



A CONFLUENCE PSG WHITE PAPER

Issues Too Big for Session

The Case for Deliberate Decision-Making
Infrastructure in State Government



CONFLUENCE
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GROUP

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Executive Summary

Some issues are too technically complex, too politically divided, and too consequential to resolve well inside an ordinary legislative session, no matter how capable the legislators working on it. States have already built the tools to handle these issues: more calendar time, real authority shared beyond the legislature, or a process built entirely outside government, but rarely name why one tool fits and another does not. This paper names that choice directly, and shows it happening across the country right now.

The Three-Condition Test

- ☐ Technically complex enough that no legislator can gather full command of it inside a session
- ☐ Divided enough that a bill arrives already opposed
- ☐ Consequential enough that a rushed answer costs more to fix than to build right the first time

If all three, the ordinary process is the wrong tool, not an inferior one.



The ordinary process is not simply inefficient. It is the wrong tool for the job, in the same way a five-month construction schedule is the wrong tool for a project that needs five years, regardless of how skilled the crew is.

A**Model A: Extended Time, Same Authority**

same decision-makers,
more calendar.

**Colorado's Joint
Budget Committee.**
Florida's committee weeks.

B**Model B: Authority Beyond the Legislature**

real authority shared with
people the legislature
doesn't control.

**Minnesota's Sentencing
Guidelines Commission.**
**Colorado's redistricting
commission.**

C**Model C: No Government Convener at All**

built and run entirely
outside government.

Colorado's LTSS Work Group.

50 years

Minnesota's Sentencing
Commission, across multiple
generations of political turnover

13 days

from Colorado's AI Policy
Working Group's unanimous
recommendation to law

4 states

actively building data-
center structure right now,
in four different shapes

“

Letting go, building something that can reach a conclusion its creator did not choose in advance, is not a lesser form of leadership. It is a harder one, because it trades the certainty of control for the possibility of a better answer, and accepts that the second thing is worth more than the first.

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SECTION 1

Opening

Every legislature in the country runs on the same basic architecture. A defined number of weeks, a body of generalists elected to represent a place rather than a subject, a bill drafting process built for early commitment to a position rather than for the slower work of earning buy-in broad enough to last, and a floor vote that measures whether enough people agree, not whether the agreement is well founded. For most of what a legislature does, that architecture works. Roads get funded. Agencies get their budgets. Statutes get updated. The system was built to move a large volume of ordinary business through a compressed window, and it does that job well.

For some issues, that architecture is not enough, and states already know it. They reach for more time, for a body that takes on real decision-making authority itself, for one whose recommendations still return to the legislature for a final vote, or for a process built and run entirely outside government. They rarely name, in advance, why one tool fits a given issue and another does not. Guessing wrong carries a real cost, paid later, in compromises that do not hold. This paper names that choice directly: which issues need something other than the ordinary session, and which point along that continuum, from a little more calendar to full authority handed elsewhere, they actually require.

This paper is not a critique of the people who work inside that system. Legislators are not failing when a hard issue does not resolve cleanly in a single session. The tool is doing exactly what it was built to do. The problem is that a specific category of decision does not fit the tool, and every state has examples of what happens when that mismatch goes unrecognized: a bill drafted before the affected parties have had a real conversation, a compromise reached under floor-vote pressure that unravels in implementation, a question that needed expertise no committee had time to acquire.

None of this suggests legislators sit passively while a hard bill takes shape. Good legislators and their staff hold meetings, take input, and revise language in response to concerns long before a bill reaches committee. That effort is real, and it deserves to be named as real. But it runs into limits that have nothing to do with any individual legislator's diligence. A legislative office can sustain only so many of these conversations across the dozens of bills competing for its attention in a single session, and the issues that meet all three conditions above are, by definition, the ones that most need sustained engagement, not the least. A sponsor meeting with stakeholders about a bill already drafted is refining a position, not neutrally exploring a problem, and the people in that room know the difference; what a stakeholder says to the person who will decide whether their concerns survive into the final language is rarely identical to what they would say with no such stake sitting across the table. And the version

of a conversation that fits inside a legislative calendar is not always the same conversation that would actually change what the room understands, rather than simply what it agreed to trade away this time. None of this is a shortcoming in how any legislator does the job. It is a description of what the ordinary tool can and cannot do, however well it is used.

Three conditions define that category. First, the subject matter is technically complex enough that no single legislator has the time or capacity, inside a compressed session, to gather full command of it, and a legislator who is already drafting a bill from a particular point of view faces a genuine challenge, in perception and in practice, to also be a neutral gatherer of every perspective the issue requires. Second, the stakeholder community is divided enough that a bill introduced fully formed produces a coalition of opposition before anyone involved has had a genuine conversation with the other side. Third, the consequences of getting it wrong are significant and durable enough that a half-formed compromise costs more to fix later than building the right answer would have cost the first time.

The Three-Condition Test

1

COMPLEXITY

Technically complex enough that no legislator can gather full command of it inside a session



2

DIVISION

Divided enough that a bill arrives already opposed



3

STAKES

Consequential enough that a rushed answer costs more to fix than to build right the first time



If all three, ordinary process is the wrong tool, not an inferior one.

When only one or two of these conditions are present, the ordinary process usually still works, perhaps more slowly, or with more friction, but it works. When all three are present at once, ordinary process is not simply inefficient. It is the wrong tool for the job, in the same way a five-month construction schedule is the wrong tool for a project that needs five years, regardless of how skilled the crew is.



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States have not ignored this problem. They have built responses to it for decades, sometimes without ever naming what they were doing. A sentencing commission that has outlasted ten changes in political control. A budget committee that starts its work months before the rest of the legislature convenes. A redistricting process that a state's own voters chose to remove from the legislature's hands entirely. A cross-sector work group convened by a nonprofit, with no legislator in the room at all, because no government body could credibly claim to be neutral about the outcome. Each of these looks, on its own, like an isolated response to an isolated problem. Considered together, they form a pattern: states already know how to build the capacity this category of decision requires. What is missing is a shared vocabulary for recognizing when a new issue belongs in that category, and a deliberate practice of building the right structure before the need becomes an emergency rather than after.

That is what this paper offers. Not a single answer, and not an argument that one kind of structure fits every hard question. Some issues need more time inside the institution that already owns them. Some need a standing body with real authority that outlasts any single legislature. Some need a process built and run entirely outside government, because the government itself cannot be the neutral party the question requires. The chapters that follow lay out what distinguishes these categories from one another, using examples spanning transportation, healthcare, housing, criminal justice, and redistricting, in states governed by both parties and under every configuration of divided and unified control. The final section turns that framework into a set of questions any legislator, governor, or agency head can ask about a specific issue sitting on their own desk right now.

