likely to register and turn out to vote. Voters who are part of the active workforce are more likely to participate than those who are unemployed. While the racial gap between White and Black Americans has closed in recent years, there is a clear racial difference in voter turnout as well. Once differences in socioeconomic status are taken into account, however, this difference vanishes.<sup>29</sup>



28. Wolfinger and Rosenstone, *Who Votes?*; Rosenstone and Hansen, *Mobilization, Participation, and Democracy in America*; Leighley and Nagler, "Socioeconomic Class Bias," 725–735; Leighley and Nagler, *Who Votes Now?*

29. Leighley and Nagler, "Socioeconomic Class Bias," 725–735.





**Figure 8.8 – Voter Registration and Turnout Rates by Key Demographics**

**Data Source:** United States Census Bureau. “Historical Reported Voting Rates.” <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/voting-historical-time-series.html>. **Graphs made by author. Note:** Turnout by age group is calculated out of total population. Other figures are calculated using the citizen population.

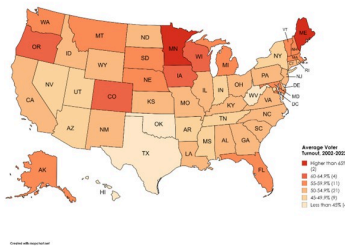
These turnout figures represent an electorate that does

not fully reflect the diversity of America.<sup>30</sup> In the 2022 election, 34 percent of voters were older than sixty-five years old, while 27 percent of nonvoters were under thirty years old. White Americans represent 75 percent of voters, while non-White Americans make up 45 percent of nonvoters. Those with at least a college degree account for 43 percent of voters, but those without a college degree account for 74 percent of nonvoters. Finally, 32 percent of voters possess a family income of more than \$100,000 per year, while 80 percent of nonvoters earn less than a six-figure salary as a family. Even as America's electorate gets more diverse, voters, compared to nonvoters, are older, Whiter, and more formally educated and earn more in income.<sup>31</sup>

These, however, are national trends. Figure 8.9 reveals significant statewide variation in turnout. States like Minnesota and Maine have voter turnout, on average, higher than 65 percent over the last twenty years. Contrast that with Hawaii, Oklahoma, Texas, and West Virginia, which have an average voter turnout of less than 45 percent. That is a considerable 20 percent difference between states at the more extreme ends of the distribution. More than thirty states have an average turnout of between 50 percent and 60 percent. What accounts for this considerable state variation?

30. Hartig et al., "Republican Gains."

31. Igielnik and Budiman, "Changing Racial and Ethnic Composition."

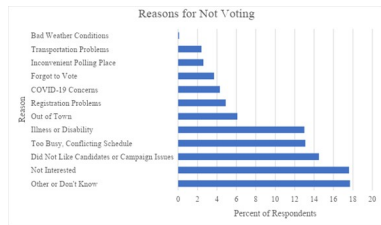


**Figure 8.9 – Average Voter Turnout by State**  
**Data Source:** McDonald, M. “1980–2022 General Election Turnout Rates (v1.0).” 2023.  
<https://election.lab.ufl.edu/dataset/1980-2022-general-election-turnout-rates/>. Map made by author.

there is little reason to suspect that these reasons vary by state in ways similar to the trends presented in Figure 8.10.

Political scientists have approached understanding voter participation by focusing on why people choose not to vote rather than identifying why someone chooses to vote. In short, people do not participate because often they cannot, they will not, or nobody asked them to participate.<sup>32</sup> More broadly, while political scientists may be loath to share this, it is irrational to vote according to

The US Census asks registered voters their reasons for not voting. The single biggest factor why Americans report not voting is a lack of interest (18 percent). The second most cited reason for not voting is disliking the candidates or campaign issues (15 percent). Reviewing the rest of the list, many of these reasons may appear like minor items that could easily be overcome by many. Moreover,



**Figure 8.10 – Most Common Reasons for Not Voting**  
**Data Source:** United States Census Bureau. “Voting and Registration in the Election of November 2020.”  
<https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-585.html>. Graph made by author.

32. Verba, Schlozman, and Brady et al., Voice and Equality.

the leading theory, the rational **calculus of voting**.<sup>33</sup> The decision to vote is a function of weighing the costs and benefits of voting before making a decision. Mathematically, this is represented by the formula

$$V = pB - C + D.$$

This equation can be understood as follows: The decision of whether or not to vote (V) is a function of the probability (p) your vote is decisive multiplied by the benefits (B) you receive from voting, minus the costs (C) associated with voting, plus one's sense of civic duty (D).

V stands for the decision to vote or not. If (after doing all the computations on the right-hand side of the equation) the value of V is positive, the voter will turn out to vote. If the value is zero or negative, it would be irrational to vote—so they abstain from voting. In the following paragraphs, each component of this equation will be explored in more depth.

The p term in the equation stands for the probability that your individual vote is decisive in determining the outcome of the election. More than 150 million Americans voted in the 2020 presidential election, and Joe Biden defeated Donald Trump by more than seven million votes, so the decision of any one voter to stay home or not surely did not decide the outcome, even in extremely contested presidential elections like the 2000 or 2016 elections, when the winner of the popular vote lost the Electoral College.

In theory, the probability that one's vote is decisive ought to increase as the election gets "smaller" or more local. When fewer people participate, a single vote carries more weight. Yet Americans frequently live in "red states" and "blue states." More than 82 percent of Americans live in a state government trifecta, where one political party controls both chambers of the state legislator and the

33. Downs, *Economic Theory of Democracy*; Riker and Ordeshook, "Theory of the Calculus," 25-42.

governorship.<sup>34</sup> Americans are increasingly geographically sorted into heavily Republican and Democratic communities.<sup>35</sup> Democrats increasingly dominate in urban areas, while Republicans dominate in rural areas. To the extent voters get a meaningful choice between the two parties, it is often in the suburbs. Whether it is the race for governor, mayor, state legislator, city council, and so on, most Americans do not have much of a meaningful choice, since most outcomes are all but secured well ahead of Election Day.

In 2022, the average margin of victory for contested state legislative races was 27.7 percent.<sup>36</sup> A nontrivial number of state legislative races do not even have candidates from both parties. During the 2022 elections, more than 30 percent were not contested (i.e., the race did not have at least both a Democrat and a Republican running against each other). Some of that is primarily a function of where Americans choose to live—not necessarily rooted in politics. However, state governments are responsible for redistricting or drawing lines of legislative districts for Congress and their respective state legislatures after every Census. Sixteen states utilize commissions to draw their state legislative districts—whether these are fully independent commissions or commissions that also incorporate politicians. The remaining thirty-four states leave the process to their state legislature.<sup>37</sup> These states are more prone to **gerrymander**, or intentionally draw district boundaries, during redistricting in a way that inequitably benefits a group or political party. (Fun fact: The term is often

34. Ballotpedia, “State Government Trifectas.”

35. Bishop, *The Big Sort*; Wasserman, “Purple America”; Brown and Enos, “Measurement of Partisan Sorting,” 998–1008; Cook, “‘Big Sort’ Continues.”

36. Ballotpedia, “Margin of Victory.”

37. All About Redistricting, “National Summary”; Ballotpedia, “Redistricting Commissions.”

mispronounced. It should be pronounced with a hard G, like “Gary.”<sup>38</sup>

38. Associated Press, “Supreme Court.”

**Table 8.2 – Average Margin of Victory in 2022 State Legislative Races**  
 Data Source: Ballotpedia. “[Margin of Victory Analysis for the 2022 State Legislative Elections.](#)” n.d. Table made by author.

	Upper Chamber (Senate)	Lower Chamber (House)
AL	53.6	57.4
AK	20.3	21.6
AZ	28.4	12.4
AR	41.9	39.1
CA	17.9	24.5
CO	19.8	26.3
CT	19.9	23.0
DE	26.4	34.2
FL	25.5	26.2
GA	33.4	33.7
HI	39.5	36.8
ID	37.0	33.3
IL	24.6	28.9
IN	30.5	32.5
IA	27.7	26.0
KS	N/A	23.3
KY	38.5	34.8
ME	22.7	23.5
MD	40.6	19.5
MA	26.5	25.1
MI	25.2	26.9
MN	26.7	28.1
MO	41.3	30.0

MT	19.9	26.9
NE	17.7	N/A
NV	16.0	19.6
NH	15.6	10.6
NM	N/A	25.1
NY	26.3	33.6
NC	27.3	27.2
ND	28.8	15.8
OH	39.0	32.0
OK	28.9	28.7
OR	21.8	31.7
PA	27.2	27.6
RI	28.0	24.9
SC	N/A	27.9
SD	25.0	12.3
TN	51.0	41.0
TX	31.3	32.6
UT	43.0	34.9
VT	15.4	19.9
WA	30.2	27.4
WV	28.6	30.4
WI	25.7	27.3
WY	39.2	33.1
TOTAL	29.2	27.9

The B term in the equation stands for the benefits you receive as a voter should your preferred candidate win the election.

While polarization between the two parties may be considered a negative, the growing ideological distance between the parties is actually associated with promoting higher levels of voter participation and civic engagement.<sup>39</sup> States controlled by either the Republican or the Democratic Party are moving further apart ideologically, raising the stakes for each election.<sup>40</sup>

The C term in the equation stands for the costs associated with voting. This is subtracted from the product of the p and B terms. Multiplying the p term (the probability that your vote decides the outcome) by the B term (the benefits you receive if your preferred candidates win) is likely going to be infinitely/infinitesimally small. Thus, for almost all voters, the costs will outweigh the benefits of voting.

The first type of cost that voters face is information costs. Especially at the local level, knowing when to vote is important. While most general elections occur in November of even years (as previously discussed), primary, local, and school board elections all occur at different parts of the calendar and vary by state. Many state and local races are also featured as part of nonpartisan elections, when voters do not have the ability to rely on the partisanship of candidates to inform who they intend to support. In general, these low-information elections have lower levels of voter turnout, since many voters are unwilling to do the research to make an informed vote.<sup>41</sup>

Even if, however, voters know when and where to vote and then have taken the additional time to identify who they intend to support, there are additional costs to voting. **Suffrage**, or the right to vote, is not explicitly listed in the US Constitution. States,

39. Hetherington, "Turned Off or Turned On?"

40. Shor and McCarty, "Two Decades of Polarization," 343-370; Shor and McCarty, "Ideological Mapping," 530-551.

41. Schaffner, Streb, and Wright et al., "Teams Without Uniforms," 7-30.

not the federal government, were given wide latitude to implement elections. As a result, most states initially only gave White landowning/taxpaying men the ability to vote. However, states always have moved at different speeds, as states gave women and racial minorities the right to vote well before the federal government.<sup>42</sup> For example, New Jersey let people vote if they met property and tax requirements regardless of race or gender. Wyoming granted women the right to vote more than fifty years before the federal government intervened.

The federal government periodically intervenes to ensure that state requirements are uniform and that basic standards are upheld. After the Civil War, the Fifteenth Amendment ensured that states would not be able to deny the right to vote on account of race—giving many Black Americans the first opportunity to vote. In 1920, the Nineteenth Amendment was ratified, giving women the right to vote. During the Vietnam War, the Twenty-Sixth Amendment was ratified, lowering the voting age to eighteen years old. Additional pieces of federal legislation, like the Civil Rights Act of 1964 and the Voting Rights Act of 1965, also increased the power the federal government had over states to ensure voting rights were more equitably distributed.

Today, leading scholars are calling to add an amendment to the Constitution to specifically enshrine the right to vote.<sup>43</sup> To date, Congress has been unsuccessful in passing the [For the People Act](#), the [Freedom to Vote Act](#), or the [John Lewis Voting Rights Advancement Act](#), three pieces of federal legislation that supporters argue would broaden voting rights. Given these stalled efforts, states are still at the forefront of the battle to extend or restrict voting rights. This discussion, perhaps more so than any other policy difference or institutional feature, echoes the competing themes of laboratories of democracy versus laboratories of

42. Brower, “What Does the Constitution Say?”

43. Hasen, Real Right to Vote.

autocracy. Who should be able to vote? How easy should it be for citizens to cast their ballot? What reasonable regulations are appropriate to ensure the integrity of our elections?

In terms of extending the right to vote, many local governments allow youth over the age of sixteen to vote in school board or local elections. Many states also allow seventeen-year-olds to vote in primaries if they will turn eighteen before the next general election.<sup>44</sup>

While the federal government already prevents legal noncitizens from voting in federal elections, the House of Representatives recently passed the Safeguard American Voter Eligibility Act.<sup>45</sup> Currently, noncitizens only can vote in specific local elections in California, Maryland, and Vermont. In addition, many states are adding additional layers to prevent noncitizens from voting in state or local elections. Seven states previously amended their state constitutions to prevent noncitizens from voting.<sup>46</sup> Voters in eight states will be voting on constitutional amendments adding language stating that US citizenship is a requirement for voting (Idaho, Iowa, Kentucky, Missouri, North Carolina, Oklahoma, South Carolina, and Wisconsin).<sup>47</sup>

The final group subject to considerable debate and public policy is felons. This varies considerably by state. People previously convicted of a felony never lost their voting rights in two states and Washington, DC. On the other end of the spectrum, ten states do not automatically restore voting rights to felons after they have completed their sentences. The remaining states vary as to how voting rights are restored for people convicted of a felony after they

44. National Youth Rights Association, “Voting Age Status Report.”

45. Morgan, “US House Approves.”

46. Ballotpedia, “Laws Permitting Noncitizens.”

47. Ballotpedia, “2024 Ballot Measures.”

have completed their prison sentences or after they have completed their prison sentence, probation, and parole.<sup>48</sup>

Even within this legal framework, states have long found ways to make voting more difficult. After the Civil War, the American South implemented a series of Jim Crow laws that promoted racial segregation and further limited the rights of racial minorities, specifically Black Americans. These included literacy tests (requiring a demonstration of the ability to read and write in order to vote), poll taxes (fees that needed to be paid in order to vote), and grandfather clauses (in order to vote, your grandfather also needed to have the right to vote). To ensure that poor or illiterate Whites were able to participate, these restraints were selectively applied to voters of color. While the passage of the Twenty-Fourth Amendment outlawed poll taxes, many modern state proposals are often referred to as “modern Jim Crow laws” or “Jim Crow 2.0.”<sup>49</sup>

The electoral institutions adopted by states are associated with state variation in voter turnout.<sup>50</sup> So what aspects of today’s election administration vary by state, and how might they be associated with rates of voter turnout? How do states affect the cost of voting?

The first cost is the requirement to register to vote. In most advanced industrial democracies, the government automatically registers its citizens. In the United States, that burden falls on the individual voter. Voter registration is required in forty-nine of the fifty states, with the exception of North Dakota.

Within states, the registration requirements and process vary considerably. Today, twenty-four states and Washington, DC,

48. Ballotpedia, “Voting Rights.”

49. Brockell, “Some Call Voting Restrictions”; Cunningham, ““New Jim Crow””; Hemmer, “What Jim Crow Looks Like.”

50. Springer, “State Electoral Institutions,” 252-283.

have automatic voter registration.<sup>51</sup> States are required to set registration deadlines within thirty days of an upcoming election. Fifteen states have deadlines between twenty-eight and thirty days. Nine states have deadlines between twenty and twenty-seven days before an election, while seven states have deadlines with one to fifteen days before an election.<sup>52</sup> The remaining nineteen states have a process called same-day registration (SDR) or election-day registration (EDR). In these states, citizens are able to register to vote on Election Day or to register and cast a ballot on the same day during an early voting period. Research suggests that this sort of reform is positively associated with voter turnout and reducing inequality in turnout.<sup>53</sup> Without an external deadline, interested citizens can register on the spot (or update an address on their voter registration) and vote—rather than having registration serve as an advance prerequisite to participate.

Another key aspect of the voting process that varies by state is where voting is allowed to occur. Historically, most voting occurs in person on Election Day. States have some degree of latitude on how long polls stay open on Election Day.<sup>54</sup> States also have latitude on how many polling locations they establish and where they choose to locate them. For example, college students are more likely to vote if they are able to participate on their

51. National Conference of State Legislatures, “Automatic Voter Registration.”

52. National Conference of State Legislatures, “Voter Registration Deadlines.”

53. Knack and White, “Election-Day Registration,” 29–44; Brian and Grofman, “Election Day Registration’s Effect,” 170–183; McDonald, “Portable Voter Registration,” 491–501; Neiheisel and Burden, “Impact of Election Day Registration,” 636–664; Grumbach and Hill, “Rock the Registration,” 405–417.

54. Ballotpedia, “State Poll Opening and Closing Times (2024).”

campus.<sup>55</sup> For other voters, being able to utilize a voter center, a polling location that is not exclusive for only registered voters of certain precinct-based geographies, is associated with higher rates of voter turnout.<sup>56</sup> One of the reasons that voting centers are received favorably by voters is that they know where to go—having to look up voting locations if they change from election to election is associated with lower rates of turnout.<sup>57</sup> The farther voters have to travel, the less likely they are to vote—unless they are able to vote through “nontraditional means” like early voting or voting by mail.<sup>58</sup>

Increasingly, more and more Americans take advantage of the opportunity to vote early.<sup>59</sup> At this point, almost every state (forty-seven and Washington, DC) allows voters to cast their ballot in person ahead of Election Day.<sup>60</sup> In 2020 (during the pandemic), almost 70 percent of those who cast a ballot did so before Election Day. In spite of how widespread this opportunity is across the fifty states, the opportunity to vote early is not associated with increases in voter turnout in most cases.<sup>61</sup>

Eight states (California, Colorado, Hawaii, Nevada, Oregon, Utah, Vermont, and Washington) and Washington, DC, allow elections to be conducted entirely by mail.<sup>62</sup> Early research suggested that vote by mail (VBM) might be associated with lower

55. Shino and Smith, “Mobilizing the Youth Vote?,” 524–541; McDonald et al., “Campus Voting,” 225–238.

56. Stein and Vonnahme, “Engaging the Unengaged Voter,” 487–497.

57. Brady and McNulty, “Turnout Out to Vote,” 115–134.

58. Dyck and Gimpel, “Distance, Turnout,” 531–548.

59. Jones, “Early Voting Higher”; Parks, “2020 Changed.”

60. Ballotpedia, “Early Voting.”

61. Gronke, Galanes-Rosenbaum, and Miller et al., “Early Voting and Turnout,” 639–645.

62. National Conference of State Legislatures, “States with Mostly-Mail Elections.”

rates of turnout;<sup>63</sup> more recent work points to higher turnout.<sup>64</sup> Reviewing “all the major studies on vote by mail elections conducted in the United States in the last 25 years,” political scientists have found that most studies find allowing ballots to be cast by mail is positively associated with higher rates of voter turnout.<sup>65</sup>

Short of allowing all voters to cast a ballot by mail, many voters have the opportunity to vote absentee. This process also varies considerably by state.<sup>66</sup> Some states require voters to confirm they will be absent or unable to vote in person in order to vote absentee. Twenty-eight states do not require voters to provide any sort of excuse. Likewise, in some states, voters who would like to vote absentee have to fill out an application every election cycle. In other states, voters are permanently on a list to receive an absentee ballot. Overall, no-excuse or no-fault absentee voting is associated with higher rates of turnout.<sup>67</sup>

The final electoral reform to be discussed in this chapter is voter identification—more specifically, photo identification requirements. Thirty-six states either require or request that voters

63. Kousser and Mullin, “Does Voting by Mail Increase?,” 428–445; Bergman and Yates, “Changing Election Methods,” 115–127; Arceneaux, Kousser, and Mullin et al., “Get Out the Vote-by-Mail?,” 882–894.

64. Southwell and Burchett, “Effect of All-Mail Elections,” 72–79; Southwell, “Five Years Later,” 89–93; Southwell, “Analysis of the Turnout,” 211–217; Gronke, Galanes-Rosenbaum, Miller and Toffey et al., “Convenience Voting,” 437–455; Gronke, Galanes-Rosenbaum, and Miller et al., “Early Voting and Turnout,” 639–645; Gronke and Miller, “Voting by Mail,” 976–997; Richey, “Voting by Mail,” 902–915; Henrickson and Johnson, “Increasing Voter Participation,” 869–884; Bonica et al., “All-Mail Voting,” 102363.

65. Menger, Stein, and Vonnahme et al., “Turnout Effects.”

66. National Conference of State Legislatures, “Voting Outside.”

67. Larocca and Klemanski, “U.S. State Election Reform,” 76–101.

show some form of identification when voting in person.<sup>68</sup> Eleven states have strict photo identification laws where voters must show a photo ID in order to participate. In states with nonstrict laws, voters can provide alternative forms of acceptable identification or otherwise verify their identity. States that experience higher levels of electoral competition between the two parties and switch to Republican control of state government are most likely to implement voter identification laws.<sup>69</sup>

68. National Conference of State Legislatures, “Voter ID Laws.”

69. Hicks, McKee, and Smith et al., “Principle or a Strategy?,” 18–33; Biggers and Hanmer, “Understanding the Adoption,” 560–588.

**Table 8.3 – Voter Identification Requirements by State**

**Data Source: National Conference of State Legislatures. “Voter ID Laws.” 2024.**  
<https://www.ncsl.org/elections-and-campaigns/voter-id>.

<b>Requirement</b>	<b>States</b>
Strict Photo ID (11)	Alabama Arkansas Georgia Indiana Kansas Mississippi North Carolina Ohio Tennessee Wisconsin Wyoming
Nonstrict Photo ID (12)	Florida Idaho Louisiana Michigan Missouri Montana Nebraska Oklahoma Rhode Island South Carolina South Dakota Texas
Strict Nonphoto ID (2)	Arizona North Dakota
Nonstrict Nonphoto ID (11)	Alaska Colorado Connecticut Delaware Iowa Kentucky New Hampshire Utah Virginia Washington West Virginia

Michael Pomante, Scot Schraufnagel, and Quan Li have published a series of works based on their “Cost of Voting Index,” which takes many of the previously discussed election



socialized into participating—through civic education in schools, parental influence, and other forces that help develop a sense that voting is something that one ought to do. Many Americans choose to cast a ballot in elections even though they are aware that their vote is unlikely to help produce the outcome they want. Yet they still choose to participate because voting is one of the most powerful ways to signal your preferences to the government. At the end of the day, who votes? Voters vote.

As a result, many measures of **convenience voting**—reforms like same-day registration, early voting, and vote by mail—do not impact voter turnout as much as one might think.<sup>72</sup> In many cases, these reforms make voting convenient—but only for preexisting voters who were already inclined to participate. Likewise, states that adopt convenience measures already are more likely to have a political culture that promotes widespread voter participation. The reforms that are most associated with increases in participation and voter turnout are the ones that change the complexion of who could choose to become a voter.

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72. Highton, “Voter Registration and Turnout,” 507–515; Berinsky, “Perverse Consequence,” 471–491; Gronke, Galanes-Rosenbaum, Miller and Toffey et al., “Convenience Voting,” 437–455; Hanmer, Discount Voting; Burden et al., “Election Laws,” 95–109.

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# Case Study Chapter 9

LAURA MERRIFIELD WILSON

## Chapter 9 Case Study: Oregon's Vote-by-Mail Experiment

What do a sumo wrestler, an actor, a physician, an adult film star, a college student, and a retired meat packer all have in common? These were just some of the occupations listed by the 135 gubernatorial candidates in California in 2003 seeking to replace unpopular incumbent Gray Davis. Typical elections have no more than a few candidates per race, and regular elections for governor in California occur concurrently with congressional midterms (in 2002, 2006, 2010, etc.). The recall election of 2003 was far from normal, however.

Democrat Gray Davis was elected as governor of California in 1998 and reelected in 2002. Despite a popular first term, several factors (including allegations of corruption, a widespread energy crisis across the state, and his signature on restrictive gun measures) prompted a group of Republicans to file a petition for a recall campaign.<sup>1</sup> The campaign requires signatures equal to 12 percent of the number of votes cast in the last election in order to hold the election to recall; then voters participate in the special election to decide whether they wish to remove or keep the elected official before their term expires.

