

BEST PRACTICES FOR COLLABORATIVE POLICYMAKING

Learning from Power-Sharing
Arrangements in State Legislatures



BIPARTISAN POLICY CENTER



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A report of FairVote and the Bipartisan Policy Center

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Introduction

Rising partisanship, polarization, and the legislative dysfunction that often accompanies them have been of utmost concern to recent observers of American politics. Diverging views and deteriorating inter-party relations have made it increasingly difficult for Democrats and Republicans to bridge the gap and find grounds for compromise and cooperation.

Although our constitutional framers did not anticipate the rise of strong parties, they warned against factions that would seek to dominate others in our representative system. James Madison began Federalist Paper 10 by arguing that “Among the numerous advantages promised by a well-constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction.”¹ As a consequence, our federal and state constitutions have systems of checks and balances, and our legislative chambers traditionally have rules that respect the rights of those in the minority.

Today, despite these safeguards—and in some cases, empowered by them—many elected officials seem ready to impose their will with little respect for minority opinions, even those that originate from within their own party. This decline of collaboration in the policymaking process has clear deleterious effects on both the quality of governance in America, and the broader health of our democracy. For example:

- **Legislative productivity.** The most widely recognized consequence of growing polarization is the breakdown of legislative efficiency: when polarization is paired with structural constraints like divided government or supermajority requirements, the difficulty of finding grounds for compromise across a growing partisan divide can lead to gridlock, delays and destructive brinksmanship.
- **The quality of deliberation.** One of the great values of a representative system is the consideration of multiple viewpoints as legislation is crafted. But, even where one party controls the levers of government such that gridlock is of no concern, growing polarization often precludes meaningful deliberations on policy between the parties. The majority is often able to advance its agenda without serious attention to the concerns of others. An inclusive, deliberative policymaking process is necessary to avoid unintended consequences and ensure full consideration of policy problems and their potential solutions.
- **The continuity and coherence of policy.** When majorities in a legislature consistently shut the minority out of the process, leaving them with little ability to impact legislative outcomes, shifts in control between parties can lead to extreme swings in policy, from one pole to another, damaging the ability of government to confront challenges that require a consistent, stable approach.
- **Accurate representation.** When the minority party is unable to meaningfully contribute to the policymaking process, the connection between government and the voters who elected that minority is undermined. However, partisanship and polarization can also impede *majority* rule on issues that do not align neatly along the partisan divide. As majority party leaders are often

reluctant to allow action on legislation that does not have the support of most of their members, legislation that does not meet this criteria, but would nonetheless win the support of a bipartisan majority in the chamber, is often dead on arrival. Disinterest in bipartisan policymaking thus impedes action on many cross-partisan issues, such as those stemming from the urban rural divide that is salient in many state chambers.

While polarization and partisanship are most often associated with Congress, the same forces have impacted government in the states. Political scientists Boris Shor and Nolan McCarty have shown that chambers in roughly half of the states are even more polarized than our national legislature, and the level of polarization in states is steadily increasing.²

Based in the common conception of the states as “laboratories of democracy,” this report was inspired by the observation that in state chambers that have adopted arrangements that allow members of both parties to share legislative power, as in the case of ties between the major parties (which occur in at least one state legislature after most elections) or bipartisan coalitions that form to organize a chamber, partisanship has at times subsided and allowed for productive and collaborative legislative sessions that allow both parties to meaningfully contribute to policymaking. Our goal is to determine the forces and mechanisms that allowed for enhanced bipartisan cooperation in these chambers, in order to identify specific rules, practices, and procedures that can be used to promote collaborative policymaking more broadly.

We begin in the first chapter by examining power-sharing arrangements in state chambers that had varying degrees of success. Analysis of these cases was built on research and interactions with dozens of legislators in interviews and a roundtable discussion at the 2014 Legislative Summit of the National Conference of State Legislatures (NCSL). Comparisons are drawn in order to identify the factors that led to surprising bipartisanship in some arrangements, while others were met with gridlock and heightened partisan tensions. Ultimately it became clear that two internal factors were particularly important for the success of the arrangements: decentralized control of the legislative agenda, and the strength and civility of the relationships between legislators of opposing parties, especially those in leadership.

The second and third chapters build on these insights to highlight concrete actions that can be taken in any legislative chamber to facilitate greater collaboration and bipartisanship in the policymaking process. Chapter two examines rules already in place in many state legislatures that can be used to decentralize control of the legislative agenda, clearing a path for bipartisan legislation that might otherwise be blocked. The third and final chapter of the report highlights strategies and programs that can be used to foster relationships between members of opposing parties that are characterized by mutual respect and trust, a prerequisite to engaging in the deliberation and compromise required to craft bipartisan policy.

Accompanying this report is an online database of legislative rules, highlighting those which impact prospects for bipartisan cooperation, based on a broader base of information on legislative procedure available from NCSL. As the conclusions of this report suggest that there are concrete actions that can be taken in legislatures themselves to foster bipartisanship and collaborative policymaking, future work stemming from this project should include expanding the scope of the database of legislative rules and practices through comprehensive research to evaluate the steps being taken to promote bipartisanship in state chambers, and the publication of an annual report evaluating their progress.

The online database and calls for action underscore that this project is only a beginning. Legislators will continue to innovate and establish rules and practices from which we all can learn. Given the policy challenges facing Congress and state governments, and the opportunity to draw lessons from the variety in the operations of state chambers around the country, we hope that this report will have an impact – and that we will have ongoing opportunities to learn from innovations in the states.

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I. Legislative Power-Sharing Arrangements: What Can They Teach Us about Collaborative Policymaking?

In almost every year for more than two decades, at least one state legislative chamber has either found itself in a tie necessitating some form of power-sharing, or been organized by a coalition formed by members of the two major parties.³ An examination of these inter-party power-sharing arrangements in state legislatures holds promise for those seeking to promote bipartisanship and collaboration, because, by definition, successful agreements will have found a way for both parties to be meaningfully included in the policymaking process, and play a role in shaping legislative outcomes. By identifying the major features common to these arrangements, and the points that were most contested as they were created, we can find the sources of legislative power that their authors saw as critical to legislators' ability to impact legislation, and which, therefore, must be shared or managed collaboratively for bipartisan policymaking to be possible.

The power-sharing arrangements examined here are similar in many respects, but the wide variation in the procedural and political circumstances surrounding their establishment, and the legislative outcomes that they produced, allows for conclusions to be drawn about some of the conditions necessary for effective bipartisan cooperation. The experiences of the chambers discussed here suggest that the factors that can significantly impact the prospects for bipartisan policymaking are both personal and procedural, namely: the establishment of civil and amiable relationships between legislators of different parties, and the distribution agenda-setting powers such that party leaders cannot keep measures with bipartisan support from reaching the floor.

Tied Chambers

Anecdotes emerging from tied state chambers resolved through power-sharing arrangements suggests that, in some cases, these situations have resulted in productive sessions with a notable rise in the level of bipartisanship and cooperation between the parties. Given the general tendency of chambers to become more, not less, partisan as the distribution of seats becomes more even, this observation is surprising, and raises the question: What about these agreements has fostered inter-party cooperation where it was previously unlikely?⁴ Is it mere necessity? Or are there other forces at work in these chambers that can provide lessons for the promotion of bipartisanship more broadly? Further, why have other, superficially similar arrangements led to the opposite outcome, partisan tension and gridlock?

Though it may seem an unlikely occurrence, ties in state legislative chambers are in fact common. Since 1984, elections have left state chambers in a tie on thirty separate occasions.⁵ While in some chambers

a statute, coin toss, or the vote of the lieutenant governor has been used to break a tie in favor of one party, the election of an equal number of legislators from each caucus generally necessitates that an agreement be reached to divide the powers normally granted to the majority. These negotiated agreements fall into one of two categories.

The most common solution is a “co” agreement, in which pairs of members, one from each party, together hold leadership and committee chair positions, sharing their powers and/or alternating the times at which they preside. The other common form of power-sharing arrangement is the “divided power contract,” in which one party elects the chamber’s presiding officer, the other chooses the chairs of the most powerful committee(s), and the chair positions of other committees are divided between the parties.⁶

By definition, successful agreements will have found a way for both parties to be meaningfully included in the policymaking process, and play a role in shaping legislative outcomes.

Divided power contracts have fallen out of favor with legislators confronting ties, as “co” agreements have been adopted in six of the last seven power-sharing arrangements in tied state chambers.⁷ Each of the chambers discussed below—the Oklahoma Senate, Oregon House and Washington House—resolved their tie through the use of a “co” agreement.

Oklahoma Senate (2007-2008)

The Oklahoma Senate was tied after the 2006 election, with 24 Democrats and 24 Republicans in the chamber. Democrats had controlled the Senate for its entire history up to that point. While Democratic Lieutenant Governor Jari Askins had the power to cast a tie breaking vote, Democratic leader Sen. Mike Morgan, previously the Democratic Senate President Pro Tempore, and Sen. Glen Coffee, a Republican leader, chose instead to negotiate an agreement to settle the tie and organize the chamber.⁸ This case study is based on research, interviews and discussions with legislators of both parties, legislative staff, and observers of Oklahoma politics.

Senators Coffee and Morgan and their negotiating teams ultimately settled on a “co” agreement, and the pair were elected as Senate Co-Presidents Pro Tempore. While nominally the title of Senate Co-President Pro Tempore would alternate between the two leaders, the agreement ensured that in practice the two would make decisions jointly, with each having veto power over the other. Committees were similarly divided, with equal numbers of Democrats and Republicans and co-chairs from each party who had to agree on which bills would receive a hearing. Co-floor leaders determined together the order in which legislation would be brought before the chamber. If they could not agree, the matter would be referred to the co-presidents.⁹

The Oklahoma Senate uses a process called “automatic calendaring”, in which bills reported from committee are placed directly onto the floor calendar.¹⁰ Generally, this means that, though party leaders can set the order in which bills are considered, they cannot block legislation reported from committee from being brought to the floor. However, under the provisions of the agreement, each party’s floor leader was empowered to block legislation authored by a member of their own party, but not by the opposition.¹¹

To address concerns that the co-arrangement would lead to gridlock, the agreement included a so-called “silver bullet” provision, which would allow each Senate co-president to assign three measures from each chamber to the committee of his choice without the assent of the other, and each committee co-chair to place on the committee agenda three measures from each chamber without the assent of his counterpart.¹² Still, there was widespread concern heading into the Senate’s first tied session that the agreement would result in gridlock and partisan bickering.¹³

Ultimately, the Senate was productive during the tied period, and the sessions were notable for their lack of partisan contention. The number of bills passed by the Senate rose after the tie, from 336 in 2006 to 370 in 2007, and 447 in 2008. Lt. Governor Jari Askins (a Democrat) cast only two tie-breaking votes over this period, and most bills were passed with meaningful bipartisan support.¹⁴ The “silver bullet” provisions were not frequently used, but Republicans did utilize the provision to pass a voter I.D. bill, and a bill prohibiting state funding of abortions, while Democrats used their “silver bullet” privileges on

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a drug re-importation measure, some of the only bills passed during the tie that were seen as particularly controversial or partisan.¹⁵

The Senate’s first tied session wrapped up early, and was notable for the passage of an immigration bill, a bipartisan budget deal, and an impactful lawsuit reform bill, though the latter

two were ultimately vetoed by Democratic Governor Brad Henry.¹⁶ *The Oklahoman* reported that the business of the Senate was conducted with an “unusual lack of rancor.”¹⁷

Successes continued in 2008, when the Senate helped to pass a bond package that included \$300 million for roads, \$100 million for a higher education endowed chair program, reforms of the state corrections department, an ethics law to ban campaign contributions from lobbyists during the legislative session, and several other pieces of major legislation.¹⁸

With each election, Republicans had steadily increased their numbers in the Oklahoma Senate. Correspondingly, the level of contention in the chamber rose.¹⁹ However, the tied period, which marked the end of many decades of Democratic control, offered a brief but dramatic departure from this trend. The goal of bipartisan cooperation was made explicit in the agreement forged by Senators Coffee and Morgan itself. Its preamble states:

While some skeptics have seen this historic equilibrium as a recipe for gridlock, we view it as an opportunity to work together to do the people’s business. Therefore, in order to ensure that the Oklahoma State Senate continues to function as the Oklahoma Legislature’s center of debate and deliberation, we, the members of the Oklahoma State Senate, set forth the following agreement and pledge to conduct the people’s business in a fair and impartial manner, to work in good faith and to honor both the letter and the spirit of this agreement.²⁰

Many senators use glowing language when discussing their thoughts on the operation of the chamber and the influence of the co-presidents during the tied period. Republican Mike Johnson, then co-chair of the appropriations committee, described the tie as his “favorite two years in the Senate,” after a long career. He spoke of an “unbelievable camaraderie” and “mutual respect” that typified the relations

between the parties in the chamber, a phenomenon he ascribed to the example set by Morgan and Coffee.²¹ Senator Clark Jolley similarly explained that “bipartisanship went deep” during the tie, and described a spirit of cooperation that began with the co-presidents but extended all the way to legislative staff.²²

Most committee chairs got along well, and in many cases, friendships developed. The co-presidents had made a conscious effort to match co-chairs that they thought would work well together. Senator Jolley noted that committees whose co-chairs struggled to get along were less successful.²³ According to several senators, the use of silver bullets was rare because of strong “tit-for-tat” bargaining relationships between committee co-chairs, who felt that ultimately they were reliant on one another to achieve their legislative goals.²⁴ This encouraged negotiation, and ultimately allowed each side to have legislation important to them advance. While the spirit of bipartisanship has faded in the years after the tie, senators that remain often cite the productive bipartisanship of the tied period as an example of how the chamber could be run.²⁵

Oregon House (2011-2012)

Oregon Democrats retained their control of the State Senate and Governor’s office after elections in 2010, but House elections resulted in a tie, with 30 Democrats and 30 Republicans. As the session approached, a group of seven Democrats, led by Rep. Arnie Roblan, and five Republicans, led by Rep. Bruce Hanna, negotiated a comprehensive agreement to resolve the tie and determine how the chamber would operate under bipartisan control.²⁶ The bargaining ultimately resulted in the adoption of a “co-agreement,” with equal partisan representation on committees, co-chairs from each party in charge of every committee, and two co-speakers: Democrat Arnie Roblan and Republican Bruce Hanna.²⁷ This case study is based in part on information from Oregon Representative Tobias Read, who was in the House during the tie, and participated in a roundtable discussion organized to help inform this report.