One further question runs underneath all of this, and it is worth naming at the outset because it resurfaces throughout the paper: once an issue clearly needs deliberate infrastructure rather than the ordinary process, is it a problem to be solved once, or a problem that will keep changing shape after the ink is dry. The answer determines not just whether a state needs a different kind of process, but what kind of structure that process should become. That distinction, more than any single example in this paper, is the one worth carrying into the next legislative session.

SECTION 2

What States Have Already Built

Every state that has built something outside the ordinary session has made a choice. Are the people making the final call the same legislators who would have made it anyway, simply given more time and better information? Or does real authority move elsewhere, sometimes entirely, to a body that decides on its own, and sometimes only in how the decision gets shaped, with legislators retaining the final vote but voting on something built by people they do not control? That question, who actually holds the pen and the gavel once the process begins, separates three distinct models. Each is legitimate. Each solves a different version of the problem.

Model A: Extended Time, Same Authority

same decision-makers,
more calendar.

Colorado's Joint
Budget Committee
Florida's committee weeks
Georgia's 2014 Joint
Study Committee on
Critical Transportation
Infrastructure Funding

Model B: Authority Beyond the Legislature

real authority shared with
people the legislature
doesn't control.

Minnesota's Sentencing
Guidelines Commission
Colorado's own redistricting
commissions
Health Policy Commission
Montana's Housing Task Force

Model C: No Government Convener at All

built and run entirely
outside government.

Colorado's LTSS Work Group
Educator Preparation and
Innovation Coalition (EduPIC)
Colorado Safer Schools
Initiative (CSSI)
Education System
Resilience and Innovation
Initiative (ESRII)

A LITTLE MORE CALENDAR

FULL AUTHORITY HANDED ELSEWHERE →

Model A: Extended Time, Same Authority

The simplest response to a hard issue is to give the same legislators more time to work on it, outside the compressed calendar of the ordinary session. This model does real work. It does not, on its own, answer the neutrality or candor limits described above, since the people deciding are still the people who would have decided anyway. What it buys is depth: fuller briefings, more hearings, a longer runway to absorb complexity before a vote.

Even the most routine, recurring obligation of state government benefits from this. Colorado's Joint Budget Committee, resolving appropriations that must be settled every year regardless of which party holds power or how tight the numbers are, works on an extended, professionally staffed calendar outside the ordinary session. Nothing about the fact that a budget must be produced each year is optional or seriously disputed, even though what that budget contains often is, from TABOR's constraints to the size and shape of state spending itself. The fact that Colorado still builds dedicated structure around the process says something about how seriously the state takes the mismatch between complexity and calendar, independent of how contested the resulting numbers turn out to be.

Florida solves the same problem without building any new body at all, not an ordinary interim committee, not a dedicated special-purpose one. Rather than a standing structure like Colorado's JBC, the state builds committee weeks directly into its calendar architecture, structured periods before the formal session clock starts, during which committees can take testimony, absorb agency

briefings, and work through complex bills without competing for time against floor votes and the hundreds of other matters a session must resolve. Same underlying fix, a different shape: no new institution, just a different way of buying time.

Georgia's 2014 Joint Study Committee on Critical Transportation Infrastructure Funding shows what this model can accomplish even on a genuinely contested question. Co-chaired by the sitting chairs of the House and Senate Transportation Committees, and composed overwhelmingly of sitting legislators, the committee met through the summer and fall between sessions to study funding mechanisms for the state's aging transportation infrastructure. Its recommendations became the basis for HB 170, signed into law in 2015, generating close to one billion dollars annually in new transportation funding. The committee did not change who was deciding. It changed how much time and information they had before deciding, and on a question with real political division attached, that alone produced a result ordinary session had not.

Model A is not a lesser version of what follows. It is the correct tool whenever the underlying problem is one of time and information, not one of neutrality or authority. The difficulty arises when a state reaches for Model A on a problem that actually requires Model B or Model C, more calendar for the same decision makers, when the decision makers themselves are the reason their ordinary process is failing.



Model B: Authority Beyond the Legislature

A harder category of problem requires more than time. It requires that the people reaching the decision include voices who are not legislators, sometimes because the technical question exceeds what any generalist body can master, sometimes because the legislature itself cannot credibly claim

neutrality about the outcome. Model B spans a wide range, from bodies built to last a single mandate to bodies designed to outlive the legislators who created them, but all share this defining feature: real decision-making weight sits with people the legislature does not control on an ongoing basis.

A related question, distinct from who is in the room, is what authority the room actually has. Some Model B bodies hold binding authority outright: Minnesota's guidelines carry the force of law, judges apply them. Others hold real influence without binding power, a recommendation that must, by rule or by practice, reach a legislative committee or a governor's desk for formal consideration, even if that body remains free to reject it. Still others are purely advisory, with no guaranteed mechanism ensuring their work is even taken up. This distinction matters as much as who sits at the table, and it resurfaces later in this paper, since a body's authority on paper is not always the same as its authority in practice.

A second gap this model closes is subtler than simple absence, since ordinary process regularly brings people with lived and professional experience into a hearing room. Testimony is common. What is limited is the role that testimony plays. A witness invited to speak to a bill already drafted, a framework already largely settled, is being asked to react to a decision rather than help shape it, and that difference matters more than it might seem. However candid or well-informed the testimony, it typically arrives after the frame is largely fixed, at the exact point in the process where changing course costs the most and happens least.

What the ordinary process rarely manages, and what this model is specifically built to do, is put people with deep technical or professional expertise in the same room, from the earliest stages, as the people who will actually live with whatever the room decides, not connected through a hearing schedule where one testifies Tuesday and the other testifies Thursday, but sitting at the same table while the actual shape of an answer is still being worked out.

The predictable result, when input arrives only through sequential testimony rather than shared table time, is one of two familiar failures. A policy shaped mainly by technical drafters, with affected communities invited to react only once the architecture is mostly set, tends to be theoretically sound and practically unworkable, a recommendation that reads well and falls apart on contact with an actual zoning office, an actual clinic, an actual small business trying to comply. A policy shaped mainly by whoever testified most persuasively, without technical grounding tested against it in real time, tends to be responsive to the room that showed up and blind to consequences nobody present was positioned to catch. Both are common. Both are expensive to unwind once written into statute. What this model does, at its best, is neither invite reaction nor defer to volume, but build the answer with both kinds of knowledge in the room together while the decision is still soft enough to be shaped by it.

