

FIFTY SHADES OF STATE LEGISLATURES:
THE IMPACT OF STATE LEGISLATIVE PROFESSIONALISM AND PARTISANSHIP ON POLICY
IMPLEMENTATION

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Abstract

State legislatures are often forgotten or ignored when discussing politics, but their impact on state-level and local lawmaking as well as influencing the implementation of federal legislation over the last 300 or so years, has been tremendous. One of the reasons why state legislatures are overlooked is because of their variance in every single state in terms of size, what they're called, makeup, structure, functionality, and most importantly professionalism. This paper examines what a state legislature is and how they vary by state, the impact of their professionalism on policy creation and implementation, and the different relationships at play between state legislatures and their corresponding executive branches, and their partners in federal government. Chapter 1 answers the following: How do state legislatures vary specifically in terms of their levels of professionalization? Although there are many elements of legislative professionalism, this chapter defines it as how full-time or part-time a specific legislative body is; meaning how much time does a lawmaker spend on the job. Chapter 2 answers the following question: How does legislative professionalism and political makeup of state executive branches impact how laws and policies are implemented at the state level? Studying the relationship between state legislatures and their corresponding governors, this chapter examines case studies of federal and state laws, specifically the Affordable Care Act and its implementation at the state level. This case study makes clear that less professionalized state legislatures are at a constitutional disadvantage and are unable to provide a "check" on their respective executive branch. Chapter 3 answers the following: Does the full-time career nature of state legislatures and political makeup of state governance, each alone and taken together, have an impact on how federal laws are implemented at the state level? Through healthcare outcomes, results show that states with more active, full-time, and professionalized

legislatures have better outcomes and are also more prepared and more equipped to serve their constituencies. The research in this paper warrants a consideration for implementing nationwide standards for state legislative professionalism so that states can react with certainty and real lawmaking authority in the face of crisis.

Readers:

- Professor Pam Prah
- Professor Douglas Harris

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Introduction

American democracy as a form of government is unique. It sets itself apart from the rest of the world, in part, because of the power the system gives to state and local governments. The Tenth Amendment to the Constitution of the United States lays out the states' specific powers. This amendment asserts, "all powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States..." Clearly, in creating this amendment, the framers of the Constitution denoted a broad and vast set of powers to the states and their respective forms of governments. American democracy is also distinctive because of its various layers of checks and balances. When drafting the Constitution and forming the new world they had imagined, the framers knew they had to limit the powers vested in the federal government and in the presidency, while also limiting legislative predominance.¹ The responsibility of this balance was left not only in the hands of the other two federal branches – the Legislature and the Judiciary – but also to the states.

During the U.S. Supreme Court case of *New State Ice Company v. Liebmann* (1932), in which the New State Ice Company, which was properly licensed by the Corporation Commission of Oklahoma, brought suit against Liebman to prevent him from selling ice in Oklahoma City without a license, Justice Louis Brandeis used the phrase, "states are laboratories of democracy."² During his dissent, the justice stated the following: "Denial of the right to

¹ "How America Is Different From Other Democracies." U.S. News & World Report. <https://www.usnews.com/opinion/blogs/world-report/2013/10/21/how-america-is-different-from-other-democracies>.

² Tarr, G. Alan. "Laboratories of Democracy? Brandeis, Federalism, and Scientific Management." *Publius* 31, no. 1 (2001): 37-46.

experiment may be fraught with serious consequences to the nation. It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory."³ His decision here and the meaning behind his argument was such that states, and their electorate, can decide, more so have the right, to experiment with new policies and laws without effecting the other states in the union.

Later in the 20th century, Tip O'Neill, Speaker of the United States House of Representatives from 1977 to 1987, coined the phrase "all politics is local." In using this phrase, he meant that elected government officials, even on a national scale, need the skills of local politicians to win elections.⁴ He also meant this as a nod to the backroom political deals and skills often spoken about when discussing state and local politics, specifically state legislatures.⁵ Although it is unclear whether the state level experiment approach is what the founders of the nation were after, it is certainly clear that they sought independence from the federal government. If states are indeed the laboratories of democracy, then each state's legislature is the chief laboratory technician, responsible for researching, crafting, debating, and passing new laws, as well as serving and listening to their constituents' everyday needs.

Much like when a reporter at the *New York Times*, *Wall Street Journal*, and other national level newspapers, digests an article in a local newspaper, then he or she takes it, follows up and reports on it, politicians and executive branch agency heads at the federal level often use an initiative or policy successfully carried through the state level as the source of a

³ Ibid

⁴ Gelman, Andrew. "All Politics Is Local? The Debate and the Graphs." *FiveThirtyEight*. January 04, 2011. <https://fivethirtyeight.com/features/all-politics-is-local-the-debate-and-the-graphs/>.

⁵ Ibid

new national law or program. For example, in 2006 under Republican Governor Mitt Romney and in collaboration with the state legislature, Massachusetts established a health care reform law that became the model for President Barack Obama's Affordable Care Act.⁶ Massachusetts' health reform bill is exactly what Justice Brandies had in mind when he spoke about states being the laboratories of democracy and being able to accomplish things, whether successful and positive or not, that only impact its own residents.

State legislatures are often forgotten or ignored when discussing politics, but their impact on state-level and local lawmaking as well as influencing federal legislation over the last 300 or so years, has been tremendous. The first legislature or local body of government in the United States, was the Virginia House of Burgesses, which was modeled after the English Parliament.⁷ Established in 1643, it would hold a voting session around once per year to vote on laws and determine local taxes.⁸ The House of Burgesses was comprised of 22 elected officials representing 11 districts in Virginia.⁹ State legislatures have come a long way since the 1600s and overall have become more professional. Currently, however, their size, makeup, structure, functionality, and professionalism still varies across the states. These state government differences are largely unknown to the general public, not because of a lack of transparency, but as stated before, the majority of politics revolves around the federal government, congress, and the presidency.

⁶ Beyond Obamacare: Lessons from Massachusetts. Anthony, Barbara. September 2017. Associate working paper series, *Number 84, Harvard Kennedy School*.

https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/files/82_BeyondObamacare.pdf

⁷ "The House of Burgesses." *Ushistory.org*. <https://www.ushistory.org/us/2f.asp>.

⁸ Ibid

⁹ Ibid

As noted, state legislatures vary dramatically in terms of their size, their functionality, and their professionalism. An example of this striking variability is the total number of members per legislative body, as New Hampshire has the largest state legislature with 424 total members and Nebraska has the smallest with only 49. For this paper, to measure legislative professionalism we will use the following definitions and groupings for states: A “part-time legislature,” is a body that operates less than year-round, has minimal to no support staff, and its elected officials are paid less than a living wage; a “full-time legislature” functions year-round with full-time staff, and elected officials are paid a livable salary; and hybrid states that have legislatures that operate and function somewhere in the middle. These characteristics can weigh heavily on the speed at which a legislative body operates, the quality of laws passed, as well as on the number of bills signed into law.

This paper examines what a state legislature is and how they vary by state, the impact of their professionalism on policy creation, and the different relationships at play between state legislatures and their corresponding executive branches (governors) and their partners (or adversaries) in the federal government. Chapter one will examine the various aspects of state legislative makeup by comparing different legislative bodies throughout the United States. Using a comparative analysis, this chapter will dive into what it really means to be a fully professionalized state legislature. Chapter two examines the relationship between state legislatures and their corresponding executive branch. This chapter’s analysis includes a case study to answer the following question: *How does legislative professionalism and political makeup of state executive branches impact how laws and policies are implemented at the state level?* Finally, chapter three will explore what impact legislative professionalism has on state-

level implementation of federal law. This chapter also uses a case study and answers the following question: *Does the full-time career nature of state legislatures and political makeup of state governance, each alone and taken together, have an impact on how federal laws and policies are implemented or impacted at the state level?* In both chapters two and three, the case studies aim to exploit policy implementation stemming from the Affordable Care Act (ACA), including laws passed at the state level in response to the ACA, as well as Medicaid expansion. Overall, this paper will make clear that professionalized legislatures are not only nimbler and more effective at passing laws, but also more able to hold other aspects of government accountable.

Although state legislatures have matured and operated on a more professional basis over time, little has been studied and written about the importance of legislative professionalism on policy implementation. The major scholars that have written about this topic include Peverill Squire, Gary Moncrief, Morris Fiorina, and Karl Kurtz. This group, although they write in great detail and lengths analyzing state legislatures, they all tend to agree that legislative professionalism is defined by the following combination – the number of bills introduced, laws passed, time for elected officials that is spent on the job, annual compensation, staff resources, staff salary, and rates of membership turnover. This paper does not dispute their analysis, but rather uses it, collectively, to determine and exploit the impacts of legislative professionalism on state policy-making, legislative processes, and on an individual legislature's ability to react to and implement federal law.

During 2020, the responsibility and role of state legislatures has, arguably, never been so important. As the COVID-19 pandemic hit the United States, state executives and their

legislators attempted to counteract the dire and deadly effect of one of the worst public health crises in modern history. This responsibility became even more crucial, as the federal government's response to the virus became inadequate and created confusion for states, their leaders, and most importantly their residents. Essentially there was no playbook for states to follow, and as governors across the nation signed and passed executive orders to primarily close nonessential businesses and schools, require people to wear masks, and to ramp up virus testing and tracing, state legislatures also tried to pass laws to react to aspects of daily life that could not be handled as easily through executive action. These laws included expanding paid sick time, changes to voting and elections, healthcare eligibility, and insurance coverage. But before they were able to pass these important measures, state legislatures needed to figure out how they would vote and pass laws remotely. Initially 23 states instituted some form of remote voting, which in and of itself required a vote.¹⁰ Among the states that did not react and implement some form of virtual legislative sessions, were Rhode Island, Montana, North Dakota, South Dakota, Georgia, and Texas.¹¹ These states are also viewed as having some of the least professionalized state legislatures.

When the Coronavirus first hit the United States, governors really had no choice but to pass executive actions. However, as the pandemic has plagued on, executive actions have become weaker as their legality has been challenged in courts throughout the nation. Additionally, in most instances they do not carry the full weight of law and are meant to be

¹⁰ Pam Greenberg, Lesley Kennedy. COVID-19: State Actions Related to Legislative Operations. <https://www.ncsl.org/research/about-state-legislatures/covid-19-state-actions-related-to-legislative-operations.aspx>.

¹¹ Ibid

more of a temporary solution.¹² Elizabeth Goitein of the New York University School of Law's Brennan Center for Justice reiterated this point further: "The justification of a governor taking on the function of the Legislature in that context [of emergency situations] is there's not enough time for the Legislature to get together and make new laws. That justification gets weaker and weaker the longer the state of emergency goes on."¹³ As executive action has faded out, the full weight of new reactionary laws to the public health crisis have needed to fade in; this much state legislatures know.

¹² Stout, Matt. "The Coronavirus Pandemic Highlights Baker's Sweeping - and Indefinite - Emergency Authority - *The Boston Globe*." June 14, 2020.

¹³ Ibid

Chapter 1: State Legislatures and the Spectrum of Legislative Professionalism

Introduction

The United States was founded and built upon the notion of checks and balances. The nation's framers set out to create a system of governance that could work and hold up in times of crisis, including wars, economic downturn, and civil upheaval. When discussing politics, most people throughout the United States think of the presidency, as well as congress, which includes the U.S. House of Representatives and the U.S. Senate. When speaking about how laws are made, most people think of the federal government and federal laws. It is hard not to think otherwise, as the current media landscape primarily covers this space as well. That being said, it is true that the federal government – which is made up of three branches, including the Executive Branch (the president), the Legislative Branch (congress), and the Judicial Branch (the supreme court and underlying court systems) – has vast power and lawmaking abilities. However, when considering how laws are made and how society is progressed forward through policy shifts, state legislatures must be included in the conversation, as they are a key component.

Among many others, productive state legislatures have three core functions. These legislative bodies must work to balance the power of both the state's court system and its governor, as well as the federal government, represent its constituencies, and of course debate and pass laws.¹⁴ President Wilson, who was governor of New Jersey before becoming

¹⁴“Full- and Part-Time Legislatures - *Ncsl.org*.” Accessed October 26, 2019. <http://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx>.

president, believed states and local governments were solely responsible for developing policies at the local and municipal level. He said: "It is that the Legislatures of the States shall have control of all the general subject-matter of law, of private rights of every kind, of local interests and of everything that directly concerns their people as communities..."¹⁵ Wilson explains here, it is the state legislatures that impact how laws are passed and implemented. Additionally, state legislatures are also charged with figuring out how to take what is passed into law at the federal level in congress and how to implement it at the state level.