There was widespread skepticism about the prospects for smooth operation of the House under the agreement. With the consent of both co-chairs required to set a committee agenda, there were fears that the “co-arrangement” would significantly hinder the ability of majorities to move bills forward, and lead to gridlock.²⁸ Nevertheless, the period during which the chamber was tied was, according to *Governing* magazine and many other observers, one of the most productive in its history, as a number of major pieces of legislation passed with strong bipartisan support.²⁹ The House approved legislation making major changes to the systems through which the state provided education and healthcare, with the passage of a comprehensive package of education reform bills, the creation of the state health insurance exchange as part of the *Affordable Care Act*, and legislation to better coordinate health care with a greater focus on preventive and primary treatments.³⁰

Other milestones came when the Legislature closed a \$3.5 billion budget gap with a bipartisan agreement, and completed the post-census redistricting process without the intervention of the courts for the first time since 1911. All of this was accomplished in just 150 days: the shortest session of the Oregon House since 1969.³¹

Legislators of both parties expressed their surprise at the strong sense of cooperation, bipartisanship, and civility that typified the operation of the House during the tied period. Many have pointed to the close working relationship between Co-Speakers Hanna and Roblan as a source of the success of the

chamber during the tie. As Representative Ben Cannon explained, “There was a strong feeling of cooperation during this most recent legislative session, of bipartisanship and civility... the Co-Speakers set a strong tone – bipartisanship was necessary.”³² Hanna and Roblan were awarded joint “Public Official of the Year” Awards by *Governing* magazine for leading the tied chamber to two of the most productive legislative sessions in Oregon’s history.³³

The Co-Speakers emphasized the importance of civility “over and over again,” according to Hanna.³⁴ Their actions demonstrated that these were more than platitudes. Roblan credited the long hours the pair spent working together crafting the power-sharing agreement as the source of a mutual trust that helped guide them through the tie.³⁵ By the midpoint of the 2011 session the Co-Speakers were regularly conducting joint interviews. The *New York Times* teased them for finishing one another’s sentences.³⁶ They even adjourned the session with each holding part of a specially-made two-person gavel.³⁷ The importance of good relationships between legislators was apparent throughout the chamber. As Representative Tobias Read explained in a roundtable discussion organized in support of this report, “so much of our success – and difficulties – were a function of the individual personalities involved.”³⁸

The tied period was one of the most productive in the chamber’s history, and major legislation passed with strong bipartisan support.

Whatever the source of the spirit of cooperation that emerged during the tie, it had an impact on legislative outcomes. According to Roblan, there were many times leaders had to ask members of the two parties to sit down and find common ground, and “each time, they rose to the occasion.”³⁹

The chamber’s rules, which were modified as part of the power-sharing agreement, also played a role in making the session a productive one. Like the Oklahoma Senate, Oregon’s House also used an automatic calendaring process during the tie. This meant that any bill reported favorably by a committee would be scheduled for a vote on the House floor, and no co-leader or committee would have a chance to block it.⁴⁰ The agreement also reinstated the right of representatives to file discharge petitions, which would allow a majority of the chamber to recall a bill held up in committee, bringing it to the House floor for a vote.⁴¹

While these petitions were not used successfully, their mere existence is often enough to dissuade a committee chair (or co-chair, in this case) from blocking legislation with strong support in the first place.⁴² In any case, discharge petitions were generally unnecessary, due to the willingness of committee co-chairs to negotiate. If a co-chair’s counterpart from the other party asked that a bill be heard, most would readily give their consent in hopes that the favor would soon be returned.⁴³ Together, the automatic calendaring process and discharge petitions meant that the constraints of the tie were unlikely to preclude action on measures supported by majorities in committee and on the floor.

Washington House (1999-2001)

Legislators in Washington’s 98-member state House of Representatives were tied after elections in 1998, with 49 Republicans and 49 Democrats. The deadlock persisted after an identical result in 2000, until a November 2001 special election victory gave Democrats a majority.⁴⁴ In each period, the “co” agreement adopted was similar to those established in Oklahoma and Oregon, with Co-Speakers, Co-

Majority Leaders, and co-chairs in charge of each committee, but the results fell far short of the bipartisan success achieved in the other chambers. Research was supplemented by discussions with legislators who participated in the agreement, including Representative Sam Hunt, and former Representative and current State Senator Mark Schoesler.

In the Washington House, chairs have control over committee agendas. As chair of the rules committee, the Speaker has extensive control over the floor calendar: no bill can be considered without the Speaker's approval. A ruling of the Speaker is required before almost any motion can be heard on the floor.⁴⁵ As a result, the "co" agreement required co-chairs to agree before placing any item on a committee's agenda, and each co-speaker had the power to block any legislation from being brought before the full chamber. This structure was modified slightly in the second "co" agreement after elections in 2000, with the adoption of a provision that allowed each committee co-chair to place one item on the agenda of their committee over the objections of their counterpart.⁴⁶ Otherwise, the structure of the agreements that governed the tie in each period remained the same.

When the House convened for its first tied session in January 1999, Republicans and Democrats marked the occasion by coming together for a literal group hug. However, the bipartisan spirit signified by the gesture proved difficult to sustain or translate into legislative success.⁴⁷ By March, it had become clear that the operation of the chamber under the tie would be characterized by what Democratic Co-Speaker Frank Chopp described as "Gridlock, with a few exceptions."⁴⁸ The chamber's tied sessions were some of the longest and least productive in its history: few significant bills were passed, pressing issues went unaddressed, and multiple special sessions were required to accomplish critical legislative tasks.

The period after the 2000 election was particularly unsuccessful. After failing to pass a budget during the normal session and an additional special session, a second special session was required so that a budget could be passed in time to prevent a shutdown of the state government.⁴⁹ A third special session was called in hopes of finally passing a transportation bill that was widely seen as the Legislature's highest priority, but ended in failure.⁵⁰ Tempers flared as Republicans in the House, the only branch of state government not controlled by Democrats, were accused of making obstruction of the Democratic agenda their central goal.⁵¹ According to Washington State Rep. Sam Hunt, the biggest blowup came when the Democratic Co-Chair of the State Government Committee tried to hold a hearing on a bill that would allow state employees to engage in collective bargaining. It resulted in a tense discussion and, ultimately, a walkout by Republican members of the committee.⁵²

"Gridlock, with a few exceptions." –Dem. Co-Speaker Frank Chopp, on the operation of the Washington House during the tie.

Despite the anger and accusations that passed between the parties, most legislators blamed the tie itself for the chamber's poor performance.⁵³ With each party having absolute veto power at the committee level and on the floor, few measures of substance were ever brought to a vote. Those that did were seen as watered down, stripped of any elements that might cause controversy, and therefore inconsequential. One legislator described the bills that were passed as "Cheez Whiz Lite," while another remarked that they were "much like overcooked oatmeal. I mean, who cares anymore? It has no flavor. It has no zest."⁵⁴

The fact that much of the legislation that did pass did so with large bipartisan majorities voting in favor (81.5% of final passage votes in 2001 were unanimous) reflects the insignificance of the bills that survived to see a floor vote, more than any meaningful cooperation between the parties.⁵⁵ With legislators cognizant of the many obstacles to passing legislation under the agreement, bill introductions

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declined dramatically, as did the proportion of bills introduced that were ultimately brought to the floor. The number of contested final passage votes on House bills declined from 201 in 1997, the last session before the tie, to just 59 in 2001.⁵⁶

The difficulty faced by both parties in bringing substantive legislation to the floor was a direct result of the veto power each wielded at the committee and calendar stage, as the co-speakers,

Republican Clyde Ballard and Democrat Frank Chopp, readily admitted. Ballard explained that, "When each side can block something, you get a whole lot of bills off the table in a hurry. It stops the agenda of both caucuses."⁵⁷ Chopp agreed, saying, "Obviously in a 49-49 tie, a lot of things are set aside and will never see the light of day."⁵⁸

While under normal operation of the chamber, support of roughly 55 of the 98 representatives was generally sufficient for a bill to be allowed to come to the floor, the parties' joint control over the agenda during the tie meant that this standard was much higher. Republican Co-Majority leader Dave Mastin explained, saying that "with the dynamic where both sides have veto power, you have to have 80 or 90 people before you can really think about having the bill move."⁵⁹ A Democratic leader pointed out that, with each party subject to the other's veto rights, they were essentially acting as "co-minorities," with each unable to consistently bring legislation to the floor.⁶⁰

With Democrats in control of the Senate and governorship, House Republicans were especially willing to use their veto power to thwart the other side's agenda. Republican Co-Speaker Clyde Ballard became known as "Captain Gridlock" to many Democrats, due to the frequency with which he kept bills from seeing the floor and his willingness to hold up important legislation, like budgets and the transportation bill, in hopes of winning concessions.⁶¹ In one particularly controversial episode, Ballard killed an election reform bill that had the support of as many as 70 of the chamber's 98 members. Democrats were so frustrated with the decision that they staged a two-hour sit-in on the chamber floor.⁶² Senate Democrats, fed up with seeing their bills repeatedly die in the other chamber, began pushing for a constitutional amendment to increase the size of the House from 98 to 99 members, in hopes of avoiding future ties.⁶³

While gridlock dominated, there were occasional examples of substantive bipartisan policymaking. Former Washington State Rep. Mark Schoesler explained that while cooperation was generally difficult, exceptions were sometimes possible in committees with co-chairs whose personalities meshed well.⁶⁴ Horse-trading and tit-for-tat cooperation led to the passage of a major energy bill, and another dealing with water issues. As Representative Hans Dunshee explained, "We [Democrats] want more water for fish. Where can we get that? We can pay farmers to get more efficient. OK, that works. They [Republicans] get some pork for their districts, and we get some water in the streams."⁶⁵ However, the bipartisanship on display as these bills were crafted was the exception, rather than the rule.

From the two co-speakers to the parties' rank and file, the general tenor of inter-party relations during the tied period made collaboration difficult. Ballard and Chopp, the co-speakers for the duration of the tied period, didn't know one another well at the arrangement's outset, and hadn't worked closely together before. It was noted that the two men, one a self-made businessman and devout Methodist, the other a Seattle liberal described as one of the "greenest" Democratic lawmakers to ever hold a legislative leadership position, had opposing views on "almost any hot-button issue," and "share little in common other than job titles."⁶⁶

While colleagues described the pair as civil heading into the tie, they also noted that both were known for their tempers. The *Seattle Times* observed that the co-speakers "both have a lot of restraint, but there are certain buttons one can press and they'll go off."⁶⁷ Comparisons were drawn to the co-speakers from the last tie in the Washington House in 1980; unlike Chopp and Ballard, that pair were longtime friends before presiding over the chamber together. The *Seattle Times* reflected: "The tougher it got, the more valuable it was that they [the previous co-speakers] were friends – because they didn't take it personally."⁶⁸

In the absence of an established rapport and solid working relationship like that of their predecessors, Chopp and Ballard expressed reserved confidence in the first days of the arrangement that it would be a successful one, but Ballard acknowledged that, "Tomorrow, we could be in the middle of a major donnybrook."⁶⁹ Less than two months later, the partisan frustrations that would typify the arrangement had become apparent. Each leader had blocked measures in response to the other's lack of cooperation. Chopp complained of the difficulty in negotiating with his Republican counterpart, saying, "There isn't much that Clyde seemingly wants... they don't have much of an agenda to trade on," a charge which Ballard denied.⁷⁰ One Republican described the mood in the chamber in early March of 1999, saying, "Tempers flare – we're gonna have a meltdown. The temperature is up to 8 on a scale of 1 to 10."⁷¹ This pattern of gridlock and subsequent finger-pointing would be a trend that continued for the tie's duration.

Inter-Party Governing Coalitions

While tied chambers force the parties to find a way to share power, sometimes bipartisan arrangements are entered into voluntarily, through the creation of inter-party coalitions. Although inter-party governing coalitions are sometimes seen as opportunistic maneuvers made by a breakaway faction of one party, they nonetheless carry the potential to enhance the degree to which the policymaking process is bipartisan.

Coalitions typically form in response to a reality that is present in every chamber: on some issues, certain legislators' views will be more consistent with those across the aisle than with members of their own party. When there is enough overlap between the goals of one party and those of a faction of the other, a coalition may form, putting the breakaway faction in a unique position. They must find a way to share power with their new coalition partners that is mutually acceptable, but also determine what role should be played by the party they have abandoned.

Like tied chambers, coalition arrangements leave their members with no choice but to find ways to work together to craft and advance legislation, but coalitions also face the added difficulty of dealing with the tension and animosity that often accompanies their creation. The efforts of these chambers to

overcome partisan contentiousness and find ways to legislate effectively can therefore help inform efforts to promote and facilitate bipartisan policymaking.

At least twenty-three coalition arrangements have come into place since 1985. Some coalitions formed to organize and run a chamber, while others came together only for the election of a specific leader. Coalition arrangements have been established less frequently in recent years: there were fourteen coalition arrangements in the 1980s, five in the 1990s, and just four from 2000 to 2014.⁷²

In 2014, coalitions controlled state Senate chambers in New York and Washington. In Alaska, a bipartisan coalition survived until 2012; the chamber's Senate Bipartisan Working Group had controlled the chamber off and on since 2006, part of a unique history of bipartisan deal-making that has seen six coalitions come to power in the state's legislature in the last 30 years and, in 2014, saw election of a formerly Republican independent governor who had run after aligning himself with Democrats. But in New York and Washington, where no such tradition exists, Democratic state senators were incensed when small groups of fellow Democrats defected and voted with Republicans to organize their respective chambers and overturn slim Democratic majorities. In New York, breakaway Democrats formed the five-member Independent Democratic Caucus (IDC). In Washington, they joined with Republicans to create the Majority Coalition Caucus (MCC). Despite the undeniably contentious circumstances surrounding each group's creation, their experiences provide insights into the conditions necessary to empower bipartisan collaboration in state legislatures.

