



The Myth of the Red State

Policy over Party in the Nebraska State Capitol

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SUMMARY

The United States Congress is set up to incentivize partisanship and divisiveness. The Nebraska state legislature is set up to incentivize cooperation and inclusion.



Nebraska's state legislature is unicameral and nonpartisan. Its members are elected via a nonpartisan "top two" primary system. The legislature is generally free of the type of strong-arm partisan politics that characterize political activity in Congress and most state legislatures. Although 71% of Nebraska representatives are registered members of the Republican Party, nonpartisan coalitions are commonplace and the legislature has engaged a wide range of "progressive" issues, from abolishing the death penalty to immigration reform.

The Nebraskan nonpartisan system offers a model of effective and transparent government, voter inclusion, and social innovation for both issue advocates and political reformers across the country.

A Legislature Like No Other

Partisan, bicameral legislatures seem as American as apple pie, with one noteworthy exception: Nebraska.

- ✓ Instead of separate, partisan primaries to select Republican and Democratic nominees, Nebraska utilizes a single, nonpartisan primary. The top two candidates, regardless of party, advance to the general election.
- ✓ The primary ballot lists all candidates without partisan affiliation.
- ✓ Legislative officers and committee chairs are elected by members using a secret ballot rather than appointed by a partisan leader.
- ✓ Minority party members are regularly appointed to committee leadership positions.¹
- ✓ Legislators do not need permission from party leadership to introduce legislation, and every bill gets an open, public committee hearing regardless of the member's affiliation or party status.

you become a better legislator because you come into office not with just your party voters' input but your entire constituency...

— Senator Colby Coash (R)

Nebraska's decision to establish a unicameral, nonpartisan legislature was anything but sudden. For 68 years, Nebraska was bicameral, with a Senate and House of Representatives. Disagreements between the two chambers resulted in few bills being passed and a general lack of productivity.

In response to perceptions of corruption, extensive influence and favors received by economic interests, progressive/populist reformers

in the 1930s sought to fundamentally change how they were represented.

They were unwilling to stand idle as Nebraska experienced the massive political and social unrest gripping much of the United States at the time. Their effort was catalyzed by the 1933 legislative session, in which a gridlocked legislature failed to handle fundamental tasks such as tax reform, appropriations, and the repeal of Prohibition.



Senator George Norris, 1913

In 1934, Nebraskans answered the challenge of that moment with a broad set of democracy reforms; voting to purge half their state legislature and enact a nonpartisan election system. No one may run for a seat in the legislature under the banner of a political party. U.S. Senator George Norris, a progressive Republican who put all his political capital behind advocating for the reform, “believed that a one-house legislature would be more transparent, that its members would be more accountable to voters for their actions, and that it would cure a significant flaw in bicameral systems by eliminating the need for conference committees, which too often acted in secret and without sufficient checks on their power.”²

Moreover, “[h]e firmly believed partisan politics were detrimental to the democratic process.”³

For Norris:

Men in the legislature, elected on a partisan political platform, are inclined to follow the bidding and the dictates of party machines and party bosses.⁴

He couldn’t have been more perceptive.

Today, state elections in Nebraska tend to offer a wide range of candidates who must reach out to a broad range of constituents to be elected. Most run on the issues and their vision, not party platforms. That means constituents actually get to know their candidates as individuals rather than simply as party representatives. Senator Colby Coash (R)⁵ described it this way in an interview with Open Primaries:

Not having the party system means as a candidate, I have to go out and court all voters and when you’re successful in winning an election, when you’ve had to court all voters, not just party voters, you become a better legislator because you come into office not with just your party voters’ input but your entire constituency...It does change the dynamic for the better.⁶

Nonpartisanship Empowers Independence

This restructuring has generally freed the legislature from the type of strong-arm partisan politics that pervades political activity in Congress and most state legislatures. With no formal party alignments or caucuses, the Nebraska legislature operates under a unique political reality that allows coalitions to form issue by issue, typically based on government philosophy, geographic background, and constituency. Although the legislature consists of thirty-five Republicans, thirteen Democrats, and one independent, only eight members regularly vote the party line.⁷

The parties in Nebraska have less control over legislators than they do in most states. That lack of party control, for example, means that the Governor of Nebraska must reach out to individual members for support when he wants to advance an agenda.

The interest level, demand for change, and time spent discussing an issue is set by the individual members of the legislature without regard for an official party stance. Members are independent trustees empowered to make their own decisions, and work out differences with other members on behalf of their constituents.