The concept of the recall election empowers voters to hold elected officials accountable for their actions between periods of

1. Stone and Datta, "Rationalizing the California Recall," 19-21.

elections. Recalls, in addition to initiatives and referendums, are a mechanism of direct democracy, providing voters with a direct say on policy or government action that is generally limited in the United States. Nineteen states, influenced by the Progressive movement at the turn of the twentieth century, offer voters recall elections.<sup>2</sup> Sometimes, the simple threat of a recall can influence a governor's decisions, much like a veto. The recall election itself is complicated, with requirements such as filing, initiatives, and in California, the selection of a new governor.<sup>3</sup> The ballot given to voters in 2003 asked two questions: first, if they wished to keep Davis as their governor, and second, if he was removed, who they would prefer to serve as the new governor.<sup>4</sup> A whopping 135 candidates filed to be on the ballot as gubernatorial candidates, making the election into a national spectacle.<sup>5</sup> The likelihood that any candidate would capture a majority of the vote was implausible but also unnecessary, as California is not a state that requires it or automatically triggers a runoff between the top two candidates if no one clinches at least 50.01 percent of the electorate.

In US history, attempts to recall governors have generally been thwarted (like Wisconsin's Scott Walker in 2012 and California's Gavin Newsom in 2021).<sup>6</sup> Davis, however, did not survive the first recall in California's history and only the second in the nation. With a vote of 55.4 percent to 44.6 percent, Davis was recalled, and with an impressive 48.6 percent of the vote, bodybuilder and actor Arnold Schwarzenegger was selected by voters to replace him.<sup>7</sup> Schwarzenegger was well known as a celebrity for his work in film

2. National Conference of State Legislatures, "Recall of State Officials."

3. Garrett, "Democracy in the Wake," 239.

4. Alvarez and Kiewiet, "Rationality and Rationalistic Choice," 267–290.

5. Stone and Datta, "Rationalizing the California Recall," 19–21.

6. Carrillo et al., "California's Recall," 481; Cramer, *Politics of Resentment*.

7. Arellano, "Recalling California's Wild."

and his bodybuilding career. His politics were much less known. But the Republican served for nine years as governor of California before he was term-limited and retired in 2011. His administrations were characterized by his general opposition to same-sex marriage and more universalized health care, though Schwarzenegger himself considered his policies to be moderately conservative.<sup>8</sup>

## Critical Thinking Questions

What makes a recall election different from a regular election?

This case study focuses on one special type of election but highlights many different components of democratic elections, such as a wide variety of candidates. What are some of the advantages and disadvantages for voters in having many (like 135) candidates? What about the advantages and disadvantages for election officials/administrators or for elections/poll workers?

Why would a voter want a recall election? What political circumstances right now might hypothetically provide enough fervor to support a recall election in your state?

8. Broxmeyer, "From the Silver Screen," 1-21.

# 9. Campaigns and Elections

LAURA MERRIFIELD WILSON

## *Chapter Summary*

The most common form of political participation is voting, and selecting candidates in an election may be the sole way many constituents engage in state politics. State elections often draw fewer voters and are vulnerable to down-ballot and coattail effects from the federal offices at the top of the ticket. This chapter focuses on campaigns (examining how campaigns are organized and implemented at the state level while emphasizing the difference between statewide and smaller state district offices) as well as elections (analyzing the impact of the campaigns and the decisions of voters). This chapter covers the election process from the perspective of both the candidates seeking office and the voters selecting their preferences.

## *Student Learning Objectives*

Upon completion of this chapter, students should be able to:

1. Identify the differences between federal and state elections as well as the essential components that compose state elections.
2. Understand the impact of “down-ballot” races and “low-information” elections on voter turnout.
3. Discuss the change in candidate responsibility and autonomy that coincided with the shift from state political conventions to state political primaries.
4. Examine the differences in candidate messaging, campaigning, and voter turnout in primary elections compared to general elections.
5. Recognize the various primary election systems, including open primaries, hybrid primaries, closed primaries, top-two primaries, and now-defunct blanket primaries.
6. Describe differences in campaign finance, messaging, and strategy for statewide races versus single-member district elections.
7. Analyze the connection between state policy and voter perception and election outcomes, particularly on current issues such as guns or abortion.

### *Focus Questions*

These questions illustrate the main concepts covered in the chapter and should help guide discussion as well as enable students to critically analyze and apply the material covered.

How do campaigns and elections vary at the state level compared to the federal level? What are some of the essential differences and what effect do these have on outcomes?

Which type of primary election do you believe is best for voters? Which do you believe is best for the party?

What are some of the challenges that coincide with the increase in elections that are more candidate-centered rather than party-centered?

Most states require a filing fee when candidates declare their intention to run and file to place their name on the ballot. What role does this serve, and is it democratic?

How do candidates pivot from the primary election to the general election?

What role does money play in campaigning for state races? How can it be advantageous for democracy? How can it be harmful?

# What Is Voter Enfranchisement and Turnout in State Elections?

Voter turnout is typically very low in the United States, despite the wide-ranging **enfranchisement** that has occurred since the US Constitution was initially ratified. At that time in American history, in order to vote, one had to be (1) White, (2) a man, (3) a property owner, and (4) at least twenty-one years of age. The disenfranchisement of a majority of the population undermined our nation's claims as a democracy. When fewer than half of the citizens could actually vote, our country was far less democratic than it is today. Several major changes struck down these limitations, beginning with the dissolution of the property requirement during the Jacksonian administration in the 1830s. In 1870, the Fifteenth Amendment was ratified to the US Constitution, providing African American men with the right to vote. Exactly half a century later, women were granted the same right with the passage of suffrage through the Nineteenth Amendment in 1920. Poll taxes, used in some states to require voters to pay a “tax” (which actually operated as a fee, meaning one was exempt from incurring the cost if they chose not to vote), were abolished with the Twenty-Fourth Amendment in 1964. Finally, the voting age was lowered nationally in 1971 to eighteen years old, a direct response to pressure from the Vietnam War protests from young adults.

All these changes enabled more Americans to participate in elections, yet the irony is that many choose not to do so, particularly in the elections whose outcome may have the most direct impact on their lives. Presidential elections consistently yield the highest **voter turnout** numbers.<sup>1</sup> Still, in recent cycles, these have averaged around 60 percent of eligible voter participation. In congressional midterm elections and state government elections, voter turnout

1. McDonald, “National and State Turnout Rates.”

drops considerably to 35 to 40 percent participation. The numbers get lower for local elections (20–25 percent) and even lower still when focusing solely on the primary elections (a distinction addressed later in this chapter in “What Are Primary and General Elections?”).

Scholars recognize that not everyone in the general population is eligible to vote, even with the enfranchisement noted earlier.<sup>2</sup> Earlier measurements of voter turnout suggested much lower numbers when considering how many people over eighteen cast a ballot. This group is known as the **voter age population** because, very simply, they are at or over the age necessary to participate in elections. The issue is that not everyone over eighteen is still eligible to vote. Our country is a nation of immigrants, and residents who do not have US citizenship do not qualify to participate in elections. Likewise, voting can be taken away from citizens who do not abide by the laws; in most states, citizens serving felony convictions are ineligible to vote during the time of their incarceration (as discussed in Chapter 8).<sup>3</sup> Thus, the **voting eligible population** is a smaller group of people realistic to those who meet the requirements to vote, which makes the measurement of voter turnout more accurate.

Why are the numbers so low, particularly for state elections? Voters are most aware of and engaged in politics during national election cycles and, even then, more engaged in the presidential race than those for the US Senate or the House of Representatives. Campaigns have more money and more exposure and it is a nationwide decision, so while swing states receive more attention, the national news and information about the candidates

2. McDonald and Popkin, “Myth of the Vanishing Voter,” 963–974; McDonald, “Every Eligible Voter Counts”; Holbrook and Heidbreder, “Does Measurement Matter?,” 157–179.
3. Aviram, Bragg, and Lewis et al., “Felon Disenfranchisement,” 295–311.

have appeal and applicability to voters in all fifty states. The recent trend of nationalization with issues reinforces the focus on national politics; it is easier to understand, dissect, and assess for voters because the mass media follows it in detail and the issues are universal to all voters in the country.

Some state office elections do run concurrently with federal offices, so for states that elect their governors in the same year as the president, those numbers in voter turnout are much higher. The benefit of this is that voter turnout can be substantially higher relative to a majority of US states that elect their governors during congressional midterm elections, or even the few states (Kentucky, Louisiana, and Mississippi) that elect their governors in years immediately after congressional midterms (i.e., 2023), and the even fewer states (Virginia and New Jersey) that elect governors in years immediately after presidential election cycles (i.e., 2021).<sup>4</sup> Voters are already thinking about politics with the presidential campaigns and are more likely to be in tune with the national issues because of widespread media coverage and focus. This can lead to ballot roll-off, when voters only vote for top-of-ticket races and then abstain from making selections for lower races (often many of the state races).<sup>5</sup>

The inherent problem with holding gubernatorial and presidential elections at the same time, however, is the obvious conflation of national and statewide issues. Gubernatorial candidates are pressed by voters for their positions on issues important to the presidential and national races but less relevant or perhaps even totally immaterial to the governor's race. There is also the potential **coattail effect**, in which a popular presidential candidate can "carry" the other candidates on their party's ticket because voters will turn out to support the presidential candidate

4. National Governors Association, "Governors: Gubernatorial Elections."

5. Knack and Kropf, "Roll-Off at the Top," 575-594.

they prefer and just mark the ballot for the other candidates from the same political party.<sup>6</sup>

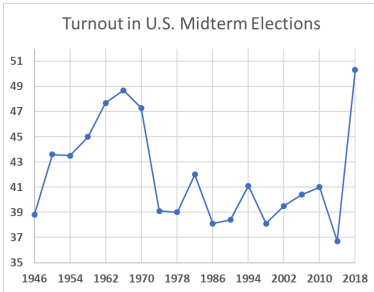
More broadly, the **down-ballot impact** can influence any candidates who are listed lower on the ballot (so state legislative races or state judicial races and even local races if they are on the ballot) when voters have strong preferences for candidates in races at the top of the ticket (i.e., US president, US Senate, or even governor) and less knowledge of or interest in the lower races.<sup>7</sup> Voting for all the candidates from the same party, known as straight-ticket voting, will often benefit the candidates at the end of the ballot from the more popular or preferred party that cycle.<sup>8</sup> Voters have limited attention and memory, so while they may dedicate some time to deciding their choice for the major races, those other races that appear lower on the ballot and are less familiar to voters, also known as low-information elections, are often subject to the voters' opinions of the top of the ticket.<sup>9</sup>

6. Golder, "Presidential Coattails," 34–48; Hogan, "Gubernatorial Coattail Effects," 587–597; Meredith, "Exploiting Friends-and-Neighbors," 742–765.

7. Andersen, "Down-Ballot Problem."

8. Bonneau and Loepp, "Getting Things Straight," 119–130; Rempel and LaForge, "Don't You Forget," 395–406.

9. Hirano et al., "Voter Learning," 91–108.



**Figure 9.1 – Turnout in US Midterm Elections and State Elections, 1946–2018**

Source: “[Turnout in U.S. Midterm Elections](#)” by Orser67 on Wikimedia Commons / [CC BY-SA](#).

True **low-information elections** are those where voters may be unaware of the offices they are voting for, what responsibilities and roles those offices have, who the candidates are, and what their particular positions, experiences, and ideas for that office may be.<sup>10</sup> In local races for the county auditor or coroner, voters rely on partisanship to make these decisions, and when that label

is absent (in nonpartisan local elections), then voters are left with even less information to use in their decision.<sup>11</sup> Sometimes, organized interest groups will take advantage of low-information elections to achieve their electoral goals.<sup>12</sup> Fewer voters turn out in the spring primaries, though those that do are more ideologically extreme, making for a vastly different electorate to win over compared to the November general election.

Voting in state elections follows two different types of races: statewide and district. Statewide races include the state constitutional offices and those in the executive branch, such as governor, lieutenant governor (whether elected on the same ticket or split from the governor), auditor, treasurer, comptroller, secretary of state, and attorney general (to review the differences within these offices, go to Chapter 5). These races are statewide, so candidates must campaign across the state, just as candidates for the US Senate do. State legislative races, however, are divided by

10. Alvarez, Hall, and Levin et al., “Low-Information Voting,” 1012–1038.

11. Holman and Lay, “Are You Picking Up?,” 315–341.

12. Anzia, Timing and Turnout.

district based on the number of seats in the assembly (as discussed in Chapter 4). Because these districts may be as small as 1/400th of the state (as it is in New Hampshire, where the house is composed of four hundred members), the campaigns are far less expensive and less professionalized. The impact of the size of the electorate and the approach and strategy in campaigning will be discussed later in this chapter (in “How Do Polling, Public Relations, and Campaign Finance Work?”).

## What Are State Election Laws?

States play a large role in deciding election regulations, which can impact voter turnout. In addition to determining when and where to hold elections (whether voters select a governor in the same election as the president, for example, or the timing of the primary elections), state law determines policy involving requirements for voting, timing for elections, and rules for candidates.

### Voting Laws

The laws involving voting range from what is required of voters to participate to how they can participate and even where they can participate. As discussed earlier in the chapter, the eligibility requirements to vote in US elections are set by the federal government and have expanded significantly since the ratification of the US Constitution. But the process and requirements to cast a ballot can be determined by the state government, in terms of voter registration, voter ID laws, early voting, and absentee or vote-by-mail options.

Voter registration requirements represent a merge of both federal guidelines and state governance. The **National Voter**

**Registration Act of 1994** (NVRA) required states to simplify voting registration procedures, allow voter registration through mail, and create a simple, one-page document to be nationally accepted as a voter registration form.<sup>13</sup> Additionally, it mandated that government agencies offer voter registration when eligible citizens interact with their department, so when individuals renew their driver's license, they are asked if they would also like to update their voter registration. This process led to the nickname of "Motor Voter" for the NVRA. States still have their own voter registration forms but are required to accept the national one. States also still determine their timeline for voter registration in addition to other details.<sup>14</sup> Twenty-two states allow same-day voter registration, while the rest require fourteen days or even thirty days advance registration to be eligible to vote prior to the actual election.<sup>15</sup> State policy also governs whether a third party can help register a voter and what requirements are entailed for that registration to be accepted.

13. Moss, "Motor Voter."

14. Highton, "Voter Registration," 507-515; Ansolabehere and Konisky, "Introduction of Voter Registration," 83-100.

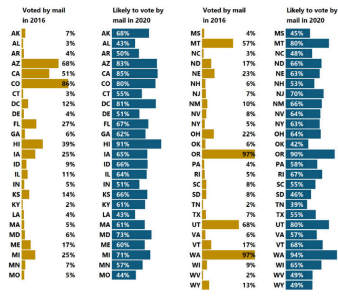
15. National Conference of State Legislatures, "Voter Registration Deadlines."

The details of actual voting are determined by state law as well. A few states proactively mail ballots to all registered voters, known as universal vote by mail (California, Colorado, Hawaii, Oregon, Utah, Vermont, and Washington).<sup>16</sup> More

commonly, some allow voters to select a “no-excuse” option to vote by mail, while other states allow absentee voting, but only if the voter is eligible based on the requirements outlined by the state (typically involving the voters’ access to the polls on Election Day). The location of the polls and accessibility are chiefly determined by the state government with some influence of federal regulations.<sup>17</sup> Voting centers, enabling voters to cast a ballot wherever they like within the county, for example, can be used depending on the state. All polling locations must abide by Americans with Disabilities Act (ADA) accommodations to make them accessible to all voters.<sup>18</sup>

The **Voting Rights Act of 1965** significantly impacted local voting decisions by requiring local governments to apply for preclearance from the Department of Justice in any changes made to their elections. This was created because of massive and egregious violations in voting accessibility before and during the

**Voting by absentee or mail-in ballot this November**  
 [ Percent respondents planning to vote who say “somewhat likely” or “very likely” ]



National sample, N = 19,016, Time period: 7/10/2020-7/26/2020  
 Source: The COVID-19 Consortium for Understanding the Public's Policy Preferences Across States (a joint project of Northwestern University, Harvard University, Rutgers University, and Northwestern University) www.covidstates.org  
 2016 numbers are based on Pew Research Center analysis of 2016 and US Census data.

**Figure 9.2 – 2020 Absentee and Postal Voting by State**  
 Source: “[Voting by Absentee or Mail-in Ballot this November \[2020\]](#)” by David Lazer, Katherine Ognyanova, Matthew Baum et al. in *The COVID States Project #7: Update on vote by mail / CC BY.*

16. Cottrell, Herron, and Smith et al., “Vote-by-Mail,” 577–590; Roth, “States That Send a Mail Ballot.”

17. Mann and Stein, “Impact of Polling Places.”

18. Schur, Ameri, and Adya et al., “Disability, Voter Turnout,” 1374–1390.

civil rights era and overwhelmingly impacted Southern states and jurisdictions. It meant that even a change in the polling location for voters had to be submitted, reviewed, and agreed to by the federal government in order to be enacted. The US Supreme Court ultimately overturned Section VI of the Voting Rights Act, which described the coverage and scope of the law, rendering the preclearance provision void in *Shelby County v. Holder* (2013).

**Voter ID laws** became popular beginning in the early 2000s as a way for states to minimize the likelihood of voter fraud. Despite voter fraud being a relatively minimal and overwhelmingly individual endeavor, states created policies that required voters to prove their identity when casting a ballot. Thirty-six states have instituted these laws that require some form of identification to be furnished upon requesting a ballot. Strict voter ID law states require IDs that are issued by the state to include an expiration date, a picture, and a name as it reasonably conforms to the voter's name (so "Matt" as a popular derivative of the more formalized "Matthew"). Less strict laws may request a photo ID but not require it and offer an oath of identity confirmation if no ID is shown.

Proponents of these laws argue that they help prevent voter fraud and make sure that voters are who they claim to be when requesting a ballot. Voter fraud includes lying about your identity, your residency, and/or your qualifications (i.e., age or citizenship). Opponents criticize the burden of proof this puts on the voter and the disproportionate difficulty this places on voters who do not have a driver's license or access to other forms of acceptable identification.

## Election Timing

Federal general elections are set by the federal government and occur on the first Tuesday of November, except when that day is November 1, and then it is the second Tuesday of that month

(November 8). The timing for the primary elections, though, and also statewide elections that are not concurrent with federal elections, in addition to local elections, is determined by the state government.

**Primary elections** (explained in more detail in “What Are Primary and General Elections?”) occur in the late winter or spring months, when the party voters select the candidates to represent their party in the general election, which occurs in November. In nonpresidential election cycles, the timing is relatively innocuous and generally unimportant. There does need to be enough time between filing and the actual election, but otherwise, the difference between March and May is more likely a historical tradition than a political decision. This is quite different, though, in federal elections, when states try to compete to have the earliest primary election and thus bring a lot of attention (and economic surge) to their state. Iowa, New Hampshire, and South Carolina have all competed in recent years to be the first primary that starts in allowing voters to narrow down the presidential selection.<sup>19</sup> For our purposes in state elections here, however, it is more important to understand that primary election season ranges in the country from January through June, depending on the state.

State governments also determine the timing of local elections, sometimes intentionally arranging them on “off-off” election cycles (so in 2025 or 2027) and even over summer months to avoid the conflation with national issues and minimize a down-ballot effect.<sup>20</sup> The times that polls are open are likewise the decision of the state governments, with some polls opening as early as 6 a.m. and some closing as late as 8 p.m.<sup>21</sup> Within this range, all states have polls open at least twelve hours, some stretch voting

19. National Conference of State Legislatures, “State Primary Election Types.”

20. Dde Benedictis-Kessner, “Off-Cycle,” 119–132.

21. Potrafke and Roesel, “Opening Hours,” 133–163.

hours to fourteen hours in one day, and one (New York) keeps polls open for fifteen hours on Election Day.

## Rules of Candidates

State law governs the requirements for who can run for public office, and some of those requirements vary slightly based on the office itself. Residency and age are always required, so meeting the threshold for the length of time the prospective candidate has resided in the state and the minimum age necessary to qualify. Typically, these are much lower than the average actual candidate's statistics, so while the state may require a candidate to be at least eighteen years old and live in the state for at least one year before filing to run for governor, most gubernatorial candidates will tend to be much older and have been residents for much longer. Party affiliation is determined by the state, with some states giving the party greater authority in determining whether a candidate qualifies to run on their party's ticket and others having much less influence in that decision. Finally, some offices require additional credentials. To run for the attorney general, a candidate must be in good standing with the state bar as a licensed attorney. To run as an auditor, a candidate may need to meet the professional requirements of a CPA.

**Filing** is the process through which an individual formally declares their candidacy for an office. They sign paperwork to do this through the secretary of state's office and often have to pay a relatively small (around \$500) filing fee to put their name on the ballot. Sometimes they are also required to meet a minimum requisite number of signatures from eligible voters. Though these requirements may feel like barriers to prospective candidates, the reality of running a successful campaign in state elections is that the

financial cost and voter support will far exceed the bare minimums required by the secretary of state's office to file.<sup>22</sup>

In addition to filing, all states embody reporting requirements that campaigns have to regularly meet. This includes quarterly filings with the secretary of state's office for campaign finance data (discussed in more detail later in “How Do Polling, Public Relations, and Campaign Finance Work?”). These requirements ensure the campaigns abide by the state law and embody the transparency and accountability that are essential to democratic elections.

## What Are Primary and General Elections?

Voter turnout in state elections lags significantly behind voter turnout in federal elections for several reasons, as noted in “What Is Voter Enfranchisement and Turnout in State Elections?” Another major difference in voter turnout depends on the type of election itself. Whether the election is a primary election, runoff election, or general election will have an impact on how many (and also which) voters choose to participate.

### Primary Elections

Primary elections occur during the late winter and early spring months. Their purpose is to enable the party to select their preferred candidate for each race, who will then go onto the general election in November. Primary elections are a democratic process for candidate selection because voters get to decide who will

22. Stratmann, “Ballot Access,” 59–71.

represent their party, but there are several different types of primary elections that differ in terms of voters' qualifications to participate.<sup>23</sup> Some states utilize a caucus system instead of primaries.<sup>24</sup> States also use conventions for their respective parties (similar to national conventions, though on a smaller scale), but most of the offices are selected via elections and not through the convention system. The differences between the various primaries and caucuses are explained below.

Elections where any registered voter can take any of the eligible parties' primary ballots to cast their vote are known as open primaries. These allow all eligible voters to participate in the primary election, regardless of party registration. Voters can decide on Election Day which party ballot they choose to take, but they may only take one party's ballot, or the party can decide whether to allow unaffiliated voters to take their party's ballot. They are neither fully open (as there are additional limitations to participation) nor completely closed, as the restrictions are still minimal in the hybrid options comparatively. Twenty states use an open primary election.

It is important to note here that because of the two-party system in the US (as will be discussed in Chapter 10), the requirements for third parties to be able to hold primaries are established by the state and can be difficult to meet. Some states may have several primary ballot options to choose from, whereas others may only offer the two major political parties, the Democrats and the Republicans. In cases where only two parties hold primaries, the third parties may choose to use the convention system to formally select their party's candidates ahead of the general election.

**Hybrid primaries** include semiopen or semiclosed primaries in which voters may need to be registered with a party

23. Hirano and Snyder, "Primary Elections," 473–500.

24. Busch, *Rules and Politics*; Clayton and Ringhiser, "Primaries and Caucuses."

in advance in order to participate but can choose to change their registration on the day of the election. Sometimes these are referred to simply as semiclosed primaries, while in other circumstances this is the result of the parties being in control of the primary elections and thus getting to decide accessibility for voters. Fourteen states use a semiclosed primary election, and four states enable the political parties to decide and organize the primary election.<sup>25</sup>

Primary elections in which voters must be registered with the party prior to the election in order to participate are known as **closed primaries**. This restricts participation to only those who have previously declared their party affiliation and makes it more likely that those voters selecting candidates for a party do actually identify as members of that party. Fifteen states use a closed primary election.<sup>26</sup>

This primary also helps minimize the potential for **crossover voting**, which occurs when a member of a different party chooses to instead take the ballot for the other party rather than their own.<sup>27</sup> When this occurs more widely or is part of a coordinated effort, it is referred to as **party raiding**. The repercussions for voting in a different party than you affiliate with are vague and difficult to enforce. Party “membership” as determined by registration is really affiliation (meaning they are not either accepted or denied membership by the leadership or broader base of members, as might be true in other organizations). It is also self-selected, so a voter gets to decide and declare their partisanship, but no formal test of loyalty or confirmation of ideological purity exists.

