

# LEGISLATURES UNDER STRESS: PROMOTING AND PROTECTING THE INSTITUTION

THAD KOUSSER, UC SAN DIEGO

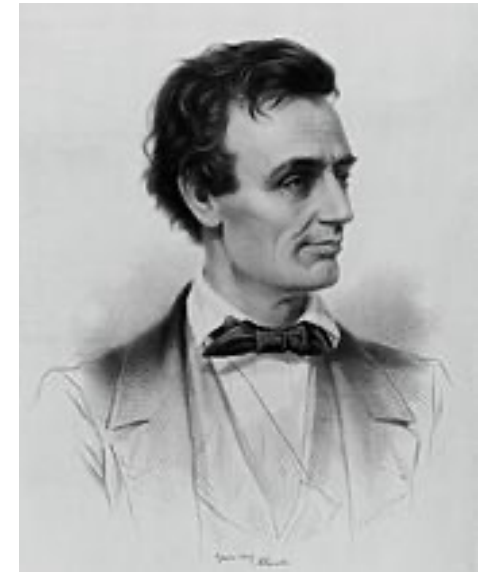
Bowhay Institute for Legislative Leadership  
Development, August 2024

# State Legislators Not Attending the BILLD

James Madison



Abraham Lincoln



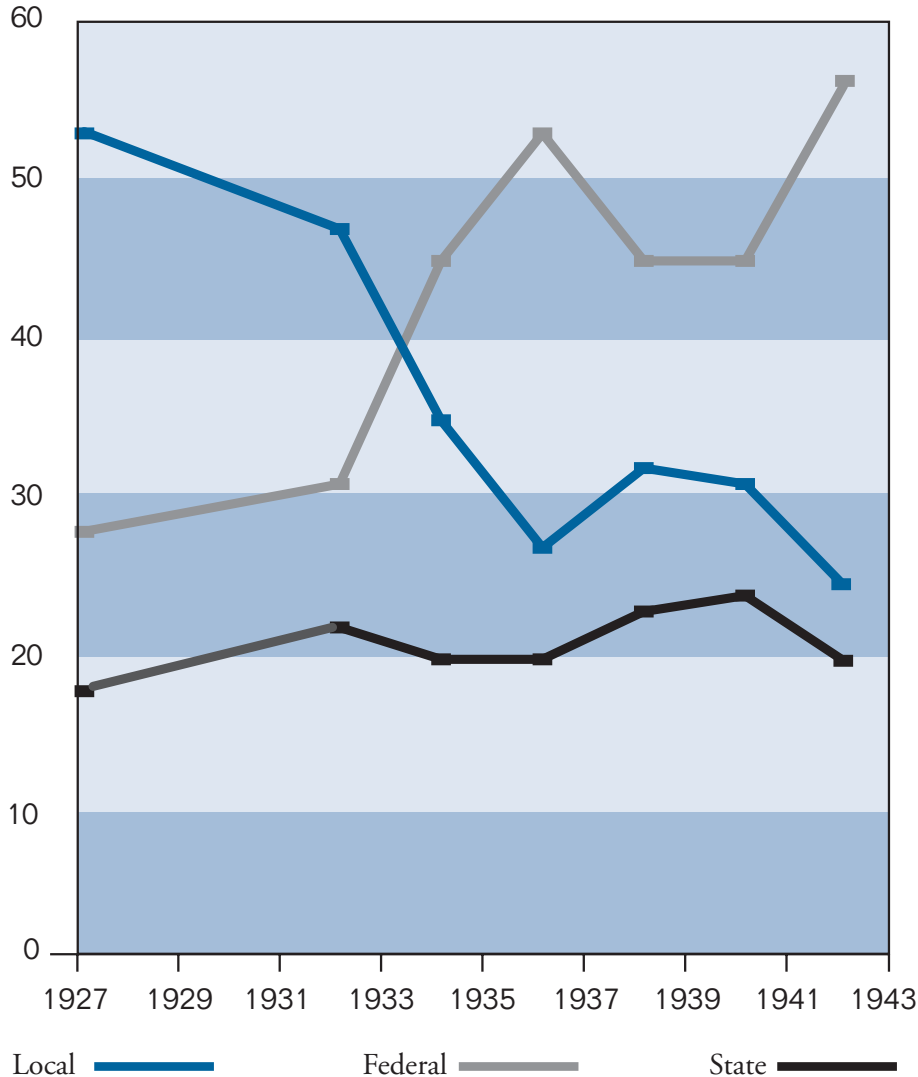
# 19<sup>th</sup> Century State Legislatures

- Service in them was often more prestigious than serving in Congress (certainly more pleasant)
  - ▣ States spent far more than the federal government
  - ▣ Played key role in building early infrastructure



**Figure 3-3 Nationalization of Domestic Policy during the Depression**

*Percent of nonmilitary spending*



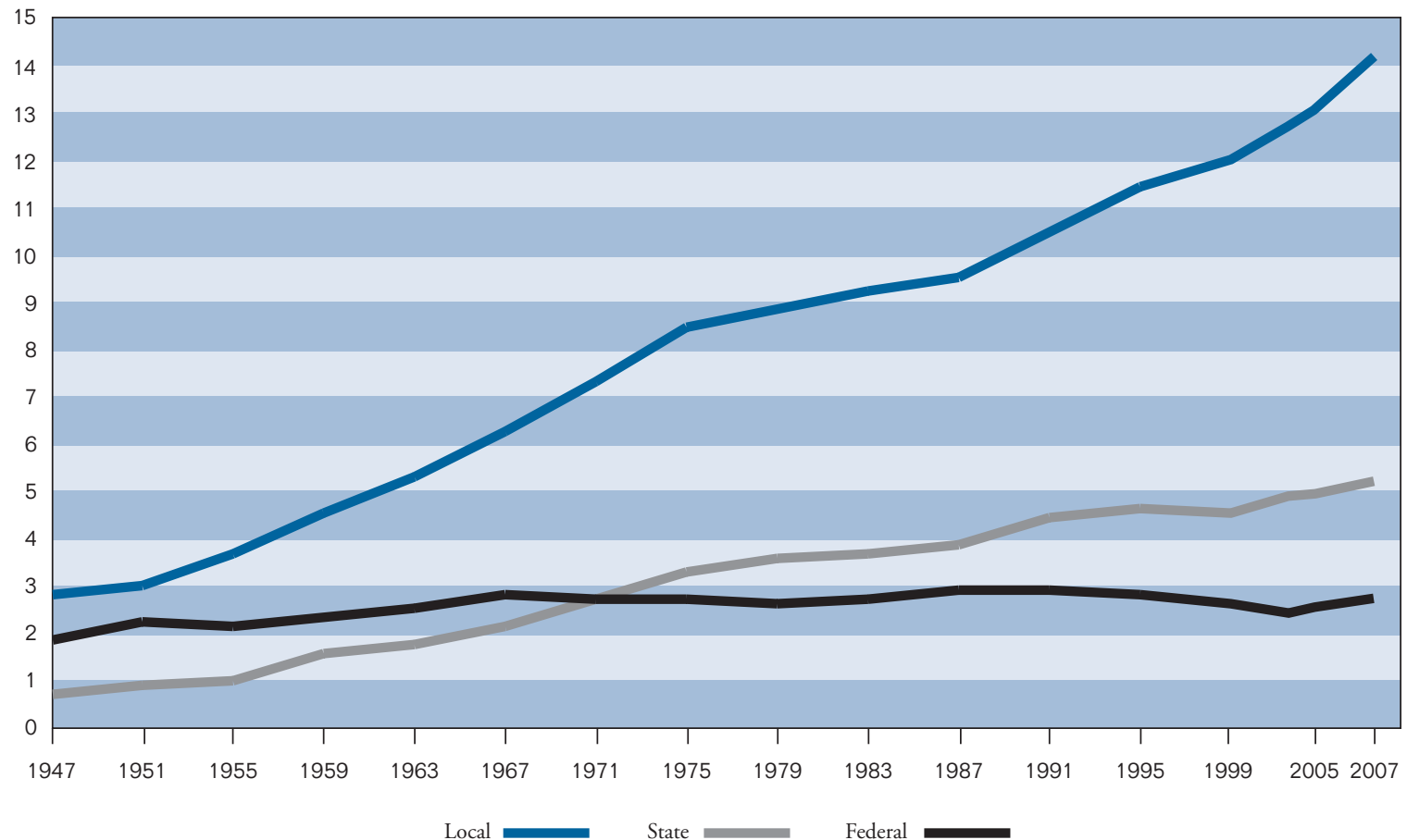
## States Came First

Until the Depression, state and local governments combined spent more domestically than the federal government.