Because committee chairs are elected by the members and not partisan leaders, with minority party members regularly holding leadership posts, the Nebraska legislature is largely a “meritocracy,” where “talent rises to the top” says Jon Bruning (R), former Nebraska Attorney General and state senator, in an interview with Open Primaries. He adds:

Committee chairs operate with much more independence, since it’s much more work to pull them off a committee.⁸

This is why, for example, Senator Heath Mello, a Democrat, can chair a powerful committee like Appropriations.⁹ It is also why Nebraskans weren’t shocked two years ago, when the 103rd session of the legislature saw more Democrats elected to committee chairs than Republicans; much to the chagrin of Republican Party elites.¹⁰

The nonpartisan structure of the Nebraska legislature has allowed state legislators to define what “left,” “right”, and “center” mean—or don’t mean—instead of letting the party define it for them. That Nebraska legislators are not bound by party dogma is incredibly empowering. It gives them the space to consider new legislative approaches, and to reach out more broadly in crafting policy. It also shakes off the mythology and false assumptions of what it means to be a Republican, Democrat or independent. Minority party officials are regularly able to inject issues into legislative debates since they are not bound by traditional party confines. Members are more likely to vote their conscience, and the entire process is transparent, without the backdoor deals that tend to dominate the legislative process in other states. As a result, all Nebraskans have much wider access to, and influence over, the legislative agenda. As Jon Bruning (R) points out in the interview with Open Primaries:



While the parties play a role, in the end candidates or incumbent legislators are not tied to the party when voters read their name on the ballot. So they’re free to appeal to ideas from both parties in their elections.¹¹

“Policy debates have therefore evolved to be less partisan,” says Patrick J. O’Donnell, long-time clerk for the unicameral legislature, “and final decisions are made upon the merits of an issue.”¹²

Voters also get a more productive legislature. Senator Coash (R) describes it this way in an interview with Open Primaries:

If you want to be productive, you have to be willing to give up some of your power-and it’s the power of the party...the flip side of that is you become more effective and more productive.

Members are not separated by partisan structures that prevent them from getting to know one another personally and better understand different perspectives. The corrosive effects of partisan gamesmanship are largely diminished. Former state Senator Amanda McGill Johnson (D) describes how important that can be in an interview with Open Primaries:



From day one of running, but especially when you get elected, it [the nonpartisan nature of the legislature] allows you to build relationships that are at the core of being productive...you get to know other members as people not as members

of a party...our legislature allows us to listen and learn and legislators regularly attend hearings where information is presented by their colleagues.

She even recalls bringing one of the most conservative members of the majority party to tears in a bipartisan discussion of a bill on human trafficking.¹³ The comparison to other states can be striking. Senator Kathy Campbell (R), in an interview with Open Primaries, recalls approaching a freshman legislator from Michigan at a conference for new legislators and asking how many bills she had introduced. She was astonished to hear the reply:

Oh no, if you have an idea for a bill you have to submit it to the party and they'll determine if it moves forward and who carries it. So a lot of freshman [in Michigan] don't carry any bills.



When the legislator from Michigan asked Senator Campbell how many bills she had introduced her freshman year in the Nebraska legislature, she was equally as dumbfounded to hear the answer. Senator Campbell replied:

I've introduced 12 bills this year.¹⁴

Senator Amanda McGill Johnson (D), in an interview with Open Primaries, adds:

I had a great deal of success passing bills which I would not have been able to do as a minority member in another state or in Congress.¹⁵

Redefining Progressive Reform

The members of the Nebraska legislature are 71% Republican, but their party affiliation (which is well-known, though not printed on the ballot) does not mean that they shy away from engaging on a wide range of issues, or even from passing legislation that would be considered progressive or left of center. In the recent past, they have enacted reforms on issues ranging from child welfare to prenatal care for undocumented immigrants. This past year, in particular, they enacted a number of progressive reforms that included overriding vetoes from the governor of their own party. Indeed, the legislature's nonpartisan structure made unusual alliances and inter-party strategizing the norm, not the exception, with coalitions developing issue by issue.