New York's Independent Democratic Caucus

The New York State Senate's recent history has been marked by spectacle. After the 2008 elections, Democrats held 32 of 62 seats—their first majority since 1964. However, in June 2009, two Democrats joined with Republicans in an attempt to oust the Democratic Majority Leader and replace him with a Republican. After over a month of chaotic power-grappling in which Senators switched back and forth between the two caucuses while procedural warfare raged on the floor and in the courts, the chamber returned to one-party control with Democrats once again holding a 32-30 majority.⁷³

In the 2010 elections, the Republicans regained control of the Senate, 32-20.⁷⁴ In January 2011, Sen. Jeff Klein (D-Bronx) led the formation of the Independent Democratic Conference, breaking from the Senate's Democratic leadership.⁷⁵ The IDC remained independent from the major party caucuses in 2011 and 2012, siding with each side where they saw it appropriate, for example, by voting with Democrats and four Republicans to pass a same-sex marriage bill that ultimately became law.⁷⁶

Following elections in 2012, Democrats regained a slim majority, with 33 seats in the now 63-member chamber, but the five-member IDC formed a leadership coalition with Republicans, instituting a unique power-sharing arrangement between IDC Leader Klein and Republican Leader Dean Skelos, and retaining control of the chamber.⁷⁷ A Senate press release from December 2012 described the arrangement:

The Independent Democratic Conference will be formally recognized as a third, permanent Senate conference. Senator Klein and Senator Skelos will assume the roles of Conference Leader for their respective conferences and will administer joint and equal authority over (1) the daily Senate agenda (a/k/a the "Active List," which lays out which bills will be voted on each day), (2) the state budget, (3)

appointments to state and local boards, and (4) leadership and committee assignments for their respective conferences. Under the agreement, coalition leaders will need to work together to lead the Senate forward.⁷⁸

The coalition was formally implemented in the Senate rules for the 2013-14 session, which designated the Republican Conference and the IDC jointly as the body's Majority Coalition (in the previous session, Republicans and the IDC had cooperated, but Republicans had organized the chamber on their own, as they possessed an absolute majority).⁷⁹ The power-sharing component was formalized through a January 9, 2013 resolution electing both Klein and Skelos as Temporary President—the body's chief procedural authority—and setting forth a schedule by which the title would periodically alternate between them.⁸⁰

In practical terms, the arrangement gave Skelos and Klein joint control over the floor agenda, effectively granting each leader veto power over any bill that left committee. It also allowed the GOP-IDC to dictate control of the Senate's committees. As of September 2014, all 34 committees were chaired by Majority Coalition members—four by the IDC and the rest by Republicans.⁸¹

The early days of the coalition were marked by the passage of the NY SAFE Act, a controversial gun-safety bill promoted by Democratic Governor Andrew Cuomo. The coalition also successfully agreed to budgets by the state's April 1 deadline in both 2013 and 2014.⁸² In his victory speech following his victory over a primary challenger in September 2014, IDC leader Klein touted the Senate's accomplishments under the power-sharing arrangement, which included passage of the NY SAFE Act, an increase in the minimum wage, the National Popular

Vote plan to reform the Electoral College and a bill to fund universal pre-K education in the state: "The IDC has proven that we can govern. I don't think anybody wants to go back to the bad old days when Albany was dysfunctional, where we couldn't get anything. The only thing we were known for was scandal."⁸³

The arrangement gave Skelos and Klein joint control over the floor agenda, effectively granting each leader veto power over any bill that left committee.

For their part, Republicans were able to control the majority of legislation passed during the coalition period. Central among their successes were dozens of separate tax cut measures, in addition to tax relief programs that targeted seniors and the middle class.⁸⁴

Based on the rough metric of total bills passed, the coalition sessions did indeed show an increase in legislative productivity from preceding sessions. The Senate passed 1,460 bills by July in its 2014 session, and 1,408 in 2013, up from an average of 1,230 in 2010-2012, before the coalition came to power.⁸⁵ An interesting byproduct of the shared power between the IDC and Republican conference leaders is that they voted the same way on floor bills 99.76% of the time in the 2013-14 session—an expected outcome given that their joint approval was required for all bills to come to the floor.

However, progressives grew increasingly dissatisfied with the coalition and its failure to address campaign finance, immigration, and other priorities.⁸⁶ The IDC was also accused of using the coalition as an excuse to let progressive legislation die without a floor vote by unnecessarily surrendering veto power to the GOP.⁸⁷ In 2013 and 2014, over 75% of the bills passed by the Senate were introduced by

Republicans (and less than 10% by members of the Democratic caucus), despite the fact that the Democratic caucus controlled over 40% of the chamber's seats over this period, and Democrats retained a nominal majority.⁸⁸ Still, this was more bipartisan than the 2012 session, in which Republicans introduced nearly 90% of all bills passed.⁸⁹

Not all agreed that the coalition had proved a boon for productivity: progressive activist Karen Scharff commented that "I think we have seen this coalition style of government has been a real roadblock to getting legislation passed."⁹⁰ In his remarks on the floor following the NY SAFE Act vote, Democratic Senator Ruben Diaz alluded to the tensions involved in the power-sharing agreement:

I understand the Governor had to come down so – to allow Jeff Klein to convince Dean Skelos to submit the bill to the floor. But ladies and gentlemen, remember -- and I'm voting yes – remember that more than 32 Democratic Senators are voting for this bill tonight. So this is a Democratic, this is a Democratic bill. Even though we are not in control in the chamber, I want everyone to know that this is – we are – more than 32 Democratic Senators, we are voting for this bill. So this is our bill. And we Democrats are the ones putting this together.⁹¹

In 2014, progressives in the state threatened primary challenges to Klein and other IDC members. They pushed Cuomo and New York City Mayor Bill de Blasio into making a play to tip the IDC back into the Democratic camp⁹². A deal was announced in late June 2014, under which the IDC would form a coalition with Senate Democrats after the November elections—apparently maintaining a similar power-sharing structure as before, with Democratic leader Andrea Stewart-Cousins (Yonkers) replacing Republican Skelos as Klein's co-leader. Klein framed the switch in policy terms, stating that it would pave the way for progressive priorities such as the DREAM Act, public campaign financing, abortion protections, and a further minimum wage increase.⁹³ Skelos cast the move as a political response to primary threats against IDC members.

When the Senate is closely divided, the IDC has the ability to serve as a kingmaker bloc, as its five members should be enough to place control of the chamber in the hands of whichever major party with which it chooses to caucus. While the IDC is far from immune to political pressure from its Democratic base, Republican Senator Martin Golden speculated in September 2014 that the IDC's commitment to rejoin the Democratic conference would not survive through November, and that ultimately the IDC would caucus with Republicans again.⁹⁴

None of the primary challenges against IDC members were successful, and Klein vowed that the IDC would retain its king-making power, saying in his victory speech following the primary that "The IDC will be a separate conference for many years to come within the State Senate."⁹⁵ However, Republicans picked up enough seats in November 2014 elections to control the chamber without help from the IDC. Senate Republicans have announced that they will continue to work closely and in consultation with the IDC, though there will be no formal power-sharing.⁹⁶

Washington's Majority Coalition Caucus

Coalition control of Washington's state Senate arose under similar circumstances. After elections in November 2012, Democrats found themselves with a slim majority, holding 26 of the chamber's 49 seats. Their control of the chamber slipped away before the session began, however, when Democrats

Rodney Tom and Tim Sheldon joined with Senate Republicans to create the Majority Coalition Caucus (MCC) and seize control of the chamber. Republicans agreed to install Sheldon as Senate President Pro Tempore, and elected Tom as Majority Leader.⁹⁷ This case study is based in part on interviews and discussion with the MCC's leaders, Republican Mark Schoesler and Democrat Rodney Tom.

The majority party in the Washington Senate, as in most chambers around the country, had traditionally controlled the chairmanship of each committee. Sen. Tom and the MCC instead proposed that control of committees be divided, with six chaired by Democrats, six by Republicans, and the remaining three led by co-chairs – one from each caucus.⁹⁸ The membership of the committees would be evenly divided, with neither party given more than a one-member advantage in any committee.⁹⁹

Tom's decision to leave the Democratic caucus while structuring a deal that would divide committee power between the parties is in keeping with a political career in which he has not fit in comfortably on either side of the aisle. Socially liberal and fiscally conservative, Tom was a Republican before switching parties in 2005.¹⁰⁰ His decision to once again caucus with Republicans was motivated, he says, largely by frustration with the partisan battles over the state budget earlier in 2012, and his fellow Democrats' desire to raise taxes to alleviate mounting fiscal pressure.¹⁰¹

"This winner-take-all mentality didn't make a lot of sense to us, where just because you're up by a couple [seats], you get all the committees. What we wanted to do was get away from some of the acrimonious relationships, try to build a more bipartisan effort."
–Rodney Tom, MCC Leader

Sen. Tom's legislative philosophy, which he believes the MCC embodies, is informed by his experience of seeing good ideas come from both sides of the aisle. At the August 2014 roundtable organized to inform work on this report, Tom said: "This winner-take-all mentality didn't make a lot of sense to us, where just because you're up by a couple [seats], you get all the committees. What we wanted to do was get away from some of the acrimonious relationships, try to build a more bipartisan effort."¹⁰² This emphasis on bipartisanship and "shared leadership" was made explicit in the "Governing Principles" document released by the MCC, and in a *Seattle Times* op-ed written by Tom and Republican Senator Mark Schoesler that explained the group's goals:

Our intent is straightforward and unprecedented: to change how the Senate works, encouraging its members to cooperate and collaborate like never before and establishing a style of lawmaking that promotes policy over politics. ... We also believe these changes will create an environment in which Senators will be comfortable bringing their best ideas to the committees, without fear that their proposals will be summarily shot down on partisan grounds.¹⁰³

In addition to calling for enhanced bipartisanship and cooperation, the MCC's "Governing Principles" document outlined the group's legislative priorities, which included "budget sustainability," education reforms and enhancements, and "governing collaboratively to protect our most vulnerable while prioritizing the needs of middle class Washingtonians."¹⁰⁴ A decision was also made to avoid taking up divisive social issues.

The MCC's bipartisan intentions were called into question by Senate Democrats almost immediately. It was pointed out that under the MCC plan, Republicans would control some of the most critical committees, including the Ways and Means Committee, which is responsible for the state budget.¹⁰⁵ Democrats were also angry that the plan had been created without any input from their caucus. Ousted Democratic Majority Leader Ed Murray said, "Coalition means entering into an agreement with people different than yourselves. But 24 of us weren't invited into those discussions. That's not bipartisanship."¹⁰⁶

Democrats ultimately made a counter proposal that would have given each committee a Democratic and Republican co-chair and divided committee membership equally, but their proposal was defeated, and the MCC plan was adopted on a 25-23 vote. After strong denunciation of the plan from Senate Democrats, only three accepted the MCC's offer of committee chair or co-chair positions.¹⁰⁷

While Democrats chose not to fully participate in the MCC plan because they did not want to grant legitimacy to an arrangement they saw as a disingenuous partisan power grab, the lack of cooperation likely contributed to the impression that MCC control was not significantly different than a standard Republican-run chamber. In one notable example from 2013, the Republican chair of the Senate Higher Education Committee, Barbara Bailey, blocked Washington's version of the DREAM Act, which would have made financial aid available to some undocumented immigrant college students. The bill had passed the state House and was sponsored in the Senate by senators from both parties, including MCC Leader Rodney Tom. A compromise led Bailey to reverse her position in 2014 and the bill was ultimately passed, but if Democrats had accepted the MCC's offer of the higher education committee chairmanship position from the outset, they likely would have been able to join their House colleagues to pass it into law much earlier.¹⁰⁸

Hargrove described the budget crafting process as the most "open and inclusive" that he had seen in his nearly three decades in the legislature.

Though the DREAM act ultimately passed over the objections of some Republicans, the Republican-dominated MCC was accused of enforcing strict discipline on other major bills, seeking to prevent its more moderate members from crossing the aisle to vote with Democrats.¹⁰⁹ To some, the MCC's reign has looked much like outright Republican control of the chamber. While the MCC's stated objectives included a focus on collaboration and bipartisanship, Senator Karen Keiser spoke for many Democrats when she complained, "I've never seen less discussion. I've never seen less negotiation."¹¹⁰ Even moderate Democrats like Senator Steve Hobbs, who helped broker compromises on a number of major bills, acknowledged that "true centrism" would have required the MCC to advance a few more bills that were popular, but left-of-center, like the Reproductive Parity Act, which had majority support in the Senate but was never brought to the floor.¹¹¹

Bipartisanship clearly did not permeate every action of the Senate in the MCC's first session, as cross-party collaboration was undeniably present as the chamber carried out its most important task: crafting the state budget. Democratic Senators Jim Hargrove and Sharon Nelson worked closely with MCC leaders to ensure that the final bill reflected their party's priorities. Though Republicans were adamant that the bill should rely only on spending cuts, rather than tax increases, to resolve the state's budgetary shortfalls, they agreed to Democratic stipulations that funding be preserved for certain critical social programs, and that the state participate in the expansion of Medicaid under the Affordable Care Act,

among other measures that “would have been doubtful in a Republican-only document.”¹¹² Hargrove described the budget crafting process as the most “open and inclusive” that he had seen in his nearly three decades in the Legislature.¹¹³

House Democrats were displeased with the Senate’s cuts-only budget, and Governor Jay Inslee ultimately called for a special legislative session to ensure that the two chambers would reconcile their differences in time to avoid a shutdown of the state government. Despite heavy criticism from the Governor, the House, and some progressives in the Senate itself, the MCC was steadfast. The final bill largely resembled the Senate plan, and passed the chamber on a 44-4 bipartisan vote.