25. National Conference of State Legislatures, “State Primary Election Types.”

26. National Conference of State Legislatures, “State Primary Election Types.”

27. Cho and Kang, “Open Primaries,” 351–379.

The constitutionality of ballot access for primary elections has evolved over time.<sup>28</sup> Voters in Louisiana, California, and Washington were eligible to participate in **blanket primaries** in which voters could take the primary ballots for both major parties in the same election. These were declared unconstitutional by the US Supreme Court in 2000.

Five states (including the three noted that previously used blanket primaries) employ a top-two primary system in which the top two candidates with the highest percentage of the vote go on to the general election.<sup>29</sup> This differs from the other primaries because the candidate from each party with the highest percentage of votes goes on to the general election regardless of how well candidates for the same race but from different political parties fared. Because the top-two primary system rewards the best two candidates, regardless of partisanship, it is very possible that the two candidates competing in the general election are from the same party.

Two states (Alaska and Maine) and several local governments (including Seattle and Salt Lake City) utilize a different system for selecting candidates known as **ranked-choice voting**. In this system of voting, candidates rank the order of their preferred candidates, and the candidates who receive the most votes (i.e., are among the more preferred candidates of voters) win. Depending on the ballot organization, voters may write “1, 2, 3...” to indicate their choice or fill in the names of their selection in order of preference. While Alaska, Maine, and many city governments presently use this method for elections, other cities and states have adopted and repealed this process over time.

28. Gaines and Cho, “Crossover Voting.”

29. National Conference of State Legislatures, “State Primary Election Types.”

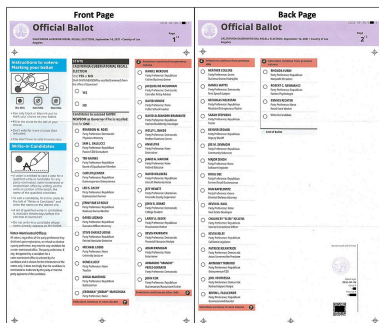
## Runoff Elections

The top two candidates compete in **runoff elections** too, but these are different from the top-two primary elections.<sup>30</sup> Runoff elections are held in nine states; though the parameters vary slightly, they are typically mandated when no candidate achieves a majority of the vote. This would be essentially impossible in an **uncontested race** (when only one candidate qualified for the ballot) and very unlikely in a race with only two candidates (possible in this situation only if a write-in candidate prevented any candidate from attaining 50 percent). However, it occurs often in circumstances where there is a **crowded primary**, meaning there are several candidates competing to win. Proportionately, the likelihood of a runoff election increases with the number of candidates that enter the race, but it does not mean it is inevitable. Runoffs are primarily centered in the South and operate as a mechanism that historically diluted the impact of African American voters.<sup>31</sup>

In states without runoff elections, candidates who simply garner a plurality of voters, whether or not it is a majority, are considered winners in the electoral contests. In runoff states, though, a runoff will occur when no candidate gets a majority. Most of these runoff elections are held in Southern states (Alabama, Arkansas, Georgia, Mississippi, North Carolina, Oklahoma, South Carolina, and Texas, with the one errant exception of South Dakota). Historically with one-party dominance, first the Southern Democrats from post-Reconstruction through the 1980s and then the Republican Party since the 1980s, runoffs were necessary because one party would attract many candidates, making it harder for a single candidate to capture a majority.

30. National Conference of State Legislatures, "Primary Runoffs"; Indridason, "Competition & Turnout," 699–710.

31. Brown, "Georgia's Runoff System."



**Figure 9.3 – California Recall Election Ballot in Los Angeles County, 2021**  
 Source: “[2021 California Gubernatorial Recall Ballot](#)” by the State of California on Wikimedia Commons / [Public Domain](#).

## Caucuses

Five states use caucuses in place of primary elections to determine the candidates who will proceed with the party label in the general election. **Caucuses** are political meetings run in person at a local level (either county or precinct depending on the state and the population density).<sup>32</sup> Some caucuses have secret ballots, similar to an election, while

others essentially have voters split themselves up into groups based on the candidate they support.<sup>33</sup> Iowa is perhaps best known for its caucus system, which is among the earliest primary selection in the presidential election.

## General Elections

General elections occur in November and are the actual contests to decide the office holders for the specific races. Who qualifies to compete in these races is decided by the primary elections described earlier. These elections often have much higher voter turnout on the whole relative to primary contests.

Primaries are theoretically, if not procedurally, limited to partisans. In a closed primary election, voters must have previously

32. Busch, Rules and Politics.

33. Smidt and Christenson., Presidential Primaries and Caucuses.

declared their party affiliation in order to participate, thus rendering nonpartisans, independents, third-party voters, and any other voters who do not identify with the major political parties unable to participate in states that do not enable them to host primary contests. Even in open primaries, voters are limited to selecting from candidates for one party, meaning a voter still must decide which ballot to choose.

In presidential election cycles, the timing of the primary may be late enough in the season that primary voters do not make an impact in deciding the presidential candidate for their party. Early primary contests (as discussed earlier in “What Are State Election Laws?”) play a disproportionate role in determining the party’s presidential candidate, but for primaries in June, May, or even as early as April, the candidates may have secured the requisite number of delegates through previous primaries in order to be secure as the nominee.<sup>34</sup> The primary elections still matter for all the statewide races that are down ballot, but the national excitement that follows the presidential election will be less impactful in those states in which the contest is already decided.

Turnout tends to be significantly higher in general elections relative to primary ones because the awareness of voters is higher.<sup>35</sup> Campaigns focus their communication, mobilization, and get-out-the-vote initiatives on the general election. Uncontested races are more common in primary elections but rarer in the general election, meaning the stakes are higher; primaries tend to benefit more ideologically pure candidates, while the opposite can be true in general elections.<sup>36</sup> Of course, a candidate

34. Boatright, Moscardelli, and Vickrey et al., “Consequences”; Boatright, Moscardelli, and Vickrey et al., “Primary Election Timing,” 472–485.

35. Nownes, “Primaries, General Elections,” 205–226.

36. Ansolabehere et al., “Decline of Competition,” 82–96; Boatright and

must win in the primary election in order to qualify for the general, but the general election is the deciding factor for the future officeholder.

## How Do Candidates and Parties Operate?

Elections in the United States used to be organized more around the political parties themselves.<sup>37</sup> Parties were strong organizations that motivated membership on the basis of patronage and would often assist in the organization and implementation of a campaign. This was especially true when states relied more heavily on conventions rather than primary elections to select the candidates who would appear on the ballot in the general election.<sup>38</sup>

The importance of campaigns and the requirements of a modern campaign (described later in this chapter in “How Do Polling, Public Relations, and Campaign Finance Work?”), in addition to the advent of primary elections, shifted the focus of campaigns from the party onto the candidate. While partisanship still plays an important role in elections, campaigns are more candidate driven and focused.

Some of the reasons for this change are straightforward. Primaries necessitated candidate-driven elections because several candidates were competing for the same party label, making the endorsement or support of the party more difficult.<sup>39</sup> Some areas utilized a concept known as **slating**, in which the party leadership

Moscardelli, “Is There a Link?,” 188–212; Routledge, 2018; Hirano et al., “Primary Elections,” 169–191.

37. Wattenberg, *Decline of American Political Parties*.

38. Hirano and Snyder, *Primary Elections in the United States*.

39. Hirano and Snyder, “Direct Primary.”

would declare their preferred candidate prior to the election, but the uncomfortable awkwardness that lingered if that candidate lost to another one the party was initially supporting made this process less popular.<sup>40</sup>

Parties likewise had more control, with partisanship being stronger among US voters, and the benefits of supporting the party were more concrete.<sup>41</sup> More Americans identify now as nonpartisan or independent rather than as a member of one major political party or another.<sup>42</sup> That is not to say voters support only independent candidates; rather, by not identifying as a member of a party, voters feel less allegiance to the party and their slate of candidates. At the same time, there is less of a clear incentive to support a party aside from personal preference. Before the civil service reform and institution of merit exams, party patronage provided tangible, meaningful rewards for party support, like securing a lucrative government job or being promoted within the party to the next level. The demise of the patronage system coincided with the decline of incentivization for party affiliation, making space for more candidate-centered campaigns and elections.

In the primary election, candidates receive very little formal support from the party. Candidates must organize their campaigns, including hiring campaign managers and campaign treasurers, determining PR, polling, performing outreach, mobilizing, advertising, and so on. They are also responsible for their own fundraising efforts. After the candidates have secured their party's nomination by winning the primary election, they will

40. Mayhew, *Placing Parties in American Politics*.

41. Fiorina, "Parties and Partisanship," 93–115; Heath, "Trends in Partisanship," 158–169; Abramowitz and Webster, "Rise of Negative Partisanship," 12–22.

42. Twenge et al., "More Polarized," 1364–1383; Pew Research Center, "Political Independents."

receive help and assistance from the political party, but they must win the primary in order to move on.

Single-issue interest groups and political action committees (PACs) can be tremendously influential in primary elections by helping financially support candidates and also creating their own campaigns to share their preferences with voters.<sup>43</sup> The 24/7 news cycle enables candidates to try to leverage earned media opportunities for hosting an interesting press release on a salient issue or capturing public interest and attention in another way.<sup>44</sup> Social media has added a somewhat more democratic element to campaigning, making it more accessible and easier for smaller campaigns to make a larger impact depending on the candidate's strategy and their opposition's approach.<sup>45</sup> All these factors are influential in candidate-centered campaigns.

## How Do Polling, Public Relations, and Campaign Finance Work?

While every campaign, candidate, race, and election cycle may vary, all successful modern campaigns incorporate several components with the ultimate aim of getting more voter support than the opposition candidate(s). Statewide campaigns can have an additional challenge of exciting voters to participate (in nonpresidential election cycles when many people may not be thinking as much about politics) or separating their campaigns from

43. Berry, "Interest Groups and Elections," 340; Boatright, Malbin, and Glavin et al., "Independent Expenditures," 119–140.

44. Turnbull, "Politics, Journalism," 50–67.

45. Munger et al., "Accessibility and Generalizability,," 20531680211016968.

national races and issues (in cycles that coincide with presidential elections or even congressional midterms). Ultimately, a successful campaign is one in which the candidate has the most votes, but achieving what seems like such a straightforward objective is far more complicated than it sounds. Candidates thus need to create a campaign team with several specifically delegated roles to execute their strategy for electoral success.

## Polling

Polling is an essential component of effective campaigning. It provides a rare but necessary insight into the voter's perspective: their impressions of the candidate, their prioritization of the



**Figure 9.4 – Election Signs Encourage Voters to Select Candidates, 2008**

Source: [“Voting on Houston’s west side”](#) by Ed Schipul on Flickr / [CC BY-SA](#).

issues, and their values and understanding of the specific race.<sup>46</sup> In an ideal world, campaigns would routinely conduct methodical, robust polling to assess the progress of the race. Polls conducted early in the campaign would set the benchmark for where the candidate was starting, and polls repeating consistently throughout the race would illustrate what tactics were successful and what weaknesses or challenges remained. A final poll shortly before the election could provide the motivation a wary and tired campaign might need to finish strong or the confidence for a leading candidate to minimize anxiety about the outcome.

Good polling can do all these things, but for most state elections, they are far less frequent than ideal. Gubernatorial races

46. Giammo, Polls and Voting Behavior; Feltoich and Giovannoni, “Campaign Messages,” 408–426.

are the top of the ticket and often the most expensive and visible races. As often as candidates can afford to conduct polling, their campaigns can use it to measure progress and adjust their strategy. For most other campaigns, polling occurs far less often. Internal polls are those conducted, typically by an outside organization, on behalf of the campaign. Campaigns may share the results of those “internals” if they reveal positive information about the candidate that they can use to promote the race; the media may use these for talking points too, though they are generally considered less verifiable and will usually be discussed with the caveat that the poll was not independently conducted.

State legislative races may operate on such a small budget that they forgo formal polling altogether. In place of polling, campaigns can host small focus groups or use their own personal assessments about the race to influence their strategy. Robust polling incorporates a good-size random sample of the district and can take several weeks to organize, implement, and analyze, which is why it can be cost prohibitive for smaller campaigns with less funding. Campaigns may choose to run their own polls with the implicit understanding that bias can lead to some inaccuracies, but the results most broadly can still be beneficial in influencing strategy.

## Public Relations

Public relations is increasingly influential in state political campaigns. Polling can tell the campaign what voters think, but good PR can help the campaign match the candidate to what the voters want. There are public relations firms that are dedicated exclusively to political campaigns and even those that specialize in their respective political parties, so their focus is deeply tied to the ideological and partisan preferences of their voting base.

Public relations can cover the very minimum for small

campaigns. For a state legislative race, this might be basic candidate branding, including a font and color scheme and perhaps also a slogan for a candidate. Websites are essential for voters to research candidate-approved messaging, and social media also offers additional points of access for candidates to connect with voters and for voters to seek out candidates. Yard signs, direct mailers, and campaign literature / door knockers are all routinely part of campaigns that public relations can assist with.

For larger or more funded races, public relations may be involved in the production of TV/radio or professional social media advertisements. The cost of creating a high-quality TV advertisement is expensive, but then the cost of airing that ad regularly enough to maximize exposure and justify the production cost is even higher.<sup>47</sup> In competitive and expensive gubernatorial races, there may be several different TV advertisements, whereas state legislative races usually do not include this type of campaign outreach.

Public relations primarily concentrates on paid media, influencing the advertising that serves as outreach to voters in mobilizing them to support the desired candidate.<sup>48</sup> It can also be impactful in earned media too, when a candidate receives attention from the media for a news piece. Earned media, typically a story on local news involving the candidate, provides free news coverage and is viewed as more authentic and reliable by voters, but it is also a form of outreach that the candidate and campaign have less control over in the messaging compared to a paid advertisement.<sup>49</sup> Public relations can help prepare the candidate to both speak and look the right way. If the earned media coverage provides negative exposure, public relations campaigns can help respond and adjust to improve the public opinion of the candidate.

47. Yanich, *Buying Reality*.

48. Stromback and Kiouisis, *Political Public Relations*.

49. Elving, "Changing Dynamics," 291-321.

## Canvassing/Mobilization

Campaigns in state government in the twenty-first century incorporate many new features in polling, public relations, social media, and other aspects that differ greatly from the campaigns for the very same races fifty years ago. One common attribute, however, remains. Canvassing, or going door-to-door to connect with voters, remains one of the most effective campaign strategies to mobilize voters.

Canvassing allows candidates and their supporters to connect directly and one-on-one with prospective voters in the district. Campaigns strategically target houses with voters who are likely to vote and may be willing to support their candidate. This strategy has been improved through modern technology, which enables canvassers to use their phones and find residences with voters that the campaign aims to target, providing their basic details to make an introduction and conversation even easier to initiate. Campaigns generally avoid residences with nonvoters or voters who affiliate with the other political party, understanding that these voters are not likely to support their candidate and thus not worth the time and effort. Instead, they target voters who may support their candidate and work to get those voters' support in the election.

Canvassing requires a tremendous amount of time and effort to do it effectively.<sup>50</sup> Each door needs to be knocked on. If the resident answers and is willing to talk, it will take time to conduct a meaningful conversation. Good canvassing isn't aimed at changing hearts and minds, so if a voter says no, the canvassers politely accept and move on. Door knocking remains effective, though, because it provides interpersonal relationships and a unique

50. Barton, Castillo, and Petrie et al., "What Persuades Voters?" F293–F326.

opportunity for voters to actually meet the candidate (or supporters) and get to hear directly from them about what is at stake in the race and why they should ultimately provide their support.

## Campaign Finance

Money plays a vital role in campaigns of any size. Every component of modern campaigning described in “How Do Polling, Public Relations, and Campaign Finance Work?” requires significant funding, and the greater success fundraising efforts have, the more engagement and opportunities campaigns will have to target voters.<sup>51</sup> State campaigns vary widely in how much they fundraise and spend, but several variables help explain these differences.

The size of the district/constituency guides how much funding is needed to reach out to the ideal number of voters.<sup>52</sup> For statewide races, this would include the entire state, whereas for state legislative races in states with large assemblies (where the district might be 1/400th of the state, as it is in New Hampshire), the number of voters is significantly smaller, but the geographic boundaries are more limited too.<sup>53</sup> Geography might seem irrelevant, but the mileage and population density can play a role in voter outreach strategy—whether canvassing is the most effective way to reach voters or, considering the cost and reach of the media market, if TV/radio advertising is better.

The presence of meaningful competition also determines how much funding is truly needed to win the election. In a race

51. Weschle, *Money in Politics*; Cagé, *Price of Democracy*; Bailey, “Two Sides of Money,” 653–669.

52. Powell, *Influence of Campaign Contributions*.

53. Hogan, “Costs of Representation,” 941–956.

with no other candidate on the ballot, the only candidate is not incentivized and may not be motivated to do anything. A race with several other candidates or a candidate who seems competitive will necessitate more involvement, though. An incumbent, a popular challenger, or a candidate with unique circumstances or an unusual race could all draw more attention and thus require more investment in the campaign.<sup>54</sup>

Finally, the circumstances of the race and cultural standards can influence how much money is needed in a particular race. Races that receive a disproportionate amount of attention, occur during low voter turnout cycles (so the campaign needs to focus on voter engagement and mobilization), or occur during presidential election cycles (so the campaign needs to separate itself from the other political noise) may need to generate more funding to make up for these challenges. The cultural expectations of the district/state should be considered too. In very rural areas, canvassing may not be an effective option, but the costs of ad buys in the media market make it more affordable and realistic. Some communities may find campaign door knocking unusual, while other areas may have the expectation to have more interaction with candidates.

States regulate campaign finance through policies and reporting required of the campaigns.<sup>55</sup> Most states have regulations with regard to who can donate and how much they can contribute. Categories to separate donor types include individual, corporation, unions, parties, and PACs. Some limits are strict, meaning there is a low maximum amount a donor can contribute, while eleven states allow for unlimited contributions.<sup>56</sup> Regulations also exist for campaign spending, prohibiting candidates from using their

54. Ansolabehere et al., “Incumbency Advantage,” 660–668.

55. Gilens, Patterson, and Haines et al., “Campaign Finance,” 1074–1081.

56. National Conference of State Legislatures, “State Limits.”

campaign funds to bankroll personal items or violating laws regarding campaign spending.

## What Is the Relationship Between Policy and Elections?

Students of government might assume that policy guides the decision-making of both public officials and voters. After all, the primary function of a state-elected leader's job is to craft policy (the legislative branch), implement it (the executive branch), or determine its constitutionality (the judicial branch). The job of voters is to assess and ultimately select the best candidate to follow through with these functions. It would make sense that policy would be a primary consideration in both lawmaking and voting.

Yet American elections routinely disprove this assumption. Voters overwhelmingly evaluate candidates on the basis of party and then on personal characteristics, some more relevant to the office (experience, education, expertise, etc.) than others (charisma, charm, unique background, etc.).<sup>57</sup> Partisanship remains an easy cognitive shortcut for voters who are less engaged and less attentive to the political world. The old adage of evaluating candidates to find one “you’d like to have a beer with” may seem silly but still holds true.<sup>58</sup> Campaign advertising targets what voters want, identified through extensive polling and crafted with public relations (as discussed in “How Do Polling, Public Relations, and Campaign Finance Work?”). Even debates, ironically often organized

57. Garzia, “Voter Evaluation,” 633–653; Lodge, Steenbergen, and Brau et al., “Responsive Voter,” 309–326.

58. Nai, Maier, and Vranić et al., “Personality Goes a Long Way,” 636–745; Redlawsk and Lau, “I Like Him,” 187–208.

with the intention of depicting issue-driven differences among candidates, can heighten the personality features of candidates to voters.

Americans' interest in policy is limited to a handful of issues, typically those salient to the current political discourse.<sup>59</sup> Many voters may care only about a couple of policies, while some are single-issue voters who judge a candidate strictly on their stance on one particular issue.<sup>60</sup> Even then, partisanship can easily supplant policies in a general election. While voters may need to be more discriminating and discerning in a competitive primary, general election voters in state elections can rely on the party label to make a strong evaluation of the candidate without complete or even comprehensive information.

The challenge is that a small subset of voters wish to have more thorough information, and in closely competitive races or races with a substantial amount of attention, candidates may be pressed to share their stances on a wide range of issues. Campaign websites provide a great medium for candidates to convey their positions within unlimited space that is easily accessible to an interested voter. Rather than issue a policy plan for every potential topic the office may encounter during a term, the campaigns are more likely to highlight the issues important to voters (again, as indicated in polling) and to the candidates themselves.

Criticism of political campaigns, especially at the state level, arises when voters, the media, or current elected officials chastise candidates for not focusing on the issues of the particular office they are seeking. This seems to occur more frequently with the nationalization of politics. On one hand, the candidates should be addressing their stances and be approached on the actual issues they would be responsible for if elected to the office they want. On the other hand, however, voters may be overwhelmed by political

59. Bechtel et al., "Reality Bites," 683–695.

60. Dejaeghere and Van Erkel, "Importance of Issue-Ownership," 15–25.

noise (especially if the state elections coincide with a national election cycle), may focus more on national issues, and may be less familiar with the actual responsibilities of the office.<sup>61</sup> This presents a challenging dilemma, as voters listen chiefly to the information they are provided with, and campaigns provide information that they think voters care most about. In elections with many different offices from different levels of government (federal, state, and local) and different branches of government (legislative, executive, and judicial), it is hard for voters to delve too deeply into each candidate's policy preferences and consider that information in addition to other attributes such as partisanship that are incorporated in a campaign.<sup>62</sup>

## Conclusion

Campaigns for state elections resemble federal campaigns in some aspects but in general are smaller and less expensive. The shift from political parties to candidates has given the campaigns more flexibility to frame their campaigns, but it has also required them to be more involved and responsible in the process. Primary elections give voters the chance to decide who will represent their party in the general election, but the different forms of access, from an open primary (in which anyone can participate) to a closed primary (in which only registered partisans can), will impact how limited involvement can be. General elections have higher voter turnout than primary elections, though that differs among presidential elections, which have the highest; state and congressional

61. Andersen, "Crowded Out," 1–20.

62. Bower, "Simpleminded Voter," 22–25; Augenblick and Nicholson, "Ballot Position," 460–480.

midterms; and finally local elections, which tend to have the lowest voter turnout.

While federal changes expanded voter enfranchisement, states still enjoy authority over elections in terms of regulations for filing, campaign finance, voter eligibility, and election options and timing. States are thus able to tailor their election laws to reflect their own interests, whether they want to make voting easier and more accessible out of a concern for democratic participation or if they want to ensure voter legitimacy and integrity by focusing on minimizing attempts or opportunities for voter fraud. Policies involving voter registration, candidate qualification, voter ID laws, and campaign finance regulations are generally decided by the states (with some small exceptions from the Voter Registration Act of 1965, as noted in “Voting Laws”). Though the rules and restraints placed on elections can have a major impact on their outcomes, the role of policy is relatively minimal in state campaigns. Campaigns for state races should address several key policy areas relevant to the office, but they may not be driven by those issues. Voters can be easily overwhelmed with many factors to consider when casting their ballot, and the political noise is heightened during presidential election years or election cycles when national issues more broadly dominate the political discourse.