One of the clearest and longest-running examples is Minnesota's Sentencing Guidelines Commission, created by the legislature in 1978 and still operating today. Its membership includes judges, prosecutors, defense attorneys, corrections officials, law enforcement, probation officers, and public members, a composition built specifically to include the historically adversarial parties whose disagreement makes sentencing policy hard to settle through the ordinary legislative process. The Commission does not merely advise. Its guidelines carry binding weight that judges apply. It has now operated across nearly five decades and multiple generations of political turnover, and its model proved durable enough that at least fifteen other states had built comparable bodies within its first fifteen years. Few examples in state government demonstrate as clearly that a legislature can build something that outlasts any single legislature, on a question too technical and too adversarial for the ordinary process to resolve well on a repeating basis.

An even starker illustration of a legislature ceding real authority took shape in Colorado in 2018, when voters approved Amendments Y and Z, removing congressional and state legislative redistricting from the General Assembly entirely and vesting it in two independent commission's, evenly divided among the state's two largest parties and unaffiliated voters, selected through a process run by a panel of retired judges rather than by legislative leadership. The Colorado Supreme Court later affirmed that lawmakers cannot direct the commission's work, calling any such attempt unconstitutional. Redistricting is not a minor or symbolic matter to hand away. It is the single issue on which a legislature has the most direct personal stake in the outcome, since district lines shape who holds each seat. That a legislature would refer, and voters would approve by a wide margin, a measure removing that authority from legislative hands entirely is perhaps the starkest evidence available that a governing body can recognize its own conflict of interest and build a structure to remove it. Independent commissions with similar authority now draw districts in several other states as well. The point of naming this example is structural, not partisan: this paper takes no position on any specific district or map, only on what the existence of these commissions demonstrates about a legislature's capacity for self-restraint when the incentive to keep control is at its strongest.

Massachusetts took a similar approach to a very different problem. Facing healthcare spending growth that outpaced the broader economy, the legislature in 2012 created the Health Policy Commission, an independent state agency, not an advisory board, empowered to set an annual statewide benchmark for healthcare cost growth and to monitor the market's performance against it. Commissioners are appointed for fixed terms and are barred from employment by or consulting relationships with the organizations they oversee. The Commission's core mechanism, an independent body holding a state to a cost-growth target, has since been echoed in some form by other states managing the same pressure, including prescription drug affordability boards that now operate in several states across the political spectrum. Unlike redistricting, healthcare cost containment carries little of the same partisan charge; both parties in most states are managing the same budget math, which makes this

a useful example of Model B addressing a technical, high-stakes problem without the tonal risk that accompanies harder-edged political territory.

Not every Model B body is built to last indefinitely. Colorado's HB23-1296 Task Force brought disability advocates, service providers, and people with direct lived experience into a room built to shape recommendations on the rights and services available to Coloradans with disabilities. The Working Group on Transforming Criminal and Juvenile Justice (TCJJ) did the same in a different domain, seating judges, prosecutors, defense counsel, and people with direct experience in the justice system to reach consensus on new commission structures when the existing Commission sunset after legislators could not agree on terms for its renewal. Neither body was built to operate indefinitely; both were built to answer a defined question and conclude. The Colorado AI Policy Working Group followed a similar pattern in a different domain entirely, bringing together technology industry representatives, civil rights advocates, labor groups, and consumer advocates to reach unanimous consensus on a revised regulatory framework after two years of legislative stalemate, a framework the legislature passed within thirteen days of floor consideration once the working group's recommendations were in hand. In each of these cases, the legislature retained the final vote. What changed was how consensus got built before that vote occurred: through a structured, neutral process, not one accountable to partisan leadership or to any interest group along the way.

Montana's Housing Task Force, convened by Governor Gianforte in 2022, sits in an interesting middle position. Its twenty-six members spanned Republican and Democratic legislators, local officials, builders, bankers, realtors, economists, and housing advocates, but the task force was chaired by the state's Department of Environmental Quality director rather than by a legislative committee chair. The person running the room was not managing floor politics or a reelection calendar tied to the outcome. The task force's recommendations, addressing zoning restrictions and land-use barriers to housing supply, became the basis for a legislative package now referred to nationally as the Montana Miracle, and the governor has extended the task force's mandate twice rather than allowing it to dissolve once its first assignment was complete. The task force did not hold final authority; its recommendations still had to pass through ordinary legislative votes to become law. But the person holding the gavel throughout its deliberations was not the same person who would later manage the bill's passage, which is a real, if partial, answer to the neutrality limit described earlier in this paper.

North Carolina offers a useful contrast in durability within Model B itself. Its Institute of Medicine, chartered by the General Assembly in 1983, convenes task forces of thirty to sixty stakeholders on major health questions, committed by design to impartiality, with any individual NCIOM task force typically seeing between fifty and ninety percent of its recommendations result in legislative or regulatory action, in whole or in part, within three to five years of release. Its scope is limited to health by charter, a limitation this paper notes only as a fact about the model, not as commentary on

any state's broader capacity. And North Carolina's Forensic Science Advisory Board, established by statute in 2011, sits within the Department of Justice with staggered, multi-year terms for its members, existing independent of any particular controversy and continuing regardless of which cases or which analysts happen to be under scrutiny in a given year.

Colorado addressed a similar problem through a different structural choice. Following the discovery of conduct by a former analyst at the Colorado Bureau of Investigation's forensic laboratory that later led to criminal conviction and sentencing, the Governor established the CBI Forensic Services Committee by executive order to advise the CBI Director on quality incidents, procedural questions, and improvement opportunities. The committee has done credible, substantive work since its creation, moving in its first year from foundational governance questions to specific, technical recommendations on individual forensic disciplines. But its existence rests on an executive order, not a statute, and North Carolina's board rests on a statute, not a constitutional provision, and Colorado's redistricting commissions rest on a constitutional amendment that requires another public vote to unwind. That is not a criticism of any one choice. It is a reminder that the word standing describes a spectrum, not a guarantee, and a body created in response to a crisis is only as durable as the instrument that created it, unless a state makes a deliberate decision to build something harder to undo once the immediate pressure that justified it has passed.



Model C: No Government Convener at All

A third category removes government from the convening role entirely. In this model, government does not host the process and does not control the invitation list. It participates, alongside employers, providers, advocates, and people with direct lived experience, but it sits at the table as one voice among many rather than as the body running the room.