# State and Locals Still Employ the People Who Serve the People

Figure 3-4 The Postwar Growth of Government Occurred at the Local Level

*Number of public civilian employees (millions)*



# States as Policy Pioneers

- States initiated the safety net
  - ▣ Veterans benefits, retiree pensions, and funding for orphans all originated as state policies
- States have been the “laboratories for reform” that spark and spread innovation
  - ▣ Education
  - ▣ Environmental policies
  - ▣ Economic development
- States are on the front lines of social controversies and don’t hesitate to take on presidents or courts

# State Legislatures at Midcentury

- *“The American state legislature is in trouble..... It is very possibly true that no American political institution has ever had so many detractors, so few defenders, or such a wide array of charges leveled against it....Today’s legislatures are located on the outskirts of public esteem and affection.”*

--William Keefe

# Those Dinosaurs—the State Legislatures

They are a study in slow motion, with many obsolete features, says a lawmaker. Yet they have produced some of the important social legislation of our time.

By THOMAS C. DESMOND

**N**EW YEAR this year rang in the lawmaking season for some 6,500 state legislators in forty-two states (the others meet in the spring or in even-numbered years). January is the month most State Representatives (or Assemblymen) and Senators leave their farms, insurance offices and law practices to gather at their state capitols for the opening of the 1935 legislative sessions.

It is a time of joyous reunion for the lawmakers. In the thirty-four states and Alaska that have biennial sessions in odd-numbered years, many have not seen each other in two years (in eight states it is only a one-year absence). As they thumped each other's back in hearty welcome and inquired with genuine solicitude about each other's health, there was much of the gay spirit which prevails at a college reunion.

But if the legislators greeted the opening of the sessions with happy heart, they were virtually alone. The convening of the Legislatures is greeted with less than enthusiasm by the public. Business shudders. Labor holds its breath. Farmers shrug their shoulders. Governors wince at the chore of keeping a rein on lawmakers. In many states the sessions are deemed somewhat as a recurrent, unavoidable public calamity.

**N**OR is this apprehension new. Thoreau, when informed the Massachusetts Legislature was about to convene, is reported to have told a neighbor, "I must go downtown to buy a lock to put on my back door." In 1812 the newsmen who covered the State Capitol at Albany sang this meaningful ballad:

*The Capitol's a funny place,  
Where statesmen congregate to  
legislate,  
They come to "cure" the people's  
ills,  
And bring along a ton of bills;  
But when the real work comes  
along  
And the session's end is nigh,  
You see them fling the people's  
bills  
To let their own get by. For —*

*Every honest statesman has some  
interests of his own.*

staff people hired. And behind each task may lie days of backroom wrangling and trading by party leaders in and out of the Legislatures, and in some states by powerful lobbyists who dangle lawmakers like charms on a woman's bracelet.

In February, the wheels begin to move. Bills are winnowed and weeded. Committee hearings are held; budgets passed; appropriations authorized, and measures reported out for debate and vote. At the end of February or mid-March, with a final roar and in a hectic nerve-racking last-minute burst of energy, the Legislatures will drive themselves to a rury of activity and grind out mountains of laws. Most are non-controversial; many are passed at the rate of one a minute.

Based on past records, some 100,000

bills will be introduced during this legislative season. About 25,000 will become law. All this within sixty days in Arkansas and Nevada, in ninety days in Minnesota and North Carolina. New York legislators can continue at work indefinitely but customarily finish toward the end of March; Illinois lawmakers, by July 1.

**T**HE 1935 sessions will attempt again the endless quest for a solution to the dilemma of trying to reduce taxes while increasing services. Desegregation will occupy the limelight in Southern Legislatures. Right-to-work and utility anti-strike legislation will be pressed in states that do not have strong unions. Ohio will consider creating an office of public defender to protect consumers from utility "rate-gouging." Arkansas

will debate going into the wholesale liquor business. Bingo will win major attention in New York, while old-age pensions will give California its recurrent headache. Nearly every state will find new highway appropriations looming up high on the lawmakers' priority list.

Legislatures will have their quotas of bills to shorten or lengthen the season for taking a siewice, a protected species of fish, or to legalize some forgetful village clerk's failure to advertise bids for a snow plow in the local weekly paper. All will poke their official noses into a thousand minor details of government. But to emphasize the wearisome or ludicrous minutiae which occupy much of the time of the legislators is to present a distorted view.

Our law- (Continued on Page 56)





# The “Reapportionment Revolution”

## Before Baker v. Carr (1962)

- ❑ One county, one legislator in most state senates, and some houses also malapportioned
- ❑ This gave rural voters extraordinary power, at the expense of suburbs (and cities)
- ❑ The support of less than 30% of voters could pick the senate majority in Illinois and Michigan

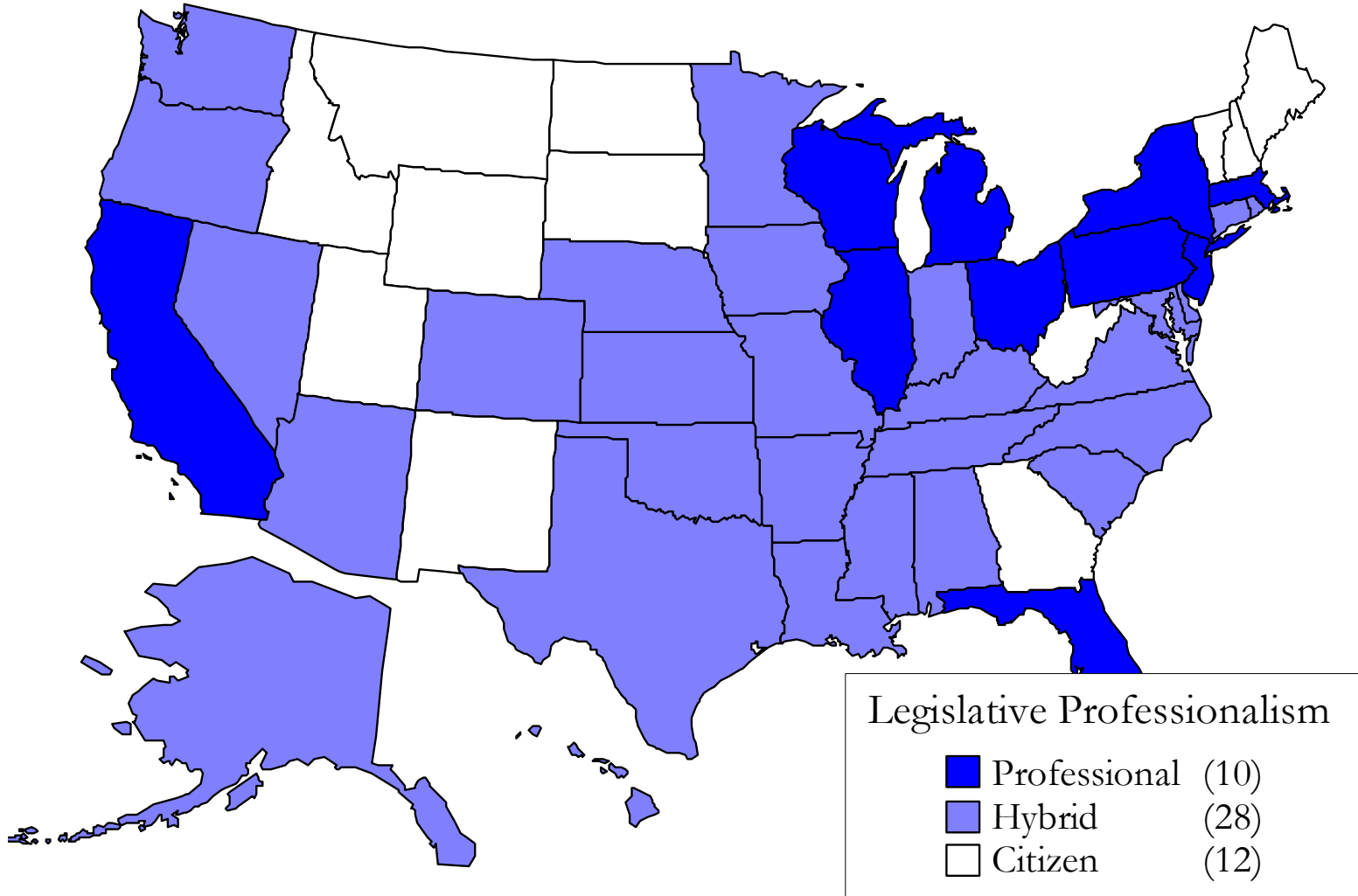
## After Baker v. Carr (1962)

