



The Council of State Governments-WEST *Special Report*

Legislative Civility: Can it survive polarized voters and contentious politics?

From the CSG-WEST Committee on the Future of Western Legislatures

“The speaker shall see that all members conduct themselves in a civil manner...”

—Montana House Rule 10-60



Participants in the Futures forum reported that legislative civility is “a somewhat serious problem.”

When the CSG-WEST Legislative Futures Committee met at the CSG/CSG-WEST annual meeting in Anchorage, Alaska in September 2004, legislators took up the question: Can legislative civility survive polarized voters and contentious politics? Three national experts helped lawmakers find some answers.

Alaska Representative Lesil McGuire chaired the committee, and Nevada Senator Maurice Washington served as vice chair. The Futures Committee is charged with examining trends that affect Western legislative institutions.

The forum was divided into three parts. In the **first** part, Shawnta Watson Walcott, communications director for Zogby International pollsters, spoke about a nation divided by values and politics. Eric Uslaner, University of Maryland professor and author of “The Decline of Comity

in Congress,” shared his insights on causes and cures for legislative incivility. Alan Rosenthal, Eagleton Institute of Politics professor at Rutgers University, discussed the impacts of declining civility on legislative institutions.

In the **second** part of the forum, lawmakers broke into four work groups to consider four questions:

1. **How serious is incivility in your legislature?**
2. **What causes incivility in your legislature?**
3. **What are the consequences of incivility in your legislature?**
4. **What actions are being taken or could be taken to respond to improve civility?**

In the **third** part of the forum, panelists responded to reports from legislative participants.

PART I: POLARIZED VOTERS, LEGISLATIVE CIVILITY AND IMPACTS ON STATE LEGISLATURES

Introduction

According to Alaska Rep. Lesil McGuire, chair of the **ACSG-WEST Committee on the Future of Western Legislatures**, civility is a hot topic for the 21st century. She cited as evidence articles like “The Rude Age,” “Yelling Rarely Solves Issues” and “Why is Everybody So Cranky?”

Furthermore, McGuire said concern about civility isn’t new. George Washington himself felt compelled to write down 110 rules of civility. And presidential elections in the early days of the nation make today’s electioneering look pretty tame.

When Thomas Jefferson ran for president, Adams’ supporters called him an atheist, an anarchist and a demagogue. Andrew Jackson was also accused of being an adulterer, a gambler, a bigamist, a drunkard, a thief and a murderer. Critics faulted John Quincy Adams for traveling on Sunday. Henry Clay’s opponents claimed that he violated all Ten Commandments.

McGuire noted that in the heat of campaigns lawmakers may be tempted to step over the line between the civil and the uncivil, and more often than not they might not know exactly where to draw that line. She said legislators need to be concerned about civility since “all of us who run for office must eventually turn to governing.”

Are we a nation divided?

Shawnta Watson Walcott, communications director of Zogby International pollsters, answered that question for lawmakers with a resounding “yes.” She said the experts watching the 2004 presidential election believe that “we haven’t been this polarized in this country during an election cycle since the times of the Jefferson and Adams battles back in the 1800s.”



Futures Committee Chair Rep. McGuire (AK) suggested that during the heat of campaigns lawmakers may be tempted to step over the line between civil and uncivil behavior.

In the 2004 presidential election, voters were bombarded by political commentators who talked endlessly about “red states” (conservative leaning) and “blue states” (liberal leaning). According to Walcott, not only are voters polarized on the big issues of Iraq, gay marriage, gun control, the environment and abortion, we are a nation divided on the small stuff too.

When Zogby pollsters looked at undecided voters (about 10 percent of all voters), they found disagreement over preferences in ice cream, soft drinks, TV stations, coffee, movies and more. If you were an undecided voter in a “red” state for example, you preferred Haagen Dazs to Ben and Jerry’s ice cream, and you liked to get your news from Fox TV. Undecided voters in blue states drank Starbucks’ coffee and got their news from CNN.