Campaigns in state government can be immensely valuable for voters, however, as they learn about the offices, candidates, and vision for the future of their state. Because they are smaller and closer to the people, constituents are more likely to have interactions with candidates running for these offices compared to federal ones, and these can be meaningful in shaping voters’ thoughts and preferences. Campaigns at the state level are generally less expensive than those of national offices, which may require campaigns to be selective in their strategy, using polling, public relations, and professional communications when possible. At the end of the election, voters are less likely to select statewide offices, but they are more likely to be impacted by the decisions of their

state government, which means these campaigns and elections are still important in daily life.

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# Case Study Chapter 10

GREGORY SHUFELDT

## Chapter 10 Case Study: Alaska Shows Another Way: Coalition Governments and Primary Reform

Political scientist E. E. Schattschneider famously wrote that “modern democracy is unthinkable save in terms of the parties.”<sup>1</sup> With that, he pointed to the essential roles political parties play in connecting citizens with their government. Two features often attributed as exclusive to political parties are that they (1) nominate candidates for office and (2) organize the government.

Political parties certainly organize state legislatures. More than 82 percent of Americans live in the forty states that are currently governed by a one-party trifecta, where one party controls both chambers of the state legislature and the governorship.<sup>2</sup> While a high figure, one-party rule is the norm more often than not at the state level.<sup>3</sup> After the 2024 elections, twenty-three states are controlled by the Republican Party, and fifteen states are controlled by the Democratic Party. Of the thirteen states with divided government, Alaska stands out for its ability to have functioning political parties work together.

1. Schattschneider 1942.

2. Ballotpedia 2024 n.d., “State Government Trifectas.”

3. Parry, Dowdle, and Kloss et al. 2022, 226–245.

After the 2022 elections, seventeen of Alaska’s twenty state senators, both Republicans and Democrats, forged a bipartisan pact to govern together, at the expense of the ideological extremes within both parties.<sup>4</sup> Members of both parties assumed leadership positions and worked together to build consensus and moderation. This is not the first time Alaska has experimented with a coalition government, having done so previously from 2007 to 2012.

This sort of coalition is frequently used in other countries with multiple political parties when no single party has a majority on their own. In Alaska, however, there is a majority of Republicans—they are just willing to work with the other party in the interests of their state even if that is not what the more extreme supporters of each party would prefer.

Take Cathy Giessel, for example. She was a Republican state legislator who frequently worked with Democrats. Her reward was to lose a 2020 primary to a far-right challenger who claimed that she lost sight of “what her job should be as a Republican senator in a Republican state with Republican majorities in the House and Senate and a Republican governor.”<sup>5</sup>

However, Alaska made two important changes to how elections are conducted in their state by passing Ballot Measure 2 in the 2020 election.<sup>6</sup> First, they switched from their previously used party primary system to a top-four model, where all the candidates (regardless of party) are placed on the same ballot, and the top four vote-getters

4. Rosen and Beacon 2022.

5. Troiano 2024a, 2024b 2024, “How a Bipartisan Governing Majority Emerged in Alaska”; Troiano 2024, The Primary Solution.

6. Ballotpedia n.d., “Alaska Ballot Measure 2.”

move to the general election.<sup>7</sup> Second, the state switched to a ranked-choice voting system. Now rather than casting a single vote for their preferred candidates, voters get to rank all the candidates. This sort of “instant runoff voting” allows voters to cast their initial vote for their preferred candidate—even if they feel like that candidate has a minimal chance of winning. Votes for marginal candidates get redistributed so that, in theory, the ultimate winner is one that a majority of voters are comfortable with—not just a plurality. Ballot Measure 2 passed with 50.55 percent of the vote, earning just less than four thousand more votes than the opposition.

Many advocates argue that these reforms weaken the stranglehold the two parties have on elections and government. By changing the electoral incentives and promoting greater voter participation, politicians can be rewarded for listening to moderation and all their constituents—not just the base of their party.<sup>8</sup>

Giessel agrees, as she was elected anew in 2022 after her two-year absence and now serves as the majority leader. She remarked, “You know, what I learned from that two-year period was that nothing gets done unless you work with everyone.”<sup>9</sup>

## Critical Thinking Questions

Who should political parties be responsive to most?

7. Ballotpedia n.d., “Primary Elections in Alaska.”

8. Slaughter, Fukuyama, and Diamond et al. 2019.

9. Rosen and Beacon 2022.

Their party supporters? Their constituents? The greater good?

How might the incentives politicians face to get elected and reelected shape their behavior in office?

What reforms would you support to promote bipartisan cooperation?

What institutional features, rules, and mechanisms do we use in our democratic system that maintain a two-party structure? Would it be beneficial or detrimental for good representation if these were abolished?

How have the parties changed over time?

Why is it so challenging for third parties to garner support for the candidates and success in outcomes?

When was our last critical realignment? Are we due? What would a realignment in current politics look like?

How would nonpartisan elections be fundamentally different from systems that require candidates to declare party affiliation and educate voters on the basis of that label?

# 10. Political Parties

MICHAEL WOLF

## *Chapter Summary*

Political parties play key roles in American democracy and differ from political parties elsewhere in the world. The two parties developed into regional political cultures and differed regionally even more based on the realignment of social group adherents following large-scale social change. Competition between parties in American states brings many positive results for party competition and for citizens, but competition is decreasing after decades of growth. Parties continue to polarize at the national level, and when broken into their functional tripartite model, polarization is increasing in party organization, within the electorate, and among party governing leaders across American states. There are downsides to state party polarization, including nationalization of political issues, a disconnect between public opinion and party leaders, and inequality.

## *Student Learning Objectives*

Upon completion of this chapter, students should be able to:

1. Evaluate models of how parties should operate in American politics and in states.
2. Explain why we have two political parties and why American parties differ from those in other democracies.
3. Understand why parties differ across states based on political culture and historical realignments of social group members.
4. Grasp why parties have polarized at the national level and how they do so in state politics.
5. Evaluate how competition improves party politics in states.
6. Distinguish between the different functions of parties in the tripartite model within states.
7. Judge whether trends in state political parties improve American representative democracy.

### *Focus Questions*

These questions illustrate the main concepts covered in the chapter and should help guide discussion as well as

enable students to critically analyze and apply the material covered.

What role and responsibility do political parties have in modern American politics?

What institutional features, rules, and mechanisms do we use in our democratic system that maintains a two-party structure? Would it be beneficial or detrimental for good representation if these were abolished?

How have the parties changed over time?

Why is it so challenging for third parties to garner support for the candidates and success in outcomes?

When was our last critical realignment? Are we due? What would a realignment in our current politics look like?

How would nonpartisan elections be fundamentally different from systems that require candidates to declare party affiliation and educate voters on the basis of that label?

## Introduction

Despite thousands of labor union protesters packing the Michigan State Capitol building, Michigan's Republican legislature passed, and its Republican governor signed, the state's first "right-to-work" law in December 2011. Dozens of states have similarly forbidden

mandatory collective bargaining dues for unions from workers, so this was not unique legislation.

What made this legislation different is that Michigan, the automotive capital of the world and the home of the United Auto Workers (UAW), had been at the forefront of the labor movements that brought industrial unions to America. Some states name highways for political or sports heroes; Detroit's most recent metropolitan highway was named for Walter Reuther, UAW president during the high point of the American auto industry from 1946 to 1970. With its industrial history and union culture, this was not a normal state for right-to-work legislation.

Twelve years later, after Democrats took majority control of the state's legislature for the first time in forty years, the legislature passed the first repeal of a right-to-work law in the United States in over fifty years. It propelled the state's governor, Gretchen Whitmer, to the top of lists of likely future Democratic presidential candidates.

The passage and repeal of the right-to-work legislation in a state that had not previously been divided on the issue indicates how polarized state party politics can be these days. Even in a state where party competition has been close, legislators and governors proved ready and willing to push an ideological issue that has economic and symbolic importance. This is indicative of how party competition, ideological divisions, and party polarization drive state politics in our current era.

## Role of Political Parties in American Democracy

Americans have always viewed political parties with mistrust. James Madison highlighted the need for a new Constitution and governing system based on controlling the “mischiefs of faction.” George

Washington also warned of the dangers of faction in his farewell address. Skepticism of political parties has only continued.

Blended with this skepticism is a recognition that parties have helped democratize and organize American political life. Moreover, following the horrors of World War II, where democracies whose party systems failed led to countries with extreme, antidemocratic parties invading neighbors and murdering millions, many American political scientists called for a clearer role for political parties in helping American democracy thrive.

These party scholars argued for what has become known as the **responsible party model** in a report in the discipline's top journal.<sup>1</sup> Accordingly, each party should take clear policy positions from the other party, and parties should highlight their policy positions in their **party platform**, which is a party's statement of its issue positions they will implement if elected. The responsible party model asserted that parties should require their candidates to pledge their support for the platform, which would clarify the choice for voters, who could more easily reward or punish party candidates based on the success or failure of the policies implemented when elected.

For many other party scholars, the model has always been unworkable in the American political system. One primary criticism is that Americans are not as ideologically divided as the electorates of other democracies, so clear ideological positions taken by all candidates have never matched where the American public is, particularly given the dissimilar life experiences and beliefs people have in a spread out, diverse federal democracy.

A second criticism is that the responsible party model, by definition, makes winning elections secondary to carrying out policy if elected. To critics, winning elections is the primary focus of parties, and parties should be pragmatic on issues to win office. Even if they win, there is no promise that the winning party can

1. American Political Science Association 1950.

carry out their policies if there is a **divided government**, where one party controls one branch of government and another controls another branch of government. Ultimately, these scholars posit that a healthy party system is one with solid competition between parties, which brings better party organization and encourages candidates to differentiate themselves from each other.<sup>2</sup>

This is not a stale academic debate. Rather, these models are a means to evaluate aspects of a political party to determine whether they champion timely political issues, compete in elections, and represent public interests in healthy ways. When we start to unpack how parties are doing across the fifty states, it is vital to see how parties connect voters with leaders, represent citizen interests, and produce good policy. These are critical areas for evaluating how well representative democracy is doing in American states.

## The American Two-Party System

Seventy percent of Americans say that the phrase “I often wish there were more political parties to choose from in this country” fits their views extremely well, very well, or at least somewhat well.<sup>3</sup> So the fact that our two-party system remains such a steady force in American politics seems out of step with American views. Further, if one looks at California, Texas, Florida, and New York, the largest states in the US, each is very different from the others and is actually larger and sociodemographically more diverse than many smaller European democracies with multiple competitive parties.<sup>4</sup>

2. Schlesinger 1985, 1152–1169.

3. McClain, Anderson, and Gelles–Watnick et al. 2022.

4. Poloni–Staudinger and Wolf 2019.

Moreover, these large states typically have a single party that dominates. How can American states be larger and more diverse yet have fewer parties? American political culture and election laws explain why this is the case.

Due to American founding beliefs of limited government and individualism, American political culture avoids a large role for government in the lives of its citizens. Americans of both parties avoid the levels of taxation and redistribution of wealth that are the mainstream positions of parties in other democracies. The resulting more compact ideological space in American political culture relative to other democracies means that citizens would not support the major parties of the left that thrive in other democracies at the federal or state level.

A second reason for only two competitive parties in American states is the fact that American states overwhelmingly use **plurality electoral laws**, where the party that wins one more vote than the other party wins the election and governs. Other democracies use proportional representation electoral laws, where the number of seats one gets in a legislature is roughly proportional to the percentage of the vote they receive. Unlike plurality election law countries like the United States, the United Kingdom, or Canada, coming in second, third, or even fourth in countries with proportional representation laws typically means you have representation in government.

## How American Parties Have Developed and Changed

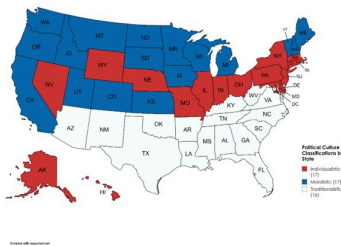
Just because the US has two parties does not mean that the parties or party competition is uniform across the country. The complex blend of party competition and changing social group makeup of parties across the states is the consequence of historical political

and cultural beliefs and critical moments in American political history where the social group makeup of parties realigned dramatically.

## Distinct Regional Political Cultures

The United States is a relatively young country but a rather older democracy. Despite its age, the differing regional beliefs about politics and party politics from its founding time have projected forward in time and across the country's regions. The result is regions that have different beliefs about citizenship, the role of politics in everyday life, and the role of parties. As previously discussed in Chapter 8, Figure 10.1 presents Daniel Elazar's blend of three different **state political cultures** in the US based on the original beliefs of colonial settlers across the American states.<sup>5</sup> Those who came to the northeastern United States believed that politics was about empowering community and consensual decision-making. This *moralistic political culture* promotes citizen participation and supports institutions like political parties that can represent citizen concerns and bring them into governance. As these northeastern colonies spread westward, they created a northern band that led to a culture and laws that encouraged participation and empowered parties to carry interests into governance.

5. Elazar 1966.



**Figure 10.1 – Elazar’s State Political Cultures**  
**Data Source: Elazar, D. 1984.**  
***American Federalism: A View from the States. 3rd ed. Harper and Row. Map made by author.***

Those who settled the mid-Atlantic colonies tended to be continental European farmers whose political drive was personal independence. This *individualistic* culture views politics as a utilitarian way to make choices. Politics is not a pursuit of an ideal community; it is a limited set of decisions that independent citizens use to infrequently participate in decision-making.

Consequently, states do not need to encourage widespread participation beyond fundamental choices, and parties do not need a role beyond electioneering. This model calls for limited government, and participation is driven by utilitarian electoral choice rather than moralistic participation. This view of politics spread through middle America as the country grew westward.

Finally, those who settled the Southeastern United States viewed politics as a preservation of the established social structure. Widespread participation is not needed and could upset the social status quo. For this *traditionalistic political culture*, participation is not broadly needed if leaders preserve social order, so political parties and widespread participation are not central to the day-to-day operations of politics. This view traveled westward through a belt of Southern and Southwestern states, and there is little real defined role for parties.

While these differing political cultures may seem oversimplified, evidence of participation levels, party competitions, election laws, and institutional openness to citizen demands continue to differentiate northern moralistic cultural states, middle-belt individualistic cultural states, and Southern traditionalistic states. These are not value judgments; they are residual traditional beliefs about parties that are codified or

socialized in states that have projected forward to contemporary beliefs about governance and the roles of political parties in society.

## Party Change Through Social Group Realignment

These historical, political, and cultural differences explain how the development of party politics has differed across regions and have led to distinctive patterns of party politics across American history. State political party fortunes and competition have also changed due to American political, social, and economic crises in particular realigning elections.

Not all elections are equal in their effect on American history, and scholars differentiate elections as far as their long-term influence on party competition across states and regions of the United States.<sup>6</sup> The most consequential elections for long-term party competition are **realigning elections**, where in one or two election cycles, one-fifth to one-third of voters shift their party support, and often the majority party becomes the minority party and vice versa. These elections have high intensity and higher voter turnout and are driven by a large-scale social change, such as whether slavery should remain legal in the 1860 realigning election, checks on industrialism in the populist 1896 realigning election, and the Great Depression in the 1932 realigning election.

Following the 1932 realigning election, which brought the New Deal party system, the two parties had very diverse coalitions within each party for most of the twentieth century, but the parties were not that distinct from each other ideologically at the national level. The states of the Deep South, due to their antipathy toward the Republican Party following the Civil War and Reconstruction,

6. Campbell et al. 1966.

were solidly Democratic states despite being more conservative. Consequently, Southern conservative Democrats and liberal East Coast Republicans tended to not be far apart on big issues and championed bipartisan legislation in Washington, DC.

In state politics, Democrats governed very conservatively in the South and very liberally elsewhere. Republicans governed rather liberally in the Northeast but were more conservative in other regions. Even though they shared the same party label, Democrats and Republicans governed states very dissimilarly in different states.

The main issue that remained unresolved in the New Deal party system was civil rights for African Americans. Northern liberal Democrats and Northeastern liberal Republicans championed civil rights reforms, while libertarian Republicans agreed with segregationist conservative Southern Democrats that the federal government should not enforce national civil rights standards on states. The passage of the Civil Rights Act of 1964 and the Voting Rights Act of 1965 triggered a realignment of the political parties, but it differed from other realignments because it occurred slowly over five decades rather than in a single election.

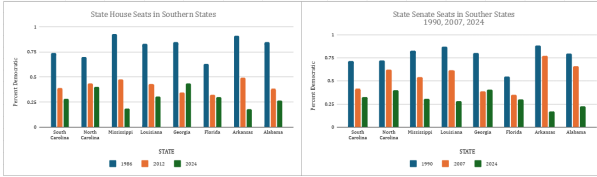
Political scientists Ted Carmines and James Stimson refer to this slow realignment on the racial issue as one of evolution because the effect of the new issue divide slowly changed the electorate's relationship to the two parties because only some voters converted to the other party, which is the hallmark of a typical realignment, but many voters were newly mobilized by racial issues, and eventually younger voters entering the electorate identified with a different party from their parents.<sup>7</sup> Southern White Democrats opposed the Civil Rights Act of 1964 and Voting Rights Act of 1965 because they directly empowered the federal government to regulate elections, education, and the workplace against the explicit segregation preferences of conservative

7. Carmines and Stimson 1989.

Southern White Democrats. Southern states did not support Democrats for president in any significant way from 1964 onward, but congressional Democrats continued to be reelected for decades.

The South had also been much more socially and religiously conservative than the non-South, so when Republicans increasingly pushed for more conservative positions on abortion, religion in public schools, and traditional gender roles beginning in the late 1960s and early 1970s, the culturally conservative South shifted toward the Republican Party in state government in the 1990s and 2000s.

By this point, a younger generation of Southern White conservatives, who identified with the Republican Party and replaced older generations of conservative Democrats, became a critical mass in Southern state elections. This shift can be seen in different snapshots of party control of Southern state legislatures across four decades in Figure 10.2.



**Figure 10.2 – Percentage of Democratic Party Control in Southern State Legislatures**  
**Data Source: Data from National Conference of State Legislatures. “State Partisan Composition.” Accessed April 1, 2024. <https://www.ncsl.org/about-state-legislatures/state-partisan-composition>. Charts made by author.**

Although the years do not quite correspond between the state house (1986, 2012, and 2024) and state senate (1990, 2007, 2024) percentages, Democrats went from holding huge majorities in every Southern statehouse (1986) and state senate (1990) to losing their majority in the 2000s and being in the extreme minority today.

While no shift is as dramatic in terms of a complete flip of state party political control in the South, the same socially conservative cultural issues that helped tip Southern state political control to the Republican Party led more moderate Republican states in the Northeast or California, which were less favorable to the cultural conservatism the party embraced, to tip from

Republican to Democratic control or to become more polarized on these very issues.<sup>8</sup>

Party scholars debate how polarized American politics has become. Some view polarization as something that divides political leaders but not the American public. To these scholars, the problem is that there is a disconnect between a public that is marginally sorted into partisan camps and political leaders who are deeply divided on hot-button issues. This undermines representative democracy because voters lack moderate candidates who fit their beliefs and have to choose among extreme cultural warriors.<sup>9</sup> Others place polarization squarely in the hands of the American public, who have strongly divergent ideological beliefs across parties and have deep issue divides on religion, gender, race, and cultural matters.<sup>10</sup>

These scholars focus on polarization at the national level, but it is key to focus on how polarization affects state party politics. The long-term change in party politics at the state level that was triggered by these cultural issues has altered how competitive parties are in different states as well as how polarization plays out in party organizations, in the partisan electorate, and among party leaders in government.

## How Competitive Are the Parties in American States?

The story of political party competition is a mixed one throughout American political history. As noted, electoral realignments hit

8. Reiter and Stonecash 2011.

9. Fiorina 2017; Fiorina, 2011.

10. Abramowitz 2011.

different regions of the country dissimilarly, so party fortunes differed over time and in different regions. Moreover, the American South supported the Democratic Party for a century following the Civil War, so there was next to no competition. One-party politics was increasingly the norm in much of America.<sup>11</sup>

Political scientists have used the **Ranney index** to evaluate how much competition there is between the two parties for control of each state government.<sup>12</sup> Figure 10.3 provides the Ranney index score for each state. A score of zero would mean that Republicans have complete control of a state's government, while a score of one would mean that Democrats have complete control of a state's government. The average score among all states is .450, indicating a slight advantage to governing states for Republicans. Over a quarter of states (thirteen) fit between .40 and .60, indicating significant party competition for state government control.

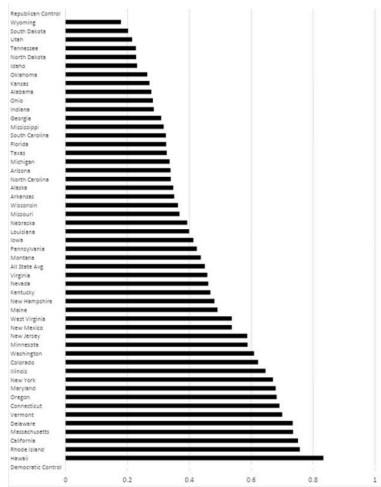
11. Miller 1956.

12. Ranney 1965, 45–88; Shufeldt and Flavin 2012, 330–342.

The current trend of state party competition is toward being less competitive overall. This actually reverts back to what has been the more typical lack of competition in states throughout American history. Party competition surged in the 1980s, 1990s, and 2000s, but by the 2010s, the norm of more one-party than two-party control of states reverted to levels not seen in over fifty years.<sup>13</sup>

In 1992, only nineteen states were so-called **trifecta states**, where one party controls the governorship, state house, and state senate, and thirty states had at least one chamber or the governorship of different parties. In 2024, there are only ten states that have divided governments, and thirty-eight are trifecta states.<sup>14</sup>

Having party competition for state government is not an end in and of itself. Competition brings many spillover benefits for democracy in the states. Scholars point to governing efficiency, better representation, checks against extremism, and attention to citizen welfare.<sup>15</sup> Indeed, higher levels of competition in the Ranney index led to higher interest in elections in public affairs generally, better voter turnout, and broader political participation beyond



**Figure 10.3 – Party Competition in States: Ranney Index**  
**Data Source:** Chart developed by author from Holbrook, Thomas, and Raymond La Raja. 2018. Table 3.2 in *Politics in the American States, 11th ed.*, ed. Virginia Gray, Russell Hanson, and Thad Kousser. Sage / CQ Press.

13. Parry, Dowdle, and Kloss et al. 2022, 226–245.

14. Ballotpedia, n.d., “State Government Trifectas.”

15. Parry, Dowdle, and Kloss et al. 2022, 227.

voting. This is particularly the case for voters with lower education and income—the voters who are most often to be less mobilized in elections.<sup>16</sup>

## Are State Parties as Polarized as National Parties?

Most scholarship on political parties focuses on the national political parties. Many scholars held a “minimalist” view of the role of state parties due to the overwhelming growth of federal policymaking by the US Congress and a stronger presidency in the twentieth century, as well as the limited budgets, a frequent lack of professional legislatures in states, and the sense that far-flung state party politicians relied on vertical cues from Washington party leaders rather than horizontal cues from other states or even from partisan beliefs within each state.<sup>17</sup> These constraints were thought to minimize the ability of state parties to drive the agenda in distinct and opposite partisan directions. In reality, state parties have polarized enormously in the last twenty-five years, and Democrats and Republicans differ substantially on almost all issues and pursue very different policy agendas.

The specific reasons for **polarization** will be detailed later in this chapter, when we break parties into their functions as organizations, in governance, and in the electorate. Each has contributed to polarization. This section focuses on establishing the evidence that party polarization exists in states. One key element of polarization is the distinct policy positions that parties have taken over time.