This solves a problem that Model B, for all its strength, does not fully answer. Even a legislature that shares real authority with a Model B body is still the body that created it, funds it, and could, in principle, change its charge or its membership. Some questions are sensitive enough, or trust in government sensitive enough, that even that residual relationship changes what people are willing to say. A provider group weighing in on a state agency's own performance, or a disability rights organization negotiating directly with the department charged with enforcing the very protections its members depend on, is not operating from the same footing as a participant in a process no state agency owns, funds, or could unilaterally reshape.

Colorado's Long-Term Services and Supports (LTSS) Work Group illustrates this model in its current, active form. Convened by the Colorado Cross-Disability Coalition and funded by the Colorado Health Foundation, the Work Group brings together people with lived and professional experience across the state's long-term care system, with state employees present as non-voting participants rather than as conveners or decision-makers. Rate-setting, the single most politically charged question the system touches, sits explicitly outside the Work Group's scope from the outset, a deliberate boundary that lets participants build trust and shared understanding on everything else without that trust collapsing the first time money enters the conversation. The Work Group briefs state leaders and legislators on a regular cadence, and any recommendation the group formally advances is delivered to the relevant state agencies, the Governor's Office, and legislative committees and leadership, a defined pathway ensuring the group's work reaches decision-makers even though the group itself holds no binding authority.

The Educator Preparation and Innovation Coalition (EduPIC), the Colorado Safer Schools Initiative (CSSI), and the Education System Resilience and Innovation Initiative (ESRII) were each initiatives this paper's author conceived and led independently, in partnership with state leaders and key stakeholders, several alongside a nonprofit subject-matter partner as well. Each surfaced cross-sector consensus that later shaped legislation and policy, work that succeeded in part because no state agency was managing the outcome from inside the room.

This model has also taken root nationally around a specific and recent policy problem: the allocation of opioid settlement funds. Roughly thirty-three states have established advisory councils to guide how billions of dollars in settlement money gets spent, and in at least fourteen of them, the council does not merely recommend, it directly disburses the funds. Membership requirements in many of these states go further than simply inviting affected voices to the table, several explicitly require a seat for someone in recovery from substance use disorder, or someone who has personally experienced the disparities the funding is meant to address. That structure, deliberately keeping the decision outside the legislature and specifically requiring lived experience in the room, is precisely the combination this model is built to produce, and it has emerged independently in dozens of states facing the same underlying problem: money moving quickly, stakes measured in lives, and a shared judgment that neither a legislature nor a single agency should be the sole hand on the allocation.

A Fourth Variable: How Fast the Ground Moves

Every example above answers a question about who is in the room and who holds authority once the process begins. A separate question, largely independent of the first, is how much the underlying facts will keep changing after the process concludes.

Some issues, once resolved, stay resolved. Sentencing philosophy shifts slowly enough that Minnesota's Commission can revise its guidelines periodically without chasing a moving target. Other issues do not sit still long enough for a single set of recommendations to remain current by the time anyone acts on them. Artificial intelligence is the clearest current example, and this paper does not revisit AI policy in detail given how thoroughly the subject was covered elsewhere, but the same structural condition shows up in less obvious places.

Psychedelic-assisted therapies, ibogaine chief among them, are moving on an even faster and more tangled set of clocks. Federally, ibogaine remains a Schedule I substance, the government's most restrictive category, and formal rescheduling cannot begin until a specific product completes Phase 3 clinical trials and wins FDA approval, a path measured in years. Yet the federal government has simultaneously directed the FDA and DEA to build a separate patient-access pathway allowing some use before that full approval process concludes, a parallel track moving considerably faster than the scheduling clock underneath it. States are not waiting on either federal track. Texas and Utah have each funded ibogaine research through their legislatures, framed explicitly around veterans and treatment-resistant PTSD, a rationale that has drawn support in states not typically associated with drug policy liberalization. Oregon and Colorado have already built voter-approved regulated access programs for certain psychedelic compounds, Massachusetts is voting on similar legislation this year, and Colorado's program is separately weighing whether to add ibogaine to its regulated list,

a decision that itself requires approval from two different state agencies before it can take effect. Federal scheduling, a federal patient-access program, state voter initiatives, state legislative research funding, and state agency rulemaking are all running on different clocks at once, and a state settling on an answer today has no guarantee that answer still fits the landscape by the time any resulting legislation takes effect. This paper takes no position on how psychedelic-assisted therapies should ultimately be regulated. The relevant fact for this argument is only that the ground is still moving on several levels simultaneously, and a process built to produce one final answer is poorly matched to a question still this actively unsettled.

Workforce development is showing early signs of the same condition. As artificial intelligence reshapes entry-level work faster than academic program approval cycles can respond, several states and independent organizations have begun exploring standing, cross-sector structures built specifically to keep recommendations current rather than producing a single report and dissolving, a body designed to keep asking the same question as the answer keeps changing, rather than answering it once and walking away.

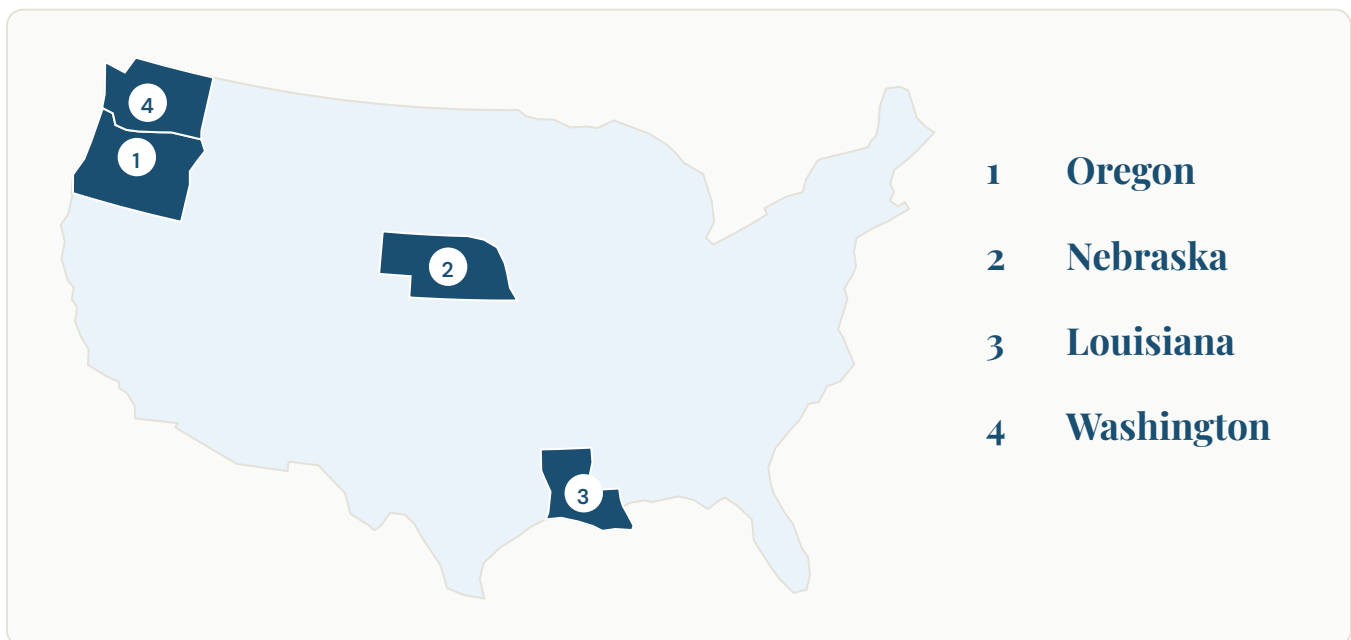
This distinction, whether an issue needs a process built to conclude or a process built to persist, does not change which model fits a given issue. It changes what that model needs to become once chosen, a point this paper returns to directly in the section that follows.