If we are to build bridges between voters who hold very different views on ideology and values, it’s necessary to understand what matters to these voters, concluded Walcott.

Why are Legislators Uncivil?



Eric Uslaner, University of Maryland Department of Government and Politics, author of *“The Decline of Comity in Congress”*

Professor Eric Uslaner has spent years studying the causes and consequences of political incivility. He speaks nationally and internationally on trust and civic engagement. He confirmed Walcott’s message, saying that: “The reason why our legislatures are so polarized is that our citizens are so polarized.”

Uslaner told forum participants that when he first began looking at the subject of civility, people attacked each other across party lines and within party lines. Uslaner recalled that in 1985, Newt Gingrich called U.S. Senator Bob Dole the tax collector for the welfare state. Uslaner said that by today’s standards Gingrich’s remarks would almost be a compliment.

More recently, in both Congress and in state legislatures, attacks have become far more partisan and far more personal. Uslaner noted that in Wisconsin, a state with a long tradition of civility, lawmakers started calling each other Nazis on the floor. One member took a microphone, banged it into a desk and broke the desk.

So what brought about all this incivility? Uslaner disagreed with those who think that structural reforms that took power away from central leaders are to blame for incivility. Incivility exists not just in the “reformed” U.S. House of Representatives, but in the U.S. Senate that never reformed itself, in many state legislatures, on the U.S. Supreme Court and in “every little city council you can imagine.” Neither does Uslaner attribute incivility to divided government where one party controls the legislature and

another controls the executive branch. He pointed out that Dwight Eisenhower actually preferred to deal with Democratic leaders of Congress.

Uslaner also disagrees that “the media did it.” Despite the outlandish mike grabbers like former Democratic Congressman Jim Traficant, viewers get their impressions of Congress from leaders who still get the bulk of face time on TV. Uslaner also disputed the idea that incivility is the fault of newcomers, such as those in term-limited states. Even lawmakers who stick around a long time often prefer to talk primarily with colleagues with whom they agree.

Uslaner alleges that our polarized party system is at the root of political incivility. In the past conservative Democrats and moderate Republicans bridged some of the gaps created by partisan differences. Now there’s no such thing as a loyal opposition. Instead of seeing someone who disagrees with us as someone who just has a different world view, it’s now an “I’m right and you’re morally defective” world.

Uslaner noted that this distrust between people who think differently is not just a political phenomenon, but also a social and cultural phenomenon. He pointed to research from 1960 that found

58 percent of Americans agreed that most people can be trusted. By 2002 and 2003, only 33 percent felt this way.

“Instead of seeing someone who disagrees with us as someone who just has a different world view, it’s now an ‘I’m right and you’re morally defective’ world.”

—Professor Eric Uslaner, author of *“The Decline of Comity in Congress”*



Alan Rosenthal, Eagleton Institute of Politics, Rutgers University, author of *“Heavy Lifting: The Job of the American Legislature”* and numerous books on legislative ethics and institutions

Long-time legislative observer Alan Rosenthal agreed that the most important cause of legislative incivility is partisan competition. “The voters aren’t stupid,” Rosenthal reminded participants. “We just happen to have a country where the voters are divided between the red and the blue voters.” Partisan competition doesn’t stop after the election is over. Rosenthal suggested that the legislative session

is part of the campaign, and that more than ever before campaigning and governing are totally intermixed. “When you’re targeting members of the other party in a chamber, it’s difficult to maintain friendships or civility. It’s not only that you campaign in a guy’s district, but you’re killing him in the legislative process as well.”

Rosenthal is also quick to point that it is the nature of our political system to promote people and parties with strong opposing views. “We want competition, we get it, but we don’t like it. We want responsible parties that offer differences to people. We get it, we don’t like it.”

In addition to partisanship, Rosenthal said that outside interest group advocacy, particularly on ideological and social issues, contributes heavily to legislative incivility. “They do believe the other side is the enemy and is evil.”