The MCC’s leaders point to the budget success as their greatest accomplishment, noting that the final bill solved the state’s fiscal crisis in a manner that was consistent with their fiscal priorities, but also represented an “unprecedented level of cooperation between Republicans and Democrats.”¹¹⁴ Other successes included a package of education reform bills that received strong bipartisan support, and a bill to fund cleanup of polluted sites.¹¹⁵ Senator Schoesler asserted that the period of MCC leadership was “absolutely more bipartisan and cooperative” than previous sessions.¹¹⁶

Some of the sharpest criticism levelled at the MCC revolved around the coalition’s difficulty in coming to an agreement with Democrats in either chamber on a transportation package that has been seen as one of the state’s most pressing needs for several years.¹¹⁷

It is unclear what role the MCC will play in Washington State in 2015, as Tim Sheldon is the lone surviving Democratic member, and Republicans would retain a 1-seat majority without him. Other Senate Democrats have sought their own allies across the aisle, electing Republican Pam Roach to the largely ceremonial position of Senate President Pro Tempore, with the help of votes from Roach, and another Republican, Don Benton. The move was seen as an affront to Sheldon, who had served as President Pro Tempore in the previous session and was expected to retain the office.¹¹⁸

Lessons for Collaborative Policymaking

1. Centralization of agenda-setting power in the hands of party leaders constrains opportunities for bipartisan policymaking.

While the power-sharing arrangements discussed here precipitated negotiations over everything from the allocation of funding for legislative staff to the distribution of parking spaces for legislators, the “power” with which they were primarily concerned is power over the legislative agenda. Unsurprisingly, differences in the way this power was divided between the parties help explain not only the legislative success of the arrangements, but the degree to which they were seen as bipartisan.

The “co” agreements governing the tied chambers in Oklahoma, Oregon, and Washington were nearly identical. In each, committee membership was divided equally between the parties, committee co-chairs shared authority, and co-speakers and senate co-presidents had to agree to exercise the powers of their offices. Yet, while arrangements in Oklahoma and Oregon led to productive sessions with unprecedented levels of civility and bipartisanship, the result of the Washington tie was almost the polar opposite.

Though there are a multitude of factors that could help explain these outcomes, one glaring difference that likely played a role is the gatekeeping power wielded by the co-speakers in the Washington House. Unlike their counterparts in Oklahoma and Oregon, where automatic calendaring meant that bills reported from committee were placed directly on the floor calendar, the scheduling power of the Washington Co-Speakers meant that each could block any measure from being brought to the floor. Both admitted to blocking bills in retaliation for decisions made by the other, and it was the use of this power that earned Republican Co-Speaker Clyde Ballard the nickname ‘Captain Gridlock’ and the ire of Democrats in his chamber. While the strong relationship between Oregon’s co-speakers and Oklahoma’s

Prospects for bipartisanship are greatest when agenda-setting power is diffuse, and rank-and-file members, rather than singular party leaders, can decide for themselves what ideas are worthy of being brought to a vote.

Senate co-presidents surely contributed to their chambers’ successes, mutual veto power presented a test to the bipartisan intentions of Ballard and Chopp that the others did not have to face.

The Washington House also allowed co-chairs greater gatekeeping power at the committee level. In Oklahoma, each co-chair had three “silver bullets” that could be used to place an item on the committee agenda.

With two co-chairs per committee and sixteen committees, this provision ensured that major legislation would flow through committees unimpeded, regardless of the committee chairs’ ability to negotiate. In the end, a strong pattern of tit-for-tat negotiation took hold in Oklahoma and meant that silver bullet provisions were infrequently used. Still, each party did use them to pass significant legislation, and their presence likely dissuaded many co-chairs from attempting to kill bills in the first place. As discussed, in Washington’s second tied session, committee co-chairs were ultimately given the right to have one bill heard over their counterparts’ objections, but even where these were used, a measure that would have been blocked by a co-chair could still be blocked by one of the co-speakers after leaving committee.

In Oregon, discharge petitions meant that there was little incentive for a committee chair to block a bill that had strong support in the chamber, as a simple majority of representatives had the power to recall the measure and place it on the calendar for floor consideration. Thus, committee chairs were unlikely to block a measure in the first place unless floor support was weak, a fact evidenced by the failure of discharge petitions that were initiated during the tie.¹¹⁹ While these petitions are used in other chambers, and had been used in Oregon in the past, they were revived in the rules that came with the power-sharing agreement as an intentional check on the gatekeeping power of committee co-chairs, with the intention of preventing gridlock and upholding majority rule.¹²⁰

Without effective mechanisms like multiple “silver-bullets” or discharge petitions that would have allowed legislators to overcome partisan gatekeeping at the committee stage, and with each co-speaker holding veto rights over the floor calendar, the “co”-arrangement in the Washington House carried much greater potential for partisan gridlock and contention. In many legislatures, the minority has few opportunities to see its bills reach the floor, and under the Washington agreement, as one legislator pointed out, the parties’ unchecked agenda-setting power effectively made them co-minorities.¹²¹ Disharmony in the chamber is often the result when one side feels shut out of the process. When both sides are shut out, it is inevitable.

Gatekeeping rules help explain the different outcomes in coalition arrangements as well. Though New York's IDC and Washington's MCC coalitions were similar in many respects – each was created after a small group of moderate Democrats broke away from their party to join with Republicans in a new majority – major differences in the way that agenda-setting powers were allocated in the two chambers had a significant impact on the way the arrangements functioned.

In New York, Democrats had little say over what bills would be heard in committee and brought to the floor. Under the agreement that brought the IDC coalition into existence, the vast majority of committee chair positions were given to Republicans, with the remainder going to the IDC. Members of the Democratic conference could only have their bills heard in a committee with the consent of the chair. Even when a Democratic bill did make it out of committee, joint control of the legislative calendar by the IDC and Republican co-leaders meant that the opposition of just one of them was enough to kill the bill. These constraints help explain why less than 10% of the bills passed by the Senate under coalition control were introduced by members of the Democratic conference.

Republican control of agenda-setting powers also explains why several Democratic and IDC bills that likely enjoyed the support of the majority of the chamber's members, like the DREAM Act and campaign finance reform, were never brought to a vote. Ironically, the campaign finance reform bill was itself an IDC bill, but one that they did not publicly pressure Republicans to bring to a vote.¹²² The Democrat-favored measures that did pass did so only because they were either supported by Republican co-leader Skelos, or a result of tit-for-tat bargaining between Skelos and IDC leader Jeff Klein of the same sort seen in the co-chair and co-leader relationships in the tied chambers examined above. The IDC's now-defunct offer to form a coalition with Democrats in 2015 in order to pursue latent Democratic legislation reflects the ability of the Republican co-leader to block bills supported by the majority of the chamber under the current arrangement.

Agenda-setting power in Washington under the MCC was considerably more diffuse. The MCC's offer to let members of the Democratic caucus chair half of the Senate's committees illustrates a major distinction in the governing philosophies of the two coalitions. Had Democrats accepted each of these positions, it would have meaningfully improved their ability to advance their legislative priorities. This is evidenced by the year-long delay in passing their own version of the DREAM Act, which was held up by the Republican chair of the Higher Education Committee—a position that the MCC had originally offered to Democrats.¹²³

Even without control of half of the Senate's committees, Washington's Senate Democrats still had a broader purview to advance their legislation than their counterparts in New York. In Washington, bills are selected for consideration on the floor not by the majority leader(s), as in New York, but by a vote of the Rules Committee, which was divided evenly between Democrats and Republicans during the MCC period. Thus, any Democratic bill that came out of committee in the Washington Senate could be brought to a vote on the floor without the assent of Republican leadership, provided it found support among a majority of the members of the rules committee.

The decentralized nature of agenda-setting power in the Washington Senate made it more fertile ground for the creation of bipartisan policy than the New York chamber, in which Democrats were reliant on the cooperation of Republican leadership for their bills to be brought to a vote. Still, Washington Senate Democrats would have had a greater role to play in the policymaking process had they accepted the committee chair positions they were originally offered.

The distribution of agenda-setting powers at the committee level and on the chamber floor is the critical element of any power-sharing arrangement. Prospects for bipartisanship are greatest when agenda-setting power is diffuse, as in Washington, and rank-and-file members, rather than singular party leaders, can decide for themselves what ideas are worthy of being brought to a vote. When agenda-setting power in a power-sharing arrangements is vested in individual party leaders, bipartisan collaboration is most likely when each party is given equal weight, and leaders from each side are reliant on one another to advance their priorities, as in the co-leader and co-chair relationships in tied chambers. This was not the case in New York, where the Republican leader had veto power over the agenda of the Democratic Conference, but non-IDC Democrats had no similar power over Republican legislation to use as a bargaining chip.

These relationships between agenda-setting powers and prospects for bipartisan policymaking can also be applied outside the context of power-sharing arrangements. The next chapter examines everyday rules and practices from state legislative chambers that are consistent with these principles and can be expected to promote a more collaborative legislative process.

2. Prospects for bipartisan policymaking are enhanced where there are strong relationships between legislators and legislative leaders of different parties.

According to political scientist Thom Little, in power-sharing arrangements, “trust between the leadership of the two parties is by far the most important factor. No matter what the rules are, if the two leaders don’t trust each other, it will be a disaster.”¹²⁴ The cases presented here are entirely consistent with Little’s argument. In each, positive legislative outcomes were credited to horse-trading, or “tit-for-tat” negotiations between the parties. These bipartisan negotiations, whether they are over the legislative agenda, or the finer points of a specific policy, cannot be effective unless each side trusts the other to eschew dirty tricks and follow through on their promises. The relationships between legislators, especially those in leadership positions, had a direct impact on the ability and willingness of the parties to cooperate, and ultimately on legislative outcomes.

In tied chambers, the differences in tone that characterized their operation under power-sharing are stark, especially among party leaders. In the Washington House, the parties were led by co-speakers that did not know one another well, were seen as having little in common, and known for their tempers. Naturally, their ability to cooperate was limited.

Given the example set by the co-speakers, and the fact that their cooperation was necessary for bills to be heard on the floor, it is unsurprising that cooperation was also scarce in committees.

“No matter what the rules are, if the two leaders don’t trust each other, it will be a disaster.”

Of the few notable bipartisan successes there were in

Washington, each was the result of horse-trading, negotiation, and compromise.¹²⁵ Unfortunately, the stressed relations between the parties meant that their willingness and ability to engage in this process was lacking.

The inter-party relations on display during ties in Oregon and Oklahoma were starkly different. In each, legislators from both parties point to the strong personal relationship between the co-leaders as a primary source of the sessions’ success. The trust and mutual respect demonstrated by leaders set an example that was emulated by committee co-chairs and the rest of the chamber.

Moreover, each pair made it known explicitly that civility and cooperation would be emphasized from the outset. Oregon House Co-Speaker Arnie Roblan explained, saying, “How you treat people is as important as what the outcomes are. If people feel like they have a voice, they’re more involved in getting into the solution making process.”¹²⁶ In Oklahoma, Senator Kenneth Corn explained that the social atmosphere of the chamber changed after the adoption of the “co” agreement.¹²⁷ As a result, committee co-chairs cooperated, and even “became friends,” and were reluctant to block legislation.¹²⁸ In Oregon, the same was true. As Representative Tobias Read explained in the August 2014 roundtable discussion organized for this report, Oregon’s co-speakers acted in cooperation to protect the interests of one another and of the chamber as a whole, rather than as agents of their parties during the tie, a much different picture than that painted of the relationship between co-speakers in Washington.¹²⁹ Clearly, in each of these chambers, relationships facilitated cooperation and negotiation between party members and leaders that were not possible in Washington.

The role of civility was similarly evident in coalition arrangements. In both cases, the formation of a coalition raised tensions between Democrats and the new Republican-dominated majority, as Democrats’ control of the chamber was suddenly undone by members of their own party. In Washington, Democrats largely refused to participate in a proposed power-sharing deal that they saw as illegitimate, and the state’s Democratic Party Chairmen authored a fundraising message describing Senators Tom and Sheldon as “traitors,” who were “no longer part of the Democratic Party.”¹³⁰ In New York, the IDC was likewise cited as a source of “tension and disorder” during its 2013 session, and drew the ire of progressives both inside and outside of the Senate as it was seen as standing in the way of their priorities.¹³¹

If not for the damaged relationships between Rodney Tom’s MCC and the rest of the Washington Democratic Party, they may have chosen to participate fully in the power-sharing arrangement by accepting the MCC offer of committee chair positions. But mistrust and anger related to the coalition’s formation precluded their cooperation. As a result, they missed opportunities to contribute to legislative outcomes.¹³²

In New York, strained relations between the Democratic Party and its breakaway faction similarly impacted prospects for bipartisanship. Progressive Democrats were frustrated with the coalition due to their inability to get votes on many Democratic bills despite the nominal majority the party held in the chamber.¹³³ For its part, the coalition showed little desire to include Democrats in the process, and agenda-setting rules allowed them to retain control. Stronger personal ties and greater civility between the parties might have motivated a more inclusive process. Instead, exclusion bred more resentment.

Thus, in any chamber, agenda-setting rules that facilitate inclusion of both parties in the policymaking process go hand-in-hand with civility and mutual respect. As Arnie Roblan explains, “When you don’t give a voice to the minority, it creates real animosity.”¹³⁴ The inverse is also true, tension and incivility make the minority less likely to be included in the legislative process. The second half of this report highlights ways that collaborative policymaking can be promoted through the application of these lessons.