Four States, Same Issue, Right Now

This pattern is not confined to settled history. As this paper goes to publication, at least four states are actively building structure around data center siting and its downstream effects on energy, water, and local communities, and each has chosen a different shape.

Oregon's Governor convened a statewide Data Center Advisory Committee in January 2026, deliberately cross-sector, spanning economic development, energy, water, and land use, running monthly public sessions through much of the year and due to report its findings in October. Nebraska's Governor moved similarly, but reactively: after signing an executive order ending taxpayer subsidies for large data centers, he used the same order to create a seventeen-member task force studying the sector's impact on water, power, and local infrastructure. Louisiana took a hybrid approach: its legislature created a special task force by concurrent resolution, chaired by a sitting committee chairman in the style of Model A, but built specifically to pull in the technical agencies whose expertise the legislature does not have in house, energy and natural resources, the public service commission, wildlife and fisheries, agriculture, and environmental quality.

Washington offers the clearest picture of where this can lead, because its process has already concluded. A Governor-convened work group, spanning environmental advocates, technology industry leaders, and government officials, delivered its final recommendations in December 2025 on how the state should manage a boom in data center development concentrated in two counties expected to drive the largest new electricity load increase in the Pacific Northwest. Notably, a proposed requirement that data centers source clean energy did not survive into the final report, a concrete illustration of the tradeoffs this category of issue forces into the open. Washington's own history adds a further layer: its legislature had already tried a narrower version of this in 2018, a task force composed almost entirely of legislators, focused on incentives to attract the industry. Seven years and a considerably larger set of stakes later, the state moved to a broader, executive-convened process built to weigh environmental and ratepayer concerns that the earlier, narrower body was never built to consider, a small but real illustration of how an issue's trajectory can outgrow the structure originally built for it.



Four states, four different structural choices, on the same issue, in the same eighteen-month window. That is not evidence that any one of these approaches is correct. It is evidence that the mismatch this paper describes is not a historical curiosity. It is happening in real time, and the states above are, each in their own way, building the capacity to meet it rather than waiting for it to force the question during an ordinary session already crowded with everything else a legislature has to do.

SECTION 3

The Central Argument

None of the three models described in this paper is superior to the others. Each answers a different version of the mismatch this paper opened with, and matching the right model to the right problem, rather than defaulting to whichever a state has used before, is the actual discipline this paper is arguing for.

Two questions, asked together, do most of the diagnostic work. First: once the process begins, do the same people who would have decided anyway still hold the pen, or does real authority move to people the legislature does not control day to day? Second: whatever that room produces, does it bind, does it require formal consideration somewhere, or does it depend entirely on someone choosing to act on it later? A state that gets the first question right and ignores the second can still build something toothless, an independent, well-run process whose recommendations sit on a shelf because nothing requires anyone to open them. Model B's own range, from Minnesota's binding guidelines to TCJJ's still-unrealized commissions, shows both ends of that spectrum inside the same category of body.

A third question, raised earlier in this paper, sits alongside the first two: will the underlying facts hold still long enough for a single answer to remain correct, or does the issue need a structure built to keep revising itself as circumstances change? Getting the first two questions right and the third wrong produces its own failure, and it can take either of two forms. A well-authorized, appropriately independent body may answer a moving question once and then go quiet, leaving the state to start over from nothing the next time conditions shift. Or, more quietly, the state may enact exactly what that process recommended, a law, a regulation, a new system, that was the right answer at the moment it was built, only to find it outdated, poorly suited, or simply ineffective within a year or two, with no mechanism in place to notice or correct it. Both are the same underlying failure wearing different clothes: building well for a moment rather than for a trajectory.

None of this argues that every hard issue requires the most demanding version of deliberate process, an independent body, holding binding authority, built to stand indefinitely. Most do not. A state facing a complex but well-understood question with broad stakeholder agreement may only need Model A's extra time. A state facing a technical problem where expertise is scarce but political division is modest may find a time-limited Model B task force sufficient, without ever needing something built to last. The harder, more expensive, more durable versions of these tools fit a narrower set of issues than the examples in this paper might suggest if read in isolation, and naming that narrower set honestly, rather than treating every hard problem as justification for the most elaborate response available, is what makes the argument that follows credible rather than self-serving.

Whichever model a state chooses, the same underlying discipline determines whether it works. A process that lets participants stake out positions before everyone in the room shares a specific, common understanding of the problem tends to harden those positions rather than move past them. The processes described throughout this paper, at their best, do the opposite: establish a shared understanding of the problem first, generate the widest possible range of ways to address it before anyone is asked to commit to one, and only then move toward a position enough participants can actually hold. This sequencing, not any particular structure or convening authority, is the mechanism that turns a room full of people with competing interests into one capable of producing an answer

that holds. A fuller treatment of this discipline is available in Confluence's earlier paper, *The Power of Collaborative Decision Making*; this paper assumes it rather than repeating it.