In the media, especially in the current era of the 24-hour news cycle, where headlines last a matter of hours and in some cases minutes, state legislatures, and their work, often gets forgotten and overlooked. But to Wilson's point, the work they carry out is a pivotal element of the nation's governmental structure and how American society functions. Although every state has a legislature, these governmental bodies vary in their professionalization (full-time vs. part-time), operations and formal voting, makeup, and composition. Massachusetts, for instance, has a full-time legislature, while Montanan legislators operate formal sessions only 90 days every other year; then there is Hawaii which operates on a part-time basis during a two-year legislative session.¹⁶ On the spectrum of professionalized state legislatures, Massachusetts is on one end (fully professionalized), Montana on the other (least professionalized), with a state like Hawaii somewhere in between. This diversity in the structure of legislatures is what this chapter aims to exploit; to understand how legislative professionalism impacts how laws are passed and how policies are implemented at the state level. This chapter will answer the

¹⁵ Wilson, Woodrow. "The States and the Federal Government." *The North American Review* 187, no. 630 (1908): 684-701. <http://www.jstor.org/stable/25106130>.

¹⁶ "Full- and Part-Time Legislatures - *Ncsl.org*." Accessed October 26, 2019.

following question: *How do state legislatures vary in terms of their levels of professionalization and how does this professionalization impact how policies are passed and implemented?*

Overview of State Legislatures

There are reasons why the work and impact of state legislatures may be less known. Unlike, the U.S. Congress which is centrally located in Washing D.C., the nation’s capital, with two distinct bodies, the House and the Senate, state legislatures vary in their names and titles, size, functionality, and how they’re governed (i.e. leadership structure). Every state has some sort of a legislative body made up of elected representatives, whose primary responsibility is to, according to the White House, “consider matters brought forth by the governor or introduced by its members to create legislation that becomes law.”¹⁷ The other main task of state legislative officials is to formulate and pass the state’s budget.¹⁸ As of 2018, Republicans control 30 state legislatures, while Democrats maintain a majority in 19.¹⁹

Across the country in various states, legislatures have differing names, ranging from the congressionally similar “house of representatives” and “senate” to “general assembly,” “general court,” “council,” and “legislative assembly.”²⁰ Although the specific names can vary, in 27 states, the legislature is called the “legislature,” or the “state legislature,” while in 19 states the legislature is called the general assembly.”²¹ Further, while 49 states are made up of

¹⁷ “State & Local Government.” The White House, The United States Government, www.whitehouse.gov/about-the-white-house/state-local-government/.

¹⁸ Ibid

¹⁹ “With One-Party Control in Most States, Minority Parties Are 'Teetering on Irrelevance'.” In 2019, All But One State Legislature Is Controlled by One Party.

²⁰ “Full- or Part-Time Legislature: Which Is Better?” The Thicket at State Legislatures. Accessed October 26, 2019. https://ncsl.typepad.com/the_thicket/2013/02/full-time-or-part-time-legislature-which-is-better.html.

²¹ Ibid

bicameral legislatures – an upper body (typically the senate) and a lower body (typically the house) – Nebraska is the only state that operates through a unicameral legislature (one legislative body) which is simply called the Nebraska Legislature.²²

State legislatures also vary in size. Currently, they range from 49 to 424 total members, and over time, these numbers have shifted based on state constitutional amendments and population changes. Nebraska, due to only having one legislative body, is currently the smallest state legislature while New Hampshire is currently the largest state legislature.²³ State law also varies as it relates to term length, as some states use two-year terms and others are on four-year election cycles. State legislatures were developed through their state constitutions, but over time, the functionality and governance structure of these bodies changed. As populations have shifted in states and census data has been updated every ten years, state legislative bodies have had to adapt. If a state’s population calls for additional legislative representation, the legislature has to react and add an additional seat, or vice versa if populations trend in a downwards direction.²⁴

How a State Legislature Functions

In every state legislature bills become laws through the committee process.²⁵ In general, legislative committees are tasked with researching, understanding, collecting public input and testimony, and then presenting bills to a full body of the state house and state senate

²² Ibid

²³ Warnock, Kae, and Brenda Erickson. Number of Legislators and Length of Terms in Years, www.ncsl.org/research/about-state-legislatures/number-of-legislators-and-length-of-terms.aspx.

²⁴ Ibid

²⁵ Makse, Todd. “The Retention of Expertise and Productivity in State Legislative Committees.” *State Politics & Policy Quarterly* 17, no. 4 (December 2017): 418–40.

(or state assembly).²⁶ Bills, as well as committees, are broken down and split up by subject matter, such as healthcare, education, economic development, and taxation, then distributed to the committee best suited to determine if the topic warrants debate (and ultimately a vote) of the full legislative body. Committees are responsible for rooting out weak bills, as well as re-writing and amending legislation which can be improved upon. In some ways, the committee process has been successful due to its bipartisan approach, as these small groups are made up of both democrats and republicans, which can result in committees formulating bipartisan products.²⁷ However, some view the committee system as overtly partisan, as the majority party will typically have the final say in terms of what bills will progress further and possibly be voted into law.²⁸ The relationship between the majority and minority parties varies by state, as some state legislatures grant more authority to elected officials in the minority party.²⁹ Partisanship or bi-partisanship at the committee level depends on what issue is being discussed, as in many cases, bills at the state level will be more practical and legislators will agree to work together for the common good.

For example, healthcare has been an issue where both major parties, Democrat and Republican, have been able to work together at the state level and pass laws to improve the quality of life for millions of constituents.³⁰ Since the passage of the Affordable Care Act in 2010, states have voted on and implemented the expansion of Medicaid, the federal program

²⁶ Ibid

²⁷ "The Importance of Committees." ushistory.org. Independence Hall Association. Accessed November 16, 2019. <http://www.ushistory.org/gov/6c.asp>.

²⁸ Smith, C. Lysle. "The Committee System in State Legislatures." *The American Political Science Review* 12, no. 4 (1918).

²⁹ Ibid

³⁰ "The Importance of Committees." ushistory.org. Independence Hall Association. Accessed November 16, 2019. <http://www.ushistory.org/gov/6c.asp>.

that supports lower income individuals and families. According to the Kaiser Family Foundation, state Medicaid agencies must work with federal partners to adopt Medicaid expansion, thus weighing heavily on the relationship between states and the federal government.³¹ Depending on the state, its healthcare agency makeup and oversight, governance and legislative structures, and party affiliation (the political party in control), there are different guidelines for what kinds of Medicaid changes can be authorized. States vary in terms of which kinds of regulatory changes must be made through amendments to state statute – which would require legislative approval, therefore starting at the legislative committee level. In some states, policies like Medicaid expansion can also be passed by voter referendum (ballot initiative). By 2015, 28 states had adopted Medicaid expansion and in the majority of instances, the new healthcare policies were passed and implemented through the legislative and committee process.³² For example, in Minnesota, the state legislature took up a stand-alone bill (independent from any other piece of legislation) that was referred to the Committee on Health and Human Services Policy. This committee held public hearings and amended the bill then sent it along to the Committee on Ways and Means. Ways and Means committees are responsible for all tax and budgetary issues. In 2013, the Minnesota State Legislature voted on and passed Medicaid expansion in less than two months, which was quite fast for this state legislative body that operates on a more part-time basis.³³ Alternatively, consider the state of New York, which included the Medicaid expansion package as part of a

³¹ Antonisse, Larisa, and Robin Rudowitz. “An Overview of State Approaches to Adopting the Medicaid Expansion - Issue Brief.” The Henry J. Kaiser Family Foundation, February 28, 2019. <https://www.kff.org/report-section/an-overview-of-state-approaches-to-adopting-the-medicaid-expansion-issue-brief/>

³² Prokop, Andrew. “The Battle over Medicaid Expansion in 2013 and 2014, Explained.” Vox. Vox, May 12, 2015. <https://www.vox.com/2015/1/27/18088994/medicaid-expansion-explained>.

³³ Ibid

budget bill passed during the 2013 legislative session. This process did not include any healthcare specific committees and was taken up by the Financial Services Committee and then passed along to ways and means.³⁴ Depending on the state, their level of legislative professionalism, and where they are in the legislative cycle, the legislative process, or committee process, will vary.

State Legislative Budget Process

The annual budget is thought of by political experts, as the most important aspect of state governance and state decision-making. A state's budget touches all aspects of residential life and can really be the difference in moving a state forward in the right direction or backwards in the wrong direction. During this process, generally, the governor sends his or her version of the budget to the legislature for debate, first in the House of Representatives (or state assembly, depending on the state), and then in the state senate. States operate on either an annual budget cycle every fiscal year, which typically begins on July 1, or they function using a biennial budget cycle (one budget which spans and covers two fiscal years).³⁵ Right now, there are twenty states that enact biennial budgets.³⁶ Additionally, with the exception of Vermont, states are required to balance their budgets; this is dissimilar to the federal government that does not have to balance its budget.³⁷ Figure 1 below, details the entire

³⁴ Ibid

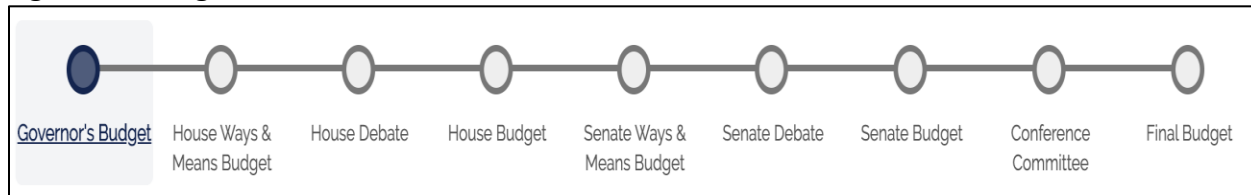
³⁵ "State Budget Processes: A Comparative Analysis." State Budget Processes: A Comparative Analysis | CSG Knowledge Center. <https://knowledgecenter.csg.org/kc/content/state-budget-processes-comparative-analysis#:~:text=>

³⁶ Ibid

³⁷ Ibid

process from start to finish for the Commonwealth of Massachusetts, which enacts a budget for every fiscal year.

Figure 1 – Budget Process for the Commonwealth of Massachusetts



Source: <https://malegislature.gov/>

As shown in Figure 1, once the fiscal year budget has passed both the state House and Senate, the governor may choose to veto or sign the bill. In some states, including Massachusetts, the governor has line-item veto authority, where he or she has the option not only to veto the entire bill, but also just certain sections (line items) they might disagree with (veto rules vary by state).

Professionalized vs. Non-professionalized Legislatures and an Overview of Legislative Governance

It is clear from the three legislative examples used above (Massachusetts, Montana, and Hawaii) that states vary greatly in terms of how their legislatures are structured and how they operate. As defined and laid out in the introduction, a “part-time legislature,” is a body that operates less than year-round, has minimal to no support staff, and its elected officials are paid less than a living wage. On the other hand, a “full-time legislature” functions year-round with full-time staff, and elected officials are paid a livable salary.³⁸ There are also states that have

³⁸ “Full- or Part-Time Legislature: Which Is Better?” The Thicket at State Legislatures. Accessed October 26, 2019. https://ncsl.typepad.com/the_thicket/2013/02/full-time-or-part-time-legislature-which-is-better.html.

legislatures that are considered “hybrids.” This generally means the legislature’s lawmakers spend about two-thirds of a full-time job in their roles as elected officials and earn less money than their colleagues in states with full-time legislatures. From a legislative professionalism standpoint, the ideal state legislature should function more like congress, with individual legislative offices setup with full-time elected officials and then specific staff devoted to researching public policy, providing political communications, and constituent services.

Public policy theorists and experts alike have examined the notion of professionalized state legislatures for years.³⁹ Some past studies do indicate that full-time legislatures are more responsive to constituents than part-time legislatures and are therefore more apt to effectively implement laws handed down by the federal government, especially those that are more suited to their constituents needs.⁴⁰ Further, more professionalized legislatures have been found to have more of an impact on partisan policy debates, as well as policy outcomes in general.⁴¹ However, the argument over what type of legislature works better is not that simple, as some in the field of public policy and government view full-time legislatures as sometimes getting in the way of governors and state executive branches and their policy priorities.⁴² Others have also revealed that part-time legislatures are more efficient in enacting laws because of their more condensed window of operation; these views argue part-time state governmental bodies

³⁹ Maestas, Cherie. "Professional Legislatures and Ambitious Politicians: Policy Responsiveness of State Institutions." *Legislative Studies Quarterly* 25, no. 4 (2000): 663-90. <http://www.jstor.org/stable/440439>.

⁴⁰ Ibid

⁴¹ Woods, Neal D., and Michael Baranowski. "Legislative Professionalism and Influence on State Agencies: The Effects of Resources and Careerism." *Legislative Studies Quarterly* 31, no. 4 (2006): 585-609. www.jstor.org/stable/40263404.

⁴² "Is the Grass Greener for Part-Time Legislatures?" The Pew Charitable Trusts. Accessed October 25, 2019. <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2004/05/14/is-the-grass-greener-for-parttime-legislatures>.

have less time to debate “strange bills” and as a result only focus on enacting and implementing potential bills that will have the most impact on constituents.⁴³ Additionally, more professionalized legislatures can lead to elected officials becoming “career politicians” which can result in these individuals focusing primarily on only getting reelected and fundraising.