16. Flavin and Shufeldt 2015.

17. Grumbach 2024.

From 1970 to 1999, very little difference existed on most issues between parties in American states. After 1999, the distinctions in positions between the two parties on issues like abortion, civil rights, environment, guns, health/welfare, housing, immigration, labor, LGBTQ, taxes, and other issues ballooned.<sup>18</sup> On fourteen of sixteen issues, state parties polarized significantly on policies from 1999 to 2014. The only issues that did not show a considerable difference were criminal justice and education, which, after the COVID-19 pandemic and George Floyd's murder and associated protests, are two of the areas most vividly divided in the 2020s.

There are some key structural explanations provided by scholars for this polarization as well. The first structural explanation for polarization comes from the *competition* between parties that was discussed in "How Competitive Are the Parties in American States?" The many positive outcomes from competitive parties in states cannot be denied, but this competition also leads to greater polarization among state legislators.<sup>19</sup> When the margin between your party being in the majority and being in the minority is small, it leads parties to avoid working across the aisle with the opposing party and to "seek out ways to distinguish their party from the opposition. In a legislative setting, this is likely to take the form of bringing up issues designed to elicit and then communicate partisan cleavages."<sup>20</sup>

Competition certainly ends up leading to larger issue divides between parties, but other scholars argue that a lack of competition does not stop state parties from pursuing more ideologically extreme issue positions. In other words, those trifecta states, where one party controls the governor's office and both chambers of the legislature, also pursue strongly ideological policies

18. Grumbach 2024.

19. Hinchliffe and Lee 2015, 172–197.

20. Hinchliffe and Lee 2015, 189.

even if only one party is polarized.<sup>21</sup> Parties still pursue extremely partisan issue agendas even if they lack the two-party competition associated with two polarized parties.

The second structural contributor to party polarization in the American states is the nationalization of political debate in America. It may seem ironic that nationalization leads to party polarization spread across dozens of far-flung states. Arguments about polarization from nationalization follow two paths. First, citizens increasingly vote for state and local offices consistently with their federal voting for president, US House, and US Senate. This has occurred at the same time as voters' knowledge of federal issues trumps their knowledge of state and local political dynamics as local newspapers and news outlets disappear and national issues crowd out local concerns.<sup>22</sup>

A second explanation for nationalization centers on how national party gridlock in Washington, DC, has led parties to shift their polarized policy agendas to states. The conventional wisdom of fifty decentralized Republican and Democratic parties uneasily held together across regional beliefs is inaccurate. Instead, both political parties have nationalized and implemented the most ideological policies at the state level.<sup>23</sup> These two arguments—one where voters focus on national issues and another where party elites deliver national, polarized policies at the expense of the interests of people in a state—illustrate how the borders and unique political flavors in states are being overwhelmed by polarized partisanship.

21. Shor 2015, 201–221.

22. Hopkins 2018.

23. Grumbach 2022.

# How Can We Evaluate How Parties Perform in States? The Tripartite Model

The positive and negative consequences of polarization will be weighed in “What Are the Consequences of Polarization?” but it is also important to evaluate how parties are performing in states using a classic evaluation approach by party scholars: the **tripartite model**. The tripartite model breaks parties into their core functions so that such large-scale entities can be judged on specific areas of performance.

The first area, party in the electorate, relates to how parties relate to citizens. Do people identify with parties and connect their political beliefs with a political party to make sense of politics at the state and local levels? The second, parties in government, assesses how much parties drive the agenda of state politics and how partisan political leaders act. The final area, parties as organizations, focuses on how well organized local and state parties are to recruit candidates, compete in elections, and drive voter turnout.

Political parties are stronger in all these areas and, in combination, have supercharged the role of political parties in governing states. While it may seem natural to root for the vibrancy of any political institution, it is important to evaluate whether these strengthened state parties mean citizens are better represented in their statehouse or not.

## What Are the Trends of Parties in State Electorates?

Party identification is a critical concept to understanding the beliefs of Americans and their voting behavior. The strength of party identification comes from the social-psychological connection

people have with their party.<sup>24</sup> Like other identities, such as religious denomination, ethnicity, or even the fandom one has with sports teams, partisanship has been socialized by family and community into an individual-level psychological identity that drives behavior.

Party identification is an attitude that then acts as a perceptual screen in how people view politics, particularly coloring perceptions of issues and candidates.<sup>25</sup> Instead of an important issue or quality candidate disrupting one's vote intention or loyalty to their party, evaluations of issues and candidates are a consequence of one's partisan predisposition.<sup>26</sup> No one knows who will be running for governor of Indiana in 2032, but it is easy to imagine that Democrats will like their candidate better than Republicans do and vice versa, and this is years into the future. Partisans also flip-flop their position on issues like the appropriateness of executive powers of presidents or governors and deficit spending depending on whether their party is in power or not. Hence issues and candidates should be independently evaluated political phenomena, but to most party identifiers, they are actually the result of their preexisting party identification.

The overall percentage of Americans who identify with political parties has not shifted dramatically, but the strength of party identification among Americans has become substantially stronger over the last half-century.

This classic view of the power of party identification has been fortified by a second, increasingly important attitudinal component of party identification: negative partisanship.<sup>27</sup> This occurs due to voters being motivated more by a dislike of the other party's candidate than they are mobilized by their own affinity for

24. Campbell et al. 1960.

25. Campbell et al. 1960.

26. Campbell et al. 1960.

27. Abramowitz and Webster 2018, 119–135.

their own party. This so-called affective polarization—a dislike, lack of trust, and distaste for the other party—further strengthens the power of party identification in shaping evaluations of issues and candidates by adding aversion toward the other party along with the positive predispositions partisans have for their own party, particularly among the strongest, most engaged partisans.<sup>28</sup>

The strengthening party identification and distaste for the opposing party is evident in the average ideological distance between Republican Party identifiers and Democratic Party identifiers over time and the divide on key cultural, gender, racial, and identity issues over time. Other scholars point to the gradual merging of lifestyles and worldviews with party identification in recent decades, which amplifies the party divide.<sup>29</sup> Preferences for types of vehicles, where to live, beer, and even children’s names slowly fused with party identification and strengthened both lifestyle choices and party beliefs.<sup>30</sup>

The pursuit of lifestyle goals, which overlap with party beliefs, has led to citizens sorting into different geographic areas that concentrate partisans together.<sup>31</sup> Not all voters move or have the luxury of relocating, but a critical mass of partisans do migrate within states based on preferred lifestyles, race, churches, schools, and so on and a sociologically relevant fondness for living close to others like themselves.<sup>32</sup> In surveys of people who have moved, partisanship is a statistically significant influence on the choice of where to live, even when controlling for other lifestyle factors.<sup>33</sup>

This partisan geographic sorting increases polarization in

28. Iyengar et al. 2019, 129–146.

29. Hetherington and Weiler 2009.

30. Hetherington and Weiler 2018.

31. Bishop 2009.

32. Cho, Gimpel, and Hui et al. 2013, 856–870.

33. Gimpel and Hui 2015, 130–142; Cho, Gimpel, and Hui et al. 2013, 856–870.

two key ways. First, it creates state legislative districts that increasingly favor one party and lead to the election of more polarized representatives to the statehouse.<sup>34</sup> Second, with fewer opposing partisans in the neighborhood, there are fewer chances that strong partisan views could be moderated through conversation with an opposing partisan in everyday life.<sup>35</sup>

The clear trend in the electorate in American states is toward stronger partisanship. With a stronger identity with one's own party, hostility toward the other party, stronger ideological divisions, and the merging of lifestyle with partisan beliefs and a willingness to move to fit these beliefs, the result is concentrated partisan beliefs in legislative districts and a greater preference for stronger partisans to be represented by partisan representatives willing to push polarized agendas in state policy. This does not mean that minority partisans, moderates or independents, are satisfied with partisan policies or the sharper tone of state politics that has resulted.<sup>36</sup> It does mean that at least some of the state party polarization in America comes from voter preferences.

## How Are Parties Performing as Organizations in States?

American political parties lack the hierarchical organization that other democracies have. Meanwhile, American party organizations developed at different paces and have historically lacked coordination between levels and have unique coalitions of social

34. Shea 2014.

35. Huckfeldt and Sprague 1995; McClurg 2006, 349–366; Cho, Gimpel, and Hui et al. 2013, 856–870.

36. Wolf, Strachan, and Shea et al. 2012.

groups.<sup>37</sup> Local parties organized to win municipal and county elections. State parties organized to win state legislative and executive elections. National parties organized to win federal offices. This meant that party organizations were remote from each other geographically and organizationally.

The state party organization, typically called the Democratic or Republican State Central Committee or Democratic or Republican Executive Committee, is headed by a state party chair, staff, sometimes elected party officials, and representatives from either county parties or a party official from the areas of each US House of Representatives' seat in the state.

Local Republican and Democratic parties organize at the county level and focus on county, municipal, or legislative elections in their region by recruiting candidates and helping with get-out-the-vote efforts. The county parties are further subdivided into precincts, where precinct chairs coordinate these efforts at the precinct level.

Beginning with Republicans in the 1960s, the national parties' increasing support of the sharing of technology and databases among the national, state, and local parties has increased the overall party organizational integration.<sup>38</sup> State and local parties have increased their organizational capacity enormously in recent decades. Surveys of county party leaders indicate how much they have adopted technology to help with electioneering, voter mobilization, and fundraising and how much they feel their local party is increasingly thriving as an organization.<sup>39</sup>

State parties have always had organizational responsibilities given the many executive offices and state legislative races they are organized to contest. State parties have had consequential organizational power in the form of state party

37. Eldersveld 1964.

38. Bibby 1999.

39. Shea, Strachan, and Wolf et al. 2013, 103–132.

conventions, which provided organizational power in recruiting and nominating candidates for key offices and crafting the state party platform.

Through a host of activities, including campaign donations, state party leaders have tended to recruit and promote more moderate candidates in the interest of winning general elections given that rank-and-file voters tend to be more moderate than party activists.<sup>40</sup> State party leaders' moderation has given way to ideological pressures from the national level and local level. First, national-level polarized political debate on cultural issues has eclipsed state-level issues in the media and in the minds of voters, which has been exacerbated by the loss of local media outlets. Second, local party leaders tend to be much more ideologically driven in their recruitment of candidates, preferring those who will not compromise relative to moderate candidates.<sup>41</sup> Given their choice, local Democratic Party leaders prefer extreme ideological candidates to moderate candidates by a ratio of 2 to 1, and local Republican Party leaders prefer extreme to moderate candidates by a ratio of 10 to 1.<sup>42</sup>

Given these top-down and bottom-up pressures, it is no surprise that state party leaders' moderation has waned. State party platforms have become far more polarized in recent decades as local party activists drive their parties to take more ideological positions on issues in the platforms, which ultimately sets the parties' governing agendas further from the average public opinion in the state.<sup>43</sup> Consequently, when state political leaders move to implement their policies in office from their platform, it begins at a much more polarized starting point across all states relative to previous eras of party platforms.

40. La Raja and Schaffner 2015; Hassell 2018.

41. Doherty, Dowling, and Miller et al. 2022.

42. Brockman et al. 2021, 724–749.

43. Coffey 2007, 75–91; Coffey 2014, 137–153.

Other organizations increase party polarization as well. The National Governors Association (NGA) had been a powerhouse lobbying group of all governors. In recent decades, the NGA has lost some of its relative power as governors have increasingly closed party ranks to champion more partisan positions through the Republican Governors Association and Democratic Governors Association.<sup>44</sup> Similarly, state attorneys general had often worked together on litigation, one example being the bipartisan lawsuit against the tobacco industry in the 1990s by over forty state attorneys general. Recently, the attorneys general have moved in more partisan directions through their party associations. A majority of the Republican Attorneys General Association members sued to decertify the results of the 2020 elections in Georgia, Michigan, Pennsylvania, and Wisconsin.<sup>45</sup> Meanwhile, a dozen Democratic attorneys general sued the Food and Drug Administration for overregulating access to the abortion pill mifepristone.<sup>46</sup> These organizations encourage more partisan approaches to executive action across states.

Conventional wisdom would suggest that the disparate nature of politics across the American states would keep party organizations rather weak and uncoordinated. On the contrary, state and local party organizations have increased their capacity independently and together, including with national parties. The result has been in support of greater party polarization as activists have ensured that Republicans and Democrats have distinctively ideological party platforms across all fifty states.<sup>47</sup>

44. Jensen 2017, 314–341.

45. Peters and Haberman 2020.

46. McCammon 2023.

47. Coffey 2007, 75–91; Coffey 2014, 137–153.

## How Much Do Parties Influence State Governmental Leaders?

Parties increasingly drive the governing agenda of states as well as the behavior of state political leaders. Likely due to Americans' distrust of Washington, DC, and the increased institutional power of governors, as well as their willingness to take more partisan positions that emerge on the national level, governors are key partisan figures in American life.<sup>48</sup> Part of this is due to the high profile governors have in national politics these days, with many considered front-runners for the nomination for president in their own parties and having unusually high approval ratings relative to other officeholders in America.<sup>49</sup>

Governors increasingly display partisan positions in the governing they pursue and increasingly champion issues that match those of the national party relative to the average viewpoint of citizens in their states.<sup>50</sup> In trifecta states, they frequently drive the agenda in partisan directions. In competitive states, governors increasingly use unilateral executive action when legislatures are polarized.<sup>51</sup>

State legislators also increasingly vote in line with their party—even if they do not line up squarely with their constituents—because of the resources their party is able to provide, even when controlling for the common views legislators typically have with their partisan constituents.<sup>52</sup> The rate of ideologically partisan voting in state legislatures has skyrocketed in the past two decades.

48. Sabato 1978.

49. Burton and Radcliffe 2024.

50. Hopkins 2018.

51. Shor 2015, 219.

52. Jenkins 2008, 239–262.

Using a blend of state legislative roll-call votes and survey data of legislators in 2011, Shor and McCarty found that a majority of ninety-nine state legislative chambers were less polarized than the US Congress and that there were vast differences in the amount of ideological polarization among states' legislatures.<sup>53</sup>

In subsequent studies using updated data, these scholars found a drastic increase in ideological separation between the parties over time. In 1996, 14 percent of Democrats were more conservative than Republicans, and 16 percent of Republicans were more liberal than Democrats in their legislatures, which reflected a common overlap of moderation in state legislatures.<sup>54</sup> In 2015, Shor's study had shifted from mixed results of polarization in 2011 to seventy-one of ninety-nine state legislative bodies being more polarized, twenty stable partisan divided legislative bodies, and only eight legislative bodies that were depolarizing.<sup>55</sup> As Shor and McCarty note, "By 2020, the overlap is gone....Note that nowadays this overlap is predominantly *between* parties across states; there is rarely much ideological overlap *within* states between the two parties anymore."<sup>56</sup>

Even Nebraska, which has a nonpartisan, single-chamber legislature, has polarized, even though its members do not run for office as partisans; only Hawaii and Washington state did not see increased polarization, and Washington already had a large gap between the parties' ideological positions.<sup>57</sup> In historical terms, the polarization of parties has led to a doubling of the magnitude of policy differences in states based on party control of the statehouse.<sup>58</sup>

53. Shor and McCarty 2011, 530–550.

54. Shor and McCarty 2022, 343–370.

55. Shor 2015, 203–221.

56. Shor and McCarty 2022, 349.

57. Shor and McCarty 2022, 356.

58. Caughey, Warshaw, and Xu et al. 2017, 1342–1358.

As discussed, the polarization is more than just ideological; it is also a yawning divide across all major issues commonly tackled by legislatures by 2014 except criminal justice and education.<sup>59</sup> Again, criminal justice and educational issues have also seen a major divide spring up since this research in the past few years as battles over mask requirements and curriculum in schools exploded in the COVID and post-COVID era and the controversy over policing erupted after the murder of George Floyd by a police officer in Minneapolis in May 2020.

## What Are the Consequences of Polarization?

Parties have upped their organizational game and provided activists with more control of party business. They have driven increasingly the governing agenda and the political behavior of political leaders across the American states. Also, stronger partisans in the electorate have pushed for ideological issue positions, frequently from communities that are more densely packed with fellow partisans and supportive of more ideological representation in their statehouse.

What are the implications for state government? The first is that states pass and execute more ideological policies much more easily than they are implemented at the federal level. This is more easily done in trifecta states. States with partisan divides between legislative bodies or between a governor and legislature can face gridlock, and the consequences emulate what occurs in Washington, DC. Budgetary delays occur more often when one

59. Hopkins 2018.

chamber of the legislature is controlled by a different party than the other, and budgetary delays last longer with polarization.<sup>60</sup>

Budgets may seem politically bland, but these battles can affect states greatly. In 2015, Illinois's Republican Governor Bruce Rauner and the Democratic-controlled legislature could not agree on a budget. After two years, nearly \$15 billion in unpaid vendor bills, underfunded public pensions, deficits, and a wrecked credit rating, the legislature finally passed a budget.<sup>61</sup>

More than budgets and policy, the growing polarization in states increases inequality and affects citizens, their trust in government, and how well represented they are. Given that there are stronger partisans who follow their partisan lifestyles to move to more concentrated partisan areas, it seems illogical to question aspects of representative democracy when a considerable portion of the electorate seems to be pushing for greater polarized issues.

But what motivates stronger partisans may also demobilize less interested and more moderate voters, particularly with the sharp tones that come with polarization.<sup>62</sup> Even for stronger partisans, the media's framing of political conflict in state government and the perception that division is due to the other party's extremity lead to a decrease in political trust in their legislature, which ultimately saps the sense of representation.<sup>63</sup>

Representation of state citizens' beliefs is a genuine concern in this polarized age. For decades, findings from the classic model of state party representation of public opinion indicated that the underlying public opinion was well represented in state legislatures because political parties moderated their positions to fit the public's views.<sup>64</sup> In this current polarized era, scholars question

60. Birkhead 2016, 259–269.

61. Bosman and Davey 2017; Mendoza 2018.

62. Wolf, Strachan, and Shea et al. 2012.

63. Banda and Kirkland 2018, 596–628.

64. Erikson, Wright, and McIver et al. 1993.

whether parties and legislators respond to public opinion in the same way.

The broader spread of views in legislative districts between Democratic and Republican citizens leads to uncertainty about what the average opinion is in a district, so instead of partisan legislators moderating their positions as they had in the past, representatives move toward their party's more extreme position.<sup>65</sup> This leaves moderates and citizens of the other party less well represented. This is accentuated by the polarized issue framing from the national partisan debate, which drives legislators toward national party positions rather than their own state citizenry's position.<sup>66</sup> Representing national party positions more than the opinion of one's state is even more common for governors.<sup>67</sup>

Increased state party polarization correlates with inequality. When state parties are polarized and gridlocked, addressing economic inequality is difficult and controversial. When states do not update policies like the minimum wage, Temporary Assistance for Needy Families (TANF), and the tax credit for families in poverty, the benefits decrease because they are not indexed to inflation, so poorer families' economic interests are not well represented.<sup>68</sup>

Further, in this polarized era, both parties listen more to the social and economic interests of the more affluent members of their party, so Republicans do not attend to the more redistribution-based interests of their lower-income members, and Democrats do not attend to either the economic or social issue preferences of their lower-income members.<sup>69</sup>

The nationalization of state politics diminishes citizenship

65. Shor 2015, 203–221.

66. Grumbach 2022.

67. Hopkins 2018.

68. Rigby and Wright 2015, 236–255.

69. Wright and Rigby 2020, 395–415.

in the American states. When the public views state politics through a nationalized lens, it also goes against the vision the framers had that citizens would hold their state identities close in political matters of vital importance.<sup>70</sup>

Vital institutions like local media, which used to contextualize state politics so citizens could actively participate and understand state politics, are breaking down. This increases the perverse incentives for state politicians to press national hot-button issues to motivate their ideological partisans, makes the regional flavors of politics more bland, and weakens the role of citizens in a key dimension of our democracy. American democracy is failing to leverage the benefits of federalism.

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# Case Study Chapter II

GREGORY SHUFELDT

## Chapter II Case Study: #RedforEd: West Virginia's Teacher Strike

When one thinks about the strength of organized labor, West Virginia is likely not the first state that comes to mind. About 10 percent of workers in West Virginia were unionized in 2023—exactly in line with the national average.<sup>1</sup> Yet the members of the American Federation of Teachers and the National Education Association, the two largest teachers' unions in the United States, helped spark a national reckoning to invest more in teachers and public elementary and secondary education.

In 2017, West Virginia's funding of public education lagged behind other states.<sup>2</sup> The state spent less per pupil than the national average. It ranked twenty-sixth in per-pupil education spending. In particular, West Virginia public schools spent considerably less on teacher salaries, wages, and benefits compared to the national average.<sup>3</sup>

While West Virginia has below-average rates of union affiliation, the teachers' unions were unwilling to sit there and do nothing. Interest groups, like teachers' unions,

1. Bureau of Labor Statistics, "Union Members—2023."

2. Mehta, "What Has and Hasn't Changed."

3. Leachman and Figueroa, "K-12 School Funding"; Boettner, "Does West Virginia Invest Enough?"

tend to have two primary sources of power. The first is financial—being able to invest in full-time lobbying at state capitols, supporting the reelection of friendly legislators, and facilitating the defeat of political opponents. However, for those without deep pockets, the power of the people or grassroots support can facilitate change. That is what teachers in West Virginia did in 2018 and again in 2019.

In 2018, West Virginia teachers participated in a nine-day walkout. As part of drawing attention to their cause, the hashtag #RedforEd went viral. Over the next several months, teacher protests and strikes spread to other states, such as Oklahoma, Arizona, Colorado, and North Carolina.<sup>4</sup> As a result, many teachers received raises, and class sizes were reduced in many instances. In particular, West Virginia teachers won a 5 percent pay increase.

The following year, teachers walked off the job again to protest attempts to further privatize education and drain more resources away from public education. Once again, they were successful in preventing legislation they opposed. This policy fight also underscores that interest groups do not work in a vacuum. They often find themselves pitted against other interest groups. This 2019 policy fight pitted teachers against model legislation promoting school choice from the American Legislative Exchange Council (ALEC) and the deep financial pockets of Americans for Prosperity, a conservative political advocacy group funded by billionaire brothers Charles and David Koch.<sup>5</sup>

This is the essence of pluralism, that ideas ought to compete against one another to promote outcomes more generally agreeable to diverse interests. Some interests have

4. Burnette, “What Is #RedforED?”; Blanc, Red State Revolt.

5. Goldstein, “West Virginia Teachers”; Strauss, “This Time”; Strauss, “Koch Network.”

financial resources. Some interests have more people on their side. Some perspectives are more likely to be organized and have representation than others. Teachers may have earned some hard victories in West Virginia, but organized interests will continue to use state and local government for the next fight.

## Critical Thinking Questions

What factors led the teacher strikes in West Virginia and elsewhere to be successful? What lessons can other organized groups learn from their success?

What role should campaign contributions, and money in politics more broadly, play in shaping public policy? What regulations, if any, should be put in place at the state level?

What strategies would you recommend interest groups utilize to influence elections and public policy?

# II. How Do Media and Interest Groups Influence State Government?

CHAD J. KINSELLA

## *Chapter Summary*

Interest groups and media play an important role in state politics, even though their respective responsibilities seem at odds. Interest groups are increasingly prevalent in state government and influential in supporting legislation that reflects their interests, sometimes more so than the constituents'. Local journalism has struggled in the twenty-first century, but those who still report on state and local government provide an invaluable service to constituents who otherwise might be unaware. This chapter examines the role of these organizations in political participation at the state level and encourages students to consider how they can be advantageous and also challenging to democratic engagement.

## *Student Learning Objectives*

Upon completion of this chapter, students should be able to:

1. Identify the function and role of outside institutions such as the media, interest groups, and other organizations in politics.
2. Chart the historical trends and changes in the media, including the evolution from localized newspapers to more nationalized online platforms.
3. Evaluate the role of media markets and the various responsibilities of political media.
4. Analyze the free-rider problem and how interest groups effectively recruit members.
5. Assess the differences between interest group influence and media impact in state government compared to federal government.
6. Understand the importance of grassroots movements and organizations in state politics.
7. Apply a critical lens to the effect of interest group and media bias in state politics.

