

LEGISLATIVE INSTITUTIONS: THEN AND NOW

THAD KOUSSER, UC SAN DIEGO

Western Legislative Academy, December 2024

State Legislators Not Attending the WLA

James Madison



Abraham Lincoln



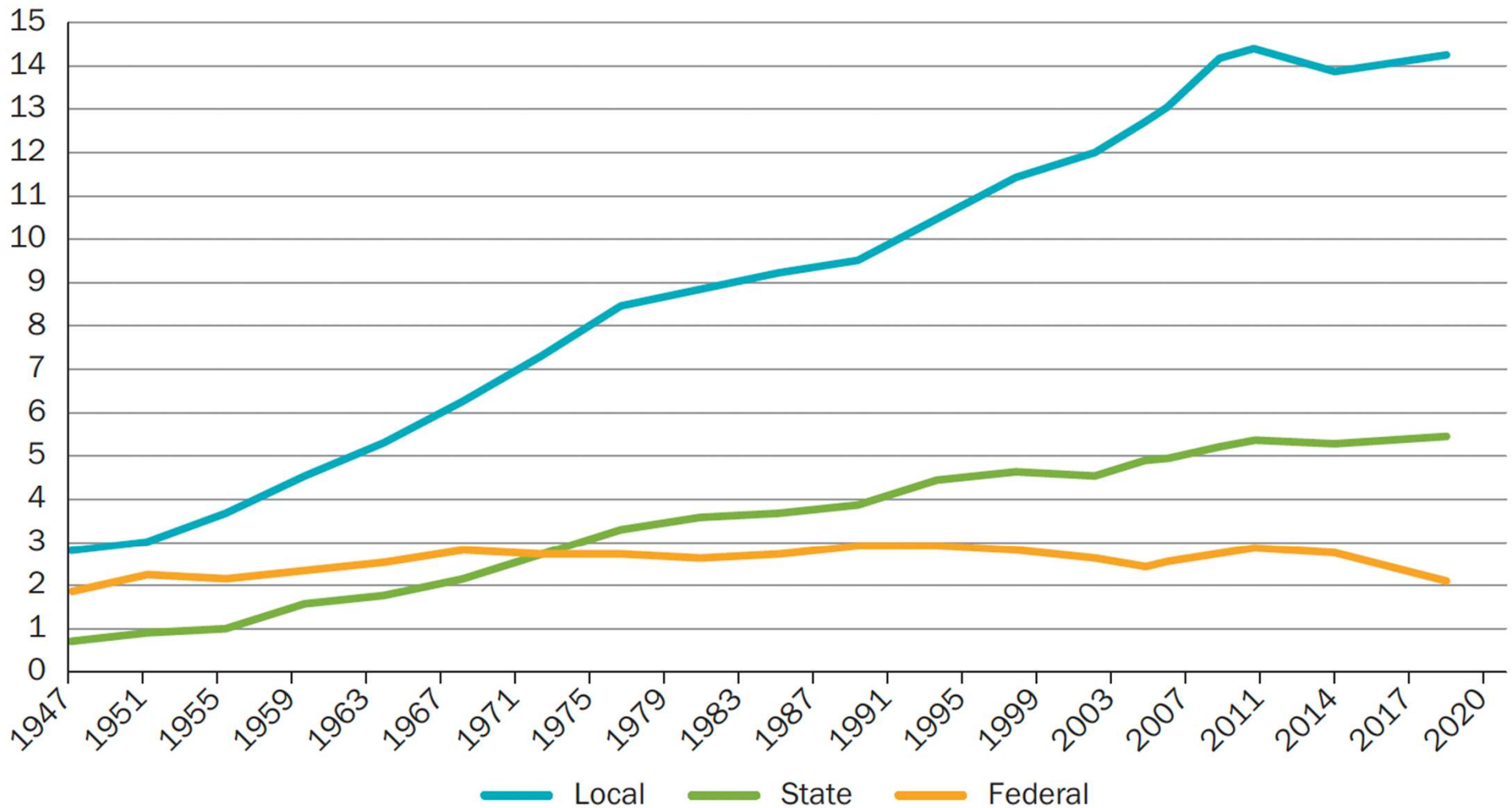
19th Century State Legislatures

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



State and Locals Still Employ the People Who Serve the People

Number of public civilian employees (millions)



States as Policy Pioneers

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

State Legislatures at Midcentury

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

--William Keefe

Those Dinosaurs—the State Legislatures

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

By THOMAS C. DESMOND

NEW YEAR this year rang in the lawmaking season for some 6,500 state legislators in forty-two states (the others meet in the spring or in even-numbered years). January is the month most State Representatives (or Assemblymen) and Senators leave their farms, insurance offices and law practices to gather at their state capitols for the opening of the 1955 legislative sessions.

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

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

NOR is this apprehension new. Thoreau, when informed the Massachusetts Legislature was about to convene, is reported to have told a neighbor, "I must go downtown to buy a lock to put on my back door." In 1912 the newsmen who covered the State Capitol at Albany sang this meaningful ballad:

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

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

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

Based on past records, some 100,000

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

THE 1955 sessions will attempt again the endless quest for a solution to the dilemma of trying to reduce taxes while increasing services. Desegregation will occupy the limelight in Southern Legislatures. Right-to-work and utility anti-strike legislation will be pressed in states that do not have strong unions. Ohio will consider creating an office of public defender to protect consumers from utility "rate-gouging." Arkansas

