run by the National Governors' Association. In your first year, you learn how to become a governor; in the second and third years you are being the governor and getting the business of state done; in the fourth year, you are running for reelection. In a two-year term, those middle two years of being governor are missing.

The second aspect of the gubernatorial tenure question is whether a governor can seek reelection to another term. While eleven states have no limitation on how many terms a governor may serve, thirty-six do limit their governors to two successive terms, while Utah limits their governor to three terms. For some that is an absolute limit, for others it means a two-term governor must vacate the office but could return after someone else serves a term. In Nebraska and Washington governors are limited to serving only eight years in a fourteen- or sixteen-year period. Virginia alone remains as a state that only allows their governor to serve a single term with no consecutive election allowed. Hence, the minute a governor is elected in Virginia and sworn in, he or she is a "lame-duck" as everyone with an interest in the governorship begins to look around to see who might become the next governor.

The goals of reform in terms of gubernatorial tenure are very state specific: New Hampshire and Vermont should join the other forty-eight states in providing their governors with four-year terms, and Virginia should allow its governor a possibility of succession to a second term.

Gubernatorial Elections

Another part of the gubernatorial tenure question concerns the timing of gubernatorial elections in relation to presidential elections. The concern here is the fear or possibility that events at the national and international level tied to the presidential election may prevent state-level candidates from articulating the issues and concerns that voters should be thinking about when voting for state officials. Further, a landslide victory for a presidential candidate can provide presidential coattails for his or her party candidates to win down the ballot. In this situation, it is not clear that the best candidate for the state office would be the winner.

Currently, only eleven states hold their gubernatorial elections at the same time as presidential elections are held, and two of these states are New Hampshire and Vermont, which hold their elections every other even year. Five states hold their gubernatorial elections in the odd numbered years, and thirty-six states hold their gubernatorial elections in the even, nonpresidential year. Again, two of these thirty-six states are New Hampshire and Vermont. A possible reform agenda item here would be for those nine states holding their elections in presidential years to shift them to an off-presidential year so the two sets of elections could be kept separate. This also suggests that if and when New Hampshire and Vermont change their gubernatorial terms to the four-year plan, they

also hold them in off-presidential years. While some may argue that there is lower voter turnout in off-presidential-year elections, it is also true that there will be less of a "coattail" effect from the nationwide presidential election both in terms of party line voting and issues. And potentially more attention will be paid to state-level issues by those who do come out to vote.

Separately Elected Executive Branch Officials—The Lieutenant Governor

As already noted, there is still a need to reduce the number of separately elected executive branch officials on any constitutional reform agenda for the states. As of 2000, there were 305 separately elected executive branch officials covering twelve major offices in the states. In addition, ten states also have multimember boards, commissions or councils with members selected by statewide or district elections. To focus on this agenda, let us first look at the office of lieutenant governor, the "heartbeat away" office in most states.

Currently forty-two states elect a lieutenant governor while five states designate a legislative leader as next in line and three designate the secretary of state as the heir apparent. Of the forty-two states with elected lieutenant governors, in twenty-four lieutenant governor candidates run jointly with the governor for election, and in eight other states a joint nomination process is used in selecting the governor and lieutenant governor.[20]

The problems that these arrangements can lead to are often staggering. In one scenario, the separately elected governor and lieutenant governor are of opposite parties, so there is a lack of joint agenda and purpose. Often this can lead to problems when the governor is out of state and the lieutenant governor is the "acting governor" and can take any steps that a governor might consider taking. Some governors of recent vintage have had to rush home to rectify or correct actions of the "acting governor." Even if the two officeholders are of the same party, they may be from different factions of the party and have the same type of political and policy differences. Or, the problem may just be a personality or ego clash that devastates the relationship.

A recent situation in New Jersey indicates another type of problem that can arise if the next-in-line person is a legislative leader. When Governor Christie Whitman, a Republican, resigned the governorship after being named secretary of the federal Environmental Protection Agency in 2001, the President of the New Jersey Senate, Donald DiFrancesco, also a Republican, became "acting governor." There was no change in which party controlled the governorship, but the new "acting governor" could not relinquish his legislative position as that was the basis for his being the "acting governor," thus creating a sort of "prime minister" situation.