DEATH PENALTY: Nebraska recently became the first “red state” to abolish the death penalty in more than 40 years. An alliance of legislators from both parties, representing diverse political views, supported the ban; even overriding the governor's veto. The alliance included members who objected to the death penalty for either moral or religious reasons, had serious concerns with systemic injustice, or who cast the issue as a waste of taxpayer money and questioned the government's ability to manage the process. They were supported by intense lobbying from a wide-ranging group of liberal, religious and libertarian-minded conservative groups. Debate on the floor of the legislature for the bill was long, and members voted their conscience. Danielle Conrad, executive director of the state chapter of the ACLU, which supported the ban, cited the state's unicameral, nonpartisan nature as the seed for their unlikely coalition.¹⁶

Senator Coash, a leader of the death penalty repeal, adds in an interview with Open Primaries:



I just didn't see repeal of the death penalty as a progressive issue; if there was any other government program in our state that was as ineffective and costly as this has been, we would have gotten rid of it a long time ago. That's a conservative approach.¹⁷

IMMIGRATION REFORM: In a significant victory for the immigrant community and its allies, the Nebraska legislature passed a bill over the governor’s veto that lifted the ban on driver’s licenses for young people brought to the U.S. illegally as children. Supporters included a broad-based coalition of farm and business groups, civil rights and immigrant activists, and local elected officials from both parties.¹⁸



RAISING THE GAS TAX: Rather than focus on party platforms, bipartisan backers successfully raised the gas tax over a veto by focusing on the critical infrastructure improvements that the new revenue would support and the economic benefits such improvements would bring to Nebraska. The bill drew intense lobbying on both sides, including a well-financed opposition led by Americans for Prosperity. However, an alliance of county and city officials, truckers and farmers was able to frame the debate.¹⁹ Twenty registered Republicans joined 10 registered Democrats in voting to override the new Republican governor’s first veto in office, and not a single registered Republican flipped his or her vote for original passage of the bill to support the governor’s position.

RAISING THE MINIMUM WAGE: Nebraska voters overwhelmingly approved a ballot initiative to raise the state’s minimum wage. Support from both sides of the aisle in the state legislature helped solidify the victory, along with an unusual coalition of wealthy citizens, labor unions and advocates for the poor.²⁰

Nebraska is NO Washington

Contrast this reality to the legislative actions of Nebraska's congressional delegation in Washington D.C., which is 80% Republican²¹ and elected through a partisan primary process. Nebraska's congressional delegation consistently votes with their national party:²²

- 1) Senator Deb Fischer (R): Votes 98% with party.
- 2) Senator Ben Sasse (R): Votes 95% with party.
- 3) Congressman Adrian Smith (R): Votes 96% with party.
- 4) Congressman Jeff Fortenberry (R): Votes 89% with party.
- 5) Congressman Brad Ashford (D): Votes 74% with party.

In Nebraska's partisan arena, all the independence and creativity that are consistent hallmarks of the nonpartisan system have disappeared; along with productive legislating. The differences are glaring. Nebraska's congressional delegation often reaches completely different outcomes than their state counterparts when voting on the exact same issues. Indeed, early this year, all Representatives and Senators from Nebraska voted to end the Deferred Action for Childhood Arrivals (DACA) program and deport young people brought in the U.S. illegally as children—the exact opposite of their state colleagues.²³ In fact the contrasts are so stark, that the Nebraska legislature actually adopted a resolution calling on Congress to pass an immigration overhaul.²⁴

Similarly, leaders in Congress have called consideration of raising the gas tax a “nonstarter,”²⁵ and have yet to agree on long-term funding to supplement the state's efforts at funding crucial infrastructure improvements. Instead, Congress recently passed its 34th short-term extension of the nation's transportation program since 2009, ensuring only that states will continue to receive federal highway funding through Oct. 29, 2015.

Meanwhile, raising the minimum wage has virtually no support among Congressional Republicans including the members of Nebraska's own delegation.²⁶ While the state's minimum hourly wage went up to \$8 in 2015, with a further raise in 2016 to \$9, the federal minimum wage stays stuck at \$7.25 an hour. Indeed, most Americans support Nebraska's approach. In most surveys, around two-thirds of respondents or more say they back a proposal to raise the minimum wage.²⁷

Two systems, with two very different outcomes for the citizens of Nebraska and two very different experiences for their elected officials. Two Nebraskans are in an unusual position to identify the distinctions; both U.S. Senator Deb Fischer and Congressman Adrian Smith are former members of the Nebraska legislature. When Senator Fischer was a member of the legislature, she was known for “working the floor”; selling her position, resolving conflicting approaches and building alliances with other members in order to advance her legislative agenda. Now, she notes, “(i)n the U.S. Senate, the culture is different. Floor debates...tend to be sparsely attended...power is concentrated to a great extent in the hands of one person: the majority party leader.”²⁸

In the U.S. House of Representatives, Congressman Adrian Smith notes that “(a) political party wields far greater power when it’s in the majority than the minority, setting the agenda and having direct responsibility for operations.”