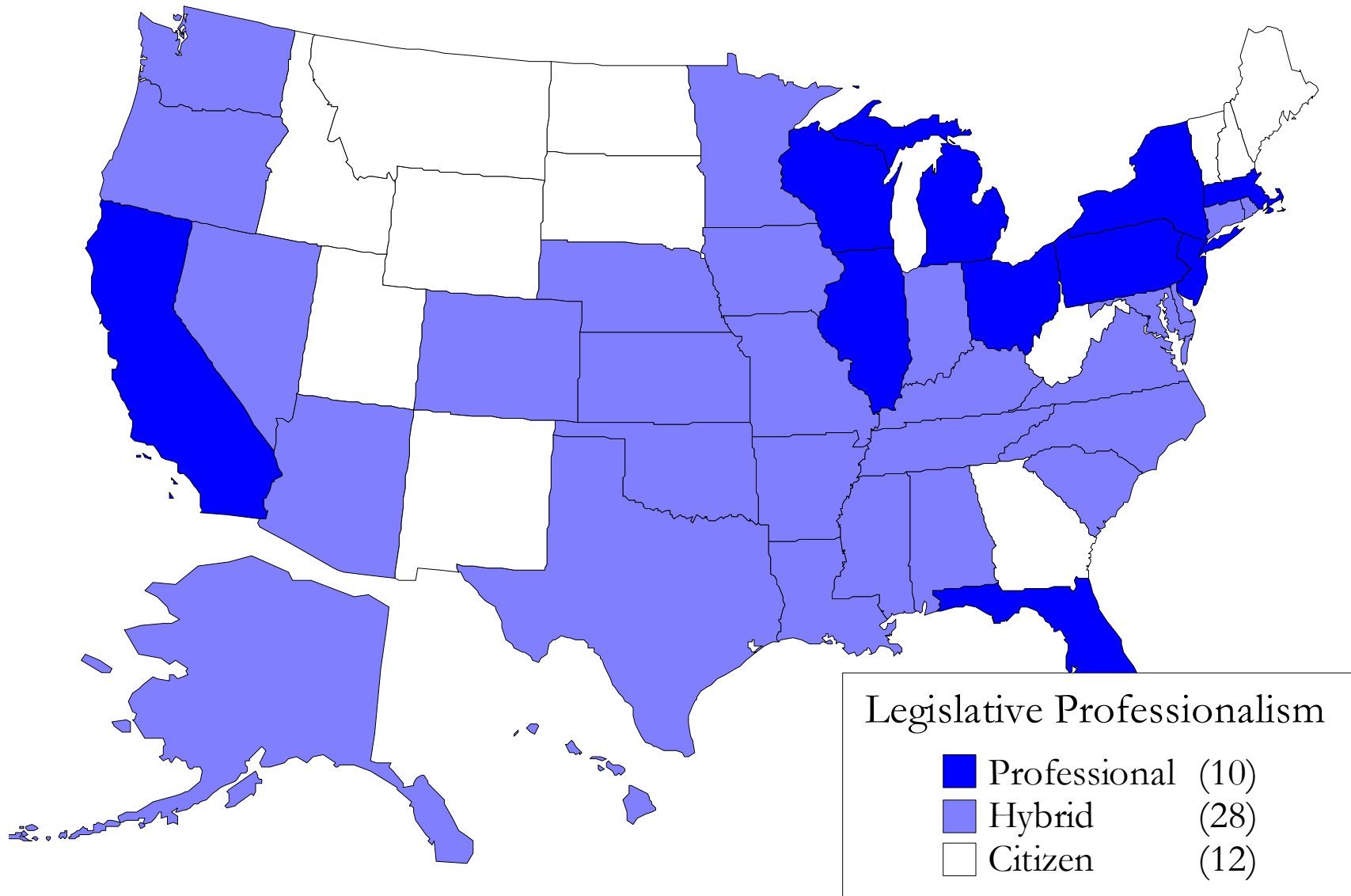
will debate going into the wholesale liquor business. Bingo will win major attention in New York, while old-age pensions will give California its recurrent headache. Nearly every state will find new highway appropriations looming up high on the lawmakers' priority list.

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

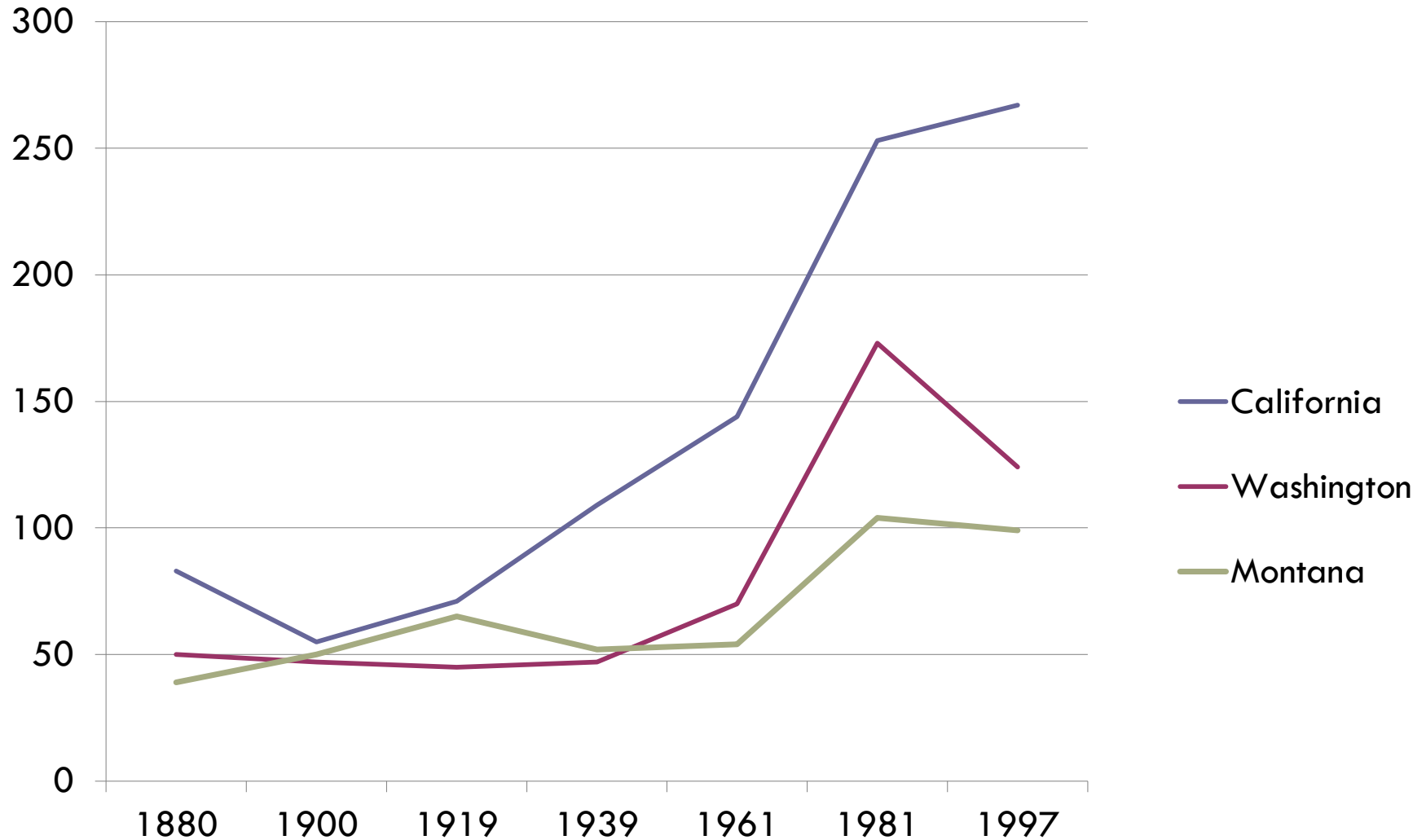
Our law. (Continued on Page 56)



Legislative Professionalization Movement



All Legislatures Changed (session days in a biennium)





Evaluating the Modernization Movement

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

Evaluating the Modernization Movement

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

Discussion Breakout #1:

What Shapes How Your Institution Works?

- If you had to pick one **rule** – a constitutional provision or chamber rule – that characterizes how your legislature operates, what would it be?