The situation in New Jersey reveals some of the difficulties that can arise when a state designates a legislative leader to be next in line should the office of governor become vacant. And it runs against the goal that most reformers have long called for in the various "Model State Constitutions."[21] The reform answer here is clear. The lieutenant governor's office is a legitimate elective position, but it should be handled in the same manner as the office of Vice President, that is, the party's gubernatorial nominee should be the one to select the party's candidate for lieutenant governor, and they should run as a team.[22]

A related concern in the selection of the lieutenant governor involves how vacancies should be filled when the office of lieutenant governor becomes vacant. A vacancy may occur on the resignation, death, disability, or impeachment of the lieutenant governor when the incumbent lieutenant governor succeeds to the governor's chair as the governor has left office due to achieving a higher office, resignation, poor health, death, or removal by impeachment or for conviction of a crime. This midterm succession situation was highlighted in 2001 as the governors of Texas (George W. Bush), Massachusetts (Paul Cellucci), New Jersey (Christie Whitman), Pennsylvania (Tom Ridge), and Wisconsin (Tommy Thompson) all resigned to join the Bush administration in Washington following the 2000 election. On resignation, the lieutenant governor became governor, except as noted above in New Jersey, and thus a vacancy was created in the lieutenant governor's position.

A possible reform in these types of midterm succession situations is to let the new governor select his or her replacement as lieutenant governor, subject to a majority vote confirmation of one or both houses of the state legislature. This most closely approximates the election of the governor and lieutenant governor as a team in the general election, and follows the model used for filling vice presidential vacancies, as spelled out in the Twenty-fifth Amendment to the U.S. Constitution adopted in 1967.[23]

The only examples of this type of midterm succession to the vice presidency occurred during the 1970s "Watergate Era." First, President Richard Nixon selected Congressman Gerald Ford as his appointed vice president when Vice President Spiro Agnew was forced to leave office in 1973. Then, in 1974 when Nixon resigned as president and Ford became president, Ford then selected former New York Governor Nelson Rockefeller as his appointed vice president. Both houses of Congress confirmed the nominations of Ford and Rockefeller to serve as vice president.

Other Separately Elected Executive Branch Officials

Some reformers argue that this is as far as the states need to go in electing state executive branch officials. Once the state begins to move beyond the governor

and lieutenant governor being elected officials, several things happen. First, the governor's ability to govern the executive branch is limited by the fact that there are other separately elected executive branch officials who have responsibility over some agencies and departments. Yet, many who vote for a governor feel that they are electing the person who will be in charge of the whole executive branch of state government, not realizing that they are incorrect in this assumption.

Second, when there is an array of state level offices to be filled at election time, the voters often do not know very much about the candidates for these offices, let alone what they might do once in office. Also obscure is just what the responsibilities of some of these offices are. All many voters know is which party the candidates represent. This problem is exacerbated by current trends in the media coverage of state elections, in that coverage of the campaigns for lower-level offices has declined. And the nature of television advertising in the political campaigns for the higher-level offices tends to drown out most information on these other offices and the candidates involved.

One effect of this is that there is considerable "voter falloff" down the ballot—voters do not cast a vote for candidates they do not know about for an office whose role they do not understand. For example, in North Carolina, with ten separately elected executive branch officials, about one out of every ten voters did not vote for several of the so-called lower ballot races in the 1984 to 2000 elections.[24] "If there were a bias in just who those non-voters in particular contests were and a concerted effort by one group or another to affect the outcome of a very close contest, the voting results could be affected."[25] So, democracy is not necessarily served in this situation, but those with a specific interest in one of these lower-level elections, and in who wins these offices may well be. Nevertheless, many states continue to elect various executive branch officials other than the governor and lieutenant governor, and a case can be made in some instances for their selection by someone other than the governor.

Attorney General

Currently forty-three states elect their attorney general. In four states the governor appoints the attorney general subject to the confirmation by one or both houses of the state legislature (Alaska, Hawaii, New Jersey) or the Council (New Hampshire), and in Wyoming the governor appoints the attorney general without any confirmation needed. In Maine, the attorney general is elected by the state legislature, while the state's Supreme Court selects the attorney general in Tennessee.[26]

The attorney general is the state's lawyer initiating suits on the state's behalf and responding to lawsuits filed against the state. When separately elected, this poses no problem as the attorney general has separate elective status to do so, but when appointed by some other elected official or officials, the attorney general's

status may be compromised. For example, there may be times when the attorney general must take action against the governor for what he or she has done or not done. If appointed by the governor, this ability would be compromised. This should not affect the governor as every governor's office has or should have a legal assistant whose responsibility is to advise and protect the governor. It is difficult to imagine the potential problems that might arise in a state where the state's Supreme Court selects the attorney general who later would be pressing the state's position on a variety of cases before that same court.