- ❑ The Supreme Court’s doctrine of “one person, one vote” meant districts all needed to contain the same number of residents
- ❑ Urban and suburban districts gained equal representation, equal funding
- ❑ Legislatures became more diverse, but no systematic partisan change

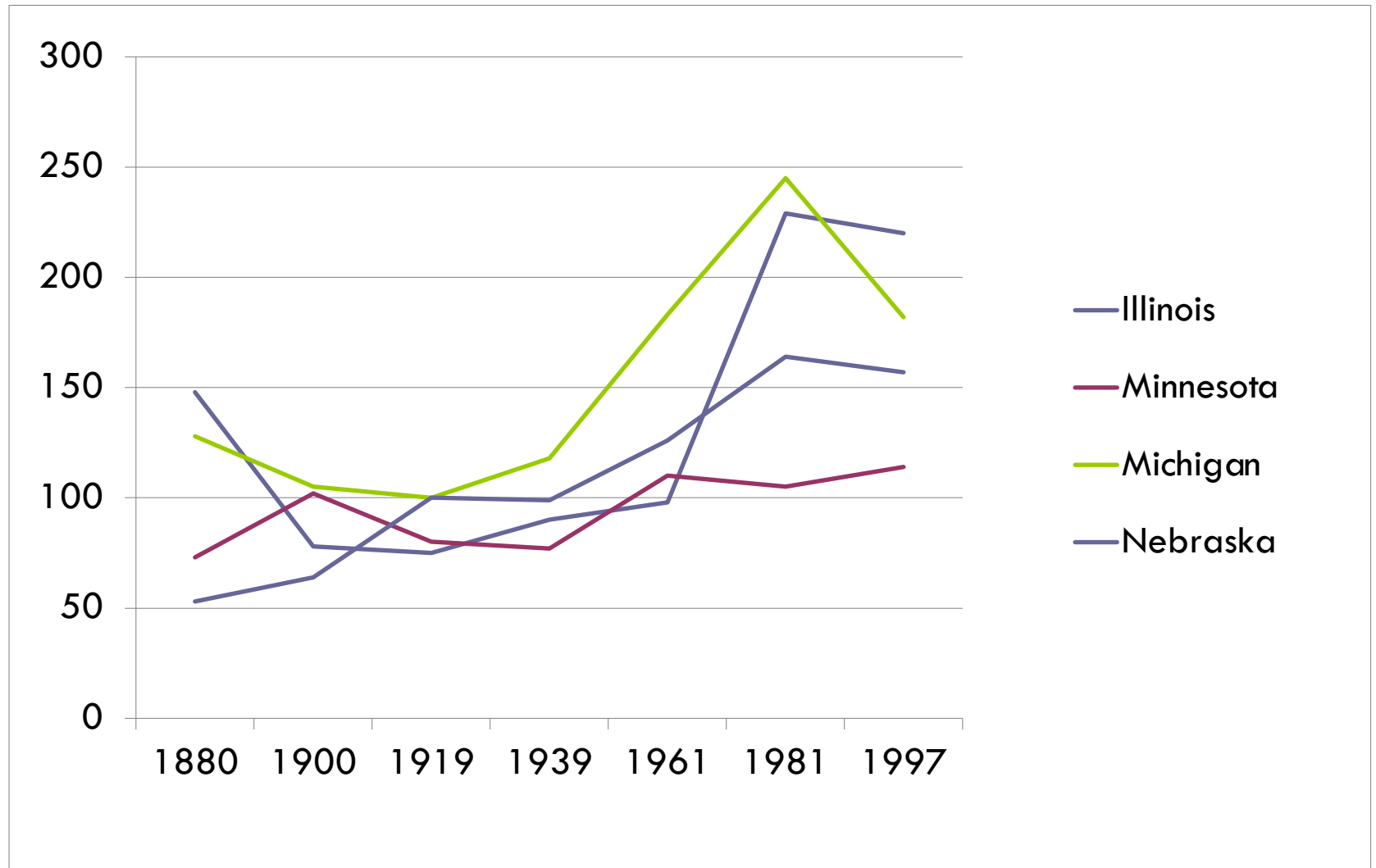
# Trivia That Isn't Trivial

- Which legislature in the Midwest has the largest number of members (201)?
- Which Midwestern legislature reduced its own size by 70% in the 1930s?
- What obstacles and opportunities does a legislature's size provide?

# Legislative Professionalization Movement



# Some Legislatures Changed More than Others (session days in a biennium)



# Evaluating the Modernization Movement

- The Goals of Professionalism
  - ▣ To make legislatures *transformative*. In contrast to a parliament that rubber stamps cabinet requests, it could change proposals and design bills of its own
  - ▣ Expert staff designed to make lobbyists less powerful
  - ▣ Full-time members would not be tied to the whims or special interest of a day job

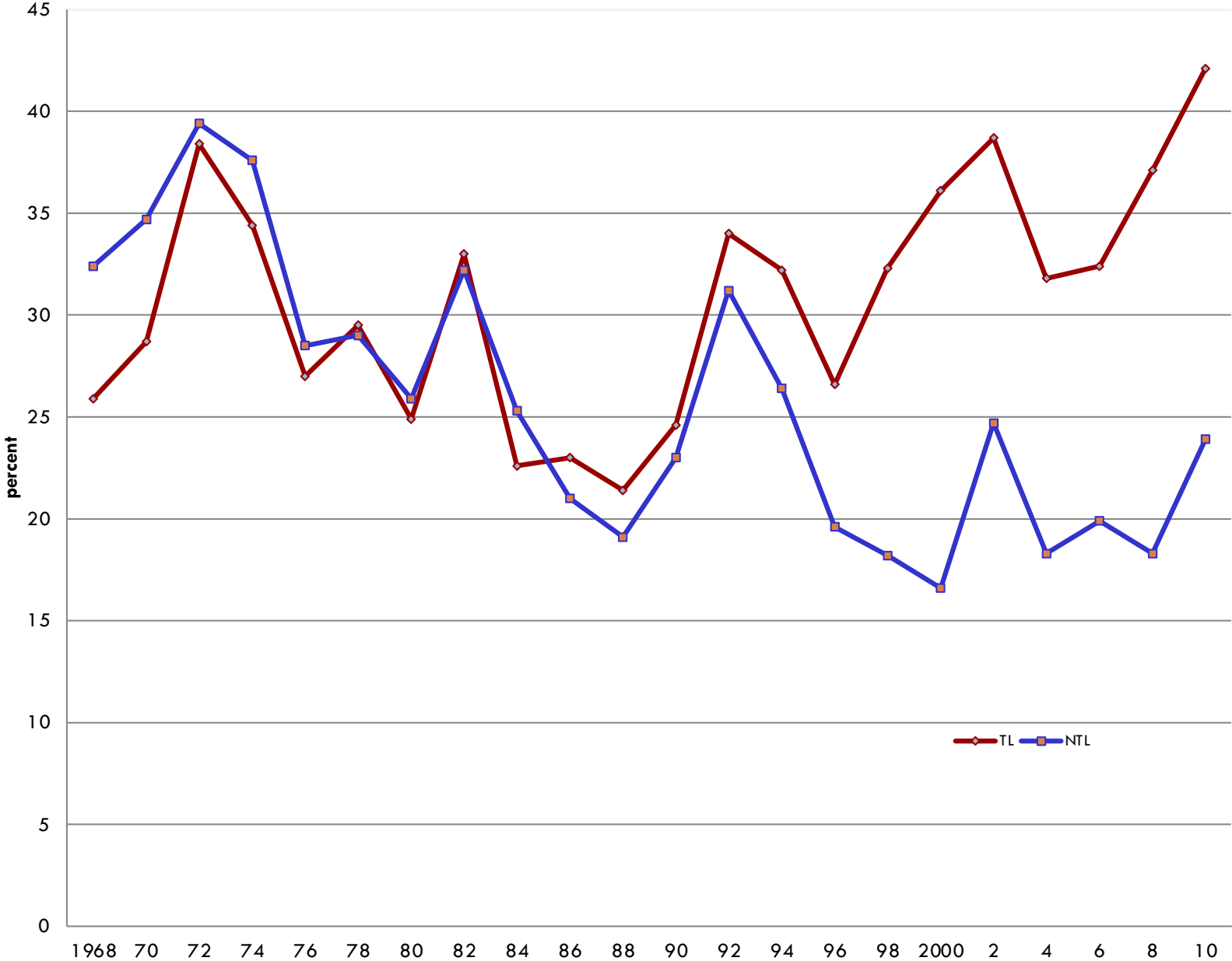
# Evaluating the Modernization Movement

- Critique of Professionalism
  - ▣ Power of incumbency grows with increased resources, could make government less responsive
  - ▣ Special interests still wield power through campaign contributions
  - ▣ “Career politicians” drawn from ranks of staff and local office