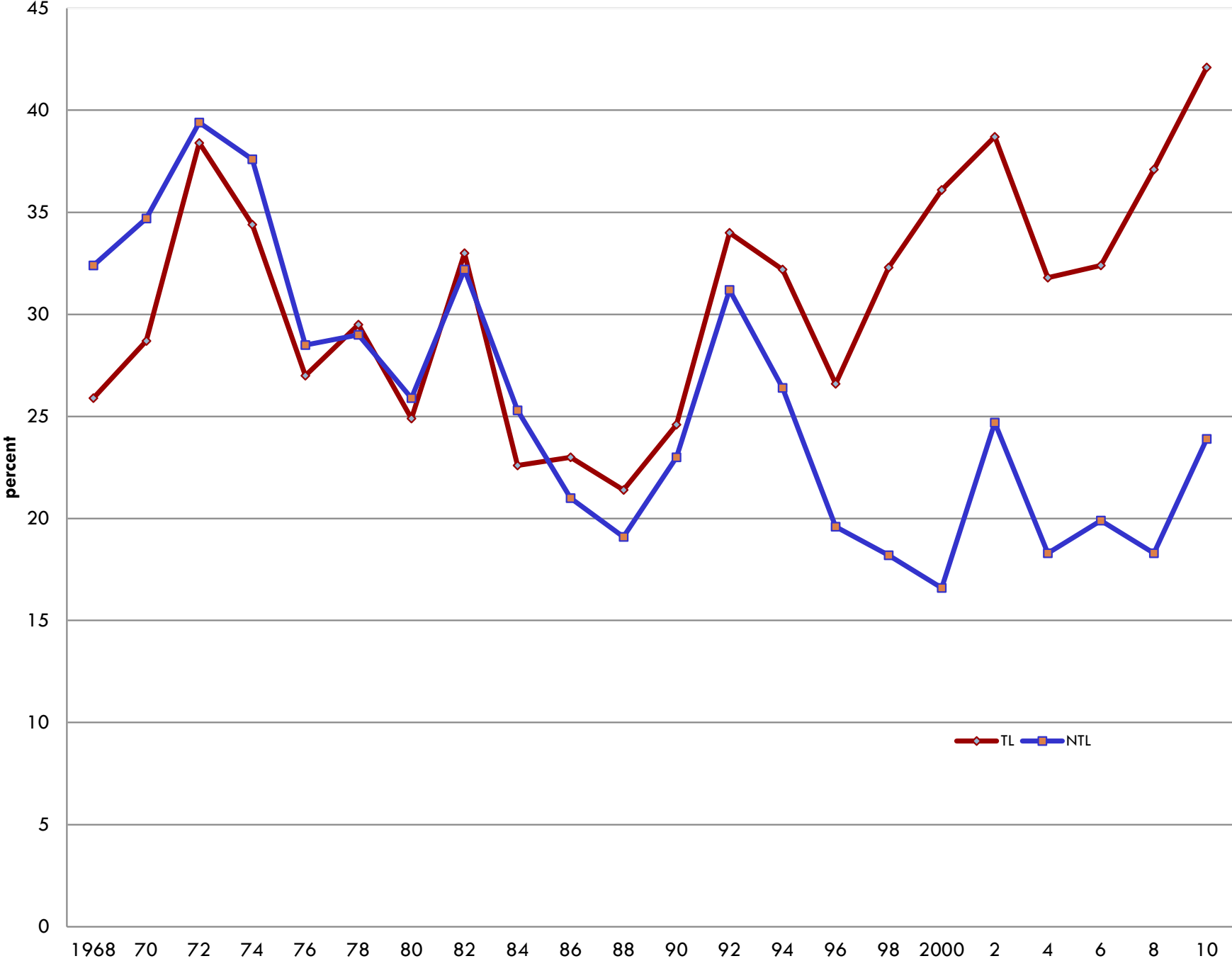
or

- What is one **norm** – a practice, not formally required but followed based on consensus or history – that exemplifies how your state does things?

Voter Revolt of the 1990s: Term Limits

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

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



Limits & Who Goes to State Capitols?

Gender and Demographic Diversity

Gender

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

Race and Ethnicity

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

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

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



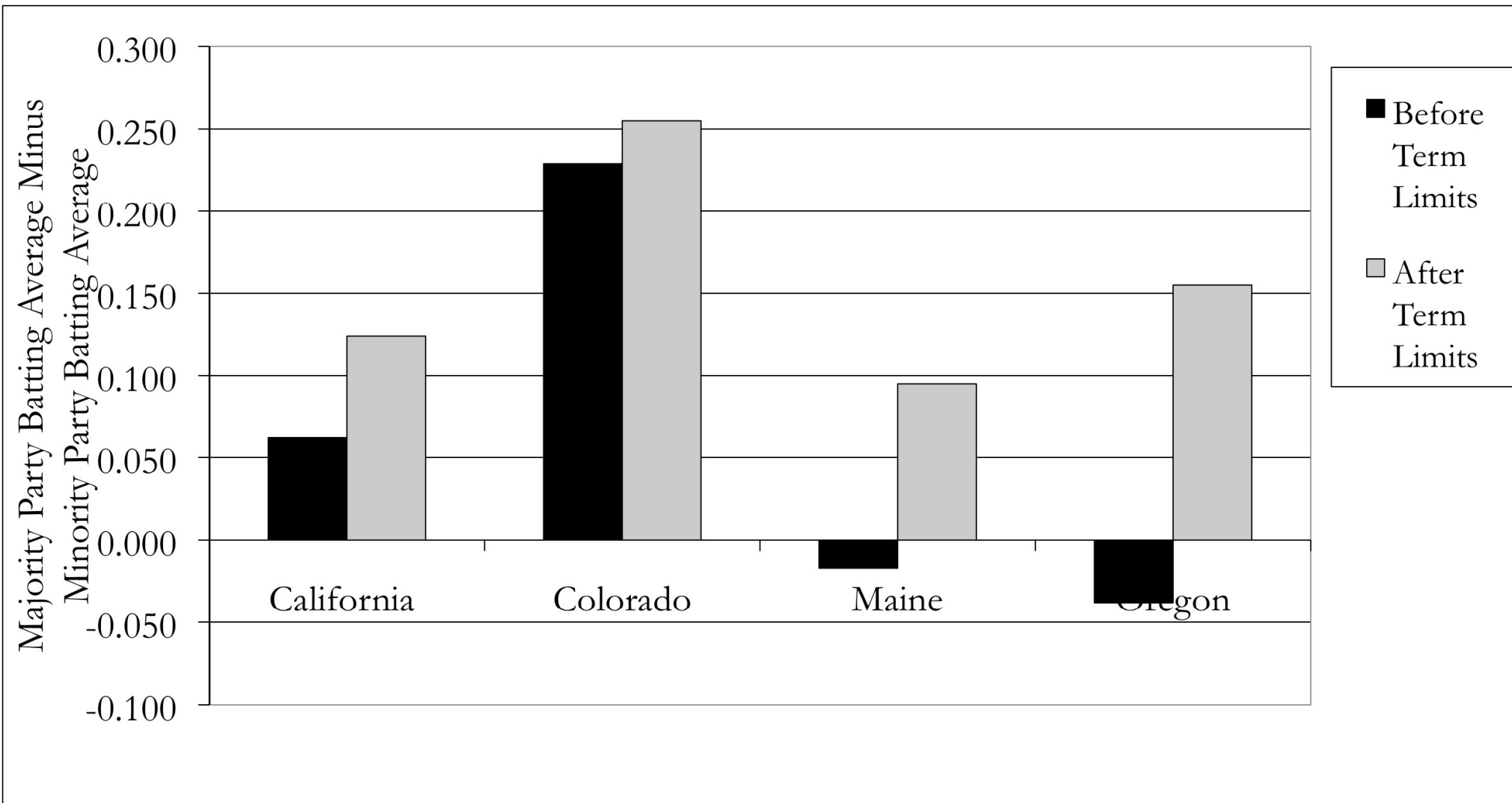
Limits & Who Goes to State Capitols?