### *Focus Questions*

These questions illustrate the main concepts covered in the chapter and should help guide discussion as well as enable students to critically analyze and apply the material covered.

How is interest group influence different at the state level compared to the federal level?

Why do people choose to join interest groups?  
How do interest groups overcome the free-rider problem?

How has media consumption changed over time?  
What impact can this have on citizens' knowledge, perceptions, and behavior?

What are the primary purposes of the media in a democratic system of government? How is that role being satisfied or unfulfilled in the current political culture?

## Introduction

In 2010, Ohio Republicans won control of both the statehouse and governor's office. Then-Governor John Kasich and the Ohio Republican legislative caucus made it a priority to pass legislation enshrining a "right-to-work" law, as did several other Midwestern states that elected Republican majorities in the wave of 2010. Right-to-work laws make union membership optional, even in workplaces that are unionized, and are seen as a way to weaken unions that are most often allied with the Democratic Party. Ohio passed such legislation into law in 2010 via SB 5. Ohio unions mobilized and were able to collect enough signatures to trigger a referendum, Issue 2, on the law in 2011. Union efforts on Issue 2 were successful, winning by a wide margin in 2011, repealing the right-to-work law. This was a major victory for Ohio unions, who organized under the banner of

the group “We Are Ohio,” raising \$30 million to best their opposition in spending by a 3 to 1 margin.<sup>1</sup>

Groups also play a key role in legislative sessions themselves. In 2023, the Indiana state legislative session was a resounding victory for school choice advocates. The state legislatures passed a near-universal expansion of the state school voucher program, enabling almost all children in Indiana to be eligible to attend the school of their choice and ensuring that millions of dollars go to charter schools as opposed to public schools in the years to come. The legislation was passed on the heels of an intense lobbying campaign by a group called Hoosiers for Quality Education that saw them spend \$433,754 on lobbying during the sessions and hundreds of thousands more on a marketing campaign supporting charter schools. Overall, \$20.7 million was spent on lobbying the Indiana General Assembly in 2023, and an array of groups employed hundreds of lobbyists.<sup>2</sup>

These stories highlight instances where interest groups are involved in politics and affect policy in state government. **Interest groups** are organized groups of people who participate in the political process and try to affect politics and/or policy in such a way as to benefit themselves or their constituencies. Second only to political parties, interest groups are a major player in state politics and policymaking across all fifty states. They typically can call upon a large number of members, have offices in and around state capitols, and have access to significant amounts of money that are employed to influence politics and elections throughout the state and policy during legislative sessions. As the stories point out, they can be quite successful in their endeavors.

The number of interest groups has increased in the states over time,<sup>3</sup> and with that has come an increase in memberships,

1. Fields, “Ohio Voters.”
2. Lange, “Lobbyists Spent .7 Million.”
3. Gray and Lowery, Population Ecology.

fundraising and spending on campaigns, and general presence in state politics just as in national politics. Depending on the state, certain interest groups are major players in state politics. In some states with weaker political party infrastructures, interest groups fill the void by providing funds, recruiting candidates, and offering guidance on policymaking.

## What Are the Different Types of Interest Groups?

There are a variety of interest groups active in each state that vary in size, activity, and influence. In many cases, the legislation proposed will dictate how active interest groups are. Certain policy and spending initiatives will attract the attention of groups, with some organizing to oppose the legislature and others organizing to support it, depending on how the proposals are written and, more often today, the partisan makeup of the state legislature and who wrote the legislation. Several groups have to be active every session, as their issues are at the forefront of legislative business. If you attend a state university, your university employs at least one if not a team of lobbyists who constantly monitor legislation and budgets. Ultimately, if you can either visit or be an intern at a state legislature during a session, you will see a variety of interest groups.

Overall, the largest line items of every state's budget are K-12 education and Medicaid, both encompassing a large number of groups who have varying interests in the activities and funds spent on them. Furthermore, states regulate economic activity, including beer and alcohol sales, insurance, professional licensing, natural resources, taxes, and several others. Given the breadth of involvement in several domains and the large amount of money at stake, groups of various types, backgrounds, and goals feel it is in their best interest (or in some cases, their survival is at stake) to influence state government.

One of the oldest and most prominent types of interest groups are those that represent individual **businesses** or a collective of businesses such as the state Chamber of Commerce. Depending on which state you live in, there may be several prominent businesses that are headquartered there or have significant interests or presence in the state. For instance, Walmart is the largest business in Arkansas, whereas Nike is the largest in Oregon, and General Electric is the largest in Massachusetts. Businesses sometimes have a direct interest in policy considered by the state legislature or the budget. Sometimes businesses benefit from tax cuts or portions of the tax code for employing citizens within the state or may have or wish to have direct business with the state. There are instances when businesses are indirectly affected by state policy, such as more recent policies surrounding the LGBTQ community, because businesses want to be able to hire the best and brightest, with potential employees feeling welcome. Also, transportation spending is important to businesses so that products can move easily to and from facilities.

Another one of the oldest and most well-known groups is **unions**. Unions represent organized labor in both the private and public sectors. The Service Employees International Union is active in many states and is a union you may belong to if you work in the service industry, such as in restaurants, while in college. Teachers are represented by several groups but most prominently by state affiliates of the National Education Association, who actively work to increase pay, rights, and the general well-being of public school teachers. Even some of your professors are represented by the American Association of University Professors. These groups all work for workers' rights and often together to forward or stop legislation that threatens them all, such as right-to-work legislation. Unions will often work proactively to stop antilabor legislation while also supporting prolabor legislation.

**Professional organizations** are another type of interest group that is active in state government. These groups represent different professional organizations and industries, such as

accountants, beer and liquor vendors, home builders, physicians, farmers (including specific types of farmers, like corn, soybean, sugar, etc.) car dealerships, and so on. Unlike unions, which bargain and sign contracts on behalf of their members, professional associations represent particular industries or fields and may be more active at times when policy is being considered that could affect the constituency they represent.

States also have interest groups that are **ideological** in nature and represent a particular side of a **single issue**. Given the ideological nationalization of partisanship that has occurred at the state level,<sup>4</sup> several ideological groups that are visible at the national level have state affiliates or state offices. In several cases, ideological groups form as part of a broader coalition to push a particular issue or, if a state has direct democracy, to organize to support or oppose the issue on the ballot.

Finally, there are **public-sector interest groups**. These represent multiple public-sector entities and can include state and private universities, municipal and county associations, school board associations, and a host of other public entities within a state. These interest groups can represent both local elected officials and public employees.

## Why Join an Interest Group?

There are several motivations for people to join interest groups. First, people join interest groups for **information purposes**. Interest groups are active and informed about state laws and changes that are made. They can offer conferences, newsletters, and training to inform their members about state laws and policies that pertain

4. Caughey and Warshaw, *Dynamic Democracy*.

to their particular interest group members and keep them aware of changes that affect them. City and county associations across the country have annual conferences to inform members of state budgets and policies that affect these local governments.

An obvious advantage of joining many interest groups is the material benefits that come from joining. **Material benefits** come in many forms. Union members join because these groups provide job security and negotiate their contracts and, in doing so, generally try to get increased pay and benefits. State teachers' associations have done this for years and, across many states, have large numbers of members because they actively attempt to improve teacher pay and benefits. Several professional associations and businesses actively seek state contracts for a variety of services and may live or die by their ability to obtain contracts and keep them in the state budget.

Finally, people join interest groups because of **solidarity with the purpose** of the group. Many interest groups have members who believe in the cause and mission of the group. This is especially true of the many ideological and single-issue groups that exist in the states either as state affiliates of a national group or as state-level groups. In different states at different times, the issue of medical malpractice reform has come up for debate in state legislatures. Interest groups that represented patient rights and lawyers would compete with groups representing hospitals and doctors for legislatures' attention. It is the goal of these interest groups to either encourage or stop legislation passing medical malpractice reform that would put limits on payments in lawsuits dealing with medical malpractice. More recently, state affiliates of the National Rifle Association have competed with antigun groups such as the Brady Campaign regarding gun rights that are still hotly debated in state capitols across the country.<sup>5</sup> These groups will donate money to supportive legislators; plan protests; conduct email, phone call, and letter-writing campaigns; and make

## 5. Walker, Mobilizing Interest Groups.

endorsements in primary and general election races to mobilize their constituents to support and vote for like-minded legislators.

## How Do Interest Groups Influence?

Interest groups are heavily involved in state politics and policymaking. Every interest group is interested in ensuring the best outcomes for their members and employs a variety of tactics to influence. Overall, interest groups use four main tactics to influence. These include (1) lobbying; (2) grassroots lobbying; (3) making political contributions to friendly state policymakers, especially through **political action committees (PACs)**; and (4) conducting public relations campaigns to successfully institutionalize or block policy.

**Lobbyists** are representatives hired by interest groups to influence the decisions of government officials. Interest groups will sometimes hire their own in-house lobbyists or contract with a lobbying, law, or public relations firm to represent them. Several firms are located near the state capitol with the expressed intention of having a regular and visible presence for lawmakers. Law firms around the state capitol will often have a government relations department as part of their firm that employs lobbyists. In state capitols across the country, hundreds of lobbyists are employed, and groups spend hundreds of millions of dollars to influence state officials.

**Table 11.1 – Number of Registered Lobbyists and Spending on Lobbying Activities in Certain States**

Data Source: OpenSecrets. 2023. Accessed December 6, 2023.

[https://www.followthemoney.org/show-me?dt=3&lby-y=2022&lby-f-fc=2&lby-f-fc=2#\[\[1\]gro=lb-y-s,lby-y](https://www.followthemoney.org/show-me?dt=3&lby-y=2022&lby-f-fc=2&lby-f-fc=2#[[1]gro=lb-y-s,lby-y). Table by the author.

State	Year	Registered Lobbyists	Total Spending
AK	2022	95	\$21,287,317.79
CA	2022	1802	\$445,524,124.55
CO	2022	367	\$68,518,640.82
CT	2022	769	\$110,899,868.51
FL	2022	1855	\$276,009,000.00
IA	2022	656	\$21,635,921.06
KY	2022	685	\$24,383,228.38
MA	2022	1401	\$111,822,713.83
ME	2022	185	\$3,307,168.41
MI	2022	1371	\$49,934,738.39
NE	2022	443	\$22,232,038.47
NJ	2022	986	\$95,076,033.71
NY	2022	1329	\$330,542,990.00
OR	2022	937	\$45,516,102.64
SC	2022	411	\$26,058,732.61
TX	2022	1607	\$229,328,494.05
VT	2022	642	\$10,113,300.16
WA	2022	1074	\$79,290,399.53
WI	2022	694	\$31,917,844.00

Table 11.1 shows several state lobbying records for 2021 and 2022. The number of lobbyists and the amount spent varies significantly by state. Large states such as California, Florida, Texas,

and New York have over a thousand lobbyists employed, with spending that goes into the hundreds of millions of dollars. Smaller states such as Alaska, Maine, Kentucky, and Connecticut reveal significant diversity, with variation in the number of lobbyists (ranging from less than a hundred to several hundred lobbyists) and the amount of money spent (ranging from a few million dollars in Maine to states spending tens of millions of dollars). The number of lobbyists in a state is also affected by the political culture of the state (moralistic, individualistic, or traditionalistic), whether the legislator is full or part time, and even how states define what a lobbyist is—some states have expansive definitions requiring large-scale registration, while others have restrictive definitions requiring fewer people to register as lobbyists.

Lobbyists play a critical role in the policymaking process. Their number-one job is to inform legislators and others involved in policymaking about the interest(s) they represent. Much of lobbyists' time is spent before and during sessions getting meetings with legislators, ranging from conversations in their offices to group-financed dinners and social gatherings in and around the state capitol. Many legislators are elected and have a background in or passion for certain policies, but most are not well versed in all areas taken up by state government. This provides lobbyists an opportunity to fill this void by providing information to legislators on the policy preferences of the group they represent. For instance, if a legislator is a retired teacher and ran based on their knowledge and passion for education, they may not know much about banking, medical malpractice, or a range of other critical issues the state legislature will consider. Lobbyists help provide critical information to state legislators, including personal narratives, statistics, and data to help convey their main points. Lobbyists must be experts in the areas they represent.

Research on core lobbyists' activities in several states found that their successful tactics include the following:

- meeting personally with state legislators;

- meeting personally with legislative staffers;
- entering into coalitions with other interest groups;
- helping draft legislation;
- meeting personally with members of executive agencies;
- testifying at legislative committee hearings;
- meeting with members of the governor’s staff;
- talking with members of the media;
- organizing letter, email, and telephone campaigns to state legislators;
- providing written testimony to legislative committees;
- providing written comments on proposed rules and regulations; and
- assisting with the drafting of regulations, rules, and guidelines.<sup>6</sup>

As this list shows, there are a host of activities in which lobbyists engage. With the high number of lobbyists employed in state government across the country, it is clear that interest groups feel a need to have representation to safeguard their interests in state government. Even other government entities such as cities and counties within the state hire lobbyists to represent their interests and ensure that state funds to their local governments are protected or increased.<sup>7</sup>

Given the number of lobbyists employed in states and the amount of money spent on lobbying activities, it is clear that lobbying is an effective tool and provides access to groups that are beyond the means of most individuals. Given the popular skepticism the public holds of the lobbying profession, states have enacted regulations for lobbyists to abide by.<sup>8</sup> One of the most important aspects of state regulations is simply defining *lobbyists*, and the

6. Nownes and DeAlejandro, “Lobbying,” 429–55.

7. Payson, *When Cities Lobby*.

8. Cigler, Loomis, and Nownes et al., *Interest Group Politics*.

definition can vary greatly on how inclusive or inclusive it is by state. Also, states regulate lobbyist activities, such as reporting gifts given to legislators of a certain value or restricting them completely so that lobbyists have to register themselves and their activities with the state.<sup>9</sup> States have also created independent ethics commissions<sup>10,11</sup> and disclosure laws including limits on gifts,<sup>12</sup> which include a complete prohibition (except for trinkets and mementos of low monetary value) in Minnesota or, similarly, gift limits of \$10 in Arizona. The purpose of these laws is to provide greater transparency and reduce the influence of lobbyists on state elected officials.<sup>13,14</sup>

The result is that every state legislature includes registration requirements for lobbyists before they can start with lobbying activities. Registration costs range from zero to several hundred dollars, with some states waiving fees for government or public-sector lobbyists. Some states require those who hire lobbyists (referred to as principals) to register either instead of their lobbyists or along with them. The information that lobbyists must register varies significantly from state to state, as can each state's definition of a lobbyist. Overall, states require a filer's name, address, client, and subject matters in which they are experts. Some states require photo identification, disclosure of sublobbyists in their employ, pledges of honesty, and even compensation. States with ethics commissions that oversee lobbying may require even

9. Newmark, "Measuring State Legislative Lobbying," 182-191.

10. Rosenson, "Against Their Apparent Self-Interest," 42-65.

11. Rosenson, *Shadowlands of Conduct*.

12. Rosenthal, *Third House*.

13. Rosenthal, *Third House*.

14. Ozymy, "Assessing the Impact," 397-420.

more detailed registration to give them more discretion in lobbying oversight.<sup>15</sup>

Despite the concerns of Americans around interest groups and their lobbyists, lobbying can be an important, socially responsible activity.<sup>16</sup> The main job of lobbyists is advocacy, and this is often carried out in ethical ways by lobbyists in a variety of fields.<sup>17</sup> A lobbyist's work is often directed at crafting good public policies that benefit society,<sup>18</sup> although what groups and lobbyists consider good public policy depends greatly on their own opinions and judgment. Lobbyists work for many causes and organizations, including higher education institutions. They seek to advance the needs of their clients and to provide positive outcomes for the community.

The professional organizations of lobbyists themselves encourage ethical behavior and professionalism, including ethical standards.<sup>19,20</sup> Lobbyists must be good stewards of public trust and leverage their skills for the benefit of the public good, and to accomplish this, they must be honest, transparent, and accountable.<sup>21</sup> Lobbyists who violate these tenets face a variety of formal and informal sanctions. Formal sanctions include fines and imprisonment, while informal sanctions can cost a lobbyist their job—once they lose the trust of legislators, it is difficult if not impossible to get it back. In a survey of Indiana lobbyists in 2022, the vast majority reported that they adhere to all ethical behavior

15. National Conference of State Legislators, “Lobbyist Registration Requirements.”

16. Hamilton and Hoch, “Ethical Standards,” 117–129.

17. Berg, “Ethics of Lobbying,” 97–114.

18. Givel and Spivak, “Bureaucratic Advocacy,” 5–18.

19. Governmental Affairs Society of Indiana, “Governmental Affairs Society.”

20. National Association of State Lobbyists, “Code of Ethics.”

21. Goodall, When Colleges Lobby States.

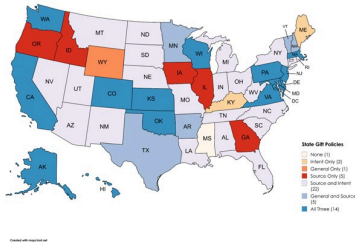
and work,<sup>22</sup> with all lobbyists saying they maintain appropriate confidentiality and turn down inappropriate requests.

Beyond regulating lobbyists, states have enacted laws and regulations governing gifts to legislators and government officials. These stipulations also apply to all members of any kind of interest group. According to the National Association of Attorneys General, all states except Mississippi have enacted regulations and laws to dictate when elected or other government officials may and may not accept a gift. Overall, these regulations fall into three areas:

- **General Restriction:** This type of law or regulation prohibits a public official from receiving a gift regardless of whether the giver intends to influence the official. This type of prohibition is based on the idea that receiving anything of value without giving equal consideration in return may potentially create a sense of obligation in the recipient, thus ensuring the recipient of the gift does not feel indebted to the gift giver.
- **Source-Based Restriction:** This prohibits gifts given by interested parties such as lobbyists or a person who has business that lies within an official's authority or jurisdiction. States vary on how they enforce these laws and regulations, with states like Colorado completely prohibiting gifts to officials, while other states, such as Pennsylvania, acknowledge that giving gifts such as shared meals and entertainment is part of the culture and limit and/or require disclosure as opposed to complete prohibition.
- **Intent-Based Restriction:** Gifts are restricted or allowed based on whether the giver intends to influence or could influence an official from otherwise being impartial in doing their duty or making decisions. Such gifts in this type of restriction are treated as bribery even if there is no specific quid pro quo (a favor for a favor) agreement (see Figure 11.1 for how states vary

## 22. Kinsella and Snideman, "Ethics and State Level Lobbyists."

on gift restrictions).



**Figure 11.1 – State Gift Policies**  
Data Source: National Association of Attorneys General. “[State Gift Laws.](#)” 2024 / Map made by author.

Many states use a combination of gift restrictions as their official policy. Wisconsin, Washington, and Oklahoma use all three restrictions; Minnesota and Texas use a combination of general and source; Indiana and New York use source and intent; Wyoming uses only general; and Mississippi is the only state that uses none.<sup>23</sup>

Research has shown that the results are clear. States that have increased formal lobbying regulations have seen a decline in the influence of interest groups in the legislative process, defined by a survey of state legislators on interest group influence on the legislative process.<sup>24,25</sup> Furthermore, states that have strictly regulated lobbyists have seen an increase in state legislators’ consideration of their citizens’ opinions.<sup>26</sup>

Another major way in which interest groups are active in influencing policy is through direct involvement in the political process by donating to campaigns. Although the number of competitive state legislative races has steadily decreased for decades,<sup>27</sup> according to the National Institute on Money in State Politics, the amount of money spent on state legislative races has increased dramatically. For instance, in 2012, state legislative races

23. National Association of Attorneys General, “State Gift Laws.”

24. Ozymy, “Assessing the Impact,” 397–420.

25. Ozymy, “Keepin’ on the Sunny Side,” 3–23.

26. Flavin, “Lobbying Regulations,” 304–326.

27. Klarner, “Democracy in Decline.”

raised and spent just over \$1 billion, while in 2022, they raised and spent over \$1.6 billion.<sup>28</sup> All fifty states have their sets of campaign finance laws that differ, sometimes dramatically, from federal standards enforced by the Federal Election Commission. Also, each state has an election administration agency and requires some form of disclosure. The goal of disclosure is to ensure transparency in elections, meaning that the public can obtain information on who is donating and how much.

States allow for different interest groups to contribute money to state legislative campaigns in several ways. One of these methods is through PACs. PACs are specialized organizations that are created for the sole purpose of raising and spending money on campaigns. Typically, PACs are affiliated with an interest group, and many of the affiliations are obvious in PAC names. Research on PAC donations has found that these donations do influence legislators, including a case where legislators in Florida were influenced when they voted on school vouchers after contributions from a teachers' union PAC.<sup>29</sup> As with lobbyists, some states have enacted stricter campaign finance laws to limit outside influence.<sup>30</sup> Currently, thirteen states allow PACs to contribute unlimited amounts of campaign funds to state legislative candidates, while the remaining thirty-seven states allow for PACs to either contribute as much as individuals or set a different limit for them. States allow for PAC contributions but have limited how much they can give, including in Rhode Island and Florida (\$1,000), or the proportion of the total amount of donations (50 percent), like Tennessee.

Unlike federal elections, many states allow corporations and unions to make direct contributions to state races. Currently, six states allow corporations to make unlimited contributions to state legislative candidates, and another twenty-two prohibit

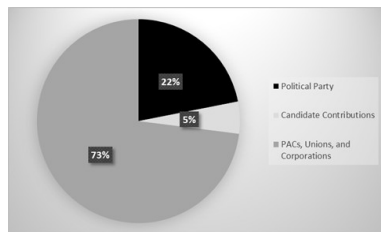
28. FollowtheMoney.org, "Contributions, State Legislative Races."

29. Constant, "When Money Matters," 195–219.

30. Hogan, "State Campaign Finance," 887–906.

corporate donations to state legislative candidates. Nineteen states set corporate contribution limits as the same for individuals, and three other states set different amounts of campaign donation limits for corporations. Similarly, states also vary on union campaign contributions to state legislative candidates. Eight states allow unlimited union campaign contributions, and fourteen others prohibit union contributions. Another twenty states allow for union contributions at the same amount as individual donations, and five others allow unions to only contribute campaign funds to state legislative candidates equal to corporate donations or only through their PAC.<sup>31</sup> Of the nearly \$600 million donated by nonindividuals in state legislative elections in 2022, \$432 million was donated by PACs, corporations, and unions (see Figure 11.2). Ultimately, states with restrictions on donation amounts see fewer direct donations to legislators, while those with less restrictive policies rely on disclosure laws so citizens can see how much is being donated and by whom.

Table 11.2 shows three states (California, Minnesota, and Florida) with the top five contributing groups in 2022 along with their amounts. Donations all run into the millions of dollars, and depending on the state and its campaign finance laws, groups either donate directly, as in California, or find it better to donate to party or candidate committees who then make decisions on donations, such as in Minnesota and Florida.



**Figure 11.2 – Nonindividual Contributions in 2022**  
Data Source: [OpenSecrets](#). [Follow the Money](#) / Chart by the author.

31. National Conference of State Legislatures, “Contribution Limits Overview.”

**Table 11.2 – Top Five Contributors in Selected States, 2022**  
 Data Source: OpenSecrets. 2023. “At a Glance.” Accessed December 8, 2023.  
<https://www.followthemoney.org>. Table by the author.

California		Minnesota		Florida	
Spending Group	Amount	Spending Group	Amount	Spending Group	Amount
San Manuel Band of Mission Indians	\$105,672,007	Democratic Governors Association	\$7,650,165	Ron DeSantis Campaign Committee	\$94,429,753
Lyft Inc.	\$53,260,384	2022 Fund FKA 2018 Fund	\$7,525,000	Florida Republican Party	\$21,496,495
Davita Inc.	\$48,492,696	Democratic-Farmer-Labor Senate Caucus of Minnesota	\$7,476,714	Republican Governors Association	\$20,950,000
Federated Indians of Graton Rancheria	\$35,060,848	Education Minnesota	\$6,362,234	Friends of Charlie Crist	\$6,930,708
Fanduel Group	\$35,060,848	Democratic-Farmer-Labor House Caucus of Minnesota	\$4,668,476	Duke Energy	\$5,588,073

Another major method used by interest groups to lobby is through **grassroots lobbying**. Grassroots lobbying is the use of interest group members to contact elected officials in an attempt to sway them to support the issues championed by the interest group. Essentially, this is using the strength of numbers to sway policymakers and can be as or more effective than traditional lobbying efforts. Grassroots lobbying may employ a host of different tactics, such as letter/email writing, phone calls, meetings with elected officials, and protests.