He further laments:

Where D.C. fails the most is that there’s too much bickering and not enough solid, true debate.²⁹

Jim Jenkins (I), former U.S. Senate candidate and Nebraska businessman, agrees in an interview with Open Primaries:



The party system has such a stranglehold over our political culture that most Americans see their only options in the political arena as supporting one party or another (even independents have no choice but to play the two party game), when the real problem is not left versus right but instead a system that is now largely uncompetitive, lacking true debate and one that is focused mostly on winning and not on governing.³⁰

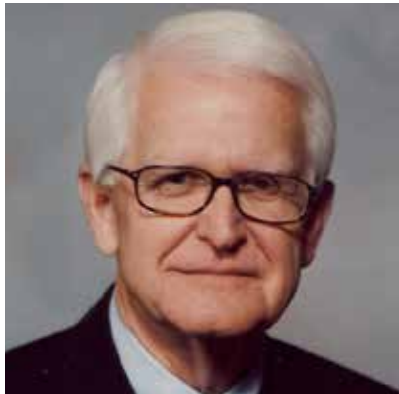
Pride in the Nebraska System

Nebraska's state legislators are proud of the independence that their state's nonpartisan system offers them in pursuing a constructive agenda:



Speaker of the
Legislature Senator
Galen Hadley (R)

“We don’t have party caucuses and we don’t have party leaders. In other legislatures the speaker can basically tell people how to vote. I can’t tell anybody how to vote. I have enough trouble telling myself how to vote.³¹”



Nebraska State
Senator Bill Avery
(D)

“We don’t have a majority party or minority party with an organized group of senators. Getting a bill passed means you have to get a coalition on every bill – the same 25 green lights don’t go on every time.³²”



Nebraska State
Senator Dan
Hughes (R)

“Nebraska’s system gives each senator the power to force debate on an issue. Rather than being dismissed because of the party affiliation of the issue, it has a greater likelihood of being discussed by the chamber.³³”

CONCLUSION

Nebraska serves as evidence that under a nonpartisan system debates over issues prevail over partisan politics, even in a state heavily dominated by one political party. Its nonpartisan system has created a more inclusive culture in the statehouse; one that embraces debate, new ideas, and different approaches to governance. Inter-party work among members is standard, diverse coalitions of interest groups common, and constituents of all persuasions enjoy broad access to government.

Nebraska offers a blueprint of good government and social innovation for issue advocates and political reformers nationwide. Indeed, delegations from other states often visit Nebraska and study its nonpartisan system. Such visits can be eye-opening. Michigan state Representative Martin Howrylak (R), has recently introduced legislation that would have Michigan adopt Nebraska's nonpartisan model. In introducing the legislation, he remarked:

Michigan's residents deserve a legislature that is representative of and to the people. Too much good policy runs into the headwind of elections, with each party trying to position itself superior to that of the other party. Good policy knows no party labels and there is no reason that elections should stand in the way of legislation that benefits Michigan's taxpayers.³⁴

Nebraska's nonpartisan system demonstrates that structural reforms not only matter, but can be transformative well beyond even one state's borders. As Jim Jenkins (I), former U.S. Senate candidate and businessman, declares in an interview with Open Primaries:

Nebraska clearly demonstrates that a top two system can work. It is a unifying force, not a dividing force.³⁵

"There's a lot of people in Nebraska who feel very strongly about their independent-mindedness," says Ari Kohen, a political science professor at the University of Nebraska-Lincoln. "And to see it play out this way and have the nation see it play out this way, there's a pride in that."³⁶

AUTHOR BIOGRAPHY



Jeremy Gruber, J.D. is the Senior Vice President at Open Primaries. He is a lawyer, writer, and internationally recognized public policy advocate who has helped enact over 60 state, federal and international laws and regulations. These include the successful passage of the first U.S. civil rights law in over twenty years, the Genetic Information Nondiscrimination Act (GINA), a federal law protecting Americans from genetic discrimination.

Gruber has testified before the U.S. Congress, the FDA, and numerous state, federal and international legislative and regulatory bodies. He has appeared in the New York Times, Wall St. Journal, CNN, ABC, NBC, CBS, MSNBC and many other media outlets.

Gruber received his Juris Doctor (J.D.) from St. John's University School of Law and a B.A. in Politics from Brandeis University.

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Open Primaries is a movement of diverse Americans who believe in a simple, yet radical idea: no American should be required to join a political party to exercise his or her right to vote.

The mission of Open Primaries is to advocate for open and nonpartisan primary systems, counter efforts to impose closed primaries, educate voters, train and support spokespeople, and participate in the building of local, state and national open primaries coalitions.