Citizen vs. Professional Politicians

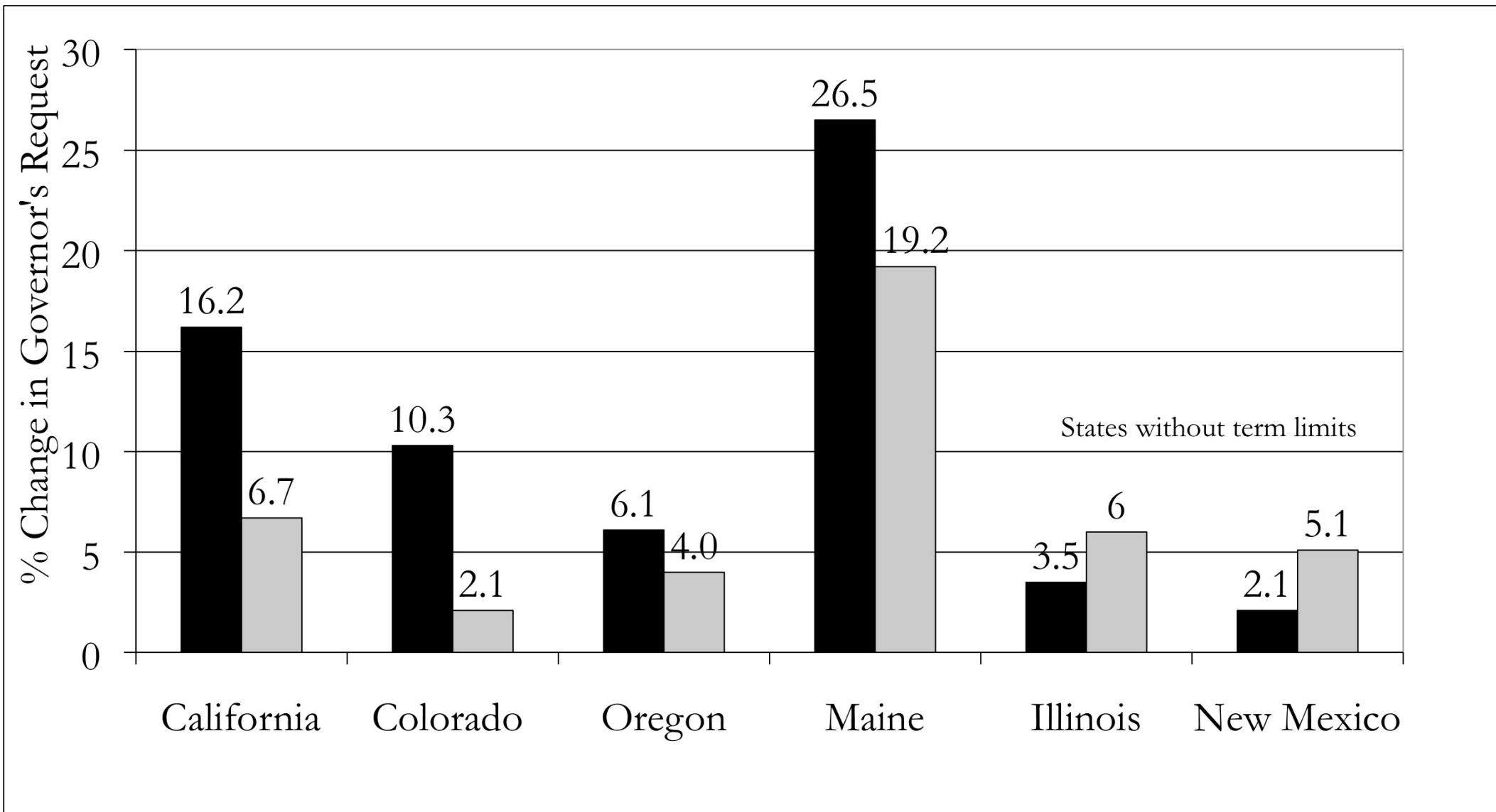
- The Reality: Political animals don't change their stripes

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

Partisan Effects: The Majority Wins, Minority Loses



Shift in Power to the Executive Branch



What Is the Sum of Term Limit Changes?