II. Legislative Rules and Practices: Democratizing the Agenda to Foster Collaboration

Collaborative policymaking can be facilitated by empowering legislators in the minority to play a meaningful role in the legislative process. In many chambers, structural barriers limit the ability of the minority (both the minority party and legislators who might side with the minority on a given issue) from impacting legislation and seeing their bills advance, even those that might be supported by a bipartisan majority. However, rules and practices already in use in many state chambers can remove these obstacles and clear a path for bipartisan legislation. Evidence from power-sharing arrangements and the experiences of these other chambers points to specific structural reforms, most of which impact the distribution of power over the legislative agenda, which can foster inclusion and cooperation in the legislative process.

As noted by political scientist Nancy Martorano Miller, seemingly small differences in the rules that govern minority party rights “can have a profound impact on the legislative process and the content of legislation.”¹³⁵ Rule changes can lead to bipartisan legislative outcomes in two ways: they can 1) foster collaboration between the parties as they find mutually agreeable solutions by combining the best ideas of both parties, or 2) equip the minority to extract concessions from the majority as they struggle to advance their agenda. If cooperation and legislative efficiency are desired, the first route is clearly preferable.

Recent power-sharing arrangements provide a window into the way rules, especially those governing agenda-setting power, can have a significant impact on the prospects for bipartisan cooperation in any chamber. Our analysis shows that, in both tied chambers and those run by inter-party coalitions, the arrangements under which agenda-setting power was least concentrated led to less contention and more bipartisan legislation. As discussed in the section on coalition arrangements, the centralization of agenda-setting power in the hands of the majority leader in the New York Senate created obstacles for bipartisan legislation and a source of contention that was absent in the Washington Senate under the Majority Coalition Caucus (MCC), where the role of the closely divided rules committee meant that agenda-setting power was more diffuse.

Similarly, tied chambers in Oklahoma and Oregon, where there was no centralized control of the floor agenda, were more bipartisan and productive than the tied Washington House, which adopted an agreement that was nearly identical to the others, save for the veto-power over the floor calendar given to leaders of each party. In each of type of arrangement, centralized agenda power was used by leaders to block legislation that did not have its primary base of support well within their own party. As the tendency of centralized agenda-setting rules to constrain prospects for bipartisanship in chambers with

power-sharing arrangements remains applicable in chambers under normal majority control, this observation can be used to identify rules that will promote bipartisan policymaking in any chamber.

The Primacy of Agenda-Setting

Scholars studying Congress have identified a number of potential sources of increased partisanship and polarization. Some are external, like electoral structures and the influence of money in politics, while others originate from within the institution itself, like enhanced “teamsmanship” as the parties seek to differentiate themselves from one another, and the breakdown of bipartisan norms.¹³⁶ Similar phenomena can be expected to challenge bipartisanship and collaboration at the state level. Only one of the widely hypothesized internal sources of the decline of bipartisanship can be directly tied to legislative rules and procedures: agenda control.

Control over agenda-setting is the “most fundamental power” in determining legislative outcomes.¹³⁷ In the baseline for distribution of legislative agenda-setting power, as typified in the modern U.S. House of Representatives, the majority party maintains control at both the committee stage and at the calendar stage, when bills are scheduled to be brought to the floor.¹³⁸ At the committee level, control over the agenda is generally wielded by committee chairs selected by party leadership.

In the U.S. House and most state legislative chambers, committee chairs have the power to block legislation assigned to them by declining to bring it before the committee. Committee members, most of whom come from the majority party, have agenda-setting powers of their own as they decide which bills brought before them will be allowed to proceed to the floor. On the floor, a House speaker, Senate president, or a committee controlled by the majority often decide whether a bill will be brought before the chamber for a vote.¹³⁹

In their influential study of party government in the U.S. House, political scientists Gary Cox and Mathew McCubbins explain that control of these offices allows the majority to form “a procedural cartel that collectively monopolizes agenda-setting power.”¹⁴⁰ While the majority party’s leadership remains free to advance legislation favored by the minority if they see fit, in practice, the majority’s gatekeepers tend to follow what Cox and McCubbins call “the first commandment of party leadership – *Though shalt not aid bills that split thy party.*”¹⁴¹

Because House speakers and Senate presidents are elected by their party, and they in turn often choose committee chairs, keeping the party’s rank-and-file happy is an obvious goal for holders of these offices. This means that majority party leaders have an incentive to block bills that lack the support of a majority of the members of their caucus (a principle known as the “Hastert Rule” in the U.S. House). In states, the majority party’s standards for what bills are worth pursuing can be even higher, with leadership sometimes reluctant to alienate even a small portion of their members by bringing a bill they strongly oppose to the floor.¹⁴²

The majority party’s control over agenda-setting powers, in combination with the desire to protect their members from making floor votes on legislation that they oppose, has a range of effects that significantly constrain the ability of the minority party to meaningfully contribute to policymaking.

Majority control over the agenda means that most of the policy debate and bargaining that shapes legislation can be done within their party, rather than between the parties. On a given issue, whatever bill is ultimately allowed to reach the floor represents the consensus position of the majority party to the greatest extent possible, such that in many cases, “the deals that would in fact be made had already been made among the members of the majority party before the minority party members even had a chance to make the first offer.”¹⁴³ By allowing the majority party to maximize agreement on a bill in their caucus before it reaches the floor, gatekeeping allows them to minimize the number of minority party votes (if any) that will be needed for the bill to pass, eroding any leverage the minority might have to shape the bill to their liking. As a result, in a closely divided chamber, policy outcomes on a given

The power of majority party gatekeepers means that, in many cases, policies that would draw the support of a bipartisan majority in the chamber are ruled out from the start.

issue may not represent the median view, as would be expected under a neutral agenda-setting regime, but may instead be pushed towards the median view of the majority party, exaggerating their influence beyond what would be expected from their numerical advantage alone.¹⁴⁴

The tendency of majority party gatekeepers to prevent votes on bills not supported by a large majority of their caucus also means that, in many cases, policies that would draw the support of a bipartisan majority in the

chamber are ruled out from the start. Majorities within a chamber might come together across party lines to agree about any manner of legislation, but so long as their preferences are at odds with those of the majority party’s agenda setters, the will of the chamber majority can be made irrelevant. On issues that sharply divide the majority party, this may mean that a pressing policy concern goes unaddressed, despite the presence of a bipartisan majority in the chamber with a favored solution. Thus, majority rule in the chamber often means majority party rule, as bipartisan majorities that might form around specific issues have limited means to advance their goals. In the extreme, some leaders in chambers with lopsided partisan majorities (the lower houses in Connecticut and New York being two recent examples) will advance certain bills to the floor only if backers can show that it can win with votes from the majority party alone.

Northwestern University political scientist Laurel Harbridge argues that majority agenda-setting power has significantly impeded bipartisan collaboration in the U.S House in recent decades. She finds that, while the number of bills receiving bipartisan co-sponsorship has declined only slightly, the proportion of these bipartisan bills making it to a floor vote has declined significantly.¹⁴⁵ This suggests that, in the House, the decline in bipartisan legislative outcomes has much more to do with gatekeepers keeping bipartisan legislation from the floor than with a decline in the willingness of members of different parties to collaborate.

The existence of socially liberal Republicans, fiscally conservative Democrats, and tensions that cut across parties, like the urban versus rural dynamic that is significant in many state chambers, illustrate the difficulty the two party system has in accommodating the diversity of American political beliefs. The centralization of agenda-setting power in the hands of party leadership compounds this problem by impeding action on issues that do not align neatly along the partisan divide. This helps explain why legislators like Washington’s Rodney Tom and New York’s Jeff Klein abandoned their parties and formed coalitions in order pursue their common interests with Republicans: Democratic control of the agenda

meant a bipartisan majority uniting around specific rightward-leaning issues had little chance of success, so broader governing coalitions had to be formed to reorganize the chamber and shift control of the agenda.

The obstacles to bipartisan legislation presented by centralized control of agenda-setting mean that there is diminished incentive for legislators to collaborate across party lines to develop legislation. Crafting a truly bipartisan solution to a policy problem will inevitably be seen as futile if majority party gatekeepers can be expected to block it, or privilege whichever alternative proposal they can expect to pass with the greatest possible number of majority votes.

While there may be few obstacles to bipartisan legislation that enjoys very strong support within the majority party, bipartisan bills with limited majority party support are likely to be blocked. It follows, then, that the adoption of rules that reduce the centralized majority control of agenda-setting power is likely a prerequisite to empowering bipartisan collaboration in policymaking, as it opens a path through which the minority can advance their legislative aims through cooperation with members of the majority who see value in their ideas. This can be accomplished by either eliminating some agenda-setting powers altogether, or diffusing them among rank and file members of both parties. Fortunately, as is discussed later in this chapter, a wide variety of rules that work towards these ends are already in place in state legislative chambers, suggesting that they are workable solutions for facilitating bipartisan cooperation that might be adopted more widely.

Minority Rights and Legislative Obstruction

Changes to agenda-setting rules are not the only means through which the minority can be empowered to impact legislation, but they are the most obvious way to achieve that end by promoting collaboration, rather than enabling procedural gamesmanship and obstruction. In Nancy Martorano Miller's index of minority party procedural rights, those measures which do not strengthen minority agenda-setting power generally facilitate their ability to delay and interfere with the priorities of the majority.¹⁴⁶

Undoubtedly, obstruction can be an effective strategy. Using methods such as the filibuster, a minority may be able to disrupt a majority's pursuit of their agenda, or win concessions on specific points to ensure that final legislation reflects some of their priorities. But ultimately, the "prolonged speaking, dilatory motions, and disappearing quorums" used to obstruct legislative action damage the institutional strength of legislative chambers by diminishing their ability to address pressing issues, their responsiveness to the electorate, and their prospects for future bipartisan cooperation.¹⁴⁷

For these reasons, this chapter highlights rules that increase the minority party's legislative role by clearing obstacles to collaboration, rather than enabling the minority to create obstacles to legislation. While supermajority requirements or rules that ensure that the minority can readily propose amendments on the chamber floor can each contribute to the minority's legislative role in legitimate and unobstructive ways (especially in the case of supermajority requirements on bills that legislatures must pass, like budget and appropriations bills), their impact on the bipartisan nature of legislation often comes from enabling the minority to win concessions under a veil of threat rather than through genuine bipartisanship, meaning that they are not entirely consistent with the goal of promoting collaborative policymaking. These rules will be set aside here in favor of those whose primary effect is to promote or empower genuine bipartisan collaboration.

Rules and Practices

There is considerable diversity in the rules and procedures of state legislatures, including those that govern agenda-setting power, with the majority and its leaders exercising much more control in some chambers than others.¹⁴⁸ This reality allows for the comparison of a wide range of procedures and their impacts on policymaking.

When the majority party controls the agenda, bipartisan legislation is likely to make it to the floor only when it enjoys very strong majority party support. Diffusing agenda-setting power to enable bipartisan outcomes that do not necessarily enjoy strong majority party support is therefore the most direct way to enhance prospects for bipartisan policymaking, and to ensure that the minority party is able to engage in the legislative process without resorting to obstruction. The rules presented below represent some of the most effective ways the distribution of agenda-setting power in legislative chambers can be altered to facilitate the minority party's inclusion in a collaborative policymaking process.

Neutralizing Agenda-Setting – Two Types of Rules that Clear a Path for Bipartisan Policymaking

As the centralization of agenda-setting power in the hands of majority party leadership represents the greatest procedural obstacle for the creation of bipartisan legislation, the enactment of rules that do away with these privileges altogether is the single most effective action a legislature can take to promote bipartisan policymaking. Far from a post-partisan pipe dream, rules that achieve this end at the committee or calendar stages of the legislative process are in effect in many state chambers, where they have had a demonstrable impact on the prospects for bipartisan policymaking.

Requiring Committees to Hear or Report all Bills

“Death-by-Committee” is the most common endpoint for bills introduced in the U.S. House and Senate, and is similarly prevalent in many state chambers.¹⁴⁹ The power of the committee chair to decline to hear a bill referred to the committee is the most direct obstacle for bipartisan legislation, as chairs are generally appointed by majority party leaders, and therefore have an interest in blocking measures that will not find strong support among the party's members. Additionally, the majority contingent of committee members may vote against reporting a bill to the floor. In doing so, committee chairs and majority members may be acting to kill a measure that would find the support of a bipartisan majority in the broader chamber.

The agenda-setting power of committee chairs has been effectively eliminated in the 22 state chambers that **require committees to hear all bills that are referred to them**.¹⁵⁰ In these bodies, a majority-appointed chair has no means of preventing a committee from considering a measure. The committee itself, which is almost certain to be controlled by members of the majority party, may still decide to kill the bill, but members of the minority are likely to have a significant presence and the prospects for bipartisan legislation to emerge from the committee are enhanced.

In a study of the impact of majority party gatekeeping on legislative outcomes, political scientists Sara F. Anzia and Molly C. Jackman found that the requirement that committees hear all bills was associated with a 2.6 percentage point increase in the number of successful competitive roll call votes in which the majority party was “rolled,” meaning that the vote passed despite a majority of the members of the majority party voting in opposition.¹⁵¹ These instances of the majority party being rolled can serve as a

proxy for the prospects of bipartisan legislation, as they represent votes passed with bipartisan majorities that would have been likely to be opposed by majority party leadership and be inconsistent with their agenda.

The 2.6 percentage point increase in the roll rate very likely understates the impact of this rule on the prospects for bipartisan legislation, due to the reluctance of majority leadership in some state chambers to allow votes on bills that are opposed by even a small portion of their caucus.¹⁵² This means that neutralized agenda setting likely allows for bipartisan votes on many bills in which the majority is not rolled, but that otherwise would not have seen the floor due to weak majority support.