All this suggests that: the attorney general's office can be a legitimate elective position, chosen separately from how other elected executive branch officials are chosen. This does vary from the federal model in which the attorney general is selected by the president with the advice and consent of the U.S. Senate.

Auditor

The officials that perform the state auditing function are selected in a variety of ways. In twenty states the auditor is elected by the public, and in eighteen states the state legislatures select the auditor. Governors and agency heads select the auditor in seven states, and in California, the legislature forwards three nominees to the governor who then appoints one of those nominees to the position. Two other states have a shared method of selecting officials for the position.[27]

The auditing function is critical to the functioning of state government and the credibility of what state government officials do. The governor proposes the budget, the legislature adopts it, and then the budget is back in the hands of the governor and those in the various branches and agencies to use in funding their various responsibilities and activities. Occasionally, questions are raised about how budgeted funds are being used or not used. In more than a few such cases, it is a member of the legislature who raises the issue about how the money approved in the budget has been used. It is usually the auditor's responsibility to investigate such questions and allegations to ascertain whether they are justified or not. Having an auditor chosen by someone other than a governor is important because of the responsibilities that an auditor has.

The reform answer here is not quite as clear as in those offices noted above: the auditor should not be chosen by the governor but can be selected by the legislature or directly by the people. The goal is to ensure that the occupant of the office is free to fulfill the responsibilities of auditing the activities of other officials without being compromised by how he or she arrived in the position.

Treasurer

Currently thirty-seven states elect their state treasurer. In four states the treasurers are elected by the state legislature; in four the treasurers are appointed by the governor with the consent of the legislature; in two they are appointed

by the governor with no confirmation needed; and in three they are appointed by an agency head, in one state subject to the approval of the governor.[28]

The treasurer serves as the state's banker, supervising the normal cash flows in and out of the state treasury. The treasurer also serves as the state's investor, investing funds for a variety of purposes from "rainy day funds" to state retirement plans, and is involved in any borrowing the state may undertake. In the latter role, the treasurer is a key actor in making sure the state's credit rating is kept at a high level so interest costs are lower than if the state had a poor rating. So the office of treasurer is of considerable importance for the state's fiscal health.

The reform prescription here is not altogether clear. Since so few state treasurers are gubernatorial appointees, it is clear that earlier reforms wanted to separate the chief executive from the person with access to the state's money. That may very well still be a good idea, as long as those who are elected or appointed by the legislature have the requisite skills in money management.

Secretary of State

Currently thirty-five states elect their secretary of state, and in three other states the elected lieutenant governor serves as secretary of state. In three states the secretary of state is elected by the legislature, and in nine other states the governor appoints the secretary of state and seven of them the appointment must be approved by the legislature.[29]

Secretaries of state have a range of responsibilities tied to elections (chief election official, ballot eligibility, election reports), to various types of registration (corporations, securities, trade names), to custodial duties (state and other records), publications and (manuals, constitutions, laws, rules, and regulations), and some legislative duties. Obviously, the range of responsibilities varies by state, but there is some commonality across the states.[30]

A separately elected official is not necessarily needed for the responsibilities and duties of this position. It would be just as easy to have the governor appoint the person holding this position with or without the consent of the state legislature or let the legislature appoint the person. Since many voters do not know what the office entails or who the candidates are or stand for, this option would seem to make the most sense.

Other Separately Elected Officials

Thus far, we have focused on "process officials"—those separately elected officials who work with the leaders and agencies of state government itself. Now we turn to the third-tier level of elected officials, those who are responsible for running functional agencies providing services to the citizens of the state. These include

commissioners or secretaries of agriculture (thirteen states), education (fourteen states), labor (five states), and public utility regulation (seven states), among others. Several states have entire boards elected to run certain agencies.

The direction for reform for these third-tier elected officials heading functional agencies is clear: there is no need to insulate these offices from the governor, as the responsibilities of their offices are those that many will hold the governor accountable for in the first place. Therefore, states need to consider reducing the number of separately elected officials and let the governor be responsible for appointing the officials who run these agencies, with or without the confirmation or approval of the legislature.

The Gubernatorial Ambition Ladder

Before turning to the next item on the agenda of constitutional reform, one additional point needs to be addressed regarding the major separately elected executive branch officials in the states. The officials elected to these offices do have a statewide constituency and they often try to translate that into a run for the governor's chair. In a few words, these elected positions can be used as launching pads for higher office. So, there is an additional political twist involved here—those separately elected officials whose goals include not only serving in the office they have won, but using that office to position themselves for a run for the governor's chair. So trying to change the method of how they are chosen can and often does run directly into individual political goals—and with those goals often come political organizations and supporters who will do everything possible to prevent change in the way things work in the state's political system.