Areas of Stability

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

Areas of Change

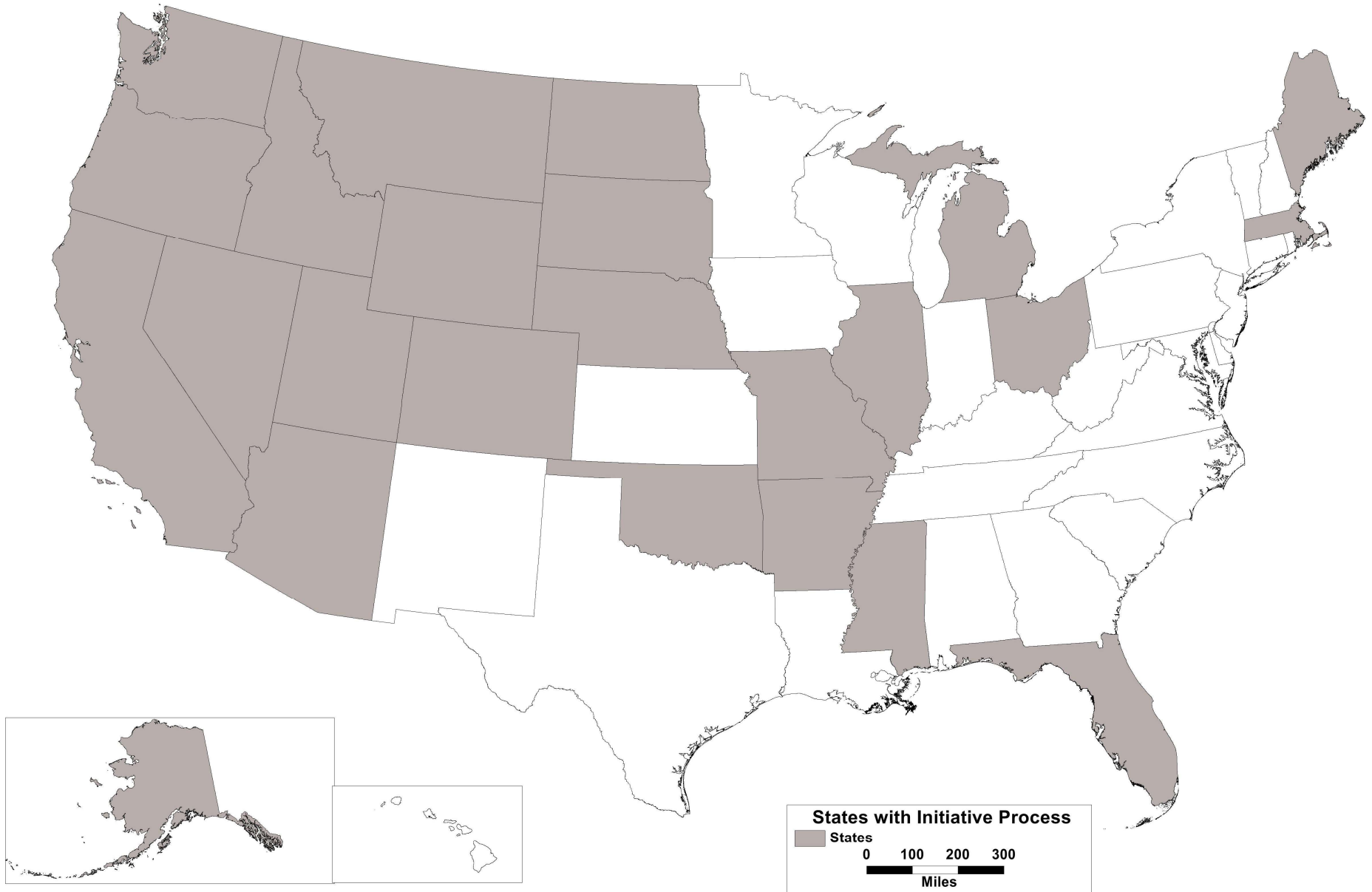
- Experience and expertise
- Balance of power with executive branch
- Trustee vs. delegate
- Innovation and spending

The Direct Democracy Movement: A Reaction to Corruption



Political cartoon depicting the Southern Pacific Railroad as an octopus gripping the politicians whom it controlled.

Progressive Revolt of 1898-1918: Establishing the Initiative Process



The “Hybrid Democracies” of the West

Direct Democracy

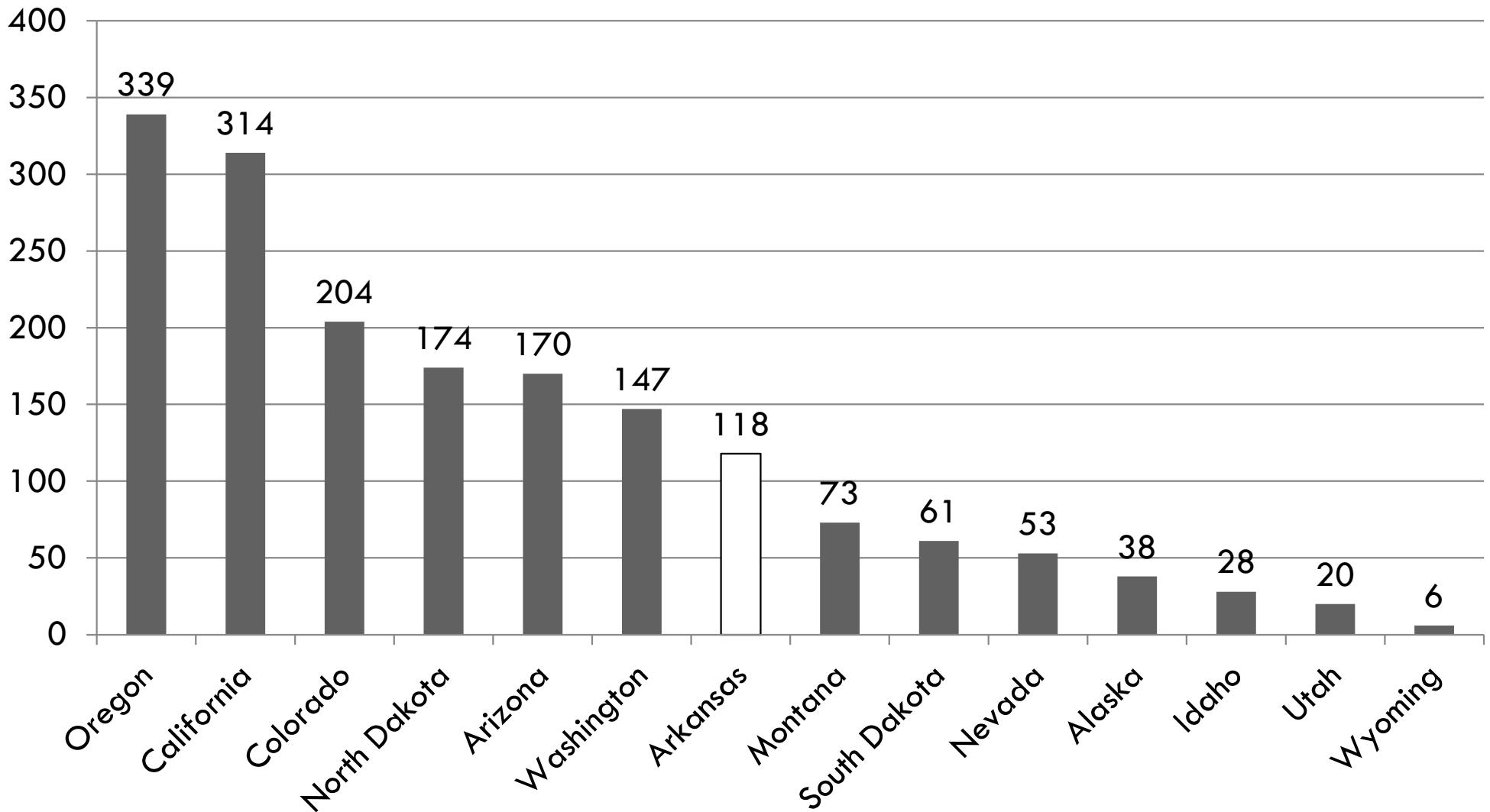
- Citizens can pass new laws and constitutional amendments (initiative)
- Power to overturn what the legislature passes (referendum)