Eighteen state chambers go a step further in limiting agenda-setting power at the committee level by **requiring that committees report all bills that are referred to them** (including some chambers that require all bills to be both heard and reported).¹⁵³ In these chambers, legislators can craft policy without fear that it will be blocked by a committee chair or a majority-dominated committee. Unless the bill can be blocked at the calendar stage, the only hurdle they need concern themselves with is winning a majority on the floor. Anzia and Jackman found that the requirement that committees report all bills was associated with a 3.7 percentage point increase in the share of competitive roll call votes in which the majority was rolled.¹⁵⁴

Automatic Calendaring

After bills are reported from committee, the next opportunity for the majority party to exercise gatekeeping rights comes at the calendar stage, when bills are scheduled to be brought before the full chamber. In state chambers where agenda-setting power exists at this stage, it takes place through one of two mechanisms. In some chambers, a rules committee or calendar committee determines if and when bills reported from committee will be brought to the chamber floor. In other chambers, a majority party leader, usually a senate president or house speaker, has the same authority.¹⁵⁵

In a most of the 99 state legislative chambers, a majority party leader or majority-appointed committee sets, or has the authority to set, the floor calendar. However, 35 state chambers use **automatic calendaring**, which requires that all bills reported from committee be placed directly onto a floor calendar.¹⁵⁶ In these chambers, the majority party has no direct means to prevent a reported bill from being brought before the full chamber, so any such measure that has the support of a majority of legislators can be acted upon regardless of the majority party leadership's position.

Under automatic calendaring, any measure reported from committee can be acted upon by a floor majority, regardless of the positions of party leaders.

In their study, Anzia and Jackman found that automatic calendaring has an effect on the frequency of majority party rolls that is similar to the impact of requirements that committees hear and report all bills. Eliminating majority gatekeeping rights at the calendar stage was associated with a 2.3 percentage point increase in the rate at which the majority party was rolled on competitive roll call votes.¹⁵⁷ As was the case with requirements that committees hear and report all bills, this figure understates the impact of such rules on the prospects for bipartisan legislation, as it does not capture votes on measures that majority leadership would have blocked due to a lack of consensus in their party, but nevertheless received

support from a majority of their members. Nor does it reflect the impact of these rules on minority support for successful votes, which would likely have increased, as without gatekeeping power, majority leadership has more limited means to ensure that bills reaching the floor maximize majority party votes at the expense of the approval of minority legislators.¹⁵⁸

The Impact of Neutral Agenda-Setting

The combination of requirements that committees hear or report all bills with automatic calendaring has an even greater impact on the outlook for bipartisan policy. In the few chambers without majority gatekeeping rights at the committee or calendar stage, the likelihood that the majority party will be rolled on competitive floor votes increases by 5.2 percentage points, and 6 percentage points in the case of final passage votes.¹⁵⁹ Given the previously discussed additional effects of gatekeeping rights beyond these majority roll incidents, these figures suggest that neutral agenda-setting has a substantial impact on the prospects for bipartisan legislative outcomes.

The presence of rules that allow the majority party to play the role of gatekeeper also have a strong effect on legislative productivity. In a separate study, Jackman found that the presence of majority party gatekeeping rights was associated with a 30 percentage point decline in legislative productivity, dwarfing the impact of the ability to filibuster (associated with a 5 percentage point decline in productivity), and other factors, like the degree of ideological polarization or partisan composition of the chamber.¹⁶⁰

The effects of a successful reform effort that did away with majority gatekeeping rights in the Colorado General Assembly provides a compelling case study of the impact changes to agenda-setting rules can have on the viability of bipartisan legislation. Until the late 1980s, agenda-setting in the assembly exhibited a “textbook case” of majority control.¹⁶¹ Committee chairs in both chambers could kill any bill referred to them by declining to bring it before the committee, and the majority party controlled the floor calendar through majority-appointed rules committees, with the speaker having additional direct veto power over the floor agenda in the House. In 1988, Common Cause and other reform groups worked to put a citizen initiative on the ballot in Colorado that would amend the state constitution to neutralize agenda-setting power in the legislature. The “Give A Vote to Every Legislator” (G.A.V.E.L.)

The presence of majority party gatekeeping rights was associated with a 30 percentage point decline in legislative productivity.

amendment required that every bill referred to a committee in the assembly be given a hearing, and that each measure reported from committee be placed directly on the floor calendar, in the order in which they were reported, with no opportunity for the majority to exercise gatekeeping rights.¹⁶²

Noting that little in the state’s politics changed around the time of the amendment’s adoption, including the partisan composition of the Assembly, political scientists Gary Cox, Mathew McCubbins, and Thad Kousser use it as an opportunity to test the impact of the adoption of neutral agenda-setting rules.¹⁶³ They found that in the session immediately following the adoption of the amendment, the rate at which the Republican majority in the Colorado House was rolled on contested roll call votes more than tripled, and the share of contested roll call votes in which the minority was rolled declined by 15% (from 73 out of 439 votes to 64 out of 454 votes).¹⁶⁴ The impact would likely have been even more significant under unified

government, as in both periods the threat of a veto from the Democratic governor may have dissuaded the Republican House majority from pushing bills that would have rolled the Democratic minority.¹⁶⁵

The study also concluded that the change led to a significant increase in the number of bills passed that shifted policy in ways consistent with the goals of the minority party, though most bills were still more consistent with the wishes of the majority. Perhaps most significantly, Cox, McCubbins and Kousser conclude that control over agenda-setting allowed majority leaders to take much of the floor time that might have gone to legislation that would require significant minority support in order to pass, and “instead devote it to legislation that emphasizes the inter-party divide.”¹⁶⁶

Neutralizing agenda-setting entirely by adopting chamber rules like those imposed by the G.A.V.E.L. amendment is the most effective procedural change that can be made to empower bipartisan policymaking within a legislative chamber. When party leaders control the agenda, bills that require broad bipartisan support in order to pass have little chance of seeing the floor, leaving little incentive for members of opposing parties to collaborate on the development of policy in the first place. Removing these gatekeeping powers entirely eliminates the most significant obstacles to bipartisan legislation.

A likely objection to the neutralization of agenda-setting comes from the view that the legislative calendar must be controlled by leadership so that critical measures are not delayed by the consideration of less important bills.¹⁶⁷ This was the argument made when majority control of the calendar as we know it today was instituted in the U.S. House in the 1880s by Speaker Thomas Bracket Reed.¹⁶⁸ However, these concerns can be addressed through the use of a bill prioritization system, some form of which is already used in at least eight state chambers, in which individual legislators can grant a limited number of bills priority status, allowing them to be considered before other measures at different stages of the legislative process.¹⁶⁹ Alternatively, restrictions on the number of bills each legislator can introduce can also help prevent crowding of the floor calendar. For example, in Colorado, where the G.A.V.E.L. amendment neutralized agenda-setting entirely, legislators are allowed to introduce only five pieces of legislation per year, the lowest of many similar restrictions in chambers throughout the country.¹⁷⁰ Motions to advance measures on the floor calendar, a procedure that will be discussed later in this chapter, can also be used by floor majorities to prioritize the consideration of legislation on the floor.

Control over agenda-setting allows majority leaders to take much of the floor time that might have gone to legislation that would require significant minority support in order to pass, and “instead devote it to legislation that emphasizes the inter-party divide.”

In the absence of solutions like these, Thomas Reed chose to abandon automatic calendaring in the U.S. House rather than reform it. However, his stated philosophies on governing suggest that the promotion of collaborative policymaking was not a primary motivator of his reforms: “The best system is to have one party govern and the other party watch; and on general principles I think it would be better for us to govern and for the Democrats to watch.”¹⁷¹

While the presence of rules that effectively eliminate agenda-setting powers at the committee and/or calendar stages in a significant number of state chambers illustrates the viability of their use and

adoption, there are also less sweeping rule changes that can be made to diffuse agenda-setting power by enhancing minority party rights. The most promising of these are discussed below, beginning with rules governing committees.

Majoritarian Rules

Eliminating agenda-setting powers at both the committee and calendar stage has the potential to significantly improve the prospects for bipartisan legislative outcomes. However, in the absence of limits on bill introduction or bill prioritization mechanisms, it also carries the possibility of inducing a legislative log jam and overwhelming the ability of the chamber to process legislation, with floor time spent on bills that have little chance of passage, including doomed measures whose introduction has more to do with scoring political points than with crafting effective policy. Rules that allow bipartisan majorities, in committees or on the floor, to overcome the decisions of gatekeepers provide a compromise that preserves majority party gatekeeping power except in cases where a measure enjoys particularly strong support. While in most chambers these procedures are rarely used, the mere threat of their use may often be enough to dissuade majority gatekeepers from blocking bipartisan legislation.

In three state chambers, ***the members of a committee can vote to place a bill on the committee's agenda***, overriding the decision of a committee chair not to schedule the bill for a hearing. In the Michigan and Nevada senates, a simple majority vote of the committee is all that is required, while in the Arizona House of Representatives, a petition must gain the signatures of two-thirds of the committee's members.

In most chambers, ***floor majorities can overcome agenda-setting at the committee stage by voting to discharge a measure from committee and bring it to the floor***. Discharge petitions or motions require support of a two-thirds or simple majority in most chambers, but in Hawaii, Missouri, and South Dakota, they require support from only one-third of the chambers' members in order to pass. Jackman found that in chambers with committee gatekeeping rights, committee discharge procedures are associated with a 2.5 percentage point increase in the rate that the majority party is rolled, significantly reducing, but not entirely negating the impact of agenda-setting at the committee stage.¹⁷²

In many chambers, a mechanism also exists for floor majorities to overcome gatekeeping at the calendar stage. ***Motions to advance a bill on the floor calendar*** allow a simple majority of a chamber's members to overcome the agenda-setting power of the party leader or committee responsible for bill scheduling. In chambers where gatekeeping powers exist at the calendar stage, that ability of a floor majority to advance a bill on the calendar is associated with a 2.8 percentage point increase in the rate at which the majority party is rolled, largely eliminating the impact of majority agenda-setting power at the calendar stage on the frequency of these votes.¹⁷³ In chambers with automatic calendaring, these measures can provide an additional method through which the consideration of certain bills can be prioritized without conceding such authority to majority leaders.

Again, these figures likely understate the impact of such rules on the prospects for bipartisan legislation, as they do not reflect successful votes on measures that majority leadership would have preferred to block due to a lack of consensus in their party, but which received support from a majority of their members. Nor do they reflect the impact of these rules on minority support for successful votes, which would likely have been increased, because when checks on gatekeeping power exist, the majority party has a reduced ability to ensure that bills reaching the floor maximize majority party votes at the expense of the support of minority legislators.¹⁷⁴

The costs associated with the exercise of these majoritarian rights by bipartisan floor majorities, and the resulting infrequency with which they are used, likely explain why their impact is not as great as that of the neutralization of agenda-setting power through the elimination of gatekeeping rights. Nonetheless, they represent an effective means through which floor majorities can overcome the procedural obstacles to bipartisan legislation.

The ability of committee members to vote to place a bill on their agenda is rare in state legislatures. Rights to discharge bills from committee or move to advance bills on the calendar are more common, but infrequently used and still absent in many chambers. In the absence of a neutral agenda-setting regime, the adoption of rules that allow for these outcomes is an effective means of limiting the procedural constraints on bipartisan legislative outcomes and collaborative policymaking.

Rules Governing Committee Composition

In most state chambers, the appointment of committee chairs and assignment of members to committees is the primary action through which party leaders influence legislative outcomes.¹⁷⁵ However, practices and rules that diffuse committee-level agenda-setting powers can give members of the minority party a greater voice and allow them to be more involved in the important role committees play in processing and crafting legislation.

Committee Chair Appointment

Given the agenda-setting powers of committee chairs in many chambers, as well as the considerable influence they can wield outside of their possible gatekeeping role, control of these positions is a prized commodity. Most state chambers follow the example of Congress, allowing majority party leadership to name committee chairs, each of whom will be a member of the majority party. However, ***norms in several chambers dictate that members of the minority party also be given some chairmanship positions.*** Other chambers have unique rules for the appointment of committee chairs that make the selection of members of the minority, or less partisan members of the majority, more likely.

In chambers in several Southern states, majority party leaders have adopted a norm of appointing members of the minority to a significant proportion of committee chair positions. In Mississippi, as the Republican Party gradually increased its strength during the Southern partisan shift of the last several decades, Democratic House speakers and lieutenant governors began appointing Republicans to chair committees. After an interruption of this practice in the state House beginning in 2007 that Republicans heavily criticized, it was restored after their takeover in 2011.¹⁷⁶ As Republican Speaker Pro Tempore Greg Snowden explained, “We didn’t want to be hypocritical... We didn’t want to repeat the same mistakes.”¹⁷⁷ In 2014, Democrats chaired eight of the thirty-five standing committees in the Mississippi House, and thirteen of the thirty-three standing committees in the Senate. Similar processes have led to a significant number of minority party chairs in chambers in Texas, Louisiana, and Arkansas, each of which recently shifted from Democratic to Republican control. In chambers elsewhere, it is extremely rare for members of the minority to chair more than one or two committees.

In some chambers, ***rules that remove or limit the power of majority leadership to the select committee chairs*** make the appointment of minority or less partisan majority chairs more likely. In Nebraska’s unicameral legislature, committee chairs are elected by the full chamber in a secret ballot.¹⁷⁸ While the Nebraska Legislature is ostensibly non-partisan, party affiliations are no secret, and Democrats chair some committees in the Republican-controlled chamber. According to Nebraska State Senator Heath

Mello, the chamber's secret ballot process for electing committee chairs likely played a role in his election as chair of the Legislature's powerful appropriations committee in 2013, given that he was one of just 18 senators aligned with the Democratic Party in the 49 member chamber.¹⁷⁹

Scholars have also suggested that in chambers in which the majority party selects committee chairs, requirements that these appointments be confirmed by a vote of the full chamber reduce the degree to which committee chairs will act as agents of the majority party, either by discouraging majority

In several Southern states, majority party leaders have adopted a norm of appointing members of the minority to a significant proportion of committee chair positions.

leadership from appointing loyal partisans, or through chairs' recognition of the full chamber as the source of their power.¹⁸⁰ Committee chair appointments are currently subject to a floor confirmation vote in the Alaska Senate and House, and the Hawaii House.¹⁸¹

Other chambers with rules that disrupt the majority's ability to use the appointment of party loyalists to committee chair positions as a means of

controlling the agenda include the Virginia House and Senate, and the Arkansas Senate, each of which appoint committee chairs based partly on seniority. This method comes with its own disadvantages, however, as it can be inconsistent with selection of the most engaged and well-qualified legislators for these important positions. For these reasons, the method used in South Carolina's House of Representatives may be preferable. There, committee chairs are elected by each committee's members.¹⁸² Regardless of the mechanism employed, in these chambers, the presence of minority chairs is more likely, and majority chairs are not handpicked by their party's leadership, making them less likely to act as gatekeepers who will enforce the majority party's agenda at the expense of bipartisan compromise.