This paper is written by a firm whose work spans nearly this entire range. Most of it is convened by government itself, created by statute, ordered by executive action, or initiated by an agency, with Confluence brought in to design and run the process once a state has decided to build one. A smaller share, roughly a quarter of the firm's engagements, is convened entirely outside government, for the narrower set of issues where government itself cannot credibly be the neutral party. That range is a reason for particular care in how this argument gets made, not a reason to avoid making it. A paper arguing that every difficult issue needs an outside facilitator would be easy to dismiss, and would deserve the dismissal. The claim actually being made here is narrower and more useful: a specific set of conditions determines which tool a given issue needs, external facilitation among them, and a state that learns to ask the right questions before choosing will build better, more durable answers than a state that defaults to whatever tool it reached for last time, or whatever tool keeps the most control in the hands of whoever is deciding.

Two things remain before this framework is complete enough to use. The three questions above tell a state which structure a given issue calls for. They do not yet explain why some states reach for the right structure early and others wait until a crisis forces the question, or why the same issue can sit comfortably inside the ordinary process in one state's political environment and clearly require something more in another's. That is where political control, and the harder discipline of institutional honesty underneath it, enter the argument.



SECTION 4

Power, Division, and Time

The previous sections describe what a state can build. Whether a state actually builds it, and how urgently, depends on a variable this paper has not yet named directly: who holds power in a given state, and how completely.

Divided government, one party controlling the legislature while another holds the governor's office, or control split between chambers, creates one version of pressure toward a deliberate process. When no single venue is trusted as neutral by every side, a bill drafted by either chamber alone tends to arrive at the other already opposed, not because the substance is unreasonable, but because of who wrote it. Under these conditions, an independent process is often better positioned than ordinary negotiation to produce something durable enough to survive a conference committee, a floor amendment fight, or a veto threat. Skilled legislative leadership can and sometimes does rise above these dynamics on its own, through genuine bipartisan negotiation or a conference committee operating in good faith. But that outcome depends on the particular people involved and the particular moment, not on any structural feature of the process itself, which is exactly the kind of reliability a state cannot count on for an issue that meets all three conditions this paper opened with.

Unified control, one party holding the legislature and the governor's office at once, creates a different and in some ways more dangerous pressure, because it removes the practical obstacle that would otherwise force the question. A divided legislature that cannot agree has no choice but to either find common ground or accept gridlock. A unified government facing the same technically complex, high-stakes issue can simply proceed, using the votes it holds, whether or not the underlying question actually meets the bar for the ordinary process. Nothing about full control makes an issue less complex, less divisive among the people it affects, or less consequential to get wrong. It only removes the friction that might otherwise have prompted a state to ask whether ordinary process was the right tool in the first place.

Unified control does not, however, guarantee unified agreement. A caucus that holds every lever of government can still be sharply divided internally, moderate and more activist wings pulling toward different answers on the same complex, high-stakes question, in exactly the way the three-condition test describes. This is not a partisan observation. It is equally true of a governing majority pulled toward its activist edge and one pulled toward its populist edge, on the left or the right, in any state where one party holds enough power to govern alone and finds that holding power is not the same as agreeing on what to do with it. A caucus working out that kind of internal disagreement through the ordinary process, floor pressure, leadership counts, the threat of a primary challenge, is not meaningfully different from a divided legislature trying to resolve a hard question through the same kind of leverage politics. The venue changes. The underlying mismatch between the tool and the problem does not.

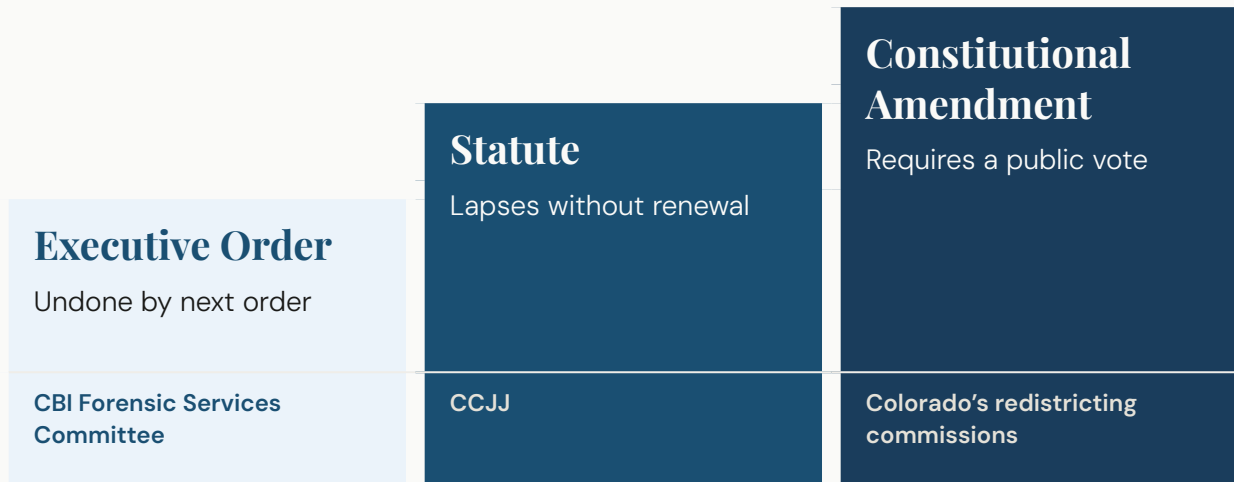
A separate variable compounds both of these: an issue's complexity, contentiousness, and pace of change are not fixed at the moment it first reaches a legislature. An issue can grow into the three-condition test over time, even if it did not meet the bar when it first appeared.

Colorado's experience with criminal and juvenile justice reform shows this happening in a single, continuous story. The Colorado Commission on Criminal and Juvenile Justice (CCJJ) operated for more than sixteen years, a genuine standing body bringing together historic adversaries, prosecutors, defense counsel, law enforcement, and advocates, to work through sentencing and justice policy on an ongoing basis. It did not fail in the way a task force fails when its recommendations go unimplemented. It worked, for more than sixteen years, exactly as designed. What ended it was neither indifference nor a policy failure, but an unresolved disagreement about the body itself: some stakeholders and legislators had come to believe the Commission's membership tilted too heavily toward institutional voices at the expense of the community and defense perspectives it was meant to balance. That disagreement blocked efforts to agree on renewal terms before the legislation's built-in sunset clause took effect, and the Commission lapsed, not because anyone voted it down, but because the legislature could not agree on what a renewed version should look like in time. The Governor created TCJJ specifically in response to that failure, tasking a new process with figuring out what should take the Commission's place. TCJJ succeeded at that narrower task, reaching full consensus among historic adversaries on the mission, structure, and membership for two new permanent commissions. The legislature has not yet acted on any of those recommendations.