History of Legislative Professionalism

Government analysts explain that up until the mid-twentieth century, state legislatures did not vary all that much and most states operated legislative bodies that were part-time and not professionalized.⁴⁴ However, in response to the Great Depression, which lasted from 1929 to 1933, President Franklin D. Roosevelt launched the New Deal to spur economic relief through governmental and industry reforms.⁴⁵ After this vast policy was implemented, the federal government’s role in American life expanded dramatically, forever shifting the role of state legislatures.⁴⁶

The New Deal expanded the federal executive branch in a way the United States had never seen before. The policy created new government agencies whose responsibility was to create economic development throughout the nation at the state level. The transition left an impact on state and local governments, as increasing demands on states came, as Congress pushed money into their legislatures through grants, stimulus projects and new federally mandated programs.⁴⁷ It was for this reason that state legislatures needed to adapt and

⁴³ Ibid

⁴⁴ Ibid

⁴⁵ [The Editors of Encyclopedia Britannica. “New Deal.” Encyclopædia Britannica, Encyclopedia Britannica, Inc., 3 Dec. 2019, www.britannica.com/event/New-Deal.](https://www.britannica.com/event/New-Deal)

⁴⁶ Voegelé, Jacob, "A Renewed Look at Ideology and Legislative Professionalism" (2014). Paper 48.

⁴⁷ Ibid

become more able to implement vast federal programs, policies, community and business-oriented grants, and other stimulus initiatives.⁴⁸ Although the New Deal pushed legislatures to become more full-time, hold greater responsibilities and be more accountable to their constituencies, by the end of the 1950s, legislatures were still relatively understaffed and, on average, only voted formally a few months out of the year.

Advocates for state government reforms in the 1960s and into the 1970s fought for legislative changes throughout the United States.⁴⁹ Thought leaders, lobbyists, and elected officials in different states worked to bring more diverse and more highly-educated candidates into the realm of state government.⁵⁰ The goal in the short-term was to create more career-oriented state legislatures and in the long-term build up and enhance state legislatures to the point where these bodies are more independent and hold as much power as executive branches and agencies at the state level.⁵¹ Post 1980, a group of states started buying into the notion of a more full-time legislature with the idea that a state's legislature should function more similarly to congress, in terms of professionalization. Legislatures in California, Illinois, New York, and Pennsylvania reformed their legislatures, began meeting and holding formal session on a more year-round basis, instead of for only a few months, and also started bringing on support staff.⁵² These states also enhanced legislative pay and salaries for the elected

⁴⁸ Ibid

⁴⁹ Woods, Neal D., and Michael Baranowski "Legislative Professionalism and Influence on State Agencies: The Effects of Resources and Careerism." *Legislative Studies Quarterly* 31, no. 4 (2006): 585-609. www.jstor.org/stable/40263404.

⁵⁰ Ibid

⁵¹ Ibid

⁵² "The Evolution of State Legislatures Has Driven Some to Flee." *Governing*. Accessed October 25, 2019. <https://www.governing.com/columns/assessments/gov-state-legislature-evolution.html>.

officials and their staff. Smaller states rejected these reforms and remained part-time with no support staff and maintained paying non-livable wages for elected officials.⁵³

Comparative Analysis: State Legislative Professionalism

As was laid out in the research above, every state legislature varies in terms of its professionalization (full-time vs. part-time), operations, makeup, and functionality. Using definitions previously stated, a “non-professionalized legislature” (part-time) is a body that operates less than year-round, has minimal to no support staff, and its elected officials are paid less than an average living wage. On the opposite end of the spectrum, a “professionalized legislature” (full-time) operates on a more year-round basis with full-time staff members, paying elected officials an above-average livable wage. Then there are hybrid state legislatures that operate somewhere in the middle. As stated earlier, full-time legislatures are more responsive to constituents than part-time legislatures and are therefore more apt to effectively work with and respond to their corresponding executive branch, and may be able to pass more laws.⁵⁴ To illustrate this point further, more professionalized and full-time legislatures over the years have been found to have more of an impact on partisan politics and policy outcomes in general.⁵⁵

Figure 2 – Legislative professionalism broken down by state

Full-time	Hybrid		Part-time
California	Alabama	Minnesota	Idaho

⁵³ Ibid

⁵⁴ Maestas, Cherie. "Professional Legislatures and Ambitious Politicians: Policy Responsiveness of State Institutions." *Legislative Studies Quarterly* 25, no. 4 (2000): 663-90.

⁵⁵ Woods, Neal D., and Michael Baranowski. "Legislative Professionalism and Influence on State Agencies: The Effects of Resources and Careerism." *Legislative Studies Quarterly* 31, no. 4 (2006): 585-609.

Ohio	Arizona	Missouri	Kansas
Wisconsin	Arkansas	Nebraska	Maine
New York	Colorado	Nevada	Mississippi
Pennsylvania	Connecticut	New Jersey	New Hampshire
Alaska	Delaware	North Carolina	New Mexico
Hawaii	Florida	Oklahoma	Rhode Island
Illinois	Georgia	Oregon	Utah
Massachusetts	Indiana	South Carolina	Vermont
	Iowa	Tennessee	West Virginia
	Kentucky	Texas	Montana
	Louisiana	Virginia	North Dakota
	Maryland	Washington	South Dakota
			Wyoming

Taking data compiled by the National Conference of State Legislatures, combined with independent analysis of state legislative functionality and operations (legislative pay, time spent on the job, and staff resources), Figure 2 shows, in general, the state breakdown in terms of legislative professionalization. Although some studies have shown some differing results, in terms of legislative professionalism, this table makes it clear that most states operate with either a part-time or hybrid state legislature.

Differing state legislative structures have shown that full-time state governing bodies are able to spend more time on the job. To achieve a more substantial picture, reviewing legislative professionalism more broadly is critical. Research shows that some of the most professionalized state legislatures are those of California, Massachusetts, Michigan, and New York (alphabetical order).⁵⁶ These states pay legislators significantly more than other states, provide resources so each legislator can have staff, and each meets in full-time legislative

⁵⁶ Squire, Peverill. "Another Look at Legislative Professionalization and Divided Government in the States." *Legislative Studies Quarterly* 22, no. 3 (1997): 417-32.

voting sessions.⁵⁷ Three out of these top four professionalized legislatures are in states that as a whole (i.e. the voters) consistently vote for Democrats across the board in the majority of both federal and state elections (including presidential).⁵⁸ Conversely, the states that have long ranked at the bottom of the legislative professionalism list, including New Hampshire, North Dakota, South Dakota, Utah, and Wyoming, tend to have Republican majorities, pay their elected officials less, and provide less staff to each legislative office.⁵⁹

Research reveals that scholars have differing views on what makes a state legislature more or less professionalized. Overall, most concur that it is a combination of bills introduced, laws passed, time for elected officials that is spent on the job, annual compensation, staff resources, staff salary, and rates of membership turnover. For the purpose of this analysis, the most important categories to compare will be elected official compensation, average number of staff per elected, and average time spent on the job for each legislator.

Figure 3 – Spectrum of legislative professionalization broken down by compensation, time on job, and staff resources

Category of Professionalization	Full-time Legislature	Part-time Legislature
Compensation	Higher annual salary for legislator	Lower annual salary for legislator
	Those in leadership positions are paid more	No compensation incentives for leadership
	Less turnover	More turnover

⁵⁷ Ibid

⁵⁸ Greenblatt, Alan. "All or Nothing: How State Politics Become a Winner-Take-All-World,". *Governing Magazine* (January 2019).

⁵⁹ Ibid

Time on Job	Legislators spend close to 100% of work week working as an elected representative	Legislators spend close to 50% of work week working as an elected representative
	Do not have a second job	Have a second job
Staff Resources	Legislators have their own staff	Legislators do not have staff
	Staff salaries are higher	Staff salaries are lower

Various analyses of state legislative structures have shown that full-time state governing bodies are able to spend more time on the job.

Figure 4 – Average for state legislatures for time on job, compensation, and staff

Average Job Time, Compensation and Staff Size by Category of Legislature

Category of Legislature	Time on the Job ¹	Compensation ²	Staff per Member ³
Full-time Legislatures	80%	\$68,599	8.9
Hybrid Legislatures	70%	\$35,326	3.1
Part-time Legislatures	54%	\$15,984	1.2

Source: <https://ncsl.com>

As shown in Figure 4, one study examined the categories of “time on the job” and compensation and found that full-time legislative officials, on average, spend 80 percent of normal works hours (9 a.m. to 5 p.m.) actually working and on average make \$68,599.⁶⁰ On the opposite end of the spectrum, the study revealed part-time state legislative elected officials

⁶⁰ “Full-Time, Hybrid, Part-Time Legislatures.” Governing. Accessed October 25, 2019. <https://www.governing.com/gov-data/politics/Full-Time-Hybrid-Part-Time-Legislatures.html>.

only work 54 percent of the regular work week and are compensated \$15,984, on average.⁶¹

Alaska, Florida, Illinois, New Jersey, Ohio, Wisconsin have legislative bodies setup so members spend roughly 80 percent of the work week (9 a.m. to 5 p.m., Monday through Friday) working on state business. The remainder of the states, spend less than two thirds of regular working hours on matters of state business and legislation, and the legislatures in the states of Arkansas, Montana, Nevada, North Dakota, Oregon and Texas hold voting sessions every other year, only.⁶²

As noted in Figure 3, more full-time state legislatures pay their elected representatives more, California sits atop the list, paying out at least \$99,000 annually to each legislator.⁶³ In California, as well as in other states, including Massachusetts, elected officials in the legislature are incentivized based on elevated leadership status. New Hampshire, which was noted earlier to have the largest state legislature but operates on a part-time basis, pays its elected officials only a small compensatory salary of just over \$100 per year.⁶⁴ For staffing, full-time legislatures typically have more staff in each representative, senator, or assembly-person's office; on average, full-time legislators have 8.9 staff members and part-time legislators employ 1.2 staffers.⁶⁵ This overview makes it clear state legislative compensation and staff support can vary dramatically.

⁶¹ Ibid

⁶² Ibid

⁶³ "Is the Grass Greener for Part-Time Legislatures?" *The Pew Charitable Trusts*. Accessed October 25, 2019. <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2004/05/14/is-the-grass-greener-for-parttime-legislatures>.

⁶⁴ Ibid

⁶⁵ Ibid

Analysis

State legislatures exist as being a check and a balance on the varying levels of state governments, as well as the federal government. Their variance in elected official “time spent on the job,” salaries for both legislators and their staff, as well as leadership incentives, can certainly influence how many bills are filed and passed each legislative session. Lawmaker’s time on the job, however, has the clearest effect on how impactful each law passed can actually be. This attention to detail can really only be achieved with more time spent drafting, researching, and writing influential laws by both elected officials and their staff.

This state legislative power can be far reaching, as state legislatures can institute their own rules, their own bills, their own policy agendas which can completely counteract the federal government (this type of balance will be outlined and detailed in the following chapters). Full-time legislatures clearly hold governors and their administrations accountable, but they also can assist in helping a gubernatorial administration’s agenda become reality.⁶⁶ This is primarily because, as outlined in the comparative analysis section above, more professionalized legislatures spend more time on the job and therefore can pass more bills, including those filled and written by state-level executive branches. However, two questions still remain to be answered: How far reaching is state legislative power as it relates to the federal government and laws passed that impact the states? And, how much of a check can a state legislature be on its corresponding executive branch? Through various case studies, the next two chapters will provide insights to these important questions and will clearly show that

⁶⁶ “Is the Grass Greener for Part-Time Legislatures?” *The Pew Charitable Trusts*. Accessed October 25, 2019. <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2004/05/14/is-the-grass-greener-for-parttime-legislatures>.

more professionalized state legislatures are more suited and prepared to take on these immense responsibilities.

Chapter 2:
The Impact of Legislative Professionalism on State-level Policy-making

Introduction

The paths of policy implementation can vary dramatically in each of the 50 states. When implementing a new law, every state has differing governmental variables, including political relationships, legislative professionalism and structural makeup, as well as executive branch functionality (i.e. how large the executive branch is). As chapter one showed, the relationship between state legislatures and the federal government, and legislative professionalism and political parties play as large a role as any when seeking to understand how laws are implemented. This chapter focuses on a critical political relationship when examining how laws are implemented: state legislatures and their corresponding executive branches (i.e. governors and their administrations).