How prevalent is this use of these separately elected state executive branch offices as launching pads to become a governor? To measure this, we look at the last four banks of elections since 1987, with a total of 210 gubernatorial elections being held between 1987 and 2002. We focus specifically on those incumbent or former lieutenant governors, attorneys general, secretaries of state, state treasurers, and state auditors who sought to win the governor's chair. In 101 of these elections, at least one of these separately elected officials was in the race (48%), and in 38 of these 101 races there were two or more of them running (18%).

This underscores that these offices and the officials holding them often are squarely in the middle of a state's political process. Using these separately elected offices as platforms for a gubernatorial race is a political fact of life in almost all states; Maine and Utah are the only exceptions in the last sixteen years of gubernatorial elections.

Gubernatorial Reorganization Authority

Executive branch reorganization was part of the good government movement in the early twentieth century and has been on the reform agenda in most states. As noted earlier, the states are still in the fourth wave of reorganization. Some states attempt a comprehensive reorganization or even a partial reorganization of their state executive branches by creating a commission to study the situation and the problems involved, and to then issue a report on what should be done. After the report is issued, it is up to the governor and legislature to adopt the suggestions in order to have some sort of reorganization occur.

However, nearly half of the states have provided their governors with the authority to reorganize through an executive order.[31] In most of these states, the governor's authority is rather broad and can range across the executive branch of state government, while in a few states it has limitations. These limitations can be that the governor's authority to reorganize by executive order extends only to local governments (New Jersey), is restricted to shifting agencies between cabinet secretarial offices (Virginia), or is limited only to reorganization and does not encompass the creation of agencies (Tennessee). In some states the executive initiatives are subject to legislative review.

There can be several reasons for the need to reorganize. First and foremost has been the drive for "modernization and streamlining of the executive branch machinery, efficiency, economy, responsiveness, and gubernatorial control."[32] When it is the governor making the changes through executive order, with or without legislative review, it would seem more likely that the role of the chief executive would be enhanced. This would lead to the governor becoming more like a chief executive with more extensive control over the executive branch.

But there can obviously be a downside to such authority if the governor is wrong in the assumptions used in issuing the executive order, has some devious or hidden political agenda to further, or goes too far in what is being changed. An example of the latter situation might be the governor who is frustrated by the various problems, situations, and signals emanating from the various educational agencies and organizations of state government. An executive order is issued to bring all of these educational agencies into one superdepartment with a single supersecretary of education in charge of education from kindergarten through professional graduate schools. There are conflicting goals and responsibilities in this new superagency as K–12, community college, and higher-educational goals are pitted against each other. The results can be confusion, loss of direction, and unneeded fights and tensions between the various types of education involved despite the stated goals of the initiative.

The reform prescription here is fairly clear. Governors should be provided with the power to reorganize the executive branches of state government through an executive order process. But this process should include a legislative

review and confirmation function that might help reduce problems and build support for the changes being suggested.

Gubernatorial Budget Power

While governors generally have considerable budgetary power in preparing and then executing the enacted state budget, recent events indicate that more thought might be needed on one further aspect of this power. As every state operates under a balanced budget requirement, responsibility often falls on the governor to take steps to cut the budget when there is a revenue shortfall due to a downturn in the nation's or state's economy. There are several types of authority provided governors to make cuts in already enacted budgets. They include: no restrictions on this authority (twelve states); across-the-board authority only (ten states); a maximum percent reduction limit (seven states); required consultation with the legislature (twelve states); and a variety of other steps idiosyncratic to a particular state (twenty-nine states).[33]

From one perspective, the stronger the governor's ability to cut the budget the better; therefore no restrictions on that power of reduction is best. This allows the governor "to reduce spending in short order to balance the budget."[34] But that is thus an unchecked power over the budget process that some question as skewing the separation of powers. Put briefly, "If the power to appropriate money is a legislative function, then the legislature should have some say in reducing the enacted budget."[35]

Having an across-the-board cutting authority would seem to be "the most efficient short-run solution," but it "may not be the best public policy." Why? The impact on "safety-net programs" would hit them with a cut just when these programs are needed most. Some programs are tied to federal matching funds and a cut in state funds would also mean a cut in federal funds—Medicaid, is a prime example. Also, such broad ranging cuts do not distinguish between higher and lower priority programs—all are hit equally.[36]

The message here is that states need to review this "power to cut" they have provided their governors and see if and how it works. Based on the evidence available from the two most recent economic downturns of the 1990s and the early twenty-first century, some states may want to revise this power whether it is in the state constitution or a state statute.