# Voter Revolt of the 1990s: Term Limits

State	Year of Impact	Year Adopted	Lifetime or Consecutive Service?	Limit in Lower House (years)	Limit in Upper House (years)
California	1996	1990	Lifetime	12 (total)	12 (total)
Maine	1996	1993	Consecutive	8	8
Arkansas	1998	1992	Lifetime	6	8
Colorado	1998	1990	Consecutive	8	8
Michigan	1998	1992	Lifetime	6	8
Arizona	2000	1992	Consecutive	8	8
Florida	2000	1992	Consecutive	8	8
Montana	2000	1992	Consecutive	8	8
Ohio	2000	1992	Consecutive	8	8
South Dakota	2000	1992	Consecutive	8	8
Missouri	2002	1992	Lifetime	8	8
Oklahoma	2004	1990	Lifetime	12 (total)	12 (total)
Nebraska	2006	2000	Consecutive	n/a	8
Louisiana	2007	1995	Consecutive	12	12
Nevada	2010	1996	Lifetime	12	12

Figure 2: House Turnover in TL and non-TL states





# Limits & Who Goes to State Capitols?

## Gender and Demographic Diversity

### Gender

- Despite great expectations, term limits has **not** led to a substantial increase in the number of women in state legislatures
- Women gained more seats in states without term limits than in states with limits from 1991 to 2009

### Race and Ethnicity

- Stable minority populations, like Black Americans, do **not** appear to benefit
- Groups with growing populations win a few more seats as term limits opens them up (Latino and AAPI)
- Leadership opportunities open up within houses

# Limits & Who Goes to State Capitols? Citizen vs. Professional Politicians

- The Hope: LIMITS (Let Incumbents Mosey Into the Sunset)



# Limits & Who Goes to State Capitols?

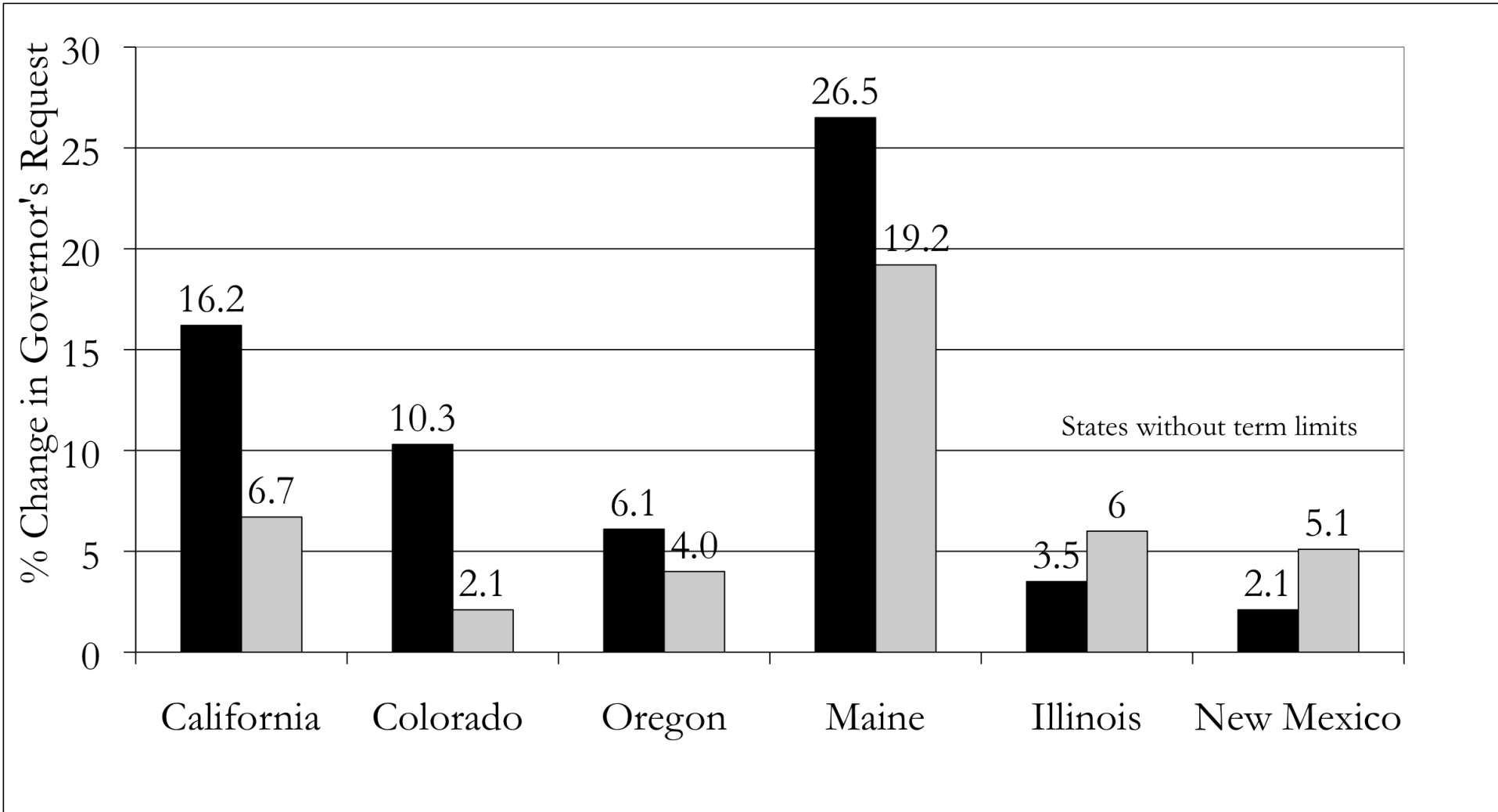
## Citizen vs. Professional Politicians

- The Reality: Political animals don't change their stripes

	<i>Ran for Another Office</i>	<i>Bureaucracy</i>	<i>Lobbyist or Interest Group</i>
Arkansas	38%		
California	59%		
Colorado	70%		
Maine	55%		
Michigan	48%		
Oregon	71%		
All Six States	54%	17%	10%

Source: Powell (2003)

# Shift in Power to the Executive Branch



# What Is the Sum of Term Limit Changes?

## Areas of Stability

- Makeup of legislatures and career ambitions of legislators
- Influence of lobbyists
- Electoral competition
- Scope of legislation

## Areas of Change

- Experience and expertise
- Balance of power with executive branch
- Trustee vs. delegate
- Innovation and spending

# Trivia That Isn't Trivial

- Which state's Joint Committee on Finance is arguably the most powerful state legislative committee in the nation, empowered to:
  - Craft the legislative budget
  - Hear all revenue and spending bills
  - Supplement agency appropriations
  - Transfer funds between programs
  - Adjust staff positions at agencies