Ironically, said Rosenthal, tougher ethics laws also contribute to incivility in legislative chambers. “The lobbyists used to bring members together across parties,” he reported. But that doesn’t happen as much now, and the legislature is probably better in some ways for it. However, when lawmakers never get together socially, it’s tougher to build consensus across the aisle.

Does legislative civility matter? If so, what can lawmakers do to promote it?

Professor Rosenthal concluded that “yes,” civility matters. The legislature as an institution suffers when there is no recognition that the other side has a legitimate point of view. According to Rosenthal, the lack of civility feeds the negative public perception of legislatures.

Rosenthal cut to the heart of why legislative civility matters. “Members will become more civil when they learn to appreciate the overriding importance, not only of their bills,

not only of their parties, not only of their agendas, not only of their careers, not even of their constituencies, but of the legislature which is the engine of democracy.”

Rosenthal offered his own remedies for incivility. Retreats that encourage members and families to get to know each other as human beings make it more difficult for legislators to be uncivil. Including all members in orientation and other training sessions would give people an opportunity to get together. He mentioned that in Maryland new members and some senior members take a bus trip around the state. The speaker sponsors the trip, and it allows members to see other parts of the state beyond their district and to talk to members with different views.

Rosenthal implored legislators, especially incumbents, not to bash or run against their own institutions. He also argued that it is the job of the legislature to explain to citizens and to school kids in particular about representative democracy and the legislature’s role in it.

Professor Uslaner asked lawmakers to declare their own unilateral cease fire—to call off their dogs first. Stop legislative procedures that obstruct what the majority does or run roughshod over the minority. He also asked legislative leaders to quit leading campaigns against incumbents of another party. If you fail to defeat these incumbents, it’s not easy to work together. Campaign instead for open seats.

Uslaner suggested that interfaith summits are one way to build bridges across a society where the biggest conflicts are religious and cultural. Further, leaders from across the political spectrum need to have a national discourse so that we remember that despite our differences, we have a shared faith in our country. “I’m asking more people to be like Bob Dole who is truly a man of the Senate and ...could work with people on both sides,” concluded Uslaner. You have to accept the legitimacy of all or at least 97 percent of your colleagues, he said.

Excerpts from Mason’s Manual of Legislative Procedure

- *It is the duty of all members to conduct themselves so as not to obstruct the like rights of other members.*
- *No person may use indecent language with reference to the body or its members.*
- *It is not the person but the measure that is the subject of debate...*

PART II: CAUSES, CONSEQUENCES AND “CURES”

Lawmakers divided into four groups to discuss questions related to legislative civility. Each group reported to the futures committee as a whole.

1. How serious a problem is incivility in your legislature?

All groups reported that legislative incivility is a “somewhat” serious problem. Members had experienced days when incivility was very serious and other days when the legislature was miraculously civil. Some members said that there is a problem with lack of civility, not just on the floor but in caucuses and elsewhere.

2. What causes incivility in your legislature?

Some lawmakers blamed the press. They believed that sometimes the media encourages legislators to fight because it makes good press. Power struggles among legislators and between the legislature and the governor were cited as contributing to incivility. Negativity is perceived to be effective, so people jump on those kinds of attacks. And those attacks are almost always covered by the press. Lack of respect for different points of view also causes incivility, as does the fact that lawmakers are becoming more and more partisan.

One group of lawmakers said that growing incivility is a product of the day and age they live in. Lawmakers are dealing with egos, competition, their own personal goals and those of their constituents. The minority in a legislature often has a hard time getting good legislation approved. Extreme points of view spoken in uncivil tones also detract from the process. Lawmakers who are aggressive and say it’s my way or no way generate an uncivil atmosphere.

Another group of lawmakers suggested that name calling,



Forum participants confer about the causes of legislative incivility.

lack of respect and debate that is unrelated to the bill at hand all combine to create incivility. Campaign funding and where that funding comes from is another source of incivility.