Rules Governing Committee Assignments

Regardless of the ability of committee chairs to act as gatekeepers, committees themselves serve an important agenda-setting function, in addition to their role in crafting legislation. The distribution of committee assignments between the parties and the mechanisms through which these assignments are made therefore have a significant impact on the ability of the minority party to participate in a collaborative policymaking process. If given the opportunity, majority party leaders often use control over the committee-assignment process to stack committees with a disproportionate number of majority members and to fill particularly influential committees with party loyalists and the members of the minority most sympathetic to their goals. Rules like those highlighted below can ensure that members of the minority are given a fair share of representation on committees, and that the majority party cannot use committee appointment powers to promote partisan outcomes.

Where majority parties have total control over committee assignments, partisan stacking of committees is common. As of 2003-2004, majority party members were overrepresented (in terms of the proportion of committee seats the party held compared to their overall strength in the chamber) in the committee systems of 46% of state chambers, especially those chambers which were closely divided between the parties.¹⁸³ This figure would no doubt be higher if not for the fact that 25 state chambers have **rules that require that party representation on committees be proportional to the number of seats each party holds in the full body.**¹⁸⁴ While many chambers allocate committee seats in a roughly proportional

manner in the absence of these rules, wider adoption would ensure that minority party members have a fair shot at shaping legislation at the committee level, and influencing what legislation ultimately reaches the floor.

The processes through which committee assignments are made also impact the ability of the minority to participate in policymaking. For example, in chambers where committees can play a gatekeeping role, **a requirement that a floor vote be held to confirm committee assignments** made by a majority leader or majority controlled committee on committees is associated with a 4 percentage point increase in the rate at which the majority party is rolled, effectively negating the tendency of majority dominated committees to act as gatekeepers for their party.¹⁸⁵ While these votes are often thought to be symbolic, this finding suggests that subjecting committee appointments to a confirmation vote by the full chamber impacts the assignment decisions of majority leadership and/or the actions of confirmed committee members in such a way as to diminish the partisanship that exists at the committee level.

Recommended Rules and Practices

Neutralizing Agenda-setting

- Require committees to hear or report all bills
- Automatic calendaring

Majoritarian Rules

- Allow committee members to vote to place an item on the committee's agenda
- Discharge petitions
- Motions to advance items on the floor calendar

Committee Composition

- Committee chairs
 - Norms dictating that some committee chairs be members of the minority party
 - Limit the power of majority leadership to appoint chairs
 - Allow the full chamber or committees themselves to elect committee chairs
 - Require floor confirmation of committee chair appointments
- Committee members
 - Require proportional partisan representation on committees
 - Require floor confirmation of committee assignments

Summary: Empowering Collaboration through Legislative Rules

As the rising partisanship and contention that has gradually permeated American politics in recent decades has many sources, reforms to legislative rules alone will not be a panacea for the restoration of bipartisanship and collaboration in policymaking. The U.S. Senate, after all, has a relatively decentralized agenda-setting structure but is no model of legislative harmony – in part due to majority leaders' efforts to prevent those in the minority from blocking legislation the majority is ready to pass. However, current agenda-setting arrangements in many states create barriers to bipartisan legislation that need not exist.

Through eliminating these barriers and neutralizing agenda-setting at each stage of the legislative process by requiring that committees hear or report all bills, or that all bills reported from committee be scheduled for floor consideration, rules changes can open a path through which bipartisan legislation can live to see the chamber floor. Majoritarian rules can similarly empower bipartisan majorities to overcome partisan gatekeepers and come together to pass legislation, though obstacles to their use make them less effective than eliminating agenda-setting powers altogether. Increasing the role played by the minority at the committee level can increase the likelihood that bipartisan legislation can advance to the floor, as well as make the work done to shape policy in committees more bipartisan.

However, each of these rule changes merely creates space for collaborative policymaking, and ensures that the legislative fruits of bipartisan cooperation have a procedural opportunity to become law. The impact of these rules will be insignificant unless legislators are willing to engage in the compromise and understanding that is required to craft bipartisan policy in the first place. Civility and trust between legislators of different parties is therefore necessary for the success of any procedural reforms. Efforts to improve the relationships among legislators and bridge the partisan divide are discussed in the next chapter.

III. Fostering Civility

The project team that developed this report initially focused on concrete legislative rules that promote collaboration across party lines. In meetings with legislators and in our first major convening at the August 2014 meeting of the National Conference of State Legislatures, it became clear that while rules, the personalities and associated approaches of legislative chamber leaders are central – that is, that good rules can be implemented poorly or ineffectively by intransigent leadership and, conversely, that a collaborative mindset among chamber leadership can foster strong collaborative practices even in the absence of such rules. Core to this relative success seems to be leaders with personal respect for their counterparts in the opposite party – whether that is a majority leader with a history of dialogue with a minority leader or a committee chair with a history of cooperation with a ranking member from the minority party. In short, civility matters – and there are concrete actions that state legislators can take in creating opportunities to increase civility.

For this chapter, we rely heavily on insights from former Ohio state representative Ted Celeste of the National Institute for Civil Discourse, a program of the University of Arizona founded by Celeste and designed to advance the understanding and practice of civility in public life.

Civility in the Legislative Process

“Civility” in a legislative context incorporates at least two related concepts. Defined narrowly, civility may be considered as adherence to the prescriptive norms that define acceptable modes of communication and action. These norms include unwritten social custom originating outside the walls of the legislature as well as formal parliamentary rules developed for the purpose of managing legislative proceedings. Civility may also be more broadly defined to refer to a less programmatic conception of legislative relationships, one including efforts to achieve genuine as opposed to gestural respect, an openness to compromise and collaboration, a presumption of mutual good faith, and a willingness to separate ideological disagreement from personal antagonism.

As an example, the Institute for Civility in Government, a non-profit organization dedicated to fostering political civility, describes civility as a state of “disagreeing without disrespect, seeking common ground as a starting point for dialogue about differences, listening past one’s preconceptions, and teaching others to do the same.”¹⁸⁶ The not-for-profit research group CivilPolitics.org similarly defines civility as “the ability to disagree productively with others, respecting their sincerity and decency.”¹⁸⁷ This chapter will generally refer to “civility” in this latter broader connotation except where otherwise noted.

The Importance of Civility to Collaborative Policymaking

Intuitively, increased civility should facilitate collaborative policymaking. Legislators should be more willing and able to work productively with members of the opposite party if their relationship is characterized by respect and cordiality than if their relationship is characterized by mistrust and dislike. Legislative bodies as a whole should be more amenable to productive policymaking, and more resistant

to willful procedural obstructionism, if their members generally accept the bona fides of the opposite party and if honest policy disagreements are not compounded by personal ill will.

The intuitive importance of civility to effective policymaking is supported empirically. In a 2011 survey of Washington State legislators, respondents were asked to rate the importance of civility in producing good policy outcomes on 1-to-10 point scale, with 10 being “essential”; over 50% of respondents rated civility as 9 or 10 on this scale.¹⁸⁸ A 1999 study by the Annenberg Policy Center found an inverse correlation between the rate of incidence of insulting

speech and the number of measures and joint resolutions passed by the U.S. House of Representatives, concluding that “civility and productivity go hand in hand.”¹⁸⁹

There is little doubt as to the importance of civility as a moderating force against counterproductive forms of inter-party conflict.

Notably, political scientists Lawrence Dodd and Scot Schraufnagel advance a more complicated account of civility’s role in policymaking: based on a survey of landmark legislation passed by the U.S. Congress from 1873 to 2004, they conclude that “too much member civility as well as too little may be detrimental to a well-functioning legislature” because “too much [civility] points to situations in which authentic expression of and contestation over societal conflicts are constrained by suppressive norms and rules.”¹⁹⁰

However, they argue that this phenomenon has arisen primarily in depolarized Congresses; in polarized Congresses, “where parties generate substantial policy contestation, the great threat is member behavior that will inflame partisan conflict. In these settings it is civility that aids policy productivity.”¹⁹¹ In today’s polarized political climate (see below), there is little doubt as to the importance of civility as a mitigating force against counterproductive forms of inter-party conflict in legislatures; there is little danger of excessive civility muddying differences between the major parties.

Less direct but no less important is civility’s effect on the institutional character of legislatures. Eric Rosenthal of Rutgers’s Eagleton Institute of Politics claims that incivility in state legislatures has resulted in a loss of public trust, saying that the public is “highly critical of what they perceive to be the unnecessary bickering, conflict and deadlock in the legislature. The public has lost confidence in the way the institution and the process work... In a period of highly contentious politics, legislators not only attack one another. They attack the institution in which they serve.”¹⁹² Upholding norms of civility, Rosenthal argues, is an important safeguard of the strength of legislatures as institutions as well as engines of collaborative policy.

The State of Civility

Vitriol and uncivil behavior are scarcely foreign to legislatures, and have not infrequently boiled over into physical violence. In February 1858, antebellum tensions in the U.S. House of Representatives famously erupted into an all-out brawl which was broken up bodily by the Sergeant-at-Arms.¹⁹³ In June 1866, Rep. Lovell H. Rousseau (KY) assaulted Rep. Josiah B. Grinnell (IA) with an iron-tipped cane after Grinnell questioned Rousseau’s Civil War service record.¹⁹⁴ At the state level, the Indiana General Assembly descended into a melee in February 1887 over a disputed attempt to fill a vacant lieutenant governorship.¹⁹⁵

Legislative proceedings today are rarely marked by such violent outbursts, though similar incidents are not unheard of.¹⁹⁶ Nonetheless, literature and popular media point to a consensus that civility in legislatures and in contemporary American public life has been in decline for at least the past two decades. Works such as Sunil Ahuja's *Congress Behaving Badly: The Rise of Partisanship and Incivility and the Death of Public Trust* (Praeger, 2008); Susan Herbst's *Rude Democracy: Civility and Incivility in American Politics* (Temple University Press, 2010); and Thomas Mann and Norm Ornstein's *It's Even Worse Than It Looks: How the American Constitutional System Collided With the New Politics of Extremism* (Basic Books, 2012) advance theories of declining civility in public life.

Rep. Joe Wilson (R-SC)'s outburst of "You lie!" during an address to the House by President Barack Obama in September 2009 stands as an iconic marker of an age of falling civility in politics,¹⁹⁷ while some analysts highlight President Obama's public criticism of the U.S. Supreme Court after its ruling in the *Citizens United* case.¹⁹⁸ Most tragically was the 2011 shooting of Arizona Rep. Gabrielle Giffords, which resulted in the death of six people, and ultimately sparked the founding of the National Institute for Civil Discourse.¹⁹⁹

Public relations firm Weber Shandwick, Powell Tate, and KRC Research conducted joint studies in 2010 and 2011 finding 65% of respondents describing civility as a "major problem" in America, with an increasing number of respondents expecting civility to erode in coming years.²⁰⁰ Declining civility in state legislatures specifically has also been the subject of study, as in research by Washington State University political scientists Francis Benjamin, Nicholas Lovrich, and Craig Parks finding a steady decline in civility in the Washington State legislative process.²⁰¹

Causes of Declining Civility

Eric Rosenthal (2005) cites a number of causes for falling civility in state legislatures, including lengthy party-driven campaigns, weakening of legislative norms, increased pressure from organized interest groups, and reduced social contact between legislators.²⁰² More broadly, rising incivility is often cast as inextricably linked to a rise in political polarization within legislatures and throughout American political life.

The Pew Research Center published a landmark survey on political polarization in June 2014 which found a striking increase in ideological separation and antipathy between members of the two major parties since the mid-1990s. The survey found growing consistency in ideological thinking and an increased alignment between ideology and partisan affiliation, with an attendant drop in the ideological overlap between the two parties. The survey also found a doubling of the number of respondents from both parties with a "very unfavorable" impression of the opposing party, with nearly a third describing the opposing party a threat to the nation's well-being.²⁰³

Meanwhile, rising polarization within legislatures themselves is a widely recognized and well-documented phenomenon. A 2013 report for the American Political Science Association by Princeton political scientists Michael Barber and Nolan McCarty summarizes the quantitative evidence for an increasingly polarized Congress, with an acceleration in polarization beginning in the early 1990s,²⁰⁴ and research by Boris Shor and McCarty finds high and increasing levels of polarization in state legislatures with California the nation's most polarized legislature.²⁰⁵

Scholars find a connection between polarization and incivility. The University of Maryland’s Eric Uslaner posits that increased incivility in Congress is a result of increased polarization and incivility in American society writ large.²⁰⁶ The National Institute for Civil Discourse postulates a “reciprocal” relationship between polarization and incivility rather than one-way causation.²⁰⁷ Author and moral psychologist Jonathan Haidt, at a 2013 meeting of the Council of State Governments Midwest, traces rising incivility to an increasing match between political polarization and ethical polarization, leading to a perception of opposing parties as being from different moral worlds.²⁰⁸

A connecting factor often cited in the joint rise of polarization and incivility is trends in media, including the rise of 24-hour cable news, partisan-targeted opinion and news programming, and ideological social media. Research by Tufts University research Sarah Sobieraj and Jeffrey M. Berry into expressions of “outrage” in media—defined as efforts to provoke a visceral emotional response of anger, fear, or moral righteousness—found that elements of outrage discourse appeared in political television programming every 90 to 100 seconds and concluded that “Partisanship, as measured by the voting behavior of legislators, is up quite sharply in the past few decades ... It strains credulity to believe that the new and expanded ideological media has had nothing to do with this trend.”²⁰⁹ University of Pennsylvania political scientist Matthew Levendusky, author of *How Partisan Media Polarize America*, similarly points to the role of media in driving polarization and incivility.²¹⁰

To the extent that rising polarization has accompanied a broad national trend away from public civility, and to the extent that incivility in state legislatures is in turn a function of this national trend, attempts to improve legislative civility may be limited in their effectiveness if proposed in isolation from these national trends. . However, policymakers and civic stakeholders have nonetheless explored a number of potentially effective measures to combat legislative incivility, discussed below.