# Bonus Question: Explain that state's “Vanna White Veto”

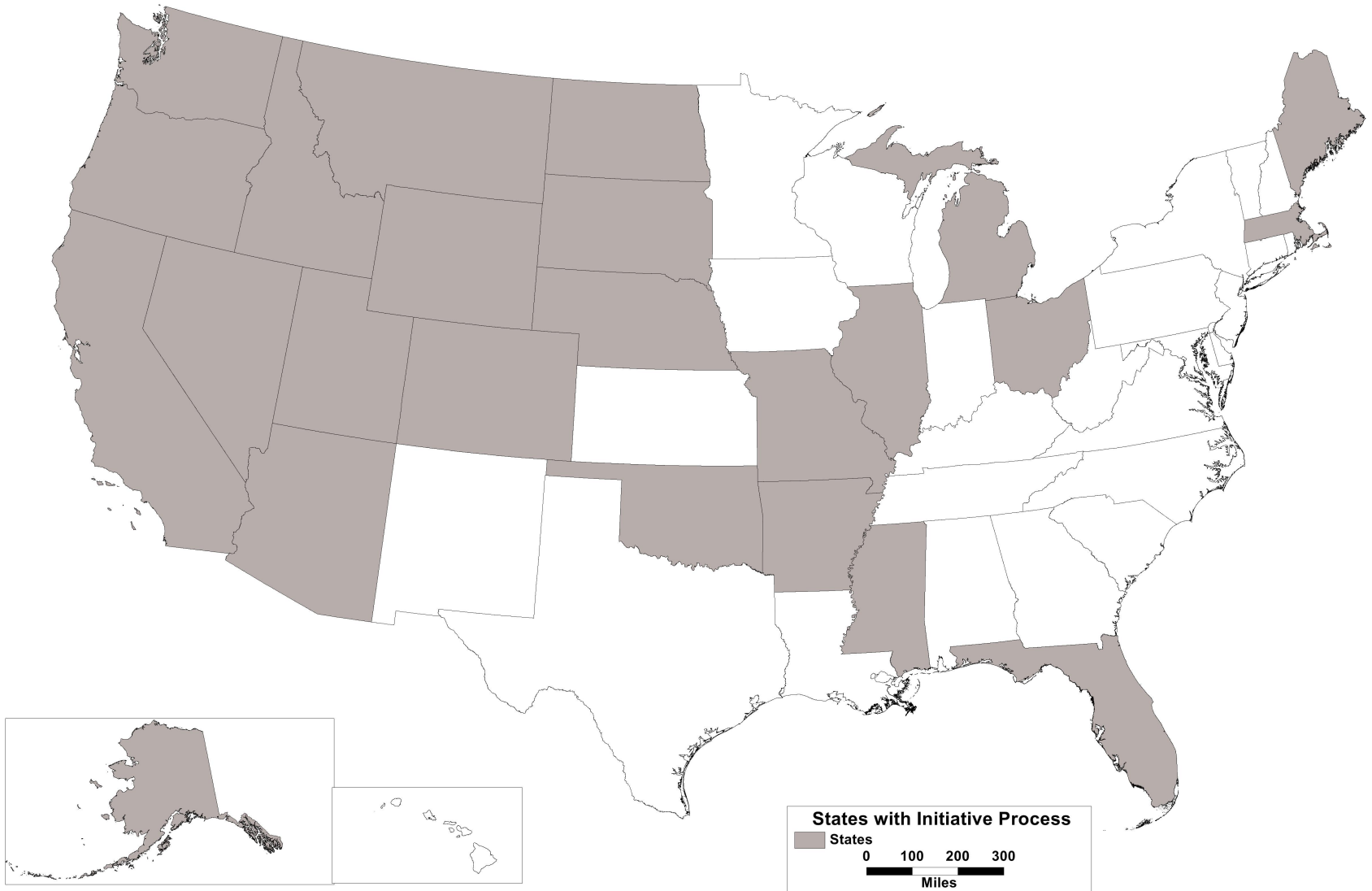
**SECTION 2135t. 79.10 (4)** of the statutes is repealed and recreated to read:

**79.10 (4) STATE SCHOOL PROPERTY TAX CREDIT.** In 1993 and thereafter, each municipality shall receive, from the appropriations under s. 20.835 (3) (c) and (e), an amount determined by multiplying the school tax rate by the estimated fair market value in excess of \$2,500, but not exceeding the following total estimated fair market value, of every parcel of taxable property on which a principal dwelling is located in the municipality and for which a claim for a credit under sub. (7m) (b) 1. b. is made by the owner of the principal dwelling:

- (a) In 1993, \$30,000.
- (b) In 1994, \$35,000.
- (c) In 1995 and thereafter, \$35,000 plus an amount in each year rounded to the nearest \$100 equal to the percentage increase in the consumer price index for all



# Progressive Revolt of 1898-1918: Establishing the Initiative Process





# The “Hybrid Democracies” of the States

## Direct Democracy

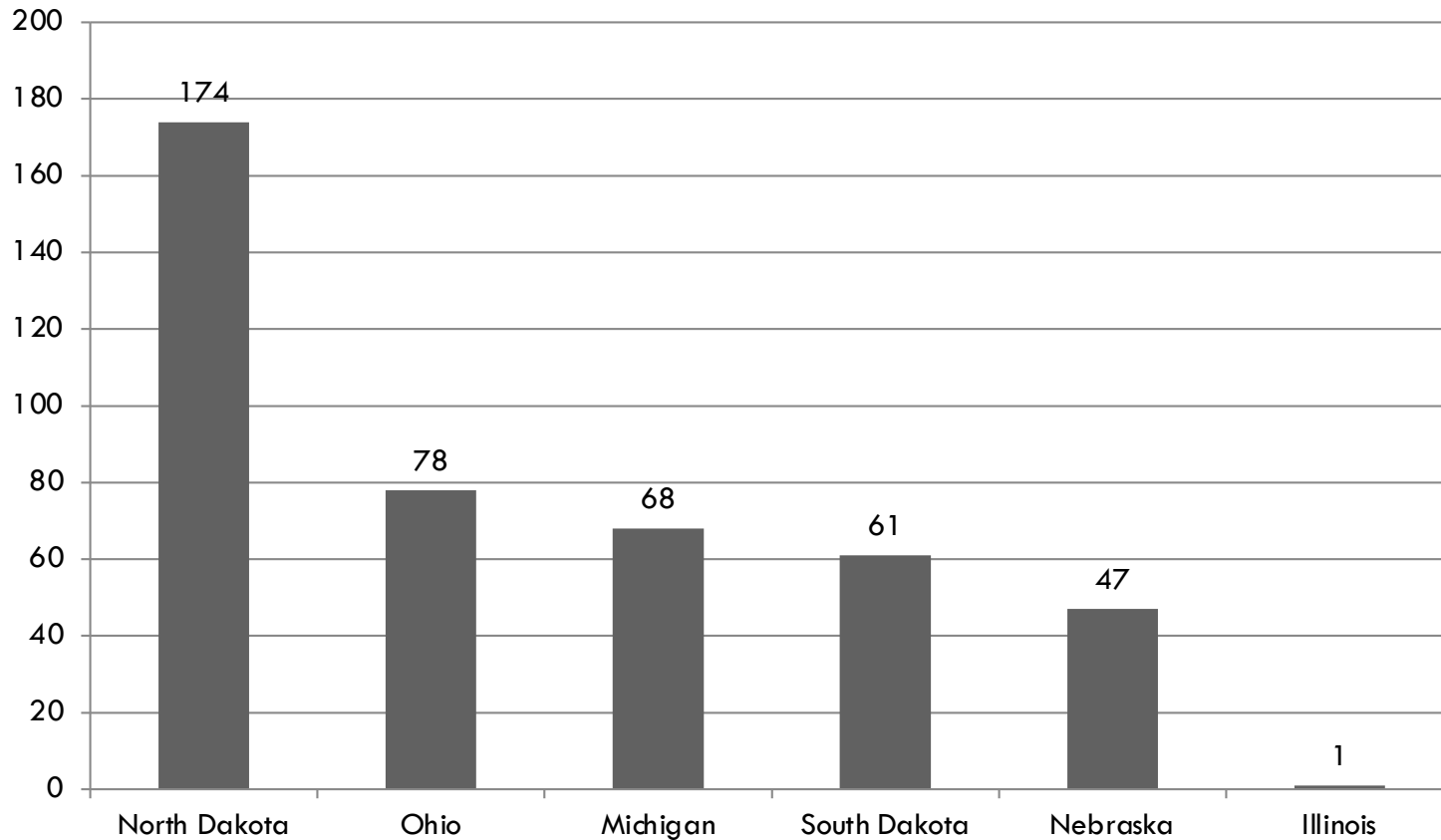
- Citizens can pass new laws and constitutional amendments (initiative)
- Power to overturn what the legislature passes (referendum)