Representative Democracy

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

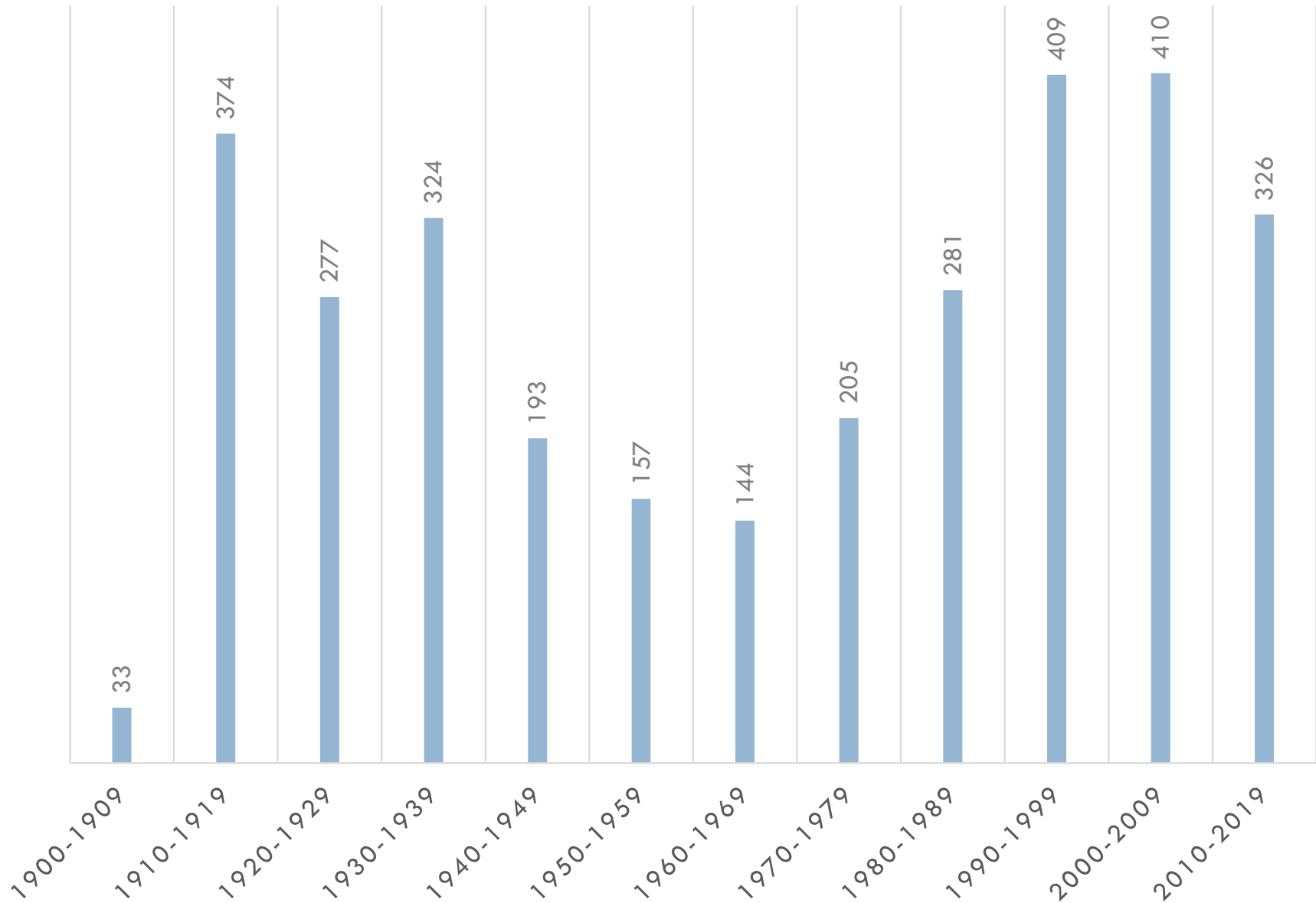
Western States Make Frequent Use of the Initiative Process...

Number of Initiatives (state history)



...Now More than Ever

TOTAL # OF CITIZEN-INITIATED MEASURES



What Does This Mean for Your Job?

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

Discussion Breakout #2:

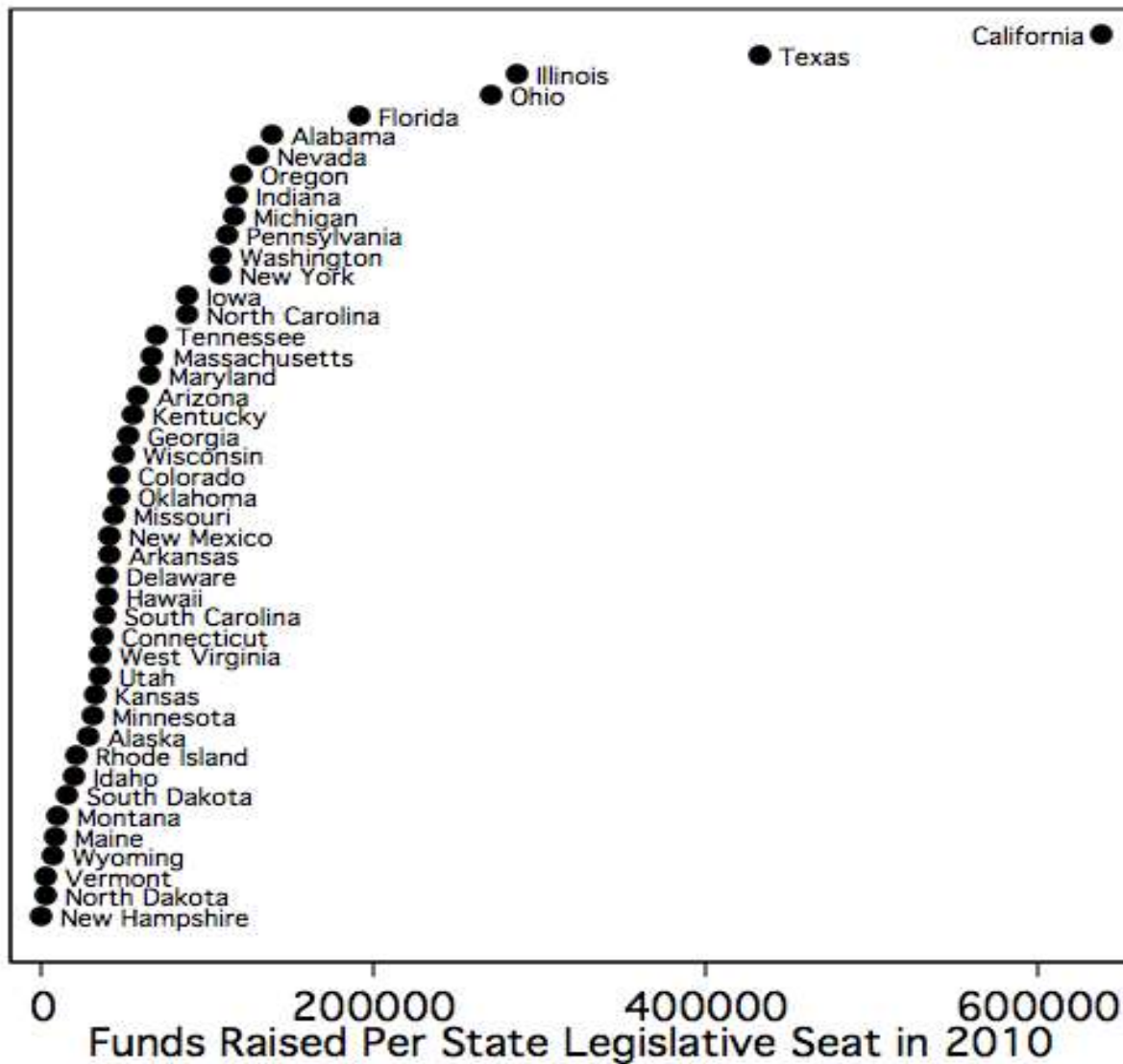
How Will You Build Your Institution?