Measures to Promote Civility in State Legislatures

Educational Initiatives

Several organizations have developed educational initiatives focused on developing civility-promoting tactics. While not attuned specifically to state legislatures, the Beyond Civility project (www.beyondcivility.org) works to bring civic stakeholders together in dialogue about the importance of effective communication across the barrier of ideological disagreement. The project hosts workshops designed to “explore together the neurological and social barriers to constructive dialogue between people who view each other as adversaries” and to develop and practice strategies for conducting difficult conversations successfully.²¹¹

In Beyond Civility’s “Side-by-Side” exercises, designed to foster personal respect and empathy across ideologies, one Democratic and one Republican politician take turns answering questions designed to prompt reflections on their formative life experiences. In “Back-to-Back” exercises, designed to foster increased understanding of the intellectual underpinnings of opposing ideologies, high-profile advocates with opposing legal or public policy views attempt to convincingly articulate the opposite position from their own.²¹²

The Institute for Civility (www.instituteforcivility.org) offers several similar civility training resources, including online civility training, workshops, and seminars. These approaches have been paralleled at the community level through initiatives such as www.LivingRoomConversations.org and

www.tothevillagesquare.org, both of which promote educational social gatherings as a means to build respectful relationships across widely differing ideologies.

Bipartisan Social Events

Congressional observers, such as the Bipartisan Policy Center's Commission on Political Reform, have identified the decrease in time that members of Congress spend in Washington, D.C., especially over weekends, as contributing to a rise in uncivil behavior and the loss of opportunities for bipartisanship. The BPC commission recommends reconfiguring the congressional calendar to include synchronized five-day work weeks in Washington and establishing periodic informal gatherings to foster relationship-building among members.²¹³

Behind these insights is the fact that private, bipartisan social events can be an effective strategy to promote personal civility and respect among legislators. These gatherings, which often involve legislative leaders in particular, may take the form of meals, retreats, or programmed activities. By temporarily removing the tension of charged political or policy disagreements, these events should allow legislators to craft personal relationships in a way that sidesteps the antagonism that might characterize their professional interactions. To the extent that civility depends on members' ability to separate political disagreements from personal traits, strengthening these non-ideologically-charged relationships should be a boon to legislative civility.

Indeed, regular or sporadic bipartisan social events are a feature of many legislatures and tend to be popular among members when implemented. Here are a few examples:

- Former Maine Senate President Kevin Raye and Maine House Speaker Robert Nutting cited small private dinners with other leadership figures as important to the Maine Legislature's productivity.²¹⁴
- U.S. Senator Kay Bailey Hutchison credited monthly bipartisan dinner parties among fellow women in the U.S. Senate as allowing legislators to "resolve conflicts the way friends do" amidst an increasingly uncivil atmosphere.²¹⁵
- Kentucky State Senator Damon Thayer, speaking of a dinner with colleagues in Senate leadership, said "At least we're talking and having conversations that before just didn't happen... we're still going to disagree, but I think we can be more cordial about it."²¹⁶
- Former U.S. Representative John Porter, citing a decline in social relations in Congress, said about the effect of bipartisan House retreats, "When a member from one side of the aisle and another encountered each other with their young children in their arms — suddenly that became the commonality and the basis for getting along, and other things kind of became secondary, as they ought to be."²¹⁷
- Rutgers's Eric Rosenthal cites the practice in Maryland of new legislators taking a bus trip around the state with senior members as a boon to relationship-building.²¹⁸

Bipartisan social events are logistically simple and low-cost measures that can yield substantial dividends in civility among legislators. According to Rosenthal, "Retreats for all members are certainly a good idea

and ought to be held periodically. Given the right programming, such an activity can help build trust. And greater trust among members is requisite for comity in the legislature.”²¹⁹

Case Study: NICD's Next Generation Initiative

The Next Generation initiative, a project of the National Institute for Civil Discourse, was developed by Ohio State Representative Ted Celeste (D) in 2012, with early origins in a workshop for the Council of State Governments Midwest annual meeting headed by Celeste and Iowa State Representative Scott Raecker (R). Next Generation works with state legislators to cultivate a culture where discourse and collaboration typify public policy development through workshops built around the theme of “Building Trust through Civil Discourse.” These half-day workshops engage state legislators from both parties in guided discussions to deepen their appreciation for each other’s commitment to public service, strengthen relationships across the aisle, and create working groups in participating state legislatures. The workshops are designed to help legislators:

- Identify the present state of legislative civility in the legislature;
- Discuss ways to improve the current level of civility; and
- Develop an action agenda.

Next Generation has hosted workshops in Ohio, Nebraska, Pennsylvania, Washington, and Maine, attended by over 100 legislators in total. In each of the five states, legislators have requested a second introductory workshop for legislators who were unable to attend the first one. Twenty of the participants have indicated a desire to receive training and become facilitators for an expansion of the Next Generation effort.

In several of the states, legislators reported cross-aisle efforts that resulted from their experiences in the workshops. Indeed, joint bi-partisan co-sponsorship of legislation was mentioned several times.

Additionally, legislators in committee chair positions reached out to their ranking members to jointly discuss agenda items, a strategy specifically discussed at the workshop.

New bipartisan social events were planned in several of the states.

Local and statewide civic and academic groups have been engaged to host and co-sponsor the Next Generation workshops. They have become an integral part of the ongoing effort once the initial workshop is completed and the action plan is identified. Three regional offices of the Council of State Governments have also added the Next Generation workshop to their lists of in-state program offerings.

While the number of participants from each state is a small percentage of the legislative body, finding like-minded and concerned colleagues has had an energizing effect on those who want to continue the mission. Often, when discussing the barriers to civility, the nature of the institution is raised, with the focus of caucuses on winning and maintaining or gaining control, rather than on effective public service. Participants have found comfort in identifying colleagues interested in changing the intense partisan culture of their legislatures.

During several of the workshops, legislators discussed a number of institutional barriers to making substantial changes in legislative culture: the partisan nature of redistricting, the impact of negative campaigning, the power of undisclosed and large sums of campaign contributions, and the general lack

of will to take on the status quo. However, despite those barriers, since the beginning of the workshops in 2012, Next Generation has developed a growing national network of legislators who are committed to bringing civil discourse to the legislative arena.

Next Generation plans to expand its introductory workshops to additional states and to provide specially requested workshops on targeted skill-building modules. Next Generation will grow the team of current and former legislator facilitators to provide for the timely expansion of the workshops. Regular meetings of participants are planned to network and enhance the impact of continued efforts.

Summary: Fostering Civility

While legislative incivility is a familiar phenomenon, the recent increase in party polarization both exacerbates its extent and consequences and stands as an obstacle to potential remedies. Nonetheless, educational dialogue initiatives, bipartisan social events, and targeted civility-building measures such as the NICD's Next Generation Project represent simple and high-upside tactics to foster legislative civility and increase the ability of state legislators to interact respectfully and productively.

Conclusion

While growing partisanship and polarization have clearly had an impact on the legislative process at the state level, this report was inspired by the observation that in chambers that have adopted power-sharing arrangements, particularly in cases of tied chambers, partisan contention has at times subsided, allowing for periods of productivity and legislative harmony. Our objectives have been, first, to identify the forces at work in these arrangements in order to derive lessons that might be valuable for the promotion of bipartisanship, and second, to identify specific and practical steps that might be taken in other state chambers, and ultimately, Congress, to improve the prospects of collaborative policymaking.

The case studies examined in the chapter on power-sharing arrangements are especially useful for deriving lessons about collaborative policymaking because not each of them was successful in that regard. “Co”-agreements in Oregon and Oklahoma saw a dramatic rise in bipartisanship, effective legislative sessions, and a policymaking process that focused on advancing the best ideas of both parties. An agreement in the Washington House that was, superficially, very similar to these, resulted in paralyzing gridlock and partisan tension, while coalition arrangements in the senates of Washington and New York were met with mixed results.

While many factors are certain to have influenced the outcomes in these chambers, two that were clearly impactful, and under the control of legislators themselves, were the strength and civility of personal relationships between members of opposing parties, especially those in leadership, and the procedural rules that governed agenda-setting power in the chamber.

In the Washington House and New York Senate, the control of party leaders over the floor agenda allowed them to block and delay action on bills that, if brought before the full chamber, would have received the support of bipartisan majorities. In the Oregon and Oklahoma senates, automatic calendaring processes meant that no such power was granted to party leaders, and any bill reported from committee could be brought to the floor for a vote.

Control over the agenda at the committee stage was similarly important, as the absence of Democratic committee chairs in the New York Senate, and Washington Senate Democrats’ refusal to accept a number of chairmanships offered to them by the MCC, had a direct impact on the ability of their caucuses to have their legislation heard, while the willingness of committee co-chairs in Oklahoma and Oregon to negotiate with one another meant that both parties in these chambers had a good chance for any relatively bipartisan legislation to reach the floor.

As explained in the chapter on rules, there is considerable evidence to suggest that rules that neutralize agenda-setting in chambers under normal majority control create a pathway for the creation of bipartisan legislation, just as they did in chambers under power-sharing arrangements. Centralized control of the agenda at both the committee and calendar stage empowers the majority to block any legislation that does not enjoy strong support within their caucus, significantly limiting the scope of potential bipartisan legislation, and reducing their need to ever bargain with the minority. As a result,

much potential legislation that would receive the support of bipartisan majorities on the floor is dead upon its introduction, including action on the many issues which do not align neatly with the partisan divide.

Fortunately, rules like automatic calendaring and requirements that committees hear or report all bills have the potential to entirely eliminate the centralized gatekeeping power that is the greatest structural obstacle to the advancement of bipartisan legislation. Short of this, majoritarian rules like discharge petitions, motions to advance items on the floor calendar, and provisions allowing committee members to vote to place items on their agenda allow majorities of legislators to overcome the gatekeeping rights of leadership. And finally, rules (or norms) that lessen the degree to which majority leadership has control over the appointment of committees and committee chairs can allow the minority a greater role in the work done in committees to shape the agenda and craft legislation.

As most state chambers adopt rules at the beginning of each session by a majority vote, the fact that each of these rules is already in use in some, and in some cases many states, demonstrates not only that they are viable arrangements under which a chamber can be run, but also that majorities in these chambers are satisfied with rules that expand the role of the minority party. This lends credence to the idea that there is considerable space for reform of legislative rules with the aim of empowering bipartisan policymaking.

In addition to rules governing agenda-setting, the case studies illustrate the importance of building relationships between legislators of opposing parties that are characterized by civility and trust, as a prerequisite to engagement in bipartisan collaboration. Of particular importance are the relationships between party leaders. In ties in Oklahoma and Oregon, strong, civil, and trusting relationships between co-speakers and co-presidents facilitated cooperation and set a tone of bipartisanship that many legislators cited as the primary source of the success of their power-sharing arrangements. Relationships such as these facilitate the difficult process of horse-trading and tit-for-tat negotiation that is inherent in the creation of bipartisan policy.

In the Washington House, an uneasy relationship between co-speakers unfamiliar with one another soon devolved into a partisan stalemate, as the two parties were unable to consistently engage in the negotiations that would have been necessary to expediently confront the legislative tasks that faced them. Similar challenges complicated efforts at bipartisanship in coalition arrangements in the New York and Washington senates, with the only exceptions coming when groups of legislators were willing to sit down with one another and find common ground, as was the case with the crafting of the Washington state budget under the MCC.

Fortunately, there is much that can be done to promote civility and build the sort of relationships between legislators necessary to bridge ideological gaps and find mutually acceptable ways to address policy problems. Among them are a range of educational initiatives aimed at fostering civility, and bipartisan social events organized in legislatures that have been linked by legislators to an enhanced ability to work out solutions with those across the aisle. Of particular note is the Next Generation initiative, a project of the National Institute of Civil Discourse, which conducts workshops on civility for state legislators and is building a nationwide network of those interested in promoting civil relations between the parties in their chambers. Concrete outcomes of these sessions have included increased bipartisan co-sponsorship of legislation, and committee chairs seeking out the views of members of the minority on agenda items.

Rules that facilitate the advancement of bipartisan policy will have little impact if legislators do not have the trust, respect or familiarity between them that is necessary to sit down at the negotiating table in the first place. Likewise, no matter how interested rank and file legislators are in crafting policy with those on the other side of the aisle, the prospects of their legislation reaching the chamber floor will be significantly diminished so long as majority party leaders have absolute power over the agenda. Effective pursuit of both ends can forge a path for bipartisan policy through the legislative process, and empower legislators to walk it.

Ultimately, there are many forces that have combined to make bipartisan cooperation more difficult. Alone, neither rules changes nor efforts to enhance civility are enough to ensure collaborative policymaking in an increasingly polarized political environment. However, as forces that are endogenous to legislatures themselves, they are more readily addressed than the broader societal forces that have pushed the parties apart, and in combination, they carry real potential to improve the quality of governance in the states, and indeed in Congress.

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