## Representative Democracy

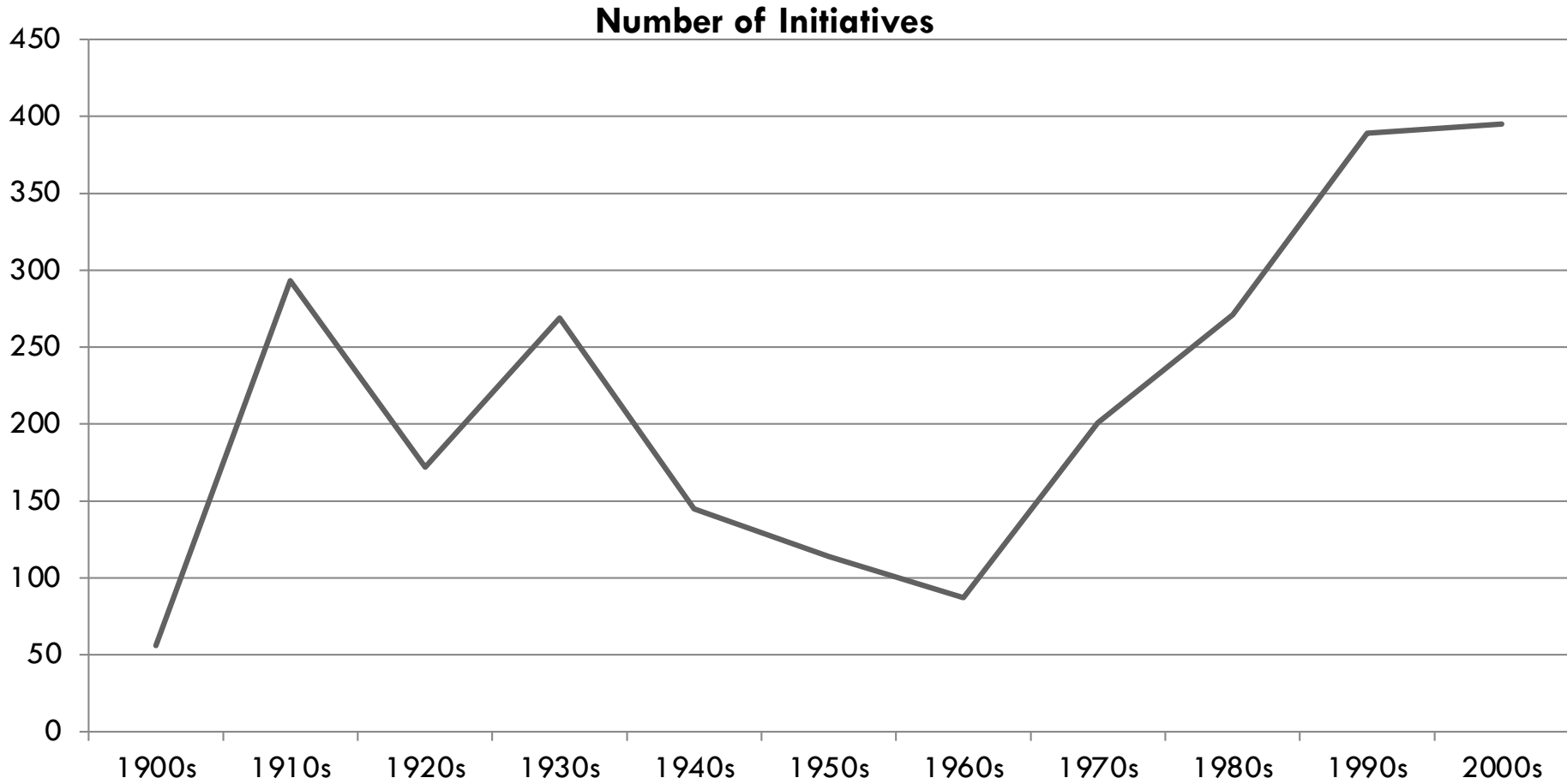
- Elected officials act as agents of citizens, have first opportunity to make policy
- Elected officials entrusted with implementing initiatives

# Some Midwestern States Make Frequent Use of the Initiative Process...

Number of Initiatives (state history)



# ...Now More than Ever



# What Does This Mean for Your Job?

- As critical issues are decided at the ballot box, legislatures become less central to state policy
- Voters have used direct democracy to constrain the choices that legislators can make
  - ▣ Tax and expenditure limits, supermajority requirements
  - ▣ Ballot box budgeting
- Legislatures can duck tough issues by sending them to the people, trading short term electoral gain for long term institutional loss

# Trivia That Isn't Trivial

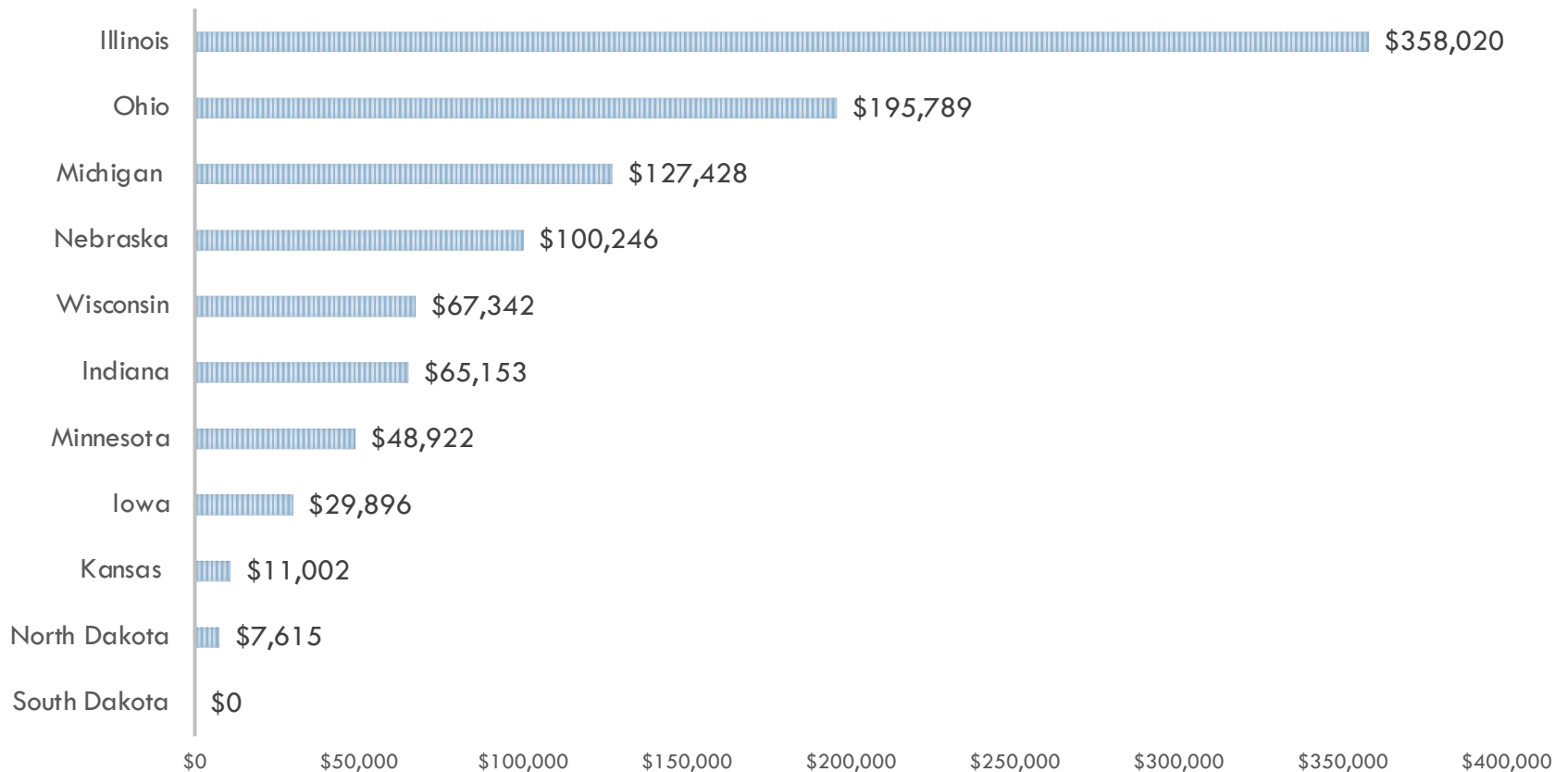
- Which legislators in the Midwest represent the largest number of constituents (nearly 350,000)?
- How many constituents live in your district?
  - ▣ What strategies do you use to communicate with them effectively and to learn about their diverse opinions and needs?