Through the lens of the relationship between state legislatures and executive branches, this chapter examines case studies of federal and state laws, specifically the Affordable Care Act and its implementation at the state level. Examining these relationships helps evaluate what type of legislature might produce the best results for its constituents. This chapter uses a series of concepts to guide this inquiry. They are: The relationship between state legislatures and corresponding executive branches (i.e. the governor); the evolution of supermajorities and their impact on policy making; and how the partisanship divides at the state level (divided governments) impacts policy creation and implementation. Using case studies, this paper examines the evolution of divided governments and legislative professionalism to answer the

following question: *How does legislative professionalism and political makeup of state executive branches impact how laws and policies are implemented at the state level?*

Divided Governments

Political theorists have considered the increase in divided government trend in the states as going from 1960 to 1990.⁶⁷ During this time, more so in the southern states, where some state legislative bodies were becoming more full-time, many entrenched Republican incumbent governors were defeating Democratic challengers. This resulted in furthering divided government across the board in the south, electing more Democrats to legislative seats, while maintaining Republican governorships.⁶⁸ It is important to note that during the early 1960s, advocacy for civil rights and voting rights was at an all-time high, which could have had an outsized effect on more Democrats being elected to legislative seats (both the Civil Rights Act and Voting Rights Act were passed in 1965).⁶⁹

Many studies have declared that from a historical perspective, political polarization in the United States is currently high and rising.⁷⁰ At various times in American history, polarization has been identified as an issue, more than just political, but cultural. These polarized political-cultural divides have helped lead to more divided governments.⁷¹ Since World War II, divided governments—when control of the executive branch and the legislative

⁶⁷ Is the Grass Greener for Part-Time Legislatures?" *The Pew Charitable Trusts*. Accessed October 25, 2019.

⁶⁸ Ibid

⁶⁹ Ibid

⁷⁰ Nivola, Pietro S. "Thinking About Political Polarization." Brookings. Brookings, July 28, 2016.

⁷¹ Ibid

branch is split between two parties—have become increasingly more common.⁷² Why divided governments have become more common, however, is less clear. Some studies have found that Democrats and Republicans might be better at running for different types of offices, which as a result have led to diverging functionality and operations at different levels of government.⁷³ For example, electorally, and although this is not as true now, Democrats have been observed as stronger in the majority in a legislature, but have not been able to consistently put together presidential coalitions. While Republican Party candidates, are viewed to be stronger as executives rather than the majority in the House or Senate.⁷⁴ Divided governments seem to also be a product of state legislative professionalism. As noted above, Democrats have been more successful at winning legislative seats and history has shown that more professionalized legislatures are more attractive to Democratic candidates and voters.⁷⁵ Policy-wise, which is what this paper examines, Democrats and Republicans can differ greatly in terms of how they operate while in power. Traditionally, Democratic governors and state legislators will come into power and try to expand government operations and staff, as well as spending.⁷⁶

Republican governors and elected legislative officials, on the other hand, have typically sought to decrease government spending.⁷⁷ When two parties collide at the state level, meaning when a state has a divided government (Democratic governor and Republican-led

⁷² Fiorina, Morris P. 1994. "Divided Government in the American States: A Byproduct of Legislative Professionalism?" *The American Political Science Review* 88(2): 304-16.

⁷³ Nivola, Pietro S. "Thinking About Political Polarization." Brookings. Brookings, July 28, 2016.

⁷⁴ Ibid

⁷⁵ Ibid

⁷⁶ Edwards, George C., Andrew Barrett, and Jeffrey Peake. "The Legislative Impact of Divided Government." *American Journal of Political Science* 41, no. 2 (1997): 545-63.

⁷⁷ Ibid

state legislature, or vice versa), common sense says that production goes down, however this is really not the case. Studies have revealed that a divided government between the executive and legislative yields no decrease in policy production (i.e. laws passed).⁷⁸ This certainly has to be measured and observed on a case by case basis.

Relationship between Divided Governments and Legislative Professionalism

Political scientists have long made the connection between divided governments and the professionalism of state legislatures. Some have observed that more professionalized legislatures require more time from elected officials, where less professionalized legislatures allow for the representative to also have an additional, more full-time job.⁷⁹ More part-time state legislatures allow for elected officials to also work in the private sector or own a small business practice; these individuals and areas of industry tend to be more republican-leaning.⁸⁰ When examining legislative professionalism, researchers have also studied the rate of salary. Studies have shown that for every \$10,000 increase in state legislative salary compensation there is an increase in Democrats winning legislative seats at a rate of nearly one percent.⁸¹

This outcome is somewhat related to the size and scale of state governments. States with larger populations seem to require larger state governments and therefore a more significant state legislative presence in terms of time spent on the job and implementing new

⁷⁸ Rogers, James R. "The Impact of Divided Government on Legislative Production." *Public Choice* 123, no. 1/2 (2005): 217-33.

⁷⁹ Fiorina, Morris P. 1999. "Further Evidence of the Partisan Consequences of Legislative Professionalism." *American Journal of Political Science* 43 (3): 974.

⁸⁰ Ibid

⁸¹ Ibid

policies.⁸² While size of government might be directly related to population, others suggest that different variables are also at play. The primarily identified variable is state political ideology. For example, Massachusetts (population 6.9 million) and Texas (population 28.7 million), have approximately the same number of seats in their lower legislative chambers (house of representatives).⁸³ Massachusetts has 200 and Texas has 181.⁸⁴ Here, political ideology is significant, as Massachusetts as a state has voted for a Democrat in each of the last nine presidential elections and Texas has voted for a Republican in the last ten elections.⁸⁵ This example shows, a significantly smaller state can have a larger state legislature, compared to a state with a much more significant population; it also makes clear that state political party has a direct impact on state legislative professionalism.⁸⁶

Relationship Behavior: State Executive vs. State Legislative

In every state, the relationship between the state legislature and the governor and his or her executive branch is fluid and varies dramatically in terms of how they interact and how they operate together. State legislators have long been known as the representatives of the people, who are in charge of writing, amending, adopting, and passing laws.⁸⁷ But, the executive branch does get its say in crafting the state's fiscal year budget, so there is a balance.

⁸² Moncrief, Gary F., and Peverill Squire. *Why States Matter: An Introduction to State Politics*. Lanham, MD: Rowman & Littlefield, 2020.

⁸³ Mahoney, John. State Partisan Composition. Accessed April 1, 2020. <https://www.ncsl.org/research/about-state-legislatures/partisan-composition.aspx>.

⁸⁴ Ibid

⁸⁵ Ibid

⁸⁶ Greenblatt, Alan. "All or Nothing: How State Politics Become a Winner-Take-All-World,". *Governing Magazine* (January 2019), at <https://www.governing.com/topics/politics/gov-state-politics-governors-2019.html>.

⁸⁷ Bernick, Ethan M., and E. Lee Bernick. 2008. "Executive-Legislative Relations: Where You Sit Really Does Matter." *Social Science Quarterly* 89 (4): 969–86.

For example, in Massachusetts, each year the governor releases an initial annual budget at the end of January, well before the legislature has any say or input. As a result, the governor gets to set the tone and the direction for all budgetary policies for the next fiscal year. This is the process taken by almost all state governments throughout the United States.⁸⁸

The other important check and balance between a legislature and a governor, is the role of the veto and the type of power it can (which can vary by state). A governor's veto power depends solely on their relationship between them and the legislature and what type of majority is in legislative power.⁸⁹ Further, a state legislature can essentially erase a governor's veto power when a majority of one political party is in legislature power; this is referred to as a veto-proof majority or supermajority.⁹⁰ Although the voting threshold varies by state, supermajorities are most important when the opposite party from the legislature controls the governorship; this creates more opportunities for legislative supermajorities to override gubernatorial vetoes. For example, legislatures in Massachusetts and Maryland have Democratic Party legislative supermajorities (defined as a two-thirds majority of one political party in both chambers) and Republican governors; North Carolina is the opposite with Republican legislative supermajorities and a Democratic governor. This leaves those executive administrations with limited lawmaking power, especially during fiscal budget debate and significant pieces of legislation.⁹¹

⁸⁸ State Budget Processes: A Comparative Analysis." State Budget Processes: A Comparative Analysis | CSG Knowledge Center. Accessed April 2, 2020. <https://knowledgecenter.csg.org/kc/content/state-budget-processes-comparative-analysis>.

⁸⁹ Herzik, Eric B., and Charles W. Wiggins. 1989. "Governors Vs. Legislatures: Vetoes, Overrides, and Policy Making in the American States." *Policy Studies Journal* 17 (4): 841–62.

⁹⁰ Ibid

⁹¹ "2018 Election Analysis: State Legislative Supermajorities." Ballotpedia, ballotpedia.org/2018_election_analysis:State_legislative_supermajorities.

Supermajorities also have a direct impact on policy-making and on the relationship between the legislature and the executive branch. In general, state legislatures and their corresponding governors operate under the following pretenses: “Interaction between governors and legislatures is filled with nuances, but the relationships can be summarized into three broad configurations: the governor is dominant, the legislature is dominant, and the two are competitively structured.”⁹² These two governmental entities are surely competitive with one another, but when supermajorities are a variable, the relationship can become strained.

Case Study: Healthcare Policy Implementation at the State Level

Methodology

This chapter will use a case study to examine health care policy implementation in various states. It will consider the following variables: State legislative professionalism, and the relationship between the state legislature and its corresponding executive branch. The purpose will be to determine what effects they had on healthcare policy implementation. This case study will help answer the question at hand, which is: *How does legislative professionalism and political makeup of state executive branches impact how laws and policies are implemented at the state level?*

The path towards policy implementation gets complex when different governmental relationships are considered. Through the lens of healthcare policy, most specifically during the

⁹² Bernick, Ethan M., and E. Lee Bernick. 2008. “Executive-Legislative Relations: Where You Sit Really Does Matter.” *Social Science Quarterly* 89 (4): 969–86.

immediate years after the Affordable Care Act was passed (2010), this case study focuses on four scenarios:

- a Democratic legislative supermajority and a Democratic governor (Massachusetts in the Deval Patrick administration);
- a Democratic legislative supermajority and a Republican governor (New Jersey in the Chris Christie administration);
- a Republican supermajority and a Democratic governor (North Carolina during the Bev Purdue administration); and
- a Republican legislative supermajority and a Republican governor (Texas, during the Rick Perry administration).

Introduction

Healthcare is a national policy issue. In some states, however, legislatures and governors have been able to (or forced to) work together to pass legislation to improve the quality of medical care for residents.⁹³ Since the passage of the Affordable Care Act (ACA)—known as Obamacare—in 2010, states have since voted on and implemented different healthcare packages, including the expansion of Medicaid which is the federal program that supports lower income individuals and families. At the state level, Medicaid agencies must work with federal partners to adopt Medicaid expansions and other federal health policy guidelines, which weighs heavily on the relationship between states and the federal

⁹³ Antonisse, Larisa, and Robin Rudowitz. "An Overview of State Approaches to Adopting the Medicaid Expansion - Issue Brief." The Henry J. Kaiser Family Foundation, February 28, 2019.

government.⁹⁴ Considering the variables, professionalization of state legislatures (full-time vs. part-time) and the relationship between state legislatures and their corresponding executive branch, this case study examines the Affordable Care Act and Medicaid expansion, and how these vast policies were implemented at the state level from 2010 forward.

Massachusetts: D-Legislature, D-Governor

The Massachusetts State Legislature is a full-time, fully professionalized legislative body that meets year-round and is controlled by the Democratic Party in both its House of Representatives and State Senate.⁹⁵ In 2010, at the time of the passage of the ACA, Massachusetts had what is referred to by political experts as a trifecta, which means the legislature (House and Senate) as well as the governor's office were controlled by the same party (Democrat).⁹⁶ In 2006, Massachusetts established an ACA-type comprehensive healthcare reform package which provided healthcare coverage to all residents, essentially only if they wanted it. After expanding healthcare coverage to 98% of residents, Massachusetts saw healthcare costs balloon to over 50 percent of the state's annual budget.⁹⁷

In 2011 and 2012, under the Patrick administration, Massachusetts legislative leaders, while working to implement the ACA, were also hyper-focused on healthcare cost control

⁹⁴ Ibid

⁹⁵ "Full-Time, Hybrid, Part-Time Legislatures." Governing. Accessed October 25, 2019. <https://www.governing.com/gov-data/politics/Full-Time-Hybrid-Part-Time-Legislatures.html>

⁹⁶ Ibid

⁹⁷ Song, Zirui, and Bruce E Landon. "Controlling Health Care Spending--the Massachusetts Experiment." The New England journal of medicine. U.S. National Library of Medicine, April 26, 2012.

mechanisms.⁹⁸ Massachusetts was unique in this regard because they already had the infrastructure in place to implement the ACA. The primary task at hand—in addition to implementing ACA mandates—state legislative leaders believed an independent agency, not fiscally dependent and under the control of the Executive Branch, had to be established to effectively oversee healthcare policy and the ACA throughout the state.⁹⁹

Governor Patrick at first was not convinced this was the right path forward, as he wanted his administration to be able to maintain control of healthcare cost mechanisms and policies.¹⁰⁰ Through a year’s worth of debate, deliberation, collaboration, and negotiation with the state’s full-time legislature, in 2012, the state passed Chapter 224. According to the Blue Cross Blue Shield Foundation, the measure is summarized as: “The creation of new commissions and agencies to monitor and enforce the benchmark for health care cost growth, placing new scrutiny on health care market power, price variation, and cost growth at individual health care entities.”¹⁰¹ Among the many important elements of Chapter 224, its most impactful were the creations of the Health Policy Commission (HPC) and the Center for Health Information and Analysis (CHIA). The HPC was responsible for establishing the annual cost growth benchmarks and tracking progress towards enforcing the benchmark, and CHIA’s responsibilities include measuring the annual change in the state’s total health care costs.¹⁰²

⁹⁸ Ibid

⁹⁹ Beyond Obamacare: Lessons from Massachusetts. Anthony, Barbara. September 2017. Associate working paper series, Number 84, Harvard Kennedy School.