- From your experience or from what you have learned today, what is a rule or your norm that you would consider changing in your chamber?
 - ▣ Reforming an existing rule?
 - ▣ Importing and adapting an idea from another state?
 - ▣ Changing one aspect of the culture?

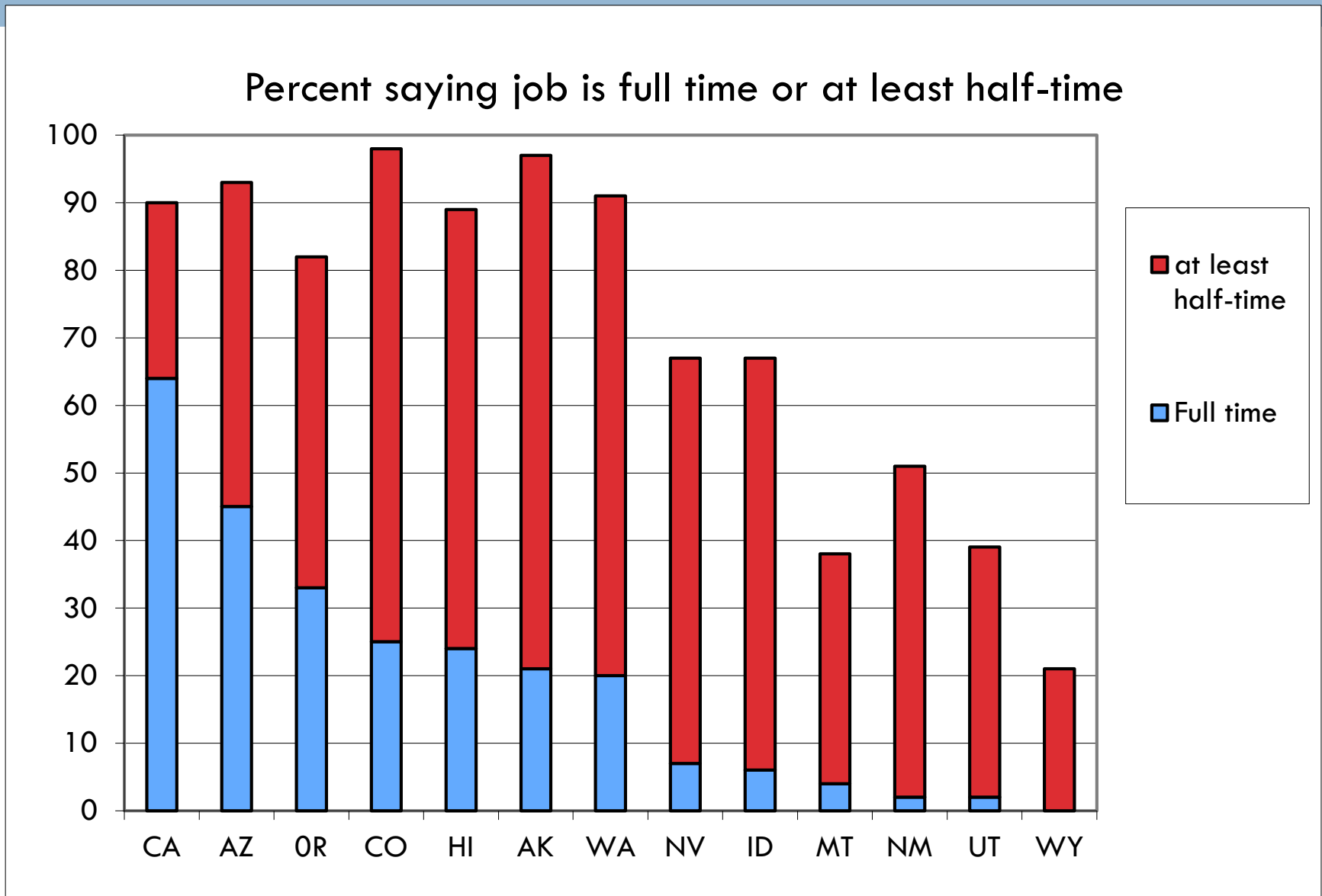
State Legislatures Today: Explosive Growth in District Size

	1970	2020	% Growth
Alaska	7,550	18,323	143%
Arizona	59,100	119,666	102
California	249,637	493,771	98
Colorado	33,985	88,998	162
Hawaii	15,098	28,452	88
Idaho	20,371	26,417	30
Montana	6,677	10,871	63
Nevada	12,218	74,182	507
New Mexico	14,529	30,263	108
Oregon	34,850	70,747	103
Utah	15,347	43,784	185
Washington	68,894	78,817	14
Wyoming	5,449	9,316	71