# State Legislatures Today: Growth in District Size

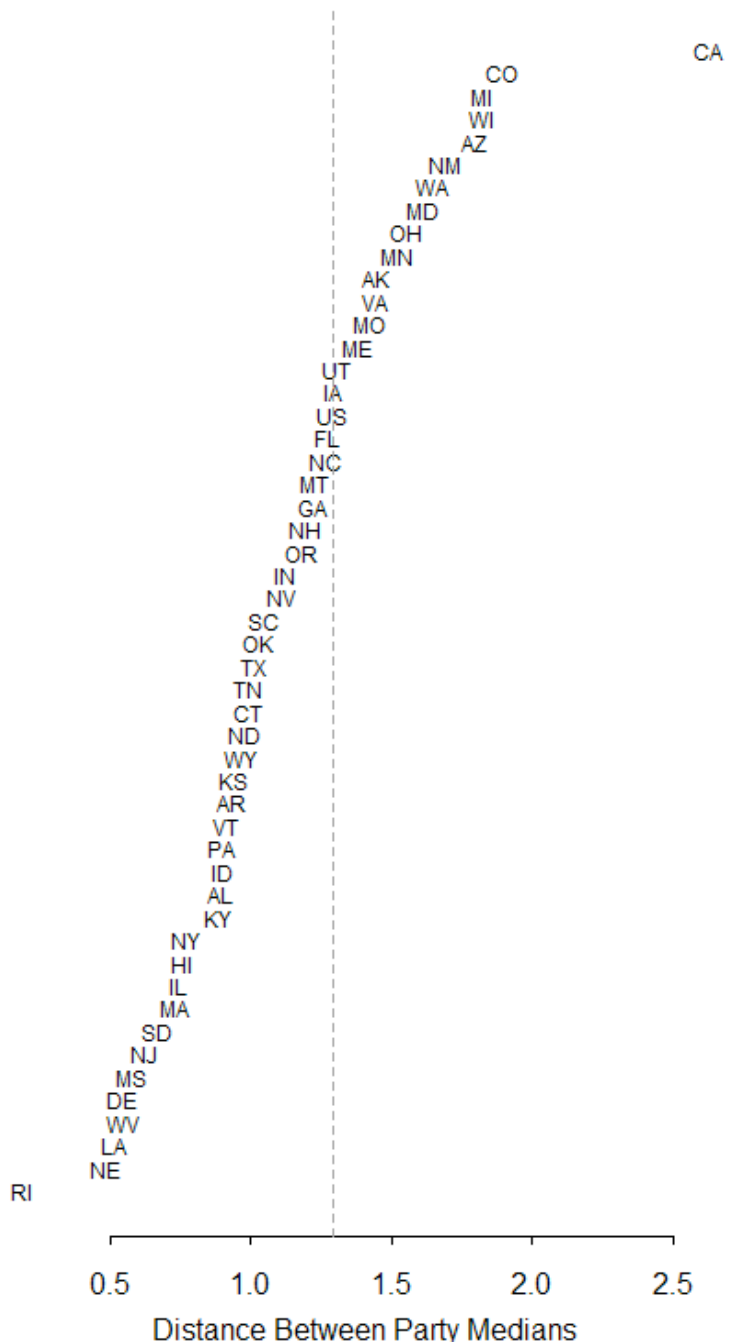
Population of state legislative districts				
State	Senate		House	
	# of seats	Constituents per district	# of seats	Constituents per district
Illinois	59	217,468	118	108,734
Indiana	50	129,676	100	64,838
Iowa	50	60,927	100	30,464
Kansas	40	71,328	125	22,825
Michigan	38	260,096	110	89,851
Minnesota	67	79,163	134	39,582
Nebraska	49	37,272	—	—
North Dakota	47	14,310	94*	14,310
Ohio	33	349,591	99	116,530
South Dakota	35	23,262	70*	23,262
Wisconsin	33	172,333	99	57,444
<i>U.S. average</i>	<i>1,971</i>	<i>156,339</i>	<i>5,413</i>	<i>59,626</i>

# State Legislatures Today: Costly to Compete

## FUNDS RAISED PER SEAT (2024 HOUSE ELECTIONS SO FAR)



# Average Legislative Polarization



# State Legislatures Today: Partisan Polarization





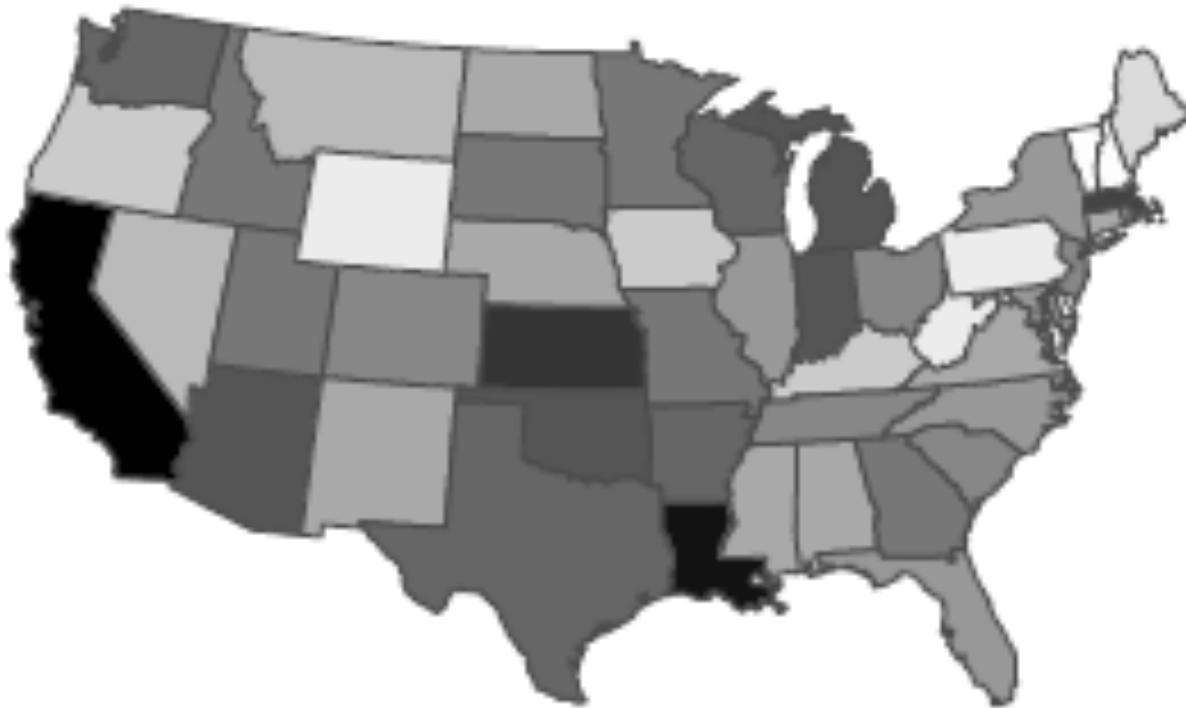
# State Legislatures Today: Partisan Polarization

- Studies of voting patterns show more polarization than there has been in a century
  - ▣ Arranged on a ideological spectrum, party caucuses have moved farther away from each other
  - ▣ This reflects a trend among voters as well
- Deals are harder to reach when the ideological gap between parties becomes a chasm
- Civility can suffer, but that is not predestined

# Do States Deliver What Voters Want?

(only 33% to 69% of policies match voters)

## Congruence Percentage



From analysis of 39 policy areas by Justin Phillips and Jeff Lax (Columbia University)