This is worth sitting with, because it is not a story about a process that failed. It is a story about two processes that each worked, one for more than sixteen years, one in reaching hard-won consensus on what should come next, and still could not protect their own outcome from the single failure mode this paper describes: an ordinary legislature, first unable to agree on the terms of a renewal, then unable to find time to act on recommendations nobody in the room actually opposed. The obstacle was not CCJJ, and it was not TCJJ. Both did exactly what they were built to do. The obstacle was the ordinary process itself, first failing to resolve a genuine disagreement about what a successor body should look like, then failing to prioritize recommendations that had already cleared the hardest part: actual agreement among adversaries.

That points to a durability question this paper has touched on but not yet stated plainly. Standing is not a fixed property of a body. It is a description of how hard the underlying commitment is to unwind, and that varies enormously depending on what created it. A body created by executive order can be undone by the next executive order. A body created by statute, like CCJJ, depends on a legislature choosing, actively, to keep it alive, and lapses by default if that choice does not get made in time. A body entrenched constitutionally, like Colorado's redistricting commissions, requires another public vote to unwind, which is a considerably higher bar than simple legislative inaction. None of these choices is wrong on its own. But a state building standing capacity for an issue it expects to recur should ask, deliberately, how much friction it wants between the body's continued existence and the next time nobody gets around to renewing it.

Durability Ladder



Less durable to more durable, harder to unwind →



Standing is not a fixed property of a body. It is a description of how hard the underlying commitment is to unwind.

None of this, control structure, caucus fracture, or issue trajectory, changes which model a given issue needs. What it changes is how much margin a state has before the mismatch this paper describes stops being a choice and becomes an emergency. A state operating under divided government, a fractured caucus, or an issue actively growing more complex and more contentious with time has less runway than it might assume, and less room to wait for a more convenient moment to build the capacity it will eventually need regardless.

That raises the harder question underneath all of it: even once a state recognizes it needs deliberate infrastructure, why do some officials build it, and others quietly keep the issue inside a room they still control.

SECTION 5

The Weight of Letting Go

Naming which structure an issue needs is the easier half of this paper's argument. The harder half is naming why states so often fail to build it even once the need is clear, and that failure deserves a more honest look than "leaders didn't realize" or "the votes weren't there."

Officials who fully believe in a process's outcome often still want the resulting structure to stay somewhere they can see it, touch it, and, if needed, reach in and adjust it. This is not cynicism, and it is not bad faith. It is the ordinary human discomfort of building something durable enough to outlast your own ability to steer it. A legislator who has spent a career learning how to move a bill through committee is being asked, by every example in this paper, to build something that will make decisions that legislator cannot control once it exists. That is a genuinely uncomfortable thing to do well, and this paper is better for saying so plainly rather than assuming it away.



Letting go, building something that can reach a conclusion its creator did not choose in advance, is not a lesser form of leadership. It is a harder one, because it trades the certainty of control for the possibility of a better answer, and accepts that the second thing is worth more than the first.

To keep a new structure close, inside a committee a legislature still chairs, inside an agency a governor still appoints, feels like the responsible choice, the one that preserves accountability. But accountability to whom, exactly, is the question worth sitting with. A body built to remain fully controllable by the institution that created it is a body built to reflect that institution's incentives indefinitely, including the incentive to avoid an answer that institution finds inconvenient. Letting go, building something that can reach a conclusion its creator did not choose in advance, is not a lesser form of leadership. It is a harder one, because it trades the certainty of control for the possibility of a better answer, and accepts that the second thing is worth more than the first.

None of this happens without real pressure to get an issue into the room in the first place, and that pressure rarely comes from calm, deliberative actors. It comes from advocates and agitators willing to force a question onto the agenda: a ballot measure threatened or filed, a bill rammed through committee over objection, a coalition making a governor's veto politically costly either way. That role is legitimate, and it is often the only reason an issue too big for session gets anyone's attention at all. But the role has a natural handoff point. The same instinct that creates enough pressure to force an issue onto the table can, left unchecked past that point, become its own version of the resistance this section describes, an unwillingness to let a neutral process shape an outcome the agitator does not fully control either. Knowing when to stop agitating and start deliberating is its own discipline, and it is a harder one to name than the case for agitating in the first place.

Nowhere is this dynamic clearer than in the one issue where a legislature's incentive to keep control is at its strongest. Colorado's 2018 decision to remove redistricting from the General Assembly entirely, discussed earlier in this paper, is not simply an example of ceding authority. It is an example of a legislature recognizing that its own incentive on this specific question could not be trusted, and building a structure specifically designed to be unreachable by that incentive, not advisory, not revocable by ordinary statute, but constitutionally placed beyond the legislature's own reach. That a legislature would refer such a measure, and voters would approve it decisively, says something about what is possible when the discomfort described above is worked through rather than avoided.

The instinct to keep new structure close shows up in smaller, less dramatic forms far more often than it shows up as visibly as redistricting, and one recent Colorado example illustrates it with unusual clarity. Among the recommendations reached by a working group of historic adversaries after months of deliberation, one that reached full consensus on nearly every other question of mission, structure, and membership, the single recommendation that did not pass unanimously was where the resulting bodies should be housed. Members ultimately recommended placing the new commissions in an executive branch agency rather than the legislature, explicitly to preserve independence from legislative or executive interference, and the final report notes this was the one recommendation that drew recorded dissent. Everything about who should serve, what the bodies should study, and how they should be structured reached consensus without real disagreement. The one question that did not was the question of who would still be able to reach in and touch it. That is not a criticism of anyone who voted differently on that specific question. It is the clearest evidence available that even a process built entirely on trust and consensus still has to work through this exact discomfort, out loud, at the moment institutional control is actually on the table.



This paper does not ask any legislator, governor, or agency head to distrust their own judgment. It asks something narrower and, in its way, more demanding: to recognize the specific moment when the honest answer to “can my institution be neutral about this outcome” is no, and to be secure enough in that recognition to act on it rather than around it. That is not a smaller act of leadership than holding on. It is a larger one.

SECTION 6

Applying This Now: A Working Framework

Everything in this paper is aimed at a single practical outcome: a legislator, governor, or agency head looking at a specific issue on their own desk, right now, and knowing which questions to ask before choosing how to handle it. What follows is that framework, stated as directly as the analysis above allows.