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ENDNOTES

- 1 “2015 Legislative Committees”, Nebraska Legislature.gov, accessed June 17, 2015, <http://nebraskalegislature.gov/pdf/committees/roster.pdf>
- 2 Mike McCabe, “A Legislative Branch Like No Other”, CSC Midwest, Feb. 2011.
- 3 Robak, Kim. 1997. “The Nebraska Unicameral and its Lasting Benefits.” Nebraska Law Review, 76 Neb. L. Rev. 791 at 795. Lincoln, NE: University of Nebraska Press.
- 4 Brad Peace, Producer, “Only in Nebraska, Birth of the Unicameral - Nebraska Stories,” NET Television, February 17, 2010.
- 5 The Nebraska system does not marginalize political parties and the elected officials quoted herein are identified with their party affiliation. However, the people of Nebraska have ownership of the electoral and governance process and the parties conduct themselves within that framework.
- 6 Open Primaries interview with Senator Colby Coash, June 12, 2015.
- 7 Anna Gronewold, “Conservative Nebraska Legislature Tackles Liberal Issues”, The Washington Times, May 10, 2015.
- 8 Open Primaries interview with Jon Bruning, August 11, 2015.
- 9 Nebraska Legislature, “Appropriations Committee”, <http://news.legislature.ne.gov/app/> .
- 10 Kevin O’Hanlon, “Speaker, committee chairs selected for 103rd Legislature,” Lincoln Journal Star, January 9, 2013.
- 11 Open Primaries interview with Jon Bruning, August 26, 2015.
- 12 Mike McCabe, “A Legislative Branch Like No Other”, CSC Midwest, Feb. 2011.
- 13 Open Primaries interview with Amanda McGill Johnson, August 12, 2015.
- 14 Open Primaries interview with Senator Kathy Campbell, June 12, 2015.
- 15 Open Primaries interview with Amanda McGill Johnson, August 12, 2015.
- 16 Russell Berman, “How Nebraska Abolished the Death Penalty,” The Atlantic, May 27, 2015.
- 17 Open Primaries interview with Senator Colby Coash, June 12, 2015.
- 18 Griselda Nevarez, “Nebraska Ends Ban On Driver’s Licenses for Young Immigrants,” May 28, 2015.
- 19 Joe Duggan, “In a defeat for Gov. Ricketts, Nebraska’s gas tax will be going up,” Omaha.com, May 15, 2015.
- 20 Paul Hammel, “Nebraska joins 23 states with minimum wage above federal government,” World-Herald Bureau, November 5, 2014.
- 21 Members of the Nebraska Congressional Delegation, Congress.gov, accessed June 25, 2015. <https://www.congress.gov/members?q=%7B%22member-state%22%3A%22Nebraska%22%7D&page=1>
- 22 Member search of www.openCongress.org accessed June 26, 2015.
- 23 Roll Call on HR 420, DACA, Accessed June 19, 2015 <http://clerk.house.gov/evs/2015/roll030.xml>
- 24 Martha Stoddard, “Nebraska Legislature calls on Congress to pass immigration overhaul,” Omaha World-Herald, April 10, 2014.
- 25 Keith Laing, “GOP governor’s gas tax hike veto overridden,” The Hill, May 18, 2015.
- 26 Claire Zillman, “Congressional Democrats’ new minimum wage proposal: \$12 per hour,” Fortune, April 29, 2015.
- 27 The American Dream Poll, “Strong support for raising minimum wage,” CNN Money, June 9, 2014.
- 28 Editorial, “Nebraska ways vs. Washington ways,” Omaha World-Herald, August 8, 2013.
- 29 Editorial, “Nebraska ways vs. Washington ways,” Omaha World-Herald, August 8, 2013.
- 30 Open Primaries interview with Jim Jenkins, August 28, 2015.
- 31 Anna Gronewold, “Conservative Nebraska Legislature tackles liberal issues”, Associated Press, May 10, 2015.
- 32 Sean Whalen, “Politicos debate the pros and cons of Nebraska’s non-partisan Legislature,” NewsNetNebraska, April 26, 2012.
- 33 Anna Gronewold, “Conservative Nebraska Legislature Tackles Liberal Issues”, The Washington Times, May 10, 2015.
- 34 “Rep. Howrylak introduces legislative reform constitutional amendment,” Press Release, July 15, 2015. <http://gophouse.org/rep-howrylak-introduces-legislative-reform-constitutional-amendment/>
- 35 Open Primaries interview with Jim Jenkins, August 28, 2015.
- 36 Betsy Woodruff, “Nebraska’s No-Stalemate, Commie Legislature,” The Daily Beast, May 29, 2015.



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