¹⁰⁰ Ibid

¹⁰¹ Chapter 224 Overview.” Mass.gov. Accessed April 5, 2020. <https://www.mass.gov/service-details/chapter-224-overview>.

¹⁰² Beyond Obamacare: Lessons from Massachusetts. Anthony, Barbara. September 2017. Associate working paper series, Number 84, Harvard Kennedy School.

Although experts have deemed it too early to tell whether Chapter 224 has been successful, some have declared it to be on the right path to meeting its mission of helping to implement the ACA, expanding oversight of healthcare policy, and eventually lowering costs.¹⁰³ That being said, health expenditures in Massachusetts are among the highest in the United States and spending on medical care grew more than 4 percent annually in 2015 and 2014. This surpassed Chapter 224's initial goal of keeping increases to 3.6 percent.¹⁰⁴ Healthcare costs have continued to fluctuate, but according to a survey from CHIA, over 65 percent of Massachusetts businesses now offer health insurance coverage, which is up over nine percent over the national average.¹⁰⁵

New Jersey: D-Legislature, R-Governor

Similar to Massachusetts, the New Jersey state legislature, which is comprised of the State Senate and General Assembly, is a full-time and professionalized legislative body.¹⁰⁶ The legislature, in 2003, passed what was called the "Basic & Essential Plan," which offered some healthcare benefits at more affordable individual out-of-pocket costs.¹⁰⁷ This plan was largely successful, but it did nothing for businesses and lower-income residents and families.¹⁰⁸ New

¹⁰³ McCluskey, Priyanka Dayal. "Mass. Senate Leaders Plan Another Run at Curbing Health Care Costs - The Boston Globe." BostonGlobe.com. The Boston Globe, December 14, 2016. <https://www.bostonglobe.com/business/2016/12/13/mass-senate-leaders-plan-another-run-curbing-health-care-costs/BYMN53mzV6EMIOiztkKGNP/story.html>.

¹⁰⁴ Ibid

¹⁰⁵ Cauchi, Dick. Massachusetts Health Initiatives: 25 Years of Change. Accessed April 5, 2020. <https://www.ncsl.org/research/health/massachusetts-health-initiatives.aspx>.

¹⁰⁶ Full-Time, Hybrid, Part-Time Legislatures." Governing. Accessed October 25, 2019.

¹⁰⁷ Roy, Avik. "Why Did Chris Christie Embrace Obamacare's Expansion Of Medicaid?" Forbes. Forbes Magazine, December 30, 2015. <https://www.forbes.com/sites/theapothecary/2015/12/27/why-did-chris-christie-embrace-obamacares-expansion-of-medicaid/#2c567bf94168>.

¹⁰⁸ Cantor, Joel C., Joel C. Cantor Joel C. Cantor, Center for State Health Policy, and Rutgers University. "How Is Affordable Care Act Implementation Going In New Jersey?" NJ Spotlight, September 19, 2019.

Jersey was in need of a revamped healthcare system but it's Democratic-led legislature could not get much accomplished with a divided government, as republican Chris Christie was governor.

In 2010, when the ACA was passed, Christie had, in campaign and official statements, voiced his opposition to a federalized form of healthcare, primarily because New Jersey already had in place one of the most expansive state healthcare programs.¹⁰⁹ In fact, Under ACA expansion, New Jersey was set to only expand eligibility coverage by 3.7 percent, which was among the lowest in the United States.¹¹⁰ However, in 2011, Christie's administration, at the request and past advocacy from the state legislature, applied for waivers to accept federal Medicaid matching funds to expand coverage for lower income adults who were previously covered by the state.¹¹¹ This was a new feature for states through the new ACA early adult expansion option.

Although this was the start of New Jersey's ACA rollout, Christie's administration filed a report with the state Legislature stating that the governor decided to have the state's health insurance marketplace run through the federal government's online portal Healthcare.gov, but the state's banking and insurance department was still responsible for oversight of ACA implementation.¹¹² In fiscal year 2014, the Department of Banking and Insurance was awarded \$7.6 million from the federal government to continue implementation of the ACA, along with Medicaid expansion, but according to legislative reports these funds were delayed and hardly

¹⁰⁹ Ibid

¹¹⁰ Ibid

¹¹¹ Heberlein, Martha. "Performing Under Pressure: Annual Findings of a 50-state survey of eligibility, enrollment, renewal, and cost-sharing Policies in Medicaid and CHIP 2011-2012". Kaiser Family Foundation, 2012.

¹¹² Cantor, Joel C., Joel C. Cantor Joel C. Cantor, Center for State Health Policy, and Rutgers University. "How Is Affordable Care Act Implementation Going In New Jersey?" NJ Spotlight, September 19, 2019.

allocated at the state level.¹¹³ This tactic by Governor Christie allowed his administration to implement the ACA's state-level mandates, while also enabling his administration to have complete control over the law in the state without interference from the legislature.

North Carolina: R-Legislature, D-Governor

Like New Jersey, the state of North Carolina had a divided government in 2010 consisting of a Republican-led legislature and at the time, a Democratic governor in Bev Purdue.¹¹⁴ North Carolina's state legislature is considered part-time, meeting formally for only two-thirds of the year with elected officials making non-livable annual salaries.¹¹⁵ When the ACA was passed into law by the federal government, the relationship status between Governor Purdue and the legislature was not in good-standing. In 2011, the state legislature established working groups consisting of elected officials, healthcare experts, providers, and consumers, to study and report on the impacts of the ACA on North Carolina residents.¹¹⁶ The groups released their report that detailed somewhat positive results if the state were to fully implement the ACA. Following up on this report, Governor Purdue began preparations to establish an insurance exchange, under new ACA rules and guidelines. However, republicans controlled both chambers of the legislature and, subsequently, did not let Purdue's ACA implementation initiative pass.¹¹⁷

¹¹³ Ibid

¹¹⁴ "General Assembly of North Carolina." Ballotpedia. Accessed May 1, 2020. https://ballotpedia.org/General_Assembly_of_North_Carolina.

¹¹⁵ Ibid

¹¹⁶ Oberlander, Jonathan, and Krista Perreira. "Implementing Obamacare in a Red State — Dispatch from North Carolina." *New England Journal of Medicine* 369, no. 26 (2013): 2469–71.

¹¹⁷ Ibid

North Carolina's divided government clearly weighed heavily on the state's decision not to implement the ACA. Purdue's legislative push only resulted in a "bill of legislative intent" – essentially stating the Republican legislature would study the issue of ACA implementation further, but not pass it into law at the current time.¹¹⁸ Not participating in the ACA and enacting Medicaid expansion had significant impact. Some estimate nearly 300,000 uninsured North Carolinians with annual incomes below the federal poverty level were ineligible for Medicaid because the state rejected the federal health insurance program.¹¹⁹

Texas: R-Legislature, R-Governor

In 2011 and 2012, the Texas Legislature was comprised of a fully Republican-led majority in both the House of Representatives and the Senate.¹²⁰ The Republican Party held a supermajority trifecta in the state, as Governor Rick Perry (R) controlled the executive branch and the party had a veto-proof majority in both legislative chambers.¹²¹ Similar to Massachusetts – but on the other end of the political spectrum – this meant whatever Texas' Republican party wanted in terms of policy implementation, they easily got. Further, in the case of Texas, Governor Perry had even more leverage than a typical governor because the state's legislature was part time and only met formally for less than two-thirds of the year.¹²²

¹¹⁸ Cauchi, Dick, and Alise Garcia. "Health Reform: State Implementation Entities, Reports, and Research ." Health Reform: State Implementation Entities, Reports, and Research. Accessed May 2, 2020.

<https://www.ncsl.org/research/health/state-implementation-entities-to-implement-the-aca.aspx>.

¹¹⁹ Oberlander, Jonathan, and Krista Perreira. "Implementing Obamacare in a Red State —Dispatch from North Carolina." *New England Journal of Medicine* 369, no. 26 (2013): 2469–71.

¹²⁰ Texas State Legislature." Ballotpedia. Accessed May 2, 2020. https://ballotpedia.org/Texas_State_Legislature.

¹²¹ Ibid

¹²² Greenblatt, Alan. "With One-Party Control in Most States, Minority Parties Are 'Teetering on Irrelevance'." In 2019, All But One State Legislature Is Controlled by One Party. *Governing Magazine* (online version - January 2019)

Leading up to the passage of the ACA, Governor Perry had been one of the more staunch advocates against federalized health care.¹²³ In July of 2012, when many states across the nation were working to implement aspects of the ACA, as well as Medicaid expansion, Perry relayed to President Obama's administration that he would not implement key provisions of the healthcare reform law.¹²⁴ Perry did not think that a state exchange or an expansion of Medicaid would result in enhanced patient care and lower health insurance costs.

In 2012, Governor Perry officially announced the state would not implement a state-based insurance exchange program, under new rules of the ACA. When this announcement was made, Perry's administration said it would work for "alternative solutions," including block grants with fewer spending restrictions for the state. It's relevant to note here that at the time, Texas was the state with the highest amount of people without health insurance and that a Medicaid expansion program would have covered more than 1 million additional lower-income individuals.¹²⁵ Specifically, of the 20 states that opted not to expand their Medicaid programs under the ACA, Texas had the highest percentage of adults that fell into the insurance gap (25%), meaning they made just over the eligibility income requirement to qualify for subsidized health insurance and care.¹²⁶

Analysis

¹²³ Rick Perry Vows to Resist Obama's 'Socialized' Healthcare Reforms." The Guardian. Guardian News and Media, July 9, 2012. <https://www.theguardian.com/world/2012/jul/09/rick-perry-resist-obama-reforms>.

¹²⁴ Fikac, Peggy. "Perry Dismisses Medicaid Expansion, Says Options under Review." Houston Chronicle. Houston Chronicle, July 10, 2012. <https://www.chron.com/news/houston-texas/article/Perry-dismisses-Medicaid-expansion-says-options-3694647.php>.

¹²⁵ The Health Insurance Gap After Implementation of the Affordable Care Act in Texas Medicine March 2017." Texmed. Accessed May 2, 2020. <https://www.texmed.org/March17Journal/>.

¹²⁶ Ibid

It is clear from this analysis that states took varied approaches to implementing or not implementing the ACA, after it was passed in 2010. What is also clear, is that these state level decisions and implementation tactics were guided by the professionalism level of their state legislature and the legislative-executive branch relationship. The case study revealed that much of the ACA state-level decision making, or at least the direction the state would attempt to take, was done by each state's executive branch and governor. In all four cases of Massachusetts, New Jersey, North Carolina, and Texas, the governors either made the unilateral decision to pass or not pass ACA rules and guidelines into state law, and therefore work either in collaboration or against their respective legislative bodies.

The case study found these executive branch decisions to either file ACA legislation within their corresponding legislature, went one of two different ways; the governor filed legislation and it passed, or he/she filed legislation that went on to fail. Massachusetts' Governor Patrick (D) passed Chapter 224, which formed ACA state-level oversight and cost control agencies, after a year's worth of collaboration and fruitful debate with the state's full-time legislature. In North Carolina, Governor Purdue (D) took similar steps to her Massachusetts counterpart, that eventually went on to not pass in the state's Republican-led, part-time legislature. At the request of state legislators, New Jersey Governor Christie did end up applying for federal waivers under the ACA, but took full control of implementation because of a lack of trust and poor working relationship between his administration and the Democratic-led, full-time state legislature. Texas is exempted because Governor Perry, as was revealed above in the case study, decided to completely opt out of the ACA, so no legislative action was necessary.

As noted, Texas was the state that had the highest number of uninsured individuals throughout the entire nation, but this sentiment did not matter, as the state's part-time legislature failed to act for its constituents by allowing Governor Perry to completely and unilaterally opt out of the ACA. It's clear partisan politics and polarization were certainly strong factors of what decisions were made and what healthcare laws were passed back in 2011, 2012, 2013, and 2014. However, it's also clear that less professionalized state legislatures are at a constitutional disadvantage and are unable to provide a "check" on their respective executive branch.