Gubernatorial Veto Power

Since the 1960s governors in the fifty states have gained considerable veto power over legislation passed by the state legislature. Every governor has the ability to veto a bill in its entirety, and forty-three governors have the power to veto

particular items in a bill without vetoing the whole bill. Several states have some restrictions on just what types or parts of legislation a governor can use the item veto. State legislatures can override a governor's veto—total or item—by a super majority in forty-six states. That supermajority is either two-thirds of the legislators present and voting, or three-fifths of the legislators elected. The other four states only require a majority of the legislators elected to override the veto. These four states are all in the South, and this obviously reflects the long history of Democratic one-party dominance in those states, now no longer a factor.

The reforms needed here are not too great as so much has been done to provide governors with these powers. Clearly, those seven states that do not allow the governor the power to veto items in bills should consider adding that power to the office. And, those four states allowing just a majority of the legislators elected to override a governor's veto should consider changing the override vote needed to a form of supermajority.

SUMMARY

The agenda items listed above are tied to a very simple premise: a single elected official, the governor should be in charge of what is happening in the state government's executive branch. Based on this premise, the following constitutional or statutory reforms are suggested:

- the need to disconnect gubernatorial elections from national elections;
- the need to provide a governor with the possibility of a second term (and these should be 4-year terms);
- the need to provide for the selection of a lieutenant governor to be elected with the governor, and when the office of lieutenant governor becomes vacant, a process to fill that office involving the new governor and the state legislature;
- the need to reduce significantly the number of other separately elected state executive branch officials;
- the need to provide the governor with the ability to appoint the heads of departments or agencies with or without the approval of the state legislature;
- the need to provide the governor with the authority to reorganize the executive branch of state government by executive order, with the review and consent of the state legislature;
- the need to review the budgetary processes available to a governor to use in the case of financial emergencies; and
- the need to review the governor's veto power to include the item veto potential with a superlegislative majority needed to override a gubernatorial veto.

Notes

1. Terry Sanford, *Storm Over the States* (New York: McGraw Hill, 1967): 188.

2. Ibid., 187.

3. David McCullogh, *John Adam*s (New York: Simon & Schuster, 2001): 220–25.

4. Ibid., 225.

5. Ibid., 222. See also Rob Gurwitt, "The Massachusetts Mess," *Governing* (December 2001): 25.

6. Robert S. Rankin, *The Government and Administration of North Carolina* (New York: Thomas Y. Crowell, 1955): 75.

7. A. E. Buck, *The Reorganization of State Government in the United States* (New York: Columbia University Press, 1938): 7, 12.

8. Ibid., 44.

9. Ibid., 14–28, passim.

10. Sanford, 43.

11. Herbert Kaufman, "Emerging Conflicts in the Doctrines of Public Administration," *The American Political Science Review* v. 50 (December 1956): 1065.

12. Terry Sanford created "A Study of American States" at Duke University with grants from major national foundations. His agenda was to take the lead in developing a multistate Compact for Education to help the states develop nationwide educational policies. Out of this came the establishment of the Education Commission of the States. He also wrote *Storm Over the States* (1967) as an agenda for the states to follow in reforming how state governments operated and set policy goals. Jess Unruh directed the newly formed the Citizens Conference on State Legislatures as an organization that would assist the legislatures of the fifty states bring their structures and processes up to date. This CCSL project was also funded by major national foundations. Change was needed in the states, and these two state leaders were instrumental in helping the states chart their way forward.

13. Larry Sabato, *Goodbye to Good-Time Charlie: The American Governorship Transformed,* 2d ed. (Washington, D.C.: CQ Press, 1983): 57.

14. Keon S. Chi, "State Executive Branch Reorganization: Options for the Future," *State Trends Forecasts* 1:1 (December 1992). South Carolina, which reorganized in the early 1990s, is added to Chi's list.

15. James K. Conant, "In the Shadow of Wilson and Brownlow: Executive Branch Reorganization in the States, 1965 to 1987," *Public Administration Review* 48:5 (September–October 1988): 895.

16. Joseph A. Schlesinger, "The Politics of the Executive," in *Politics in the American States,* 1st and 2d eds., edited by Herbert Jacob and Kenneth N. Vines (Boston: Little Brown, 1965 and 1971).

17. Thad L. Beyle, "The Governors," in *Politics in the American States,* 8th ed., edited by Virginia Gray and Russell Hanson (Washington, D.C.: CQ Press, 2003).