State Legislatures Today: Costly to Compete



State Legislatures Today: A Demanding Job



State Legislatures Today: Partisan Polarization

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

State Legislatures Today: What the Public Thinks

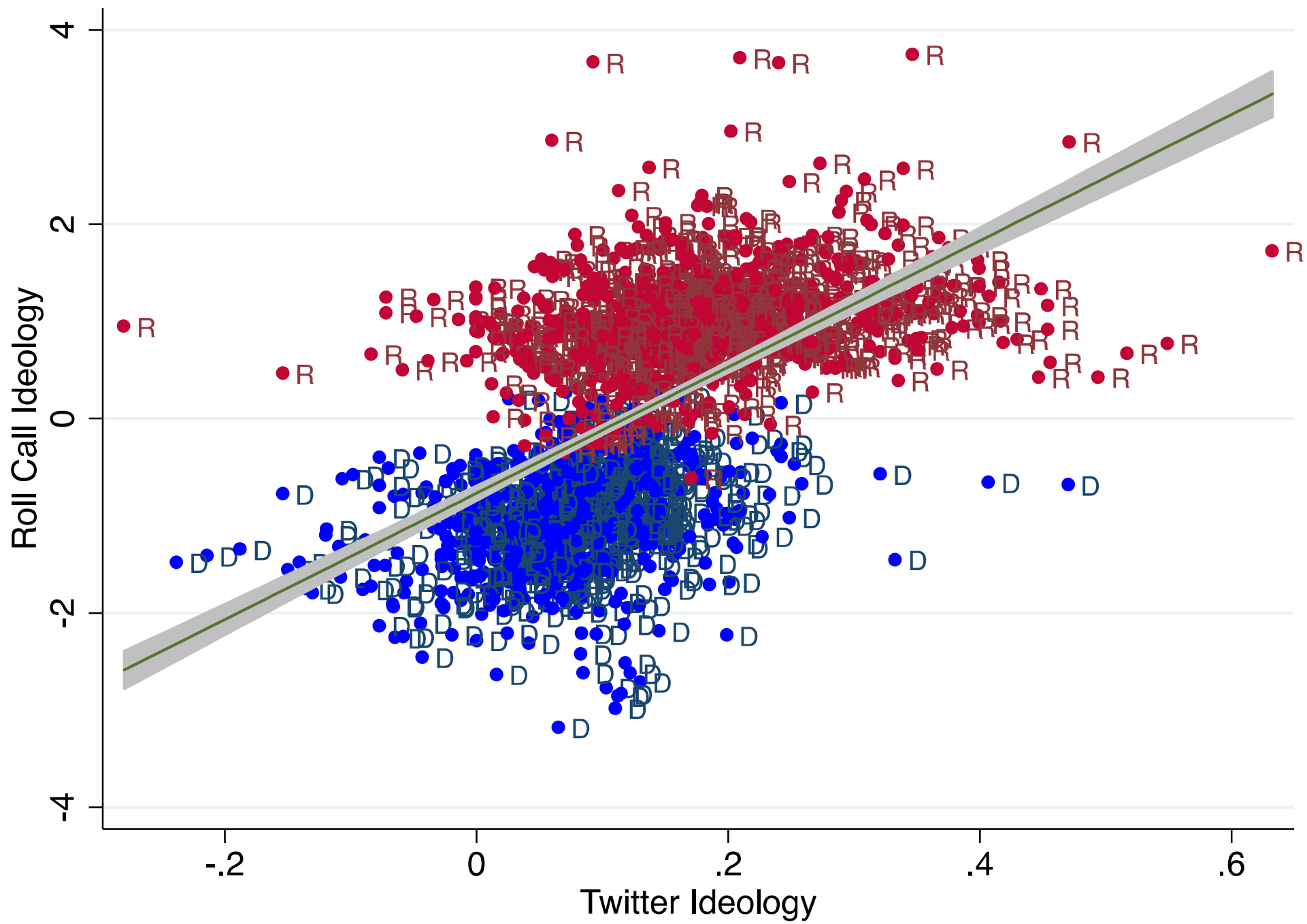
- **“NAIL DOWN or hide your valuables, folks. More than 1,500 politicians from around the country are in Anchorage for a national gathering of state leaders....The group is composed largely of legislators from the 50 states....”**

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

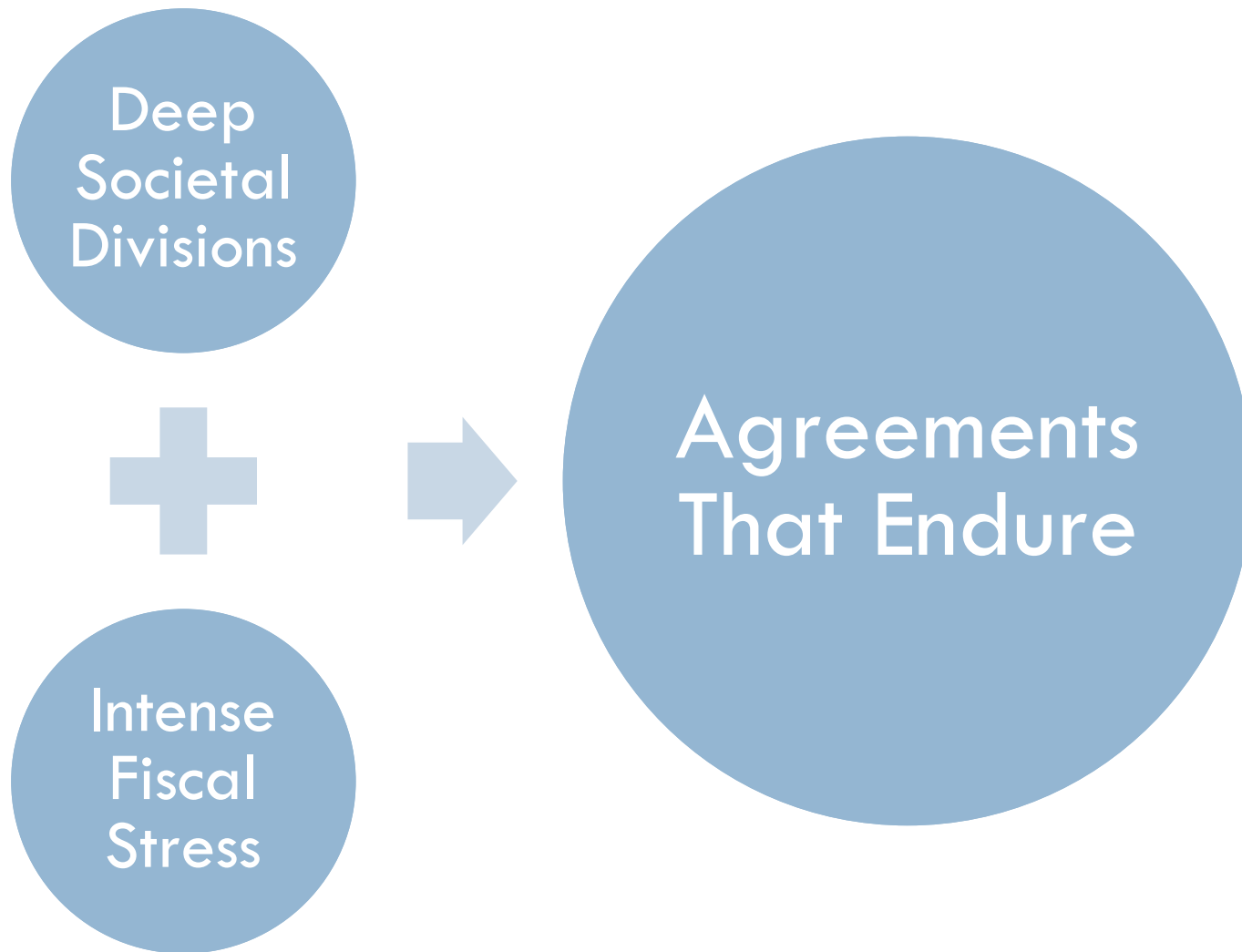


State Legislators and Social Media

- 67% of state legislators have a public X handle, producing 3,580,727 tweets through 2018 (averaging about 1100 per tweeting lawmaker)
- They tweet about everything from their policy stances to their dogs, seeking to gain trust and connect with constituents
- When they tweet about ideological positions, it is generally truth in advertising



Ideal of How a Statehouse Works



How Voters Think a Statehouse Works



Final Thoughts

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