In 2013, then-Governor Rick Perry called a special session to pass legislation restricting abortion rights in Texas. Groups like Planned Parenthood and NARAL Pro-Choice Texas rallied along with legislative Democrats to stop the bill. After Democrats in the senate fell short in their attempt to filibuster legislation until the deadline of the special session at midnight, protesters shouted and caused general chaos to bring all legislative activity to a halt until the midnight deadline. Although Perry was able to call another special session and pass the legislation, the delay illustrates what an effective grassroots lobbying campaign can do.<sup>32</sup> More recently, in response to restrictive gun laws passed by Illinois's Democrat-dominated state legislature and signed into law by Democratic Governor J. B. Pritzker, the Illinois State Rifle Association protested in a march in Springfield in an attempt to have their voices heard.<sup>33</sup> Grassroots lobbying requires the mobilization of an interest group's members and can be a powerful influencer in state capitols. Even a simple email campaign to legislators can influence legislative voting behavior.<sup>34</sup>

In many instances, particularly if an issue that is critical to a group comes to the forefront, groups will organize and employ every method possible to influence, including deploying commercials on television and social media. As states have adopted a host of different policies depending on which party controls state government,<sup>35</sup> certain interest groups have an outsized amount of influence depending on their closeness to the party in power. Overall, studies have found that there are twelve determinants of how much influence groups have in state government:

- how necessary a group's services and resources are to state

32. Batheja, "How Activists Yelled!"

33. Gorner, "Gun Rights Advocates."

34. Bergan, "Does Grassroots Lobbying Work?," 327-352.

35. Pickerill and Bowling, "Polarized Parties," 369-398.

- officials;
- whether a group's lobbying efforts are primarily defensive (trying to stop policy) or offensive (trying to pass policy);
- the strength of a group's opposition;
- the potential for a group to enter into a coalition;
- a group's financial resources;
- the size and geographic distribution of a group's membership;
- the political cohesiveness of a group's membership;
- the skills in management, organization, and politics of a group's leadership;
- political climate;
- lobbyist and policymaker relations;
- how legitimate a group's demands are perceived by the public and policymakers; and
- the amount of autonomy a group has in political strategy making.<sup>36</sup>

## What Is the Role of Media in State and Local Government?

In the early spring of 2018, after a brief meeting with his caucus, the Republican majority leader of the Iowa State Senate emerged and issued a letter just one sentence long: He was resigning. This tumultuous ending was the result of an investigation by a small political website in Des Moines that posted a video of the former majority leader meeting with a female lobbyist in a bar and the two kissing. Many in Iowa considered that such a relationship would

36. Thomas, Hrebenar, and Nownes et al., "Four Decades of Developments," 40.

have undue influence and rocked a legislature that had recently had a \$1.75 million judgment against it for sexual harassment.<sup>37</sup>

In Rhode Island in the 2016 election, Moira Walsh defeated a Democratic incumbent in the primary and won an uncontested general election. The reform-minded Democrat was in for a shock almost as soon as she was sworn in. Shortly after taking office, then-Representative Walsh spoke to a radio host and talked about how surprised she was at the amount of drinking that took place on the legislative floor and how disappointed she was that votes could be taken on critical issues with those casting those votes “half in the bag,” a term used to describe being nearly drunk. Before ever being sworn in, she had discussed concerns over the rumors about the amount of drinking that went on during sessions. After this interview was reported widely in the media, leadership in the Rhode Island House reacted swiftly. The house majority leader told state media outlets that he had never witnessed anyone intoxicated on the floor while voting. Concerns about drinking during the session were not confined to Rhode Island, as during the same year, Missouri proposed a ban on drinking in the statehouse, Oklahoma had already banned alcohol from the capitol building, and California instituted free after-hours transportation for state legislators in 2015 after a rash of drunk driving arrests.<sup>38</sup> After losing her seat in the Democratic primary in 2020, Walsh stated that one of her greatest accomplishments was moving drinking off the floor and making it less acceptable.<sup>39</sup>

Perhaps one of the most powerful and important institutions in the states is the **media** that covers state government and politics. Indeed, one of the most critical parts of a functioning democracy is to have a free and fair press. Just like national news outlets keep us informed about governance and politics in

37. Petroski, Pfannenstiel, and Noble et al., “Bill Dix Resigns,”

38. Associated Press, “File Cabinets Full of Booze.”

39. Ahlquist, “Representative Moira Walsh.”

Washington, DC, state governments have media outlets in their respective state capitols that discuss governance, politics, and policymaking in state government. Like the national media, state media functions as a watchdog, is an outlet for politicians and interest groups to take their case to citizens, and informs citizens about state government and politics. Unlike the national media and Congress, though, lawmakers at the state level are far more accessible and very interested in the press attention.

There are several forms of media. Traditionally, media is defined as being either **print**, **radio**, or **television**. The advent of the internet and social media has drastically changed how some of these traditional media outlets do business, as many, if not all of them, now use websites and social media as mediums to reach their audience. Almost all newspapers use websites and post articles, with some regional and local papers going exclusively online. The number of statehouse reporters working for digital-only outlets accounts for the fast-growing areas covering state government.<sup>40</sup> Television uses clips of their broadcast and posts those videos online as well as posting digital content that can be read. Radio also posts articles online and utilizes podcasts to reach a broader market. Almost all reporters, regardless of what outlet employs them, use social media such as Instagram, Facebook, and Twitter/X to post content and engage with their audience.

Overall, media is expected to cover a geographic area called a media market. Traditionally, there are 210 **media market areas** throughout the United States that vary considerably in size, with New York being the largest media market and Glendive in eastern Montana being the smallest. Part of the job of the media in each media market is to provide local news to the areas encompassed in their geographic setting, which can be a difficult job considering the size and diversity of some of the markets. For example, the

40. Shearer et al., “Total Number of U.S. Statehouse Reporters.”

Cincinnati media market encompasses portions of three different states: Ohio, Indiana, and Kentucky.

Despite the lofty goals and expectations of media covering state government, there are negative trends with state news outlets. Research shows that between 2003 and 2009, there were a third fewer full-time reporters devoted to covering state government and politics across the country, and by 2009, half of states had five or fewer full-time reporters.<sup>41</sup> In 2014, there were 1,592 statehouse reporters covering state politics; however, by 2022, there were 1,724 statehouse reporters (see Figure 11.3 for the number of reporters per state). Despite the increase in reporters, the number of full-time reporters had decreased between 2014 and 2022, with many statehouse reporters either working part time or even being student interns.<sup>42</sup> Not only are there problems with the number of reporters, but media consolidation is an ongoing trend in which larger companies have purchased smaller ones. Currently, 75 percent of all print newspapers are owned by one of three major media conglomerates. This has led to the need for these companies to shift coverage that can be distributed in multiple markets like national news instead of market-specific state and local news. The result is less coverage of state and local news, less ideological diversity in coverage, and a decrease in viewership.<sup>43</sup>

41. Enda, Matsa, and Boyles et al., “America’s Shifting Statehouse Press”; Rogers, “Electoral Accountability,” 555–571.

42. Shearer et al., “Total Number of U.S. Statehouse Reporters.”

43. Martin and McCrain, “Local News,” 372–384.



get their local news on websites or social media as opposed to television, print, or radio. Despite all the setbacks for local news, Americans still see value in local news and journalists, viewing them as a crucial part of the well-being of their communities.<sup>48</sup>

## How Is the Media Regulated?

The US Constitution provides broad protections in the First Amendment for freedom of the press, but it is important to realize that those constitutional protections are not absolute. All media outlets are forbidden from broadcasting or printing defamatory statements, known as libel and slander, nor can the media publish classified material. The federal government has also created the **Federal Communications Commission (FCC)**. The FCC has created and enforced several rules that apply to radio and broadcast media, including the following:

- **The Equal Time Rule:** This rule requires broadcasters to provide equal time to all candidates for the same political office.
- **The Right of Rebuttal:** This rule requires broadcasters to offer the opportunity for political candidates to respond to criticism. Ultimately, if a station airs an attack on a candidate, then the candidate must be given a chance to respond. It is important to note that this does not include negative advertising, only criticism by the station itself.
- **Indecency Regulations:** This rule limits language considered profane and obscene visual content between the hours of 6 a.m. and 10 p.m.—hours when children are likely to be watching or listening.

48. Shearer et al., “Americans’ Changing Relationship.”

Currently, digital media has significantly less regulation, although there are calls and even attempts by states to change this. After the 2016 presidential campaign, Congress had hearings regarding interference by foreign actors who posted “fake news” on social media outlets such as Facebook to interfere with the American electoral process. More recently, states have attempted to regulate social media, with thirty-four state legislatures introducing various proposals. To date, three states have passed laws regulating social media. Texas and Florida passed laws banning the censorship of users’ viewpoints or the removal of political candidates from their platforms. New York passed a law requiring social media platforms to report and respond to hate speech, including fines for companies that do not comply. All three laws are currently being challenged in the courts.<sup>49</sup>

The media and individuals also have rights regarding access to government information. **Sunshine laws** are laws intended to help with government transparency by making most government documents and records available to the public and are governed by the **Freedom of Information Act of 1967**, which affords citizens and the media the right to request information from state and local governments. Furthermore, sunshine laws require government meetings, votes, and deliberations to be open and announced with sufficient notice, including the time and place, and the location to be accessible to the public and media. These laws are intended to decrease corruption and increase public trust in government. Despite the intent of sunshine laws, state law varies significantly on what can be requested, the time frame in which one can expect a response, and even who can make the request.

49. Kern, “Push to Rein in Social Media.”

# How Does Media Influence?

Despite the decrease in the number of people covering state politics and government, state news, like national news, still plays a critical role in influencing politics. One of the key functions of the media, offline and online, is agenda setting. Agenda setting is the process by which the media reports some issues and events while ignoring others, ultimately telling the public what is important. Politicians try and occasionally succeed at trying to put issues or events that are important to them at the head of the agenda. Likewise, state and local officials would sometimes prefer to slip things through without any notice and prefer less or no media attention.

Another way in which the media has traditionally affected politics is through framing. **Framing** is the ability of the media to influence how events, issues, and actions are interpreted through the use of certain videos, pictures, or phrases or even the inclusion or exclusion of information. An example of this is how crime in urban areas is covered, with some outlets sharing stories of violent crimes while omitting signaling that violent crime is down overall.

**Priming** is when the media calls attention to some issues and not others when evaluating public officials, issues, or events and includes setting up background information to provide context but perhaps also influence opinions with subsequent information. Priming and framing differ from agenda setting by essentially acting as filters by which news is evaluated. An example of this across all fifty states was how different governors responded to COVID in 2020. During that period of national crisis, all governors' leadership abilities were judged by the actions they did and did not take regarding their COVID response.

Despite the decreasing number of reporters covering state government and politics, they still play an incredibly important role. As the stories presented illustrate, the media plays the critical role of a watchdog, making the public aware of wrongs, and usually, that coverage leads to policy change. State media informs. Again,

because of the nationalization of media and politics, the public tends to forget or willingly ignore state politics despite state politics playing a more prevalent role in the daily lives of citizens than the federal government.

## Conclusion

Interest groups play a critical role in state and local politics that is only eclipsed in importance by the parties themselves. There are many reasons why people join interest groups, and they represent diverse groups of people. Interest groups raise and spend large amounts of money and use those funds to lobby state legislatures and, through PACs, monetarily support sympathetic elected officials. States vary significantly on the regulation of money spent on campaigns by interest groups and even gifts that can be given to state officials. Interest groups are also able to mobilize their members to influence state officials.

Media in state and local government and politics plays a critical role but is going through monumental changes. Traditional media outlets of television, print, and radio use the increasingly popular formats of the web and social media to continue to connect with the public. Despite the importance of state and local coverage, the resources devoted to this coverage have continued to diminish, with negative impacts on state and local politics. The media is, overall, given great protections by the US Constitution but is regulated by the FCC, and although social media and the internet have few regulations, states have filled and continue to fill this void. Finally, despite the trend of diminished state and local coverage, the media still influences the public by what stories they decide to cover and how they cover them.

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# Case Study Chapter 12

LAURA MERRIFIELD WILSON

## Chapter 12 Case Study: Idaho and the Decision for Local Taxes

Voters often lament paying taxes despite enjoying the services and goods that funding supports. From a taxpayers' perspective, disagreement on a "fair" tax (even whether it should be progressive or regressive), dissatisfaction with the distribution of expenditures, or even a distrust of the government responsible for prioritizing the expenditures are all reasons to dislike taxes. For communities, however, pooling together resources to provide services for all residents is an essential feature of government and a unique provision that separates the public sphere from the private sphere. Taxes are collected at multiple levels of government and fund policies adopted at those levels.

In Idaho, residents of cities get to choose whether to implement a sales tax in their community. Based on general attitudes toward taxes, you might think that they would be universally unpopular and voters would never choose to adopt one. Yet many cities voluntarily opt into them to support their revenue. The decision to tax sales in some cities in Idaho rests largely on the city's tourism stream and the funding that sales taxes can generate in those communities. Cities like Sun Valley, Idaho, rely on tourism as a major part of their economy. Sun Valley is a resort city located centrally in the state that boasts breathtaking

mountain ranges outfitted with ski lodges, shopping, and a golf course.

While residents would not be able to avoid paying sales tax, a town that is heavily reliant on tourism may choose to tax hotels, dining or restaurant options, or transit that would be more likely to be used by a tourist than a resident. This shifts the burden of the tax cost from the voters to the visitors. Idaho's tax code includes a flat 5.8 percent individual income tax rate and corporate income tax rate with a 6 percent state sales tax rate.<sup>1</sup> Though cities can choose to add their own local taxes to that sales tax, only twenty-two of them do, and the combined average rate of sales tax (local plus state) is only 6.03 percent.<sup>2</sup>

Because local governments are under the purview of state governments, they are able to pursue their own policies to the extent to which they are allowed by the state. Cities in states with home rule (the ability of the city to self-govern) have additional options to pursue (or not pursue) policies that fit their unique interests and needs as a community. While the concept of home rule enables this flexibility, it also means there will likely be inconsistencies across communities in what policies they enact and even the extent to which they are empowered with home rule by the state. Larger cities may be given more flexibility and autonomy, whereas smaller cities may not.

## Critical Thinking Questions

If you were leading policy in your local community or

1. Tax Foundation, "Taxes in Idaho."
2. Tax Foundation, "Taxes in Idaho."

state, what type of tax(es) would you prefer to create your state funding? What factors would you need to consider?

Does the shift of sales tax onto the tourism industry seem democratic? In what ways could it be helpful for a community, and how might it be harmful?

What are other areas that local government has decision-making authority over? (Think about your daily interactions with government, as likely most of these involve cities, counties, or special local districts.)

With what you know, what policy arenas or specific policies do you think local governments should have authority over? What about those reserved to the states? What differentiates the two?

# 12. Local Government Structure and Organization

LAURA MERRIFIELD WILSON

## *Chapter Summary*

Local governments range in size and scope from county governments, which are the administrative arms of the state and generally universal within a state, to city governments, which are granted power through a charter from the state and often have more authority than other incorporated municipalities. This chapter helps readers understand the differences among all types of local governments (county, city, township, special purpose, general function, etc.) in addition to the more nuanced variations of organization and structure (commission style, mayor-council, and council-manager). The benefits and disadvantages and unique features of each government are emphasized.

## *Student Learning Objectives*

Upon completion of this chapter, students should be able to:

1. Identify the essential differences between county governments and city governments, including administrative tasks and authority.
2. Explain the various structures of city governments and denote the benefits and disadvantages of each (commission, council-manager, and mayor-council).
3. Describe at-large, district, and combination systems of local governments.
4. Recognize the role of general-purpose local governments in comparison to the special-purpose local governments, including school districts and more specialized administrative bodies.
5. Analyze the function of charters and the value of home rule in the relationship between local government and state governments.
6. Apply residential mobility theory and push/pull factors to current local communities of growth and decline.

### *Focus Questions*

These questions illustrate the main concepts covered in the chapter and should help guide discussion as well as

enable students to critically analyze and apply the material covered.

What features make city governments unique from county governments?

How do the different structures of city government (commission, council-manager, and mayor-council) emphasize different values and preferences in city government?

Why are at-large systems a feature in some local governments for councils and legislative bodies but not at the state level?

How do charters and home rule play a role in municipal governance?

How can we apply residential mobility theory in our understanding of community growth and policy?

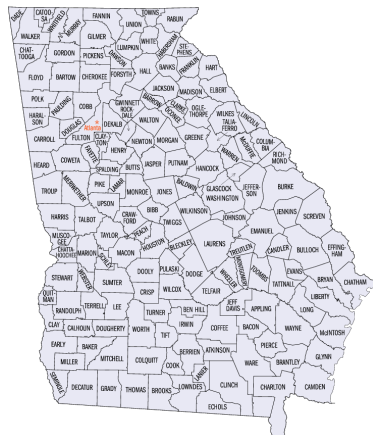
## What Are the Powers and Divisions in Local Government?

Local government plays an essential role in the daily lives of Americans, providing valuable services such as sidewalks and road maintenance and trash collection and removal. Most Americans reside in cities or suburban or urban areas, and the impact of local government decisions is substantial. While it may lack the glamour and attention given to federal and even state governments, local government serves as the front line for essential functions. Sidewalks, parks, schools, police, sanitation—all of these are

features of government with which we regularly interact. Public safety, public education, and infrastructure are necessary and expected in a modern society, and while other levels of government can influence these, they are largely the responsibility of local governments.

Yet it also often is seen as an afterthought compared to the state government. State government is far more visible, and its public officials are better known; the tasks it provides, while varying across the country, are generally monolithic and uniform across the state, meaning even as people may move across cities or counties, they are still bound by the same state laws and processes with which they are more likely to be familiar. Consider when many individuals interact with the state government: getting or renewing a driver's license. Though they are located throughout the state in different municipalities, the state bureau of motor vehicles sets the policies (guided through legislative statutes), determines the costs, and enforces the regulations so the experience of procuring a license is universally the same regardless of where you live within the state.

It is important to note that the states do treat local governments differently, though, as noted in Chapter 3. State constitutions include special provisions for local governments, noting what responsibilities and rights they may have, what title they may refer to themselves as, and what limitations to their



**Figure 12.1 – Counties in Georgia**  
Source: [“Georgia counties map”](#) by United States Census Bureau on [Wikimedia Commons](#) / [Public Domain](#).

powers may exist.<sup>1</sup> Some states allow significant local control, yielding some of the uniformity that could be held at the state level but enabling citizens to determine what they want to do uniquely in their local community that may differ from others.<sup>2</sup> This concept of home rule allows local governments more purview on policy and authority on issues and does not require the involvement or review of state government.<sup>3</sup>

Other states are more centralized in their organization and require changes in local municipalities to go through a state process. For some states, this may mean that the state legislature has substantial authority over aspects of local governing. In other states, it could go even further. Alabama's State Constitution of 1901, used until 2023, mandated that any changes locally to government had to go through a statewide vote to make the proposed change within the state constitution.<sup>4</sup> This meant effectively that people in sixty-six counties would be voting on a decision made for a county in which they did not reside, nor were they necessarily impacted at all.

Because states have the sole authority to create, destroy, or alter units of local government, the relationship between state governments and local units is quite different from the relationship between federal and state governments. The power of local governments is highly dependent on state governments, but not exclusively so. **Cities** originate with an organization of residents in a particular community who then petition the state government for a charter. The charter provides authority and specifies details of power, including boundaries, elections, bureaucratic management

1. Libonati, "State Constitutions and Local Government," 11.
2. Tarr, *Understanding State Constitutions*.
3. Briffault, "Home Rule," 253–272; Richardson, "Dillon's Rule Is from Mars," 662–685.
4. Brewer, "Constitutional Revision," 583; Stewart, *Alabama State Constitution*.

and divisions, and the policy process as a whole. It can act like a constitution for local government management, but the authority that gives it power comes not solely from the people but also from the state government, which makes it ostensibly different in its function compared to constitutions.

Throughout this chapter, the balance of power between state and local government in local municipalities will be addressed, as both levels of government play a major role in the implementation of policies at a local level. We will also explore the differences between local governments, including general-purpose (county, city, and township) and special-purpose governments. In addition, we will cover the various types of organization for local government and also discuss residential mobility theory and factors that attract or repel prospective new residents to a community.

## What Are City Charters, Home Rule, and Dillon’s Rule?

City governments are governed under **charters**. A charter is a legal document given to the city by the state government that outlines the powers and authority of the city.<sup>5</sup> It operates similarly to a constitution in that it serves as the guiding legal document for local government operations. A charter, however, is not as reciprocal as a state or federal constitution in neither its construction nor its implementation.

If residents of a state wish to change their state constitution (as discussed in Chapter 3), there are several

5. Frederickson, Wood, and Logan et al., “How American City Governments Have Changed,” 3.

mechanisms through which voters can make that change.<sup>6</sup> The constitution is responsive to voter change, and state constitutions regularly do change as the policies and preferences of voters do too.<sup>7</sup> If residents of a city want to amend their charter, they typically have to petition their state representatives and ask the state government for broader authority. This outlines an essential difference between the concept of constitutionalism, illustrated in our federal and state constitutions, and the power dynamic that appears in city charters.<sup>8</sup> Constitutions limit the power of government and uphold the power of the people; thus the people have the right, power, and authority to make changes to them. Charters do not come from the people, though, and instead are granted to the city from the state; thus it is the state who has the power to change them.

As noted in “What Are the Powers and Divisions in Local Governments?” earlier in this chapter, state governments have the power to create, alter, and destroy city governments. That language is intentionally strong and emphasizes the disproportionate power that a state has over the city through the charter. However, this power dynamic is not absolute, nor is it universal across all communities and states.

Some states empower city governments to play a greater role in policy and self-governance.<sup>9</sup> This concept is referred to as **home rule** in reference to the power vested in the city from the state government. States that enable home rule essentially allow city governments to be involved in matters not otherwise addressed by the state.<sup>10</sup> Whether a city pursues increased government involvement to respond to community needs or wants to legislate

6. Tarr, *Understanding State Constitutions*.

7. Dinan, “State Constitutional Initiative Processes,” 61.

8. Barber, *Principles of Constitutionalism*.

9. Barron, “Reclaiming Home Rule,” 2255–2386.

10. Krane, Rigos, and Hill et al., *Home Rule in America*.

policy based on its own unique community experience, home rule allows the city to make decisions and act without the expressed permission of the state. One of the natural benefits of increased home rule is the autonomy and responsiveness it provides for local communities. Because communities have different needs, interests, and resources, home rule can exacerbate inequities, which may be undesirable.

Other states restrict the ability of cities and their involvement in policymaking. **Dillon's Rule** describes the limited power that some states give to city governments to make decisions for themselves. In these situations, the state maintains the power to make changes, sometimes for or to the city without their consent. In Alabama, the State Constitution of 1901 stipulated that any change in local government had to be proposed and approved as an amendment to the state constitution (which explains, in part, the one-thousand-plus amendments made to the document before it was eventually replaced in 2022).<sup>11</sup> This creates a consistency across communities within a state, which can be advantageous in understanding the boundaries of power (as it is the same regardless of community). But preventing local input on decisions often feels restrictive and limiting, which can be frustrating to citizens seeking policy change.