One group said they wished legislation didn’t have to be a “winner takes all” game where everyone is either 100 percent right or 100 percent wrong. Sometimes the minority feels they never have the opportunity to be heard. Bills are pooh-poohed just because of who authored them. Sometimes a statesmanlike lawmaker will step up to the plate and say I have a great bill here, but it’s not going anywhere with me as the author so I’ll release it to someone who can move it forward.

“Legislatures are adversarial forums where strong disagreements flourish. The trick is to disagree without being disagreeable.”

—Nevada State Sen. Carl Dodge, 1981

3. What are the consequences of incivility?

Incivility breeds more incivility said one group. And when it takes place, there’s a lack of progress towards solutions. Lawmakers said they experience gridlock, which results in the death of important legislation.

Legislators said they agreed with the panelists that one consequence of incivility is lack of respect for the legislative institution. Incivility is serious because it erodes the integrity

of the system, and it erodes the trust that is necessary to work across party lines. “We’re all less productive when the trust isn’t there,” said one lawmaker.

One group believed that the major consequence of incivility is poor public perception. Another group said incivility eliminates compromise because “we’re not communicating, and when we stop communicating, it’s because we’ve made things personal or we’ve taken things personal...”



Lawmakers agreed that social activities with members of the other party could improve legislative civility.

4. What actions are being taken or could be taken to respond to incivility?

Not surprisingly, lawmakers spent the bulk of their work time discussing solutions to incivility. They said greater member interaction and more social activities would help improve civility. New members take their cues from more senior leaders who must set an example.

Leadership actions are critical. Leadership sets the tone and must enforce floor decorum. Leadership has both the opportunity and the responsibility in making sure that civility is something that is consistent in legislative chambers.

One group noted that Texas may be the only state where the majority and minority share committee leadership. Not only that, presiding officers come from both the majority and minority party, and that breeds competency. Striving for competency improves civility. In the Texas Senate, members have lunch everyday with opposing party members. It’s very difficult to be uncivil at ten in the morning if you know you’re going to have lunch with that person in two hours. So the lunches promote bipartisanship.

“Labor to keep alive in your breast that little spark of celestial fire called conscience.”
—George Washington’s Rules of Civility and Decent Behavior

Training and mentoring programs for new legislators will help create an atmosphere of civility. More experienced legislators need to work with newer legislators. In one legislature, a senator from the same geographic area as a new house member will help the newer lawmaker.

Education of new members in the ways of the legislature and how to work in a more civil way was recommended by one group. This group believed that clear standards of behavior must be set in terms of what’s acceptable and what’s not. Leadership plays a major role in civility from the very beginning. Peer pressure must come down on individuals who are not civil.

Retreats for legislators whether for everyone or for committees or groups were believed to be positive. One lawmaker said that in his legislature the press is invited to come to the retreats. Asking educators to teach kids about the legislative process was seen to be beneficial. Doing social things together like basketball games, golf tournaments, dinners and bowling tournaments was cited as a strong contributor to legislative civility. Lawmakers need to do things outside “the war of the legislative process,” suggested one group.

Some lawmakers said the best cure for incivility is don't attack people. Attack ideas with better ideas, said one. Another legislator asked: But who's the judge of what's a better idea?

Alaska lawmakers said that each year legislators of both parties come together in a golf classic that's a fundraiser for a good cause. Training exercises in an environment of trust are beneficial, said one group.



Western lawmakers took time to join working group discussions on civility.

PART III: THE FINAL WORD

Professor Uslaner commended the four working groups of legislators and expanded on conversations he heard about the distinction between governing and campaigning. He said lawmakers complain that we have a permanent campaign that gives rise to incivility. Although it is important and useful to have partisan divisions, the parties must stand for something, said Uslaner. He noted that in a true parliamentary system parties run and fall on the basis of real programs that they have implemented.

Uslaner pointed out that in Congress in the session leading up to the election, "most of the legislation being considered has no chance of passing and is mostly done by each party to make the other side look bad."