Chapter 3: The Impact of Legislative Professionalism on Federal Policy Implementation

Introduction

In every level of politics in the United States, from a local school committee board to Congress, political partisanship seems to be on the rise. Polarization is more than just a disagreement between politicians, citizens, and the voters. It is about how policies that impact daily living and the greater good are passed and implemented. Polarization has clearly impacted how laws are made and enacted at both the federal and the state level in America.¹²⁷ The polarization of American politics has certainly impacted our elected officials, but it clearly stems from American citizens.¹²⁸ Americans have become more polarized at a local level; a poll from March 2020 found 71 percent of Democrats and Republicans view politics are what divides the American people most.¹²⁹ As a result of these community-based political divides, outcomes at the ballot box have become more polarized, and this has had a direct impact on policy implementation at the state level, specifically state legislatures.¹³⁰

From health care to job creation and economic development, every issue seems to be more and more politicized by both the Democratic and Republican parties.

Figure 5 – Partisanship in the United States, 1994 to 2017

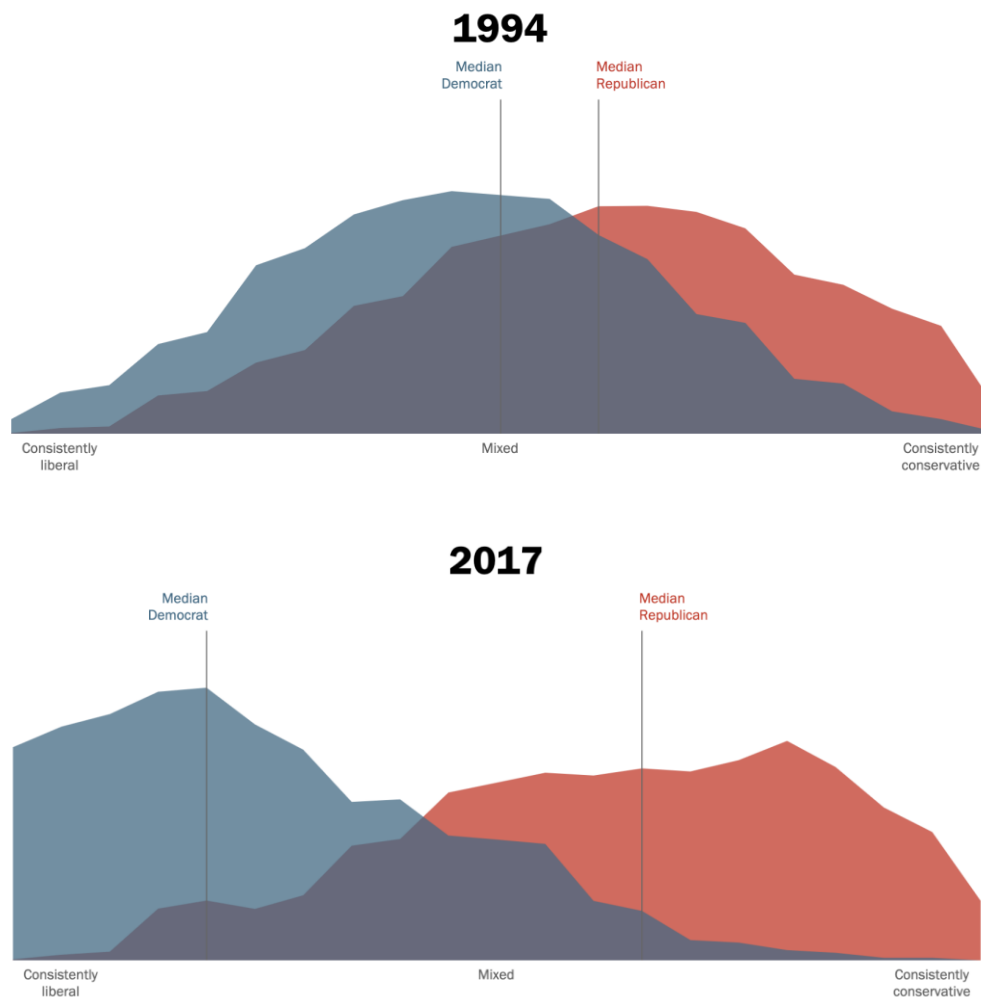
¹²⁷ Zaid Jilani and Jeremy Adam Smith, “What Is the True Cost of Polarization in America?” *Greater Good Magazine*, March 4, 2019, at

https://greatergood.berkeley.edu/article/item/what_is_the_true_cost_of_polarization_in_america.

¹²⁸ Ibid

¹²⁹ Schaeffer, Katherine. “Far More Americans See 'Very Strong' Partisan Conflicts Now than in the Last Two Presidential Election Years.” Pew Research Center, Pew Research Center, 4 March. 2020.

¹³⁰ Richard Florida “America's 'Big Sort' Is Only Getting Bigger.” *CityLab*, October 25, 2016, at <https://www.citylab.com/equity/2016/10/the-big-sort-revisited/504830/>.



Source: Pewresearch.org

Figure 5 shows the stark difference and growth in partisanship in 1994 compared to 2017, as the left side of the political spectrum and the right side have grown further apart over the past two decades. This figure also shows residents were much closer aligned back in 1994 than they are now. Currently, and really since President Barack Obama and now through President Donald Trump’s first three years, Political gridlock in Washington D.C. is clearly evident and real.¹³¹ As America and the rest of the world live through the worst pandemic in

¹³¹ Political Polarization, 1994-2017." Pew Research Center - U.S. Politics & Policy. October 20, 2017. Accessed June 27, 2020. <https://www.people-press.org/interactives/political-polarization-1994-2017/>.

modern history, partisanship remains evident on Capitol Hill.¹³² Throughout the spring of 2020, the nation has watched as the gridlocked congress struggles to even agree on the most basic of care and support – economic stimulus packages to provide support to the millions of residents trying to survive and put food on the table for their families during a pandemic.

Political gridlock, confusion, and a lack of leadership from the White House and the entire Executive Branch during the COVID-19 pandemic, a time of desperate need, has made the responsibility of the states even that much greater. Essentially, as referenced in this paper’s introduction chapter, during the health crisis, there has been no playbook for state legislatures and their leadership to follow to provide support to constituents. When the pandemic first hit the United States and states were forced to close down non-essential businesses, the first step of state legislatures was to figure out how to vote and function, while being in lockdown. Initially 23 states instituted some form of remote voting. Among the states that did not react and implement some form of virtual legislative sessions, were Rhode Island, Montana, North Dakota, South Dakota, Georgia, and Texas. These states are viewed as having some of the least professionalized (most part-time) state legislatures in the nation.

As was shown in chapters one and two, legislative professionalism can vary dramatically by state. The Brennan Center for Justice at New York University Law School, a non-partisan law and public policy institute, provides five areas of focus that can help determine a state legislature’s policy impact and professionalization, or as referred to in this paper as full-time and part-time legislatures. The categories are representativeness, deliberativeness,

¹³² Ibid

accessibility, accountability, and efficiency.¹³³ The Center's study goes on to explain that specific criteria for professionalization can revolve around a legislature's ability to introduce and enact bills, restrict debate time, and control staffing levels for specific legislative committees (i.e. provide specific staff expertise for each committee).¹³⁴ These areas of focus for professionalization are different in each state legislature and the rules that govern these legislative bodies can range broadly as well.

These two variables – full-time versus part-time – for state legislatures create different paths and outcomes for how federal actions and laws will be implemented at the state level. On top of that, the U.S. operates under a two-party system and states vary in terms of which way they lean politically – Democratic versus Republican. This chapter aims to answer the following question: *Does the full-time career nature of state legislatures and political makeup of state governance, each alone and taken together, have an impact on how federal laws and policies are implemented or impacted at the state level?* This question is unique and stands out in the conversation about how states implement federal laws because, unlike past research, it takes into account both variables of legislative professionalization, as well as partisanship; the study will both compare and contrast these pivotal aspects of governing. Drawing on case studies examining implementation of federal law at the state level including the Affordable Care Act (passed in 2010) and the expansion of Medicaid (part of the ACA, post 2010), this section explores whether a full-time or part-time legislature creates different paths for how

¹³³ Hodson, Tim. "Judging Legislatures." National Conference of State Legislatures. 2005. https://www.ncsl.org/Portals/1/documents/aslcs/Jrn2005_Fall.pdf.

¹³⁴ Ibid

federal laws are executed. Through the examination of healthcare outcomes, results will indicate states with full-time legislatures implement and execute federal laws more effectively.

Partisan Political Impact on State vs. Federal Policy-making

This study, like the previous one, not only takes into account the effect of partisanship on federal policies, but really examines state legislative operations (including legislative committee processes) along with the impact of full-time and part-time state legislatures on policy implementation from start to finish. In 2010, after the ACA was passed into law, Republican leaders in twenty-seven states sued the Obama Administration claiming that the Patient Protection and Affordable Care Act was unconstitutional.¹³⁵ This is one example of state government partisanship protecting their own state interests against federal law. Often times, Republican-majority states challenge the federal government when it is controlled by the Democratic Party or when a more liberal-leaning law is passed, and vice versa for democrats. Legal scholars take this notion further and explain that party politics enables state and federal actors to position themselves either on the side of the federal government (more liberal-leaning states) or on the side of the states (more conservative-leaning states).¹³⁶ As noted earlier, the nation's framers built the United States' governance structure around the relationship between the states and federal government to create a system of checks and

¹³⁵ Bulman-Pozen, Jessica. 2014. "Partisan Federalism." *Harvard Law Review* 127 (4): 1078–1146. <http://search.ebscohost.com.proxy1.library.jhu.edu/login.aspx?direct=true&db=bsu&AN=94426013&site=ehost-live&scope=site>.

¹³⁶ *Ibid*

balances. Although, at the time the constitution was being drafted, the partisan divide was not as vast as it has been for the past decade and still currently is now.

Similar to the previous chapter and the above example regarding the ACA and Republican-leaning states suing the Obama Administration, states whose executive and legislative branches are controlled by the same party, will often challenge a federal law through the courts.¹³⁷ They will not only openly and proactively disagree with the federal law, but in many instances states have implemented the federal law in question in ways unintended by Congress and the federal Executive Branch.¹³⁸ In much of a sense, states can use their own lawmaking ability to purposefully oppose the federal government. This concept has been referred to as partisan federalism and can vary dramatically depending on how far left or right leaning a state is.¹³⁹

Currently, Republicans control 30 state legislatures, while Democrats maintain a majority in 19.¹⁴⁰ In nearly three quarters of states, the same political party controls both the state legislature and the executive branch, and Minnesota is currently the only state that has a split state legislature, meaning one body is controlled by the Democrats and the other is controlled by Republicans.¹⁴¹ Supermajorities have become more common and the median majority in state houses has risen from 22 seats to 29, while increasing in state senates from 9 to 14 seats.¹⁴² These supermajorities have given more power to state governments and have

¹³⁷ Ibid

¹³⁸ Makse, Todd. "The Retention of Expertise and Productivity in State Legislative Committees." *State Politics & Policy Quarterly* 17, no. 4 (December 2017): 418–40.

¹³⁹ Bulman-Pozen, Jessica. 2014. "Partisan Federalism." *Harvard Law Review* 127 (4): 1078–1146.

¹⁴⁰ "With One-Party Control in Most States, Minority Parties Are 'Teetering on Irrelevance'." In 2019, All But One State Legislature Is Controlled by One Party.

¹⁴¹ Ibid

¹⁴² Ibid

also given legislatures more authority to step in and get even more involved in federal law implementation in their respective states; some have described this era of enhanced partisanship as a basis for state and federal cooperation, as opposed to competition.

Crossover Between State and Federal Lawmaking

The framers of the constitution implemented a system of federalism which is a system of shared power between the federal (centralized) government and an intricate system of state governments, which as we now know can vary greatly. Both the states and the federal government have their own individual powers, but they also have coexisting authorities, which aim to hold the checks and balances.¹⁴³ There are dozens of issues that have significant overlap and shared power between states and the federal government. Among the top most interrelating issue is healthcare, in which the federal government primarily uses policies at the state-level through federal aid programs, incentives, and grants.¹⁴⁴

The below case study will include two pieces of vastly substantial federal legislation and policies that required extensive work on behalf of the states in adherence and implementation of the laws. Considering the following variables, full-time vs. part-time legislatures and partisanship at the state level, the case study examines the Affordable Care Act (passed in 2010) and the expansion of Medicaid (part of the ACA, post 2010). Through healthcare outcomes, results will show states with more professionalized legislatures have better

¹⁴³ Lays, Julie, and Ed Smith. Top 10 in 2018. Accessed November 17, 2019. <http://www.ncsl.org/bookstore/state-legislatures-magazine/federalism-hot-legislative-issues-2018.aspx>.

¹⁴⁴ Ibid

outcomes, are more prepared to respond to and implement federal law, and are more equipped to serve their constituencies.