# State Legislatures Today: What the Public Thinks

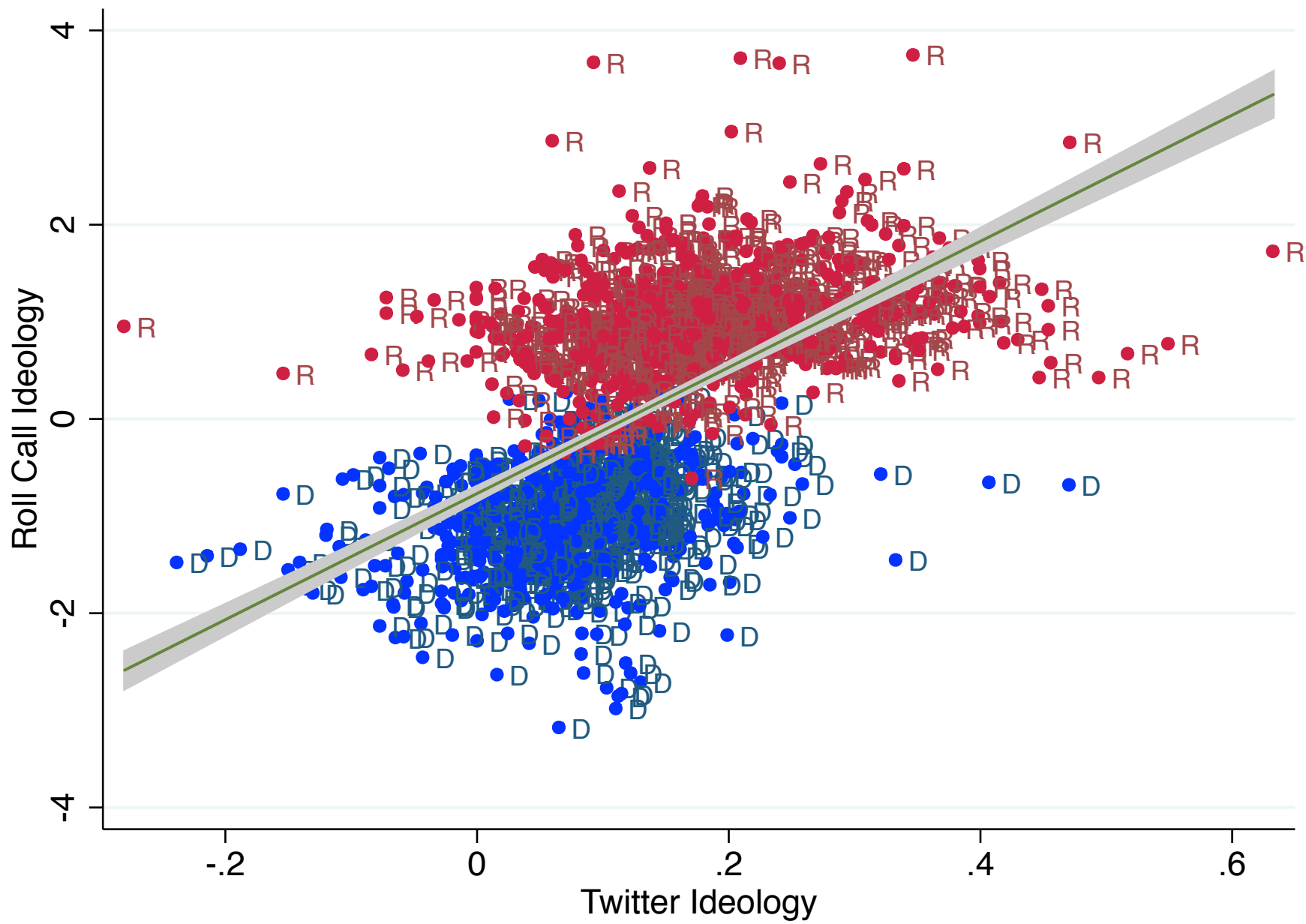
- **“NAIL DOWN or hide your valuables, folks. More than 1,500 politicians from around the country are in Anchorage for a national gathering of state leaders....The group is composed largely of legislators from the 50 states....”**

***--Anchorage Daily News, during CSG's 2004 Annual Meeting***

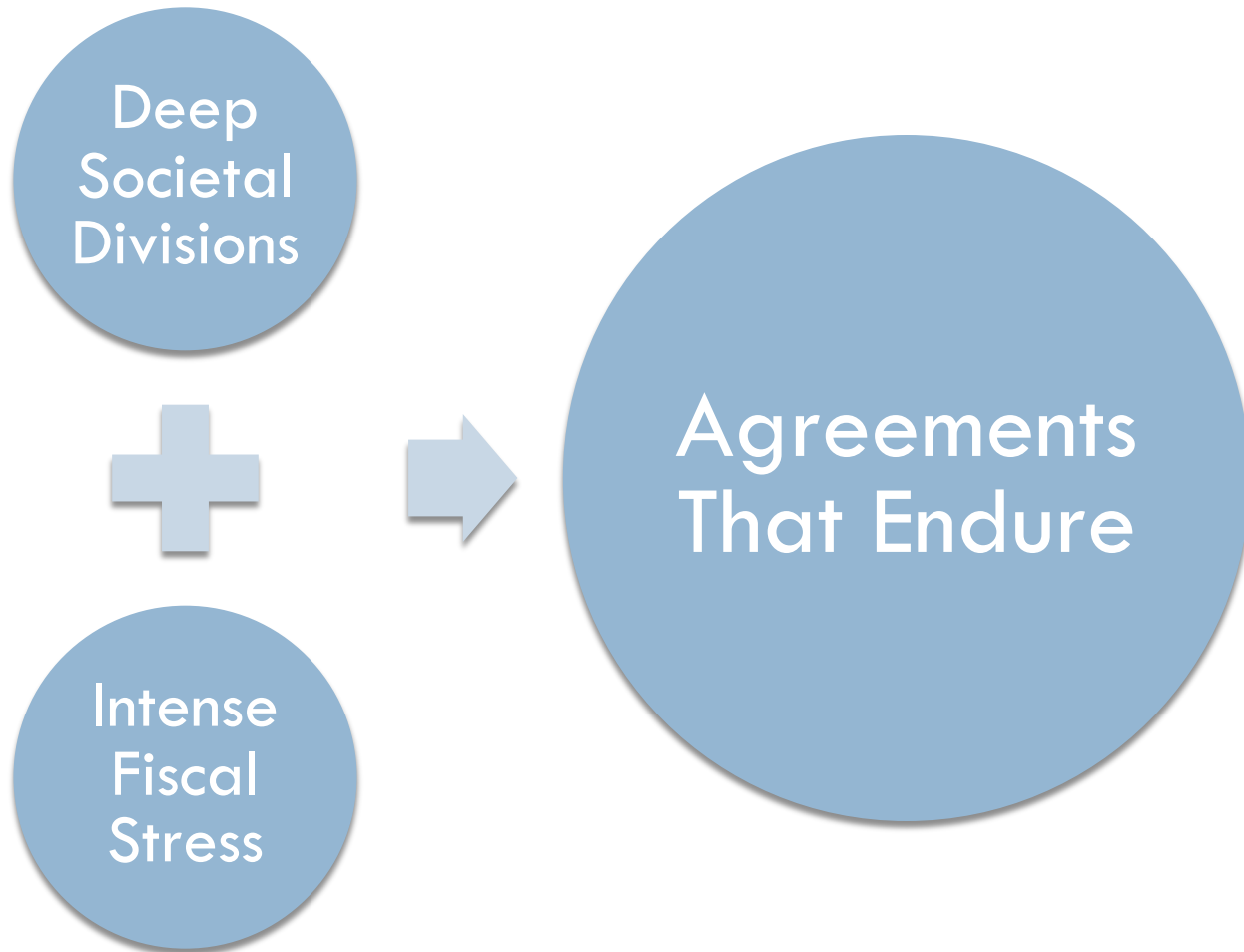


# State Legislators and Social Media

- 67% of state legislators have a public Twitter handle, producing 3,580,727 tweets (averaging about 1100 per tweeting lawmaker)
- They tweet about everything from their policy stances to their dogs, seeking to gain trust and connect with constituents
- When they tweet about ideological positions, it is generally truth in advertising



# Ideal of How a Statehouse Works





# How Voters Think a Statehouse Works





# How Do You Get To the Ideal?

## Collective Goals

- Process and rules
- Deliberation and sunshine
- Fair dealing with today's winners and losers

## Private Incentives

- Short time horizons
- Geographic perspectives
- Partisan Perceptions

# Final Thoughts

- Serving in state legislatures has always been a hard, but crucially important, job
  - ▣ Perhaps more demanding and crucial than ever
- States invested much in these institutions over the last generation, but also placed limits on them
  - ▣ Term limits and increasing use of initiatives
- Individual incentives are centrifugal forces, but legislators must come together to aid institutions