As an example of the permanent campaign, he cited his own state of Maryland where the governor and the speaker of the house are constantly bickering over the issue of slot machines. The Republican governor favors no taxes and wants slot machines to increase state revenues. The Democratic speaker wants to prohibit slot machines. And neither side is willing to budge, despite the fact that the two men grew up on the same block and were the best of friends as kids. Uslaner says this is a case where the personal political ambitions of both men take precedence over governing the state of Maryland.

Zogby spokeswoman Walcott pointed out that the majority of Maryland voters are from the speaker's party, and most

of them don't want slots legalized. The governor, she said, doesn't want to put the issue to a referendum. In her view, the slot issue is about re-election in 2006 for both the governor and the speaker.

Professor Rosenthal disagreed wholeheartedly with Professor Uslaner. Again using the example of the slot machine dispute in Maryland, Rosenthal said that the Republican governor and the Democratic speaker have real differences of opinion. "I don't think it's personal, peevish politics," said Rosenthal. "I think it's separation of powers. I think it's different ideas about governance and about policy." In order to stand for different things, it's sometimes inevitable that the campaign goes on inside the legislature.

The key, said Rosenthal, is knowing where to draw the line. "You can't keep politics out of politics. You shouldn't keep politics out of politics," he said.

Professor Uslaner responded by saying absolutely lawmakers can retain their own perspectives and ideology but at the same time be institutionalists. He gave the example from the 1940s and 1950s of Congressional Republican Minority Leader Joe Martin and Democratic Speaker Sam Rayburn. Rayburn was a bachelor and Martin was married. Martin and his wife invited Rayburn to their house for dinner at least three nights a week. Uslaner acknowledged that both were atypical within their parties, with Rayburn on the conservative wing of the Democratic Party and Martin on the moderate end of the Republican Party.

"You can't keep politics out of politics. You shouldn't keep politics out of politics."

—Professor Alan Rosenthal

Choosing Civility: The Twenty-five Rules of Considerate Conduct

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. Pay attention 2. Acknowledge others 3. Think the best 4. Listen 5. Be inclusive 6. Speak kindly 7. Don't speak ill 8. Accept and give praise 9. Respect even a subtle "no" 10. Respect others' opinions 11. Mind your body 12. Be agreeable | <ol style="list-style-type: none"> 13. Keep it down (and rediscover silence) 14. Respect other people's time 15. Respect other people's space 16. Apologize earnestly and thoughtfully 17. Assert yourself 18. Avoid personal questions 19. Care for your guests 20. Be a considerate guest 21. Think twice before asking favors 22. Refrain from idle complaints 23. Give constructive criticism 24. Respect the environment and be gentle to animals |
|---|--|
25. Don't shift responsibility and blame

Author: P.M. Forni, Cofounder of the Johns Hopkins Civility Project

Uslaner also offered examples from more recent times where liberals and conservatives put aside ideology for the sake of good policy. He noted that U.S. Senators Mikulski, Hatch and Kennedy worked together on children's nutrition programs. Bob Dole worked with George McGovern on food stamps. These individuals respect the institution and are more creatures of legislatures than just constituencies.

Rosenthal reminded participants that despite concerns about civility, the major theme of most legislatures is collegiality. When he meets former legislators, what they remember most are their colleagues. He told participants

that he while he still holds a lot of hope for greater civility lest it harm the institution, he hasn't ever seen legislative leaders who could turn a situation around. Legislative leaders, said Rosenthal, have to be responsive mainly to their caucuses and to elections. And that's reality.

Rosenthal told lawmakers that many of their ideas to improve civility are worthwhile. He especially agreed that legislators need to get together more on an informal basis. Legislatures need to build civility and understanding and dedication to their institution.



Council of State Governments - WEST

"Serving Western Legislatures"

CSG-WEST provides a nonpartisan platform for regional cooperation and collaboration among the legislatures of the 13 Western states by creating opportunities for legislators and staff to share ideas and experiences with their colleagues.

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