Case Study: Implementation of the Affordable Care Act at the State Level

Introduction

In 2010, the Patient Protection and Affordable Care Act (ACA) was signed into law by President Barack Obama. The goals of the 900-page law were to expand access to health insurance, increase consumer protections, emphasize prevention, improve quality and performance, and curb rising health care costs.¹⁴⁵ However, the primary and overarching aim was to extend health insurance coverage to about 32 million uninsured Americans by expanding both private and public health insurance.¹⁴⁶ Key provisions of the law included: Requiring businesses, with the exception of some smaller companies, to provide health insurance to their employees; requiring individuals to have health insurance (this is known as the “individual mandate”); and expanding Medicaid to cover people with incomes below 133 percent of the federal poverty level.¹⁴⁷ This was President Obama’s marquee health care law that had broad support amongst his fellow democrats and relatively no support from the opposition Republican Party. Health care and policy analysts note that this was an immense law that had many levels of federal requirements for states, and as a result, much of the

¹⁴⁵ The Affordable Care Act: A Brief Summary. National Conference of State Legislators. October 28, 2019. <http://www.ncsl.org/research/health/the-affordable-care-act-brief-summary.aspx>

¹⁴⁶ Ibid

¹⁴⁷ Ibid

responsibility for implementation fell to states and their respective legislative bodies.¹⁴⁸ The case study examines two states, Massachusetts and Montana, and how each went about implementing the ACA. These states were chosen because they show the spectrum of legislative professionalism, which had an immense impact on how and when the ACA was implemented at the state level; Massachusetts has a full-time legislature and Montana has one of the more part-time legislatures, meeting in voting sessions for only 90 days in each odd numbered year.

Massachusetts Implementation of the ACA

As noted, the Massachusetts state legislature is a full-time, fully professionalized body that meets year-round. Prior to the ACA's passage, in 2006 the Commonwealth enacted what was called the Massachusetts Health Reform Initiative (MHRI). This was meant to be a pilot program that would prepare the state for a federalized health insurance program. Under Governor Mitt Romney, with support from the state legislature, the state implemented Medicaid expansion, subsidized private health insurance, a health insurance exchange, insurance market reforms and requirements, as well as an individual health insurance mandate for individuals.¹⁴⁹

One study surveyed Massachusetts health insurance outcomes leading up to the 2010 passage of the affordable care act and showed by 2010 only 12.1 percent of the state's adults

¹⁴⁸ Shor, Boris. "Ideology, Party, and Opinion: Explaining Individual Legislator ACA Implementation Votes in the States." *State Politics & Policy Quarterly* 18, no. 4 (December 2018): 371–94.

<https://journals.sagepub.com/doi/full/10.1177/1532440018786734#articleCitationDownloadContainer>.

¹⁴⁹ Long, Sharon K., and Karen Stockley. "The Impacts of State Health Reform Initiatives on Adults in New York and Massachusetts." *Health Services Research* 46, no. 1p2 (2010): 365–87. <https://doi.org/10.1111/j.1475-6773.2010.01211>.

were not insured which was down 19.5 percent from 2006.¹⁵⁰ The study goes on to note the state's high levels of insurance coverage for individuals and amongst businesses endured throughout the implementation of the ACA in 2010 and beyond. With expectations that the ACA would initially increase health care costs before they actually went down, the state's full-time legislature passed a bill called Chapter 224, An Act Improving the Quality of Health Care and Reducing Costs through Increased Transparency, Efficiency and Innovation. This law, being the first of its kind, was a direct response to the ACA and was precisely aimed to establish a "legislative growth target" to control health care costs.¹⁵¹

Montana Implementation of the ACA

In contrast to Massachusetts, Montana has one of the nation's most part-time state legislatures, meeting regularly for only 90 days in each odd numbered year. Compared to Massachusetts, studies show the percentage of individuals who did not have health insurance in Montana was actually smaller; leading up to 2010, 15.7 percent were not insured in 2008 and 16.1 percent were not insured in 2009. However, due to a lack of legislative preparation, these numbers remained relatively stagnant and implementation of the ACA took longer to take effect and make an impact.¹⁵²

Figure 6 – Population without health insurance in Montana, 2004-2016

¹⁵⁰ Long, Sharon K., Karen Stockley, and Heather Dahlen. "Massachusetts Health Reforms: Uninsurance Remains Low, Self-Reported Health Status Improves as State Prepares To Tackle Costs." *Health Affairs* 31, no. 2 (2012): 444–51. <https://doi.org/10.1377/hlthaff.2011.0653>.

¹⁵¹ Beyond Obamacare: Lessons from Massachusetts. Anthony, Barbara. September 2017. Associate working paper series, Number 84, Harvard Kennedy School.

https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/files/82_BeyondObamacare.pdf

¹⁵² "Effect Of The Affordable Care Act In Montana - Ballotpedia". 2019. Ballotpedia. https://ballotpedia.org/Effect_of_the_Affordable_Care_Act_in_Montana.

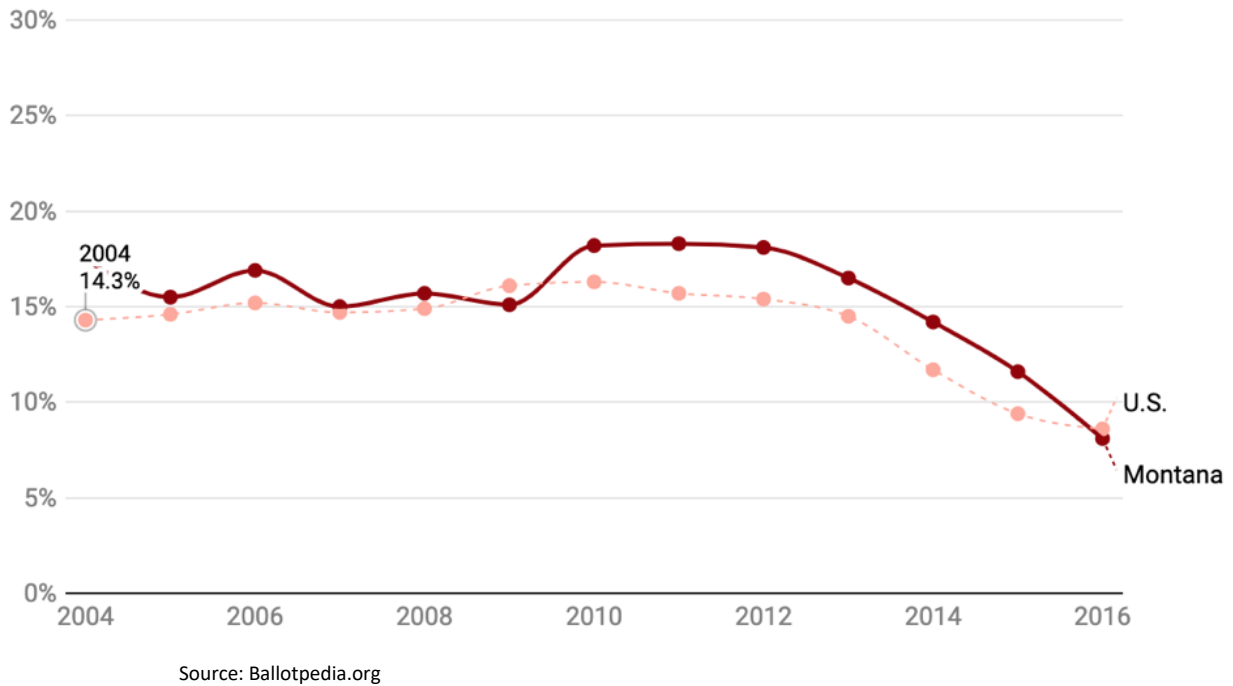


Figure 2 shows that in 2014, in Montana, individual rates for those not on health insurance started to finally decline, dropping to 9.4 percent in 2015. When the state opted to expand Medicaid in 2016, which placed them as one of the last states to enact this type of health care coverage expansion, non-coverage rates for individuals decreased dramatically – to 8.1 percent.¹⁵³ This decrease took place six years after the passage of the ACA, which was more than five years later than Massachusetts.

Partisan Impact on ACA Implementation: Massachusetts vs. Montana

In many instances, federal law effectiveness at the state level is determined by how much capacity the state legislature has to be able to properly establish systems of implementation. Traditionally, states controlled by Democratic state legislatures also have

¹⁵³ *Ibid*

larger executive branch agencies and are more progressive thinking in nature.¹⁵⁴ This is the case when comparing Massachusetts and Montana as Massachusetts, a heavily blue-leaning state with approximately 139,429 state government workers, and Montana, a red-leaning state with only 26,872 government employees.¹⁵⁵ Given these states vary in population size, they are still on opposite ends of the state government size spectrum.

This was clearly evident, post 2010, after the ACA was passed into law by Congress, as 13 of 16 states to first to try their hand at ACA implementation had state legislatures with a Democrat Party majority.¹⁵⁶ At the time (and still to this day) Massachusetts had a majority led Democratic state legislature and was one of these first 16 states to implement the ACA. When states are considering how and when (really how fast) to implement a federal law, they must rely heavily on the will of their constituents – meaning, is this what the residents want? Massachusetts had already set the stage for this type of health care policy with its enormously successful Health Reform Initiative that was implemented in 2006; the main takeaway, monthly premiums started to go down and health insurance options started to expand.¹⁵⁷ Democratic lawmakers in Massachusetts had precedent to stand on as they worked to expedite ACA implementation after it was passed by Congress in 2010.

¹⁵⁴ Top-Down Federalism: State Policy Responses to National Government Discussions
Pamela J. Clouser McCann, Charles R. Shipan, Craig Voldenacademic. Accessed October 25, 2019.

¹⁵⁵ “States With Most Government Employees: Totals and Per Capita Rates.” *Governing*. Accessed December 14, 2019. <https://www.governing.com/gov-data/public-workforce-salaries/states-most-government-workers-public-employees-by-job-type.html>.

¹⁵⁶ Shihyun Noh, and Christian L. Janousek. 2018. “Institutional Design of the Aca Health Insurance Exchanges: Factors Affecting Policy Implementation in State Administration.” *Journal of Health & Human Services Administration* 41 (2): 153–95.

¹⁵⁷ Gasteier, Audrey Morse. “Why Massachusetts Stands Out In Marketplace Premium Affordability.” *Why Massachusetts Stands Out In Marketplace Premium Affordability | Health Affairs*, September 4, 2018. <https://www.healthaffairs.org/doi/10.1377/hblog20180903.191590/full/>.

To the contrary, the state of Montana had a Republican led state legislature when the ACA came to fruition and a much smaller state government infrastructure, as noted earlier. From the above case study, it's clear that Montana took longer to implement the ACA, and two key elements from this delay were the lack of legislative professionalism and a lack of motivation to implement the health care law amongst the state's Republican lawmakers.¹⁵⁸ Advocates for multiple years after the ACA's passage in 2010, pushed for full implementation of the law, as well as for Medicaid expansion, which was one policy aspect of the ACA left entirely up to the states.¹⁵⁹

Case Study: Medicaid Expansion

Introduction

With the passage of the ACA in 2010, came the expansion of Medicaid, the federal government's health insurance program for low income individuals and families. This expansion essentially made the ACA the pillar of coverage for nearly all low-income residents. The new law redefined what it meant to be low-income under the ACA, expanding the eligibility to adults with incomes up to 138 percent of the federal poverty level.¹⁶⁰ However, in 2012, the Supreme Court ruled on an aspect of the ACA's constitutionality, stating "the ACA's Medicaid expansion [was] unconstitutionally coercive of states." This ruling largely and principally gave

¹⁵⁸ "Montana Budget & Policy Center: New Data: Failure to Expand Medicaid Hinders Progress Toward Increasing Health Coverage." Montana Budget and Policy Center, September 16, 2014. <https://montanabudget.org/post/new-data-failure-to-expand-medicaid-hinders-progress-toward-increasing-health-coverage>.

¹⁵⁹ Ibid

¹⁶⁰ Antonisse, Larisa, and Robin Rudowitz. "An Overview of State Approaches to Adopting the Medicaid Expansion - Issue Brief." The Henry J. Kaiser Family Foundation, February 28, 2019. <https://www.kff.org/report-section/an-overview-of-state-approaches-to-adopting-the-medicaid-expansion-issue-brief/>.

the states the power to decide when and if they would expand Medicaid.¹⁶¹ The Supreme Court's judgement created a vacuum of partisanship health care decision-making for states; this, combined with how full-time or part-time each state legislature is, made Medicaid expansion vary greatly in terms of timing and implementation. This case study examines three different states that had varying timing for Medicaid expansion, while considering the variables of legislative professionalism and partisanship; California (2010), Minnesota (2014), and Montana (2016).

California's Medicaid Expansion

California, a Democratic-leaning state with a full-time state legislature opted to expand Medicaid through its Low-Income Health Plan (LIHP), which extended eligibility to a significantly larger group of low-income residents.¹⁶² The key part of this health care initiative expanded eligibility for Medicaid to people with incomes as high as 200% of the Federal Poverty Level.¹⁶³ California was one of the first five states to expand Medicaid and did so in a unique way, as the state legislature made expansions by county. Beginning in November of 2010, California started to allow counties to offer expanded Medicaid while also receiving matching federal funds for covering those who were uninsured.¹⁶⁴ The state found that for the counties that

¹⁶¹ Published: Aug 01, 2012. "A Guide to the Supreme Court's Decision on the ACA's Medicaid Expansion." The Henry J. Kaiser Family Foundation, May 15, 2013. <https://www.kff.org/health-reform/issue-brief/a-guide-to-the-supreme-courts-decision/>.