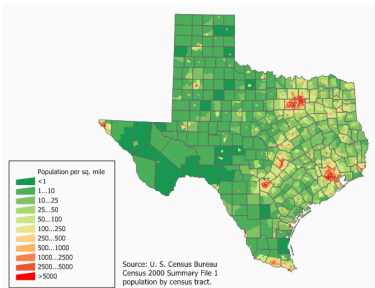
## What Are General-Purpose and Special-Purpose Governments?

Local governments can be organized in several different ways. In “What Are the Powers and Divisions in Local Government?” you

11. Brewer, “Constitutional Revision,” 583; Stewart, Alabama State Constitution.

learned that in some states, the name of a municipality reflects its population and special status. Later, in “How Do County, City, and Consolidated Governments Function?” you will see the difference in functions and responsibilities of different levels of local government. In addition to these, we can divide municipal governments into two other categories that aid in our understanding of the role they play in our lives.

Cities, counties, and consolidated governments are all examples of **general-purpose governments**. They serve a variety of functions under the umbrella of a single domain (i.e., the city of Miami) and operate within boundaries recognized by the state. Every resident in the United States is served in some capacity by these types of governments, and unlike special-purpose governments, these provide a range of services to constituents that might include police protection, infrastructure, health and safety, neighborhood services, parks, and libraries. Depending on the size of the municipality, several agencies or departments may exist to help execute the functions, but the policymaking process is still reserved for the county/city/consolidated government as a whole.



**Figure 12.2 – Counties and Population in Texas, 2000**  
 Source: “[Texas population map](#)” by [JimIrwin](#) on [Wikimedia Commons](#) / [CC BY-SA](#).

**Special-purpose governments** focus on one particular function. They are oftentimes smaller than a county size and less visible to the general public despite their important work because of the niche specialization of their service.<sup>12</sup> Mosquito districts (popular in the Southern US, where the insects breed in high numbers and can carry disease) are created as boundaries to be

12. Heikkila and Isett, “Citizen Involvement,” 238–248.

treated with chemicals, minimizing mosquitos' impact on the population. Water districts, sewer districts, and soil districts likewise provide essential functions but remain relatively unknown to most residents. Even more visible special-purpose governments, like fire districts, provide a limited function (addressing fires), involve relatively small boundaries, and are typically numbered throughout a city, so Fire House No. 14 serves a different district than the others.

By far the most visible and obviously impactful special-purpose government is the **school district**. School districts concentrate on K-12 education in a district within specific designated boundaries. The governing process is shared between the executive branch (known as a superintendent, usually appointed by the board of education) and the legislative branch (the school board, which is popularly elected).<sup>13</sup> In the most general sense, the school board is responsible for the creation of policy, then the superintendent implements the decisions.<sup>14</sup> The reality, however, is far more complicated given the magnitude of influence that state governments play in education policy. In circumstances where the state governments mandate school district compliance with a new policy, the role of the school board may be to address how the policy will be implemented, and the superintendent ultimately is responsible for that action.

## How Do County, City, and Consolidated Governments Function?

As noted in “What Are General-Purpose and Special-Purpose

13. Duke, “Organizing Education,” 682-697.

14. Sell, “Running an Effective School,” 71-97.

Governments?” there are many different types of local governments, even those that serve multiple functions with broad scope. The differences between these general-purpose governments, though, are vast. To understand each type, we will describe county governments, city governments, and township governments. You will notice that while they all provide many different functions and thus are “general purpose,” they also serve different interests, particularly between the state and the local municipality.

## County Governments

**County governments** are the primary substate governments that still serve the interests and functions of the state itself. Nearly all states utilize counties as a way to offer services at a more localized level that are not specific to the particular municipality but are needed and used across the state. They are sometimes described as the “administrative arm” of the state because their reach is wide enough to connect with residents, but they provide the same administrative functions across the state.<sup>15</sup>

County governments are responsible for county roads and other public works at a county-wide level and state certificates and licensing. Rather than drive to the state capital to apply for and receive a credential, the county serves as the “administrative arm” enabling residents to complete this task much closer to home.<sup>16</sup> Historically, this was necessary because of the tedious logistical challenges such a trip might entail; if you were a resident of Needles, California, in the far southeast part of the state, to simply venture to the state capital in Sacramento would require travel of 550 miles

15. Benton, “County Government,” 261–266.

16. Waugh, “County Government,” 403–418.

(hardly a short distance).<sup>17</sup> Travel time is not the only benefit of utilizing county governments to provide bureaucratic functions. Many of these functions are routine (such as getting a marriage license), and the congestion of having an influx of amorous couples constantly traveling to apply for state recognition of their matrimonious unions would be logistically inefficient.<sup>18</sup>

Licenses and certificates chronicling birth, marriage, divorce, and death are all offered by the county government.<sup>19</sup> They follow the same general guidelines across the state (so the mandatory waiting times for applying for and ultimately receiving a divorce do not vary from one county to the next).<sup>20</sup> In some cases, they may have slight variations where the state has allowed for some local government authority. For example, the state of Ohio has a dog license system, which compels owners to register their dogs with the state, creating a statewide network of registered canines and a robust system in case a lost pet is found.<sup>21</sup> The counties provide the actual dog licenses, and registration fees vary depending on the individual county, though the services and the function of the license are the same throughout the state.

17. Stephan, "Variation in County Size," 451–461.

18. Benton, "County Government," 261–266.

19. Benton, "County Government," 261–266.

20. Benton, *Counties as Service Delivery Agents*.

21. Ohio Laws and Administrative Rules: Legislative Service Commission, "Ohio Revised Code."

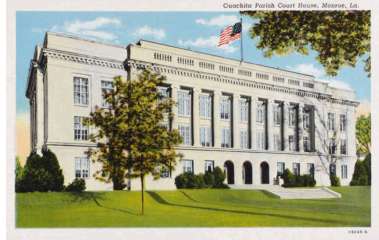
## City Governments

**City governments** are granted charters from the state that outline their boundaries, responsibilities, and functions (as noted earlier in the chapter in “What Are City Charters, Home Rule, and Dillon’s Rule?”). Because cities exist separately, they have more specific

functions relative to the amount of autonomy they are given by the state and their own community needs and priorities. Most cities provide some general services that one would expect in an organized municipality.<sup>22</sup> They offer police service, fire response, street maintenance, sewage and water, libraries and parks, and other services that would naturally be needed in an area with many people living closer together.

Larger cities may have greater needs depending on their population, so they offer more services accordingly. Large urban areas may have their own airports or convention centers that serve the neighboring communities and provide an attractive economic development option to bring tourism to the city. More rural areas do not necessarily need these services and will have a smaller population contributing to taxes simultaneously, so they are less likely to offer these to citizens.

Whereas counties serve the communities virtually identically across the state, cities can vary widely. Some states classify cities on the basis of population density within their boundaries and will grant them certain special privileges based on this; sometimes these classifications are even denoted in the name



**Figure 12.3 – Postcard of Ouachita Parish Courthouse in Monroe, Louisiana**  
Source: “[Monroe LA – Ouachita Parish Court House](#)” / [Public Domain](#).

22. Stein, “Arranging City Services,” 66–92.

of the municipality itself, as some states reserve the term *city* for those areas with a certain population threshold, and those incorporated municipalities that are smaller are known instead as *towns* or *villages*. Other states make no such distinction.

## Unified Governments

Some larger municipalities across the country have merged the services and offices of county and city governments to create a **unified or consolidated government**. In this case, rather than having a separate county government and a separate city government, the two are combined in several or all elements to create a larger city-county government that provides the functions of both.<sup>23</sup>

Consolidation was initially pursued because of the increasing problem of White flight during the 1950s and 1960s across the country.<sup>24</sup> After World War II, White residents began taking advantage of the Eisenhower interstate system and suburban housing opportunities and moved from city centers into the surrounding suburbs.<sup>25</sup> The taxable base from the city centers eroded, as the residents took their property tax, sales tax, and in some cases, income tax with them, all while the demands of the city and its services started to fail. Consolidating county and city government allowed the services to merge and the taxes to essentially be captured into a redistribution throughout the entire county rather than limited to much smaller city boundaries.<sup>26</sup>

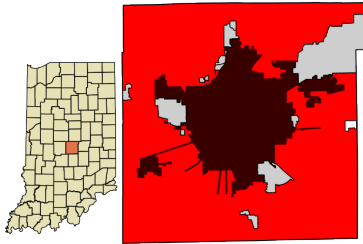
23. Kavanagh, "Does Consolidating Local Governments Work?"

24. Crowder, "Racial Context," 223–257; Woldoff, *White Flight/Black Flight*.

25. Zug, "Historical Presidency," 120–136.

26. Durning, "Consolidated Governments."

Another process, known as annexation, can extend a municipality's boundaries but does not impact the duplication of efforts of city and county governments.



**Figure 12.4 – Consolidated Government in Indianapolis with City Boundaries Before and After Unigov, 2022**

Source: “[Rough Boundaries of pre-Univog Indianapolis](#)” by IndianapolisWikipedian on Wikimedia Commons / [CC BY-SA](#).

The problem of the duplication of efforts, familiar to all scholars of federalism, meant that taxpayers were funding both city and county governments with many redundant offices, practices, and functions. Consolidation eliminated an extra level of government by merging those services into the purview of one government rather than splitting it into two. An essential argument supporting

consolidation is its efficiency: By eliminating the duplication of departments, services, and efforts that may overlap between county and city governments, the work is not redundant.<sup>27</sup> Opponents, however, argue that collapsing both county and city governments together means resources are spread more widely and may result in less equitable distribution when what only the city may need is instead expanded in offerings throughout the entire county.<sup>28</sup>

27. Leland and Johnson, “Consolidation.”

28. Faulk and Hicks, Local Government Consolidation.

# How Are County and City Governments Organized?

There are several different ways local, **all-purpose governments** can be organized. The selection is often based on community preference, but it is also not static.<sup>29</sup> As we will discuss, the preferences and what is most popular or preferred at the time have evolved and could reasonably continue. One thing that is worth noting in all types of organization is that the judicial branch is often not included in the same way that the boundaries and responsibilities of the executive branch and legislative branch are. This is because the state judicial system incorporates the local justice system, so the discussion here will focus on the differences in allocation of powers between the executive and legislative among the different types of local government.

For city governments, the three primary types of organization include commissions, the city council-manager system, and the mayor-council system. The **commission form** of local government organization folds the functions of both the executive branch (in implementing policy and managing bureaucracy) and the legislative branch (in creating policy) into one consolidated group of commissioners. They provide both functions at the local government and serve, in a sense, as equals.

## Commissioners

The number of commissioners can vary, oftentimes in odd numbers, with as few as three members. The odd number is essential to

29. Frederickson, Wood, and Logan et al., “How American City Governments Have Changed,” 3.

avoid ties or gridlock in decision-making (important in government in general but most valuable when this one role provides two governmental functions). They are elected offices, and because there is a relatively small number of commissioners, they are typically organized in scattered elections so that the terms start and end at different times rather than electing all the commissioners in one election cycle. This protects institutional memory and prevents a full turnover, where all the incumbent commissioners choose not to run for reelection or are not ultimately reelected.<sup>30</sup>

The different policy/agency areas are divided among the commissioners, so rather than all commissioners being responsible for all things, one commissioner might be tasked with transportation and infrastructure while another is responsible for trash collection and park services. The division of services and tasks reveals one of the challenges of this style of government organization. Some responsibilities of local government are more exciting and intriguing to constituents than others, but all the work eventually has to get done. Voters may not think much about trash collection until theirs is missed and suddenly excess waste is piling up in the streets and angry phone calls illustrate their frustration with the missed service. Successfully collecting trash and being responsible for waste management are not going to get much attention when it is done well because that is the general expectation; residents quite frankly probably don't notice until something goes wrong, and suddenly they care passionately. How the agencies, tasks, and responsibilities are delegated among commissioners can be very political and may feel unfair or uneven. But the consolidation of executive and legislative functions in the commission style of local government makes it necessary.

Another issue that arises in the commission style is the process of disagreement and recourse among the commissioners. This is sometimes referred to as a "three-headed monster" when

30. Kemp, Model Government Charters.

you consider a commission of three people. Each may have different policy priorities or passion projects, different visions, and different plans on how to get there. Without an executive with some unilateral authority, these disagreements can lead to legislative gridlock, and the system offers few opportunities for resolution. Because of these challenges, the popularity of the commission form of local government has declined. After its origination in Galveston, Texas, at the beginning of the twentieth century, commissions became popular across the state and country.<sup>31</sup> Now the number of commissions is closer to 1 percent.<sup>32</sup>

## Council-Manager System

Now the most popular form of local government is the **council-manager system**, which utilizes a strong city council and a subservient city manager. The city council serves as the legislative body, proposing and creating legislation such as city ordinances and playing the primary role in policies to be implemented by the chief executive (the city manager).<sup>33</sup> City councils vary in size and terms but tend to be as small as eight and as large as twenty people. In the “What Are the Types of Local Council Elections?” section, we will discuss the different ways these legislative seats are allocated and elected, such as districted systems, at-large systems, and combination systems. Regardless of how the elections are determined, the city council are all elected offices and thus responsive to the voters.

This is an important detail because it is one of the ways

31. Rice, “Commission Form of City Government.,” Texas State Historical Association.

32. National League of Cities, “Cities 101.”

33. National League of Cities, “Cities 101.”

in which the legislative branch deviates from the executive in this system.<sup>34</sup> The city manager is not an elected post and instead is hired/appointed by the city council. Thus, they report to the council and not voters directly. City managers are often professionals with degrees in public administration or related fields who are responsible for managing the bureaucracy. They are not usually from the city in which they serve. This makes them very different from mayors, as we will discuss in the next subsection (“Mayor-Council System”), and this is an important distinction.<sup>35</sup>

One of the benefits of having a professional from outside the area is that they should be able to offer less biased opinions that are not as influenced by a personal history with the area. This allows them to focus more clearly on the task at hand, and their value lies in their background and expertise in city management. Of course, this also highlights the inverse challenge, which is that the city manager does not necessarily know the area as well and may not be able to take historical factors into play when employing their authority. This is at least in part why the bureaucratic power rests within the city manager and the legislative power is given to the city council (which would presumably have such memory and historical background knowledge).<sup>36</sup>

## Mayor-Council System

The third type of local government organization is perhaps the most well known, even if it is not quite as popular as the council-manager system. The **mayor-council system** embodies both an elected executive with some unilateral and some shared powers and also

34. Morgan and Watson, “Policy Leadership,” 438–446.

35. Carr, “What Have We Learned?,” 673–689.

36. Zhang and Feiock, “City Managers’ Policy,” 461–476.

an elected legislative body. The familiarity of this system of government stems from its prominence in larger US cities. The largest ten cities in the country (New York, Los Angeles, Chicago, Houston, Phoenix, Philadelphia, San Antonio, San Diego, Dallas, and Jacksonville) all have mayors. These mayors sometimes become known as national figures, such as when a crisis occurs in their city that requires their leadership (such as Rudy Giuliani in New York City during 9/11) or because of their leadership and stature within the political party structure (like Rahm Emanuel from Chicago, who served as White House Chief of Staff under President Barack Obama before becoming mayor and then became the ambassador to Japan after leaving office).<sup>37</sup>

The mayor in this arrangement can hold significant power, and though they operate in the executive capacity and oversee the bureaucracy like a city manager, they are oftentimes more engaged in politics and more public facing.<sup>38</sup> This is largely due to the nature of the position. The mayor is publicly elected at large by the residents, making it a more expansive and expensive local campaign but also an office that is thus responsive to the voters. The politics of place can be influential in these elections, and successful mayors are often strategic in how they evaluate challenges and address solutions within their municipalities. Because this executive office is far closer to the public than the governor at the state level or the president at the federal level, the mayor has an opportunity to be highly visible in their work and close to the constituents and the community they serve. Depending on the size of the city, the office of the mayor may be a full-time post with a salary, or it could be a part-time position with a much smaller stipend that requires the occupant to be retired or have a flexible career to pursue local government leadership in addition to their full-time occupation.

37. Stren and Friendly, "Big City Mayors," 172–177.

38. Emanuel, *Nation City*; Feiock et al., "Capturing Structural and Functional Diversity," 129–150.

The **city council** is an active part of this system of government too, providing legislative functions in a similar way to the council-manager arrangement. Here the council does not have a say in the election of the mayor as they do in the selection of the manager, which can create tension and conflict between the local branches of government. The mayor owes their job not to the council but rather to the voters, and depending on how the council is elected (districted vs. at-large elections), they may have different constituencies they are aiming to serve. A councillor from a small district on the edge of town could have one-sixteenth of the voters that the mayor has in a sixteen-person council, and those voters might be very different ideologically, culturally, and economically.

The councillors propose legislation and serve on various committees that represent large local policy areas. Sometimes, their committee service overlaps substantially or minimally and is informed by their professional work. Unlike the role of mayor, city council positions are not usually full time. Many of the meetings are held in the evening, both to accommodate the councillors who may have full-time jobs in addition to their role in local leadership and also because of an interest in transparency and accessibility for residents, who are welcome to attend open meetings and hear, see, and participate in the discussions. This is a unique feature of local government, particularly smaller city governments, where evening meetings are most prevalent relative to the state or federal levels. Congress could not only hold evening meetings; in addition to the fact that attendance would be only realistically feasible for local residents living close enough to Washington, DC, there is simply too much policy work and deliberation, making evening hours insufficient.

## County Governments

County governments are often governed by elected officials like

city governments but differ in scope and organization. When the city and county governments' authority is separate and distinct, county governments can serve in executive, legislative, and limited judicial authority. The board of county government may be known as the county commission, board of supervisors, or county council. Depending on the size of the board, an elected county executive, known as the administrator, can provide daily direction. Other executive roles may include a county treasurer (responsible for funds), a county sheriff (responsible for law and order), and the county clerk (responsible for records).

## Residential Mobility Theory

Americans move to new neighborhoods, new cities, new states, and sometimes even outside the country every year. In 2021, an estimated 12.8 percent of the US population moved in some form.<sup>39</sup> Most common were those who moved within different communities but still in the same county (6.7 percent), less common were those who moved to a different county within the state (3.3 percent), and just slightly fewer were those who moved to a new state (2.4 percent). Only 0.5 percent of Americans move outside the country annually.

These shifts in population can be attributed to several factors. First, people respond to economic and personal needs, situations that might require them to leave one area and relocate to another. Whether it is for a new job or a mitigating family circumstance, a move may be a necessary decision. Some moves are temporary, such as going out of state for college.

One way we can help understand the inertia involved in the decisions of where to move to and where to move from is to utilize

39. Pelchen, "Moving Statistics."

**residential mobility theory.** This is an explanation of population shifts on the macro level that can specifically help explain why some communities are viewed as desirable and attract more residents while others struggle to maintain their population.<sup>40</sup> Residential mobility theory holds that pull factors are going to be those characteristics that draw people into a community and make that neighborhood appealing. The push factors are those qualities that will push residents out and make it less desirable for people to move in.<sup>41</sup> Pull factors include good schools, big houses, more space, and more amenities. Push factors involve crime (or the perception of it), congestion, traffic, and noise.

## What Are the Types of Local Council Elections?

It is important to understand the structure and organization of local government to recognize the three different ways the council can be elected. The different election systems are influential in how campaigns are run and how candidates decide if and when to run. They are critical, however, in the actual organization element of the council. As noted in both “Council-Manager System” and “Mayor-Council System,” the way in which council seats are arranged can be impactful in the representation the city residents have on the council and potentially also the type of leadership the council

40. Coulter and Scott, “What Motivates Residential Mobility?,” 354–371; Lee, Oropesa, and Kanan et al., “Neighborhood Context and Residential Mobility,” 249–270.
41. Coulton, Theodos, and Turner et al., “Residential Mobility,” 55–89; Ghazali, Ngiam, and Mutum et al., “Elucidating the Drivers,” 633–659.

provides. There are three different types of local council elections: districted, at-large, and combination systems.

## District Elections

In what mirrors the legislative organization for state and federal governments, **district elections** divide out the boundaries of the community into equal parts proportionate to the number of seats in the council. These are allocated based on population, just as those in the state legislatures and Congress are. Single-member districts allow one member per district. The candidates eligible for office must all live within the boundaries of that district, and all the voters who may participate in the election also must reside within the district. In circumstances where multimember districts exist, multiple members from each district are selected.

These races are smaller and more focused, just as servicing the district is more concentrated on the particular communities included.<sup>42</sup> For councillors who serve in this capacity part time, this arrangement makes it easier to be a responsive and engaged representative. Conflict can arise in this type of system, though, as each councillor represents their own district and sometimes may observe tension in terms of what the district wishes to pursue or is in the best interest of the district in comparison to the city as a whole.

Most cities employ district-based organizations.

42. Trounstine and Valdini, “Context Matters,” 554–569.

## At-Large Elections

**At-large elections** encompass the entirety of the community with no smaller subsets. Just as the mayor is elected by the entire city, so too are at-large representatives. Because their constituency and “district” are the same, in this regard, mayors’ and councillors’ elections may look similar too, even though they still perform different functions of local government once in office. At-large elections mean that all candidates can run for one of the seats open, and all voters can select their preferences among all candidates. This can appear on the ballot for voters with instructions to select their top “X” number of candidates; the “X” number of candidates with the highest percentage of voters win the election.

At-large elections work well in smaller municipalities where there is not a great concern about equality and representation.<sup>43</sup> If the city is geographically constrained to a small space, the difference between having several winning candidates on one side of the road and only a few on the other is likely marginal in differences in representation. For larger cities, though, this approach can raise questions of equal representation.<sup>44</sup> Socioeconomic status is never equally distributed across a community, and candidates who can afford to run more sophisticated campaigns could be at a disproportionate advantage in being elected. One part of the city or neighborhood could be overrepresented while other areas do not have a person from their neighborhood in this position of power.

43. Abott and Magazinnik, “At-Large Elections,” 717–733; Leal, Martinez-Ebers, and Meier et al., “Politics of Latino Education,” 1224–1244; Todd, Bram, and Krishnamurthy et al., “Do At-Large Elections Reduce?,” 102750.

44. Trounstein and Valdini, “Context Matters,” 554–569.

## Combination Elections

The **combination system** includes some district seats and some at-large seats. Districts are drawn within the city, and candidates running in those elections may only run in the district in which they reside. At-large seats allow candidates to run citywide, and the first “X” many candidates voted for by voters across the city are elected. This system allows for the benefits of both options: There is diversity in terms of representation, and candidates who might live in a district with a strong incumbent can still run and be elected citywide. Because this system provides options for candidates, it gives flexibility in their decision-making about whether to run and how without facing the uphill battle of challenging an incumbent or having to wait until an open seat comes up.

## Conclusion

Local government is often referred to as the nearest to the people it serves, and even though it captures fewer headlines and is not as well known as state and federal government, it plays a large role in our daily lives. Without county government, residents might have to clamor to the state capital any time a routine transaction with the state bureaucracy occurs, like renewing a driver’s license. Without city governments, large urban centers would miss out on providing unique services and features (like airports and convention centers) to cater to their specific needs. Special-purpose governments such as school districts provide an essential function in administering K–12 education at the local level that both serves and responds to our communities.

Local governments can be difficult to study because of the variety of types that the term *local* encompasses. As we discussed in this chapter, each different kind of local government serves a

different purpose and scope. Because they are much smaller, local governments are close to the people, whether the municipality is organized by districts or representatives are selected in at-large races. The decisions made in our local communities play a vital role in the quality of life for residents and enable them to create a community that fits their needs and interests. Local governments may be less well known, but their influence on and responsiveness to residents underscore their value in our lives.

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# Supplemental Materials

Found here:

[https://docs.google.com/spreadsheets/d/1DXKD3Ey1n63RzQfJ-of6DMx9Hng\\_WAuB-Wckvwr79wQ/edit?usp=sharing](https://docs.google.com/spreadsheets/d/1DXKD3Ey1n63RzQfJ-of6DMx9Hng_WAuB-Wckvwr79wQ/edit?usp=sharing).