¹⁶² Golberstein, Ezra et al. "California's Early ACA Expansion Increased Coverage And Reduced Out-Of-Pocket Spending For The State's Low-Income Population." *Health affairs (Project Hope)* vol. 34,10 (2015): 1688-94.

¹⁶³ Ibid

¹⁶⁴ Ibid

chose to expand coverage, the out of pocket reporting costs dropped by 10 percentage points, almost immediately after implementation was complete.¹⁶⁵

Minnesota's Medicaid Expansion

Minnesota, a state with a part-time (lawmakers meet 120 days each year), divided legislature (republicans control the State Senate, democrats control the House of the Representatives) voted to pass Medicaid expansion in late 2013.¹⁶⁶ Since the legislature only meets 120 days during the year and the expansion was passed in February, implementation took place throughout the next year (2014). The law elevated eligibility qualifications to families that were up to 138 percent of the Federal Poverty Level.¹⁶⁷ The state figured the health care coverage expansion would only impact 35,000 families and individuals, but analysts determined in 2017 that since Medicaid expansion was passed, 222,900 more people were able to receive coverage in Minnesota.¹⁶⁸ Although the state's more moderate legislature did its job and acted within its capacity, its part-time professionalism clearly impacted how quickly it could enact Medicaid expansion.

Montana's Medicaid Expansion

Montana is a republican-leaning state with one of the most part-time, least professionalized state legislatures in the country, as the body meets only 90 every other year.

¹⁶⁵ Ibid

¹⁶⁶ Norris, Louise. "Minnesota and the ACA's Medicaid Expansion: Eligibility, Enrollment and Benefits." healthinsurance.org. healthinsurance.org, October 11, 2019. <https://www.healthinsurance.org/minnesota-medicaid/>.

¹⁶⁷ Ibid

¹⁶⁸ Ibid

Montana was one of the last states to vote on and pass Medicaid expansion, as the state just recently implemented the health care initiative in 2016.¹⁶⁹ The state originally sought a waiver to expand Medicaid in 2015 from the federal government, but since the legislature was not in session, the state could not act on it until the following year. Since its implementation the program has been largely successful; as of April 2019, 95,246 Montana residents have enrolled in the expanded health care program.¹⁷⁰ It's important to note that Montana's Medicaid expansion program differs from most, as it requires adults, under the age of 55 to work or participate in other community activities for at least 80 hours each month.¹⁷¹ Work requirements, such as the one Montana included, are traditionally part of more conservative-leaning public policies.¹⁷²

Analysis

The relationship between the federal government and the states has always shifted over time. It has shifted between different policy realms and shifts as varying presidential administrations come to power. The majority political party in Congress has also changed substantially each decade. These varying dynamics come and go, but what ultimately remains more constant is legislative professionalism, as well as partisanship, trends at the state level. Although states differ in terms of how part-time or full-time their state legislature is, these

¹⁶⁹ Norris, Louise. "Montana and the ACA's Medicaid Expansion: Eligibility, Enrollment and Benefits." healthinsurance.org. healthinsurance.org, December 10, 2019. <https://www.healthinsurance.org/montana-medicaid/>.

¹⁷⁰ Ibid

¹⁷¹ Ibid

¹⁷² Antonisse, Larisa, and Robin Rudowitz. "An Overview of State Approaches to Adopting the Medicaid Expansion - Issue Brief." The Henry J. Kaiser Family Foundation, February 28, 2019.

lawmaking structures do not shift as much over time. This variable of legislative professionalism is widely important, as it relates directly to the capacity a state has, or doesn't have, to react to laws passed by the federal government. Legislative professionalism, taken with state political partisanship trends, allows for federal laws to be implemented differently by each state.

Through the examination of marquee federal health care policies, including the Affordable Care Act and the expansion of Medicaid, this study showed that both legislative professionalism and partisanship, impacts how quickly a state can react to, implement, and adhere to federal law. In the case of the ACA, Massachusetts, a majority Democratic state with a more full-time state legislature, had been implementing health care reforms leading up to the ACA's passage and then was able to react quickly to implement the new federal law. The state saw its uninsured rate go down almost immediately with health care outcomes improving as well. Under the ACA, states could opt to expand Medicaid for lower-income individuals and families. This was an important aspect of the law that challenged the relationship between many states and the federal government. Almost immediately after the ACA was implemented in 2011, California, a Democratic-leaning state with a full-time state general assembly, opted into, and passed Medicaid expansion. As a result, the Federal Poverty Level criteria to qualify for Medicaid increased to 200 percent, allowing for thousands of residents to get health care coverage.

Although the implementation of federal law varies and each law should be examined on a case by case basis, we must not shy away from the trends outlined in this study: as was the case with the ACA and Medicaid expansion, states with more full-time, and more Democratic-

leaning state legislatures were able to respond to federal law faster, more vigorously, and with more authority.

Conclusion

Varying in size, governmental makeup, functionality, and even what they are called (i.e. state legislature or general assembly) state legislatures have no uniform structure. From this paper, we know this much is clear. These characteristics, alone and together, do have an immense bearing on how laws are considered and passed. However, the variance in legislative professionalism throughout the 50 states is the greatest contributor to legislative impact on policy implementation. Case studies from the previous two chapters revealed that in both instances, the more professionalized legislatures were able to keep state level executive branches in check, were able to balance the federal government's vast and far reaching power, and were able to be nimble enough to react and so their constituents could reap the benefits of new laws, such as the Affordable Care Act and Medicaid expansion.

In chapter one, the various aspects of state legislative makeup were examined by comparing different legislative bodies throughout the United States. Through comparative analysis, this chapter dove into the depths of state legislatures and revealed the real meaning behind legislative professionalism. Following past research, it broke states into three distinct categories, in terms of their legislative professionalism – full-time, part-time, and hybrid. This chapter defined these terms as the following: A “part-time legislature,” is a body that operates less than year-round, has minimal to no support staff, and its elected officials are paid less than a living wage; a “full-time legislature” functions year-round with full-time staff, and elected officials are paid a livable salary; and hybrid states have legislatures that operate somewhere in the middle.

In terms of their professionalism, nearly half of the states operate under hybrid state legislatures. Massachusetts, California, and New York have the nation's most full-time legislatures, while Alaska, Florida, Illinois, New Jersey, Ohio, and Wisconsin have legislative bodies setup so members spend roughly 80 percent of the work week (9 a.m. to 5 p.m., Monday through Friday) working on state legislative matters. The remainder of the states, spend less than two thirds of regular working hours on matters of state business and legislation, and the legislatures in the states of Arkansas, Montana, Nevada, North Dakota, Oregon and Texas hold voting sessions only every other year.¹⁷³ State legislators that spend more time on the job and those that have more adequate staff are able to do more detailed research and, as a result, are able to craft more meaningful pieces of legislation that create more impactful change.

Chapter two answered the following question: How does legislative professionalism and political makeup of state executive branches impact how laws and policies are implemented at the state level? A case study of healthcare policy, specifically during the immediate years after the Affordable Care Act was passed (2010), focused on four scenarios of divided and non-divided state governments (Massachusetts, New Jersey, North Carolina, and Texas). It showed the less professionalized state legislatures, most notably Texas, were at a disadvantage and were unable to provide a substantial enough power balance compared to their respective executive branch (governor).

Chapter three answered a similar question, does the full-time career nature of state legislatures and political makeup of state governance, each alone and taken together, have an

¹⁷³ Ibid

impact on how federal laws and policies are implemented or impacted at the state level?

Focusing exclusively on the relationship between state legislatures and the federal government, this chapter had comparable findings to chapter two. It found more full-time, and more Democratic-leaning state legislatures, specifically Massachusetts and California, were able to respond to federal law with more authority and purpose.

As stated above, the majority of state legislatures spend less than two thirds of regular work time on issues of state legislation, with a handful of states meeting only every other year. Some reasoning behind why various state legislatures were slower to react to ACA implementation and Medicaid expansion, was simply because they were not in session, meaning under their legislative rules, lawmakers were not slated to vote formally until later in the year or even the following year. The question to be asked is, why? Why don't all states have legislative bodies that operate on a more full-time, year-round basis? Why are there not clear-cut standards to state lawmaking? Of course, guidelines are written into state constitutions and are explained in state legislative rules. Of course, changing these state legislative structures and makeup would take significant state-level amending. And lastly, of course state independence from the federal government is what the constitution's framers sought. That being said, these are still serious questions and issues that deserve more attention. The benefits of legislative professionalism are clear, but the lack of an appetite in most states to shift to being more full-time, is simply just not there. As discussed in chapter one, the last significant push from advocates for states to become more professionalized was back in the 1980s.

Much of what this paper is about, especially chapters two and three, is how federal policy can be interpreted and then implemented at the state level. This type of in depth research has not really been explored since Shep Melnick's *Between the Lines* (1994) which examines how statutory interpretation has affected the development of various national public benefit programs at the state level. The research in this paper dives into how the ACA – a major public benefit program – is implemented at the state level while also considering variables of legislative professionalism, partisanship, and divided governments. Although this paper did include two case studies that examined how states implemented federal healthcare policies, it did not dive into other important policy realms and concepts that deserve more research. There are many overlapping policies between the federal government and the states that should be examined as it relates to legislative professionalism and state-level ability to act and react. That being said, there is one example that seemingly unfolded parallel to the COVID-19 pandemic during 2020. After the death of George Floyd in Minneapolis at the knee of a police officer on May 25, 2020, there was a surge across the United States (and in parts of the world) in civil unrest, protests, and advocacy for reform in policing and progress to be made in communities, specifically in local law enforcement, to curbing institutional racism. A poll from July 8, 2020 showed 90 percent of Americans believe that racism and police violence are significant problems with nearly two-thirds stating their general support for some kind of reform in policing.¹⁷⁴ In response, the Trump Administration dragged its feet and congress unable to form a cohesive solution, there has been immense pressure on state lawmakers to

¹⁷⁴ "Nine out of 10 Americans Say Racism and Police Brutality Are Problems, Poll Finds." *The Guardian*. July 08, 2020. <https://www.theguardian.com/us-news/2020/jul/08/americans-racism-police-brutality-problems-poll>.

urgently create change. In the months following the death of Floyd, 16 states have introduced or passed bills that address some form of change in police standards.¹⁷⁵ Although this is a significant step in the right direction, approximately half of the state legislatures were not even in session and therefore unable to consider possible proposals that most likely would have generally been supported by constituents.¹⁷⁶ Unfortunately, these proposals will have to be taken up at a later date and formal votes would have to wait until the next time these legislatures are in session, which could be months later.

As discussed in the introduction to this paper, the COVID-19 pandemic has had an outsized impact on the United States. When cases began to surge across the country in late March and as they continued to rise throughout 2020, the importance of state-level lawmaking became clear. Further, with Washington D.C. in continued partisan gridlock and again combined with a limited overall response to the pandemic from the Trump Administration, the ability of state legislatures to be able to react in a timely manner and implement new laws seems to be at an all-time high. The research and case studies in this paper, warrant at the very least, a consideration for implementing nationwide standards for state legislative professionalism so that states can react with certainty and real lawmaking authority in the face of crisis. The federal government, including congress, should take the immediate steps of enacting a grant and training program that states can apply or opt into, that would educate and

¹⁷⁵ Li, Weihua, and Humera Lodhi. "Which States Are Taking on Police Reform After George Floyd?" *The Marshall Project*. June 18, 2020. <https://www.themarshallproject.org/2020/06/18/which-states-are-taking-on-police-reform-after-george-floyd>.

¹⁷⁶ Ibid

bring awareness to state officials on the benefits of enhanced legislative professionalism in their respective states.

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Biographic Statement

Throughout Noah's professional career, he has held various communications, public policy, and political campaign positions in both the private and public sectors. He currently works as the external communications specialist (similar to the role of a press secretary) for Massachusetts State Auditor Suzanne M. Bump. Prior to this role, he served as campaign manager for Auditor Bump's reelection campaign in 2018. Before joining Team Bump, Noah work as an account executive for Ball Consulting Group, a boutique communications strategy firm in Newton, Massachusetts. In this role, he helped develop and implement strategic communications plans for Ball Consulting Group clients. From, 2016-2017, he served as communications director for the Joint Committee on Public Safety and Homeland Security in the Massachusetts House of Representatives. In this position, he managed all press and communications strategy including development of press releases, op-eds, legislative testimony, constituent correspondence, internal/external communications, and maintenance of social media presence. Prior to his work for the committee, Noah served on Massachusetts State Representative Harold P. Naughton's staff as a legislative aide, where he acted as a liaison and primary point of contact for constituents, community organizations, interest groups, and state and federal agencies. In 2014, he served as campaign manager for Representative Naughton's re-election bid. Noah holds a bachelor's degree in political science from Union College, where he also minored in Russian.