- 01 Does the issue meet the three-condition test?** Ask whether meaningful engagement requires expertise beyond what a generalist body can acquire in the time available, whether the affected parties are divided enough that a fully formed bill would arrive pre-opposed, and whether the consequences of a rushed or partial answer are significant and durable enough to outweigh the cost of taking more time. If the honest answer to one or two of these is no, an ordinary process, or an ordinary process with more calendar room, is very likely the right tool. Most issues, even hard ones, resolve here. If the honest answer to all three is yes, proceed to the next question.
- 02 Who needs to be in the room, and when?** Identify both the technical expertise the question requires and the people who will have to live with, build under, or comply with whatever the process produces. If both categories exist and are not the same people, the process needs to bring them together from the earliest stages, not in sequence through separate hearings, but at the same table while the shape of an answer is still soft enough to be changed by what each side hears from the other.
- 03 Can the institution that would normally convene this process be neutral about the outcome?** This is the question Section 5 asks every official to answer honestly rather than assume. If the answer is yes, a legislatively or executive-created body with real, shared authority, Model B, is likely sufficient, whether time-limited or standing depending on the answer to the next question. If the answer is no, if the convening institution has a direct stake in how the question resolves, the process needs to be built and run outside government entirely, Model C, with government as a participant rather than the convener.
- 04 Will this issue need to be solved once, or solved repeatedly?** An issue whose underlying facts will hold still once resolved, a sentencing framework, a governance structure, needs a time-limited process built to conclude. An issue whose underlying facts will keep changing after the process ends, a fast-moving technology, a substance still under active federal and state reconsideration, a workforce need shifting faster than credentialing cycles, needs standing capacity built to keep revising its own answer. Choosing the wrong duration here is its own failure mode: building permanent infrastructure for a question that only needed answering once wastes resources the state will be asked to justify indefinitely; building a one-time process for a question that will keep moving guarantees the state is back at the starting line within a few years, having to rebuild capacity it dismantled prematurely.
- 05 What authority should the result actually carry?** Decide, before the process begins rather than after it concludes, whether its output should bind directly, require formal legislative or executive consideration by rule rather than by custom, or remain purely advisory. This is not a minor administrative detail. A body with real authority and no guaranteed path to

implementation can do everything right and still produce nothing, as this paper's own account of a stalled set of recommendations shows plainly.

- 06** **How urgent is this, given where political power currently sits?** A state under divided government, a fractured governing caucus, or an issue whose complexity or contentiousness is visibly still growing has less runway than it might assume. The capacity described above is easier to build before a crisis forces the question than during one, and the states in this paper that moved earliest were rarely the ones under the least political pressure. They were the ones that recognized the mismatch before it became unavoidable.



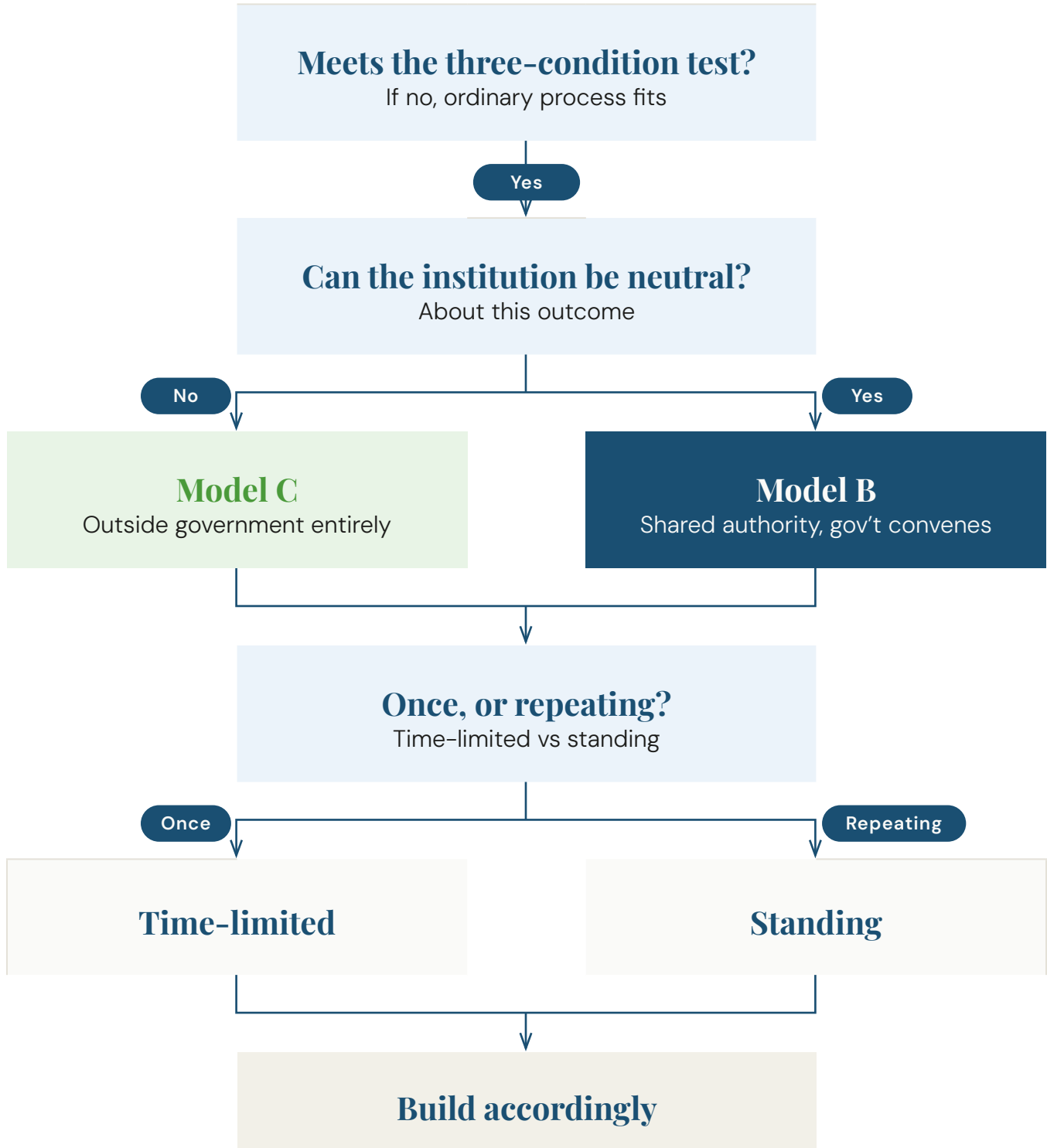
None of these six questions requires a consultant to answer. They require candor.

None of these six questions requires a consultant to answer. They require candor, about the issue, about the institution's own capacity to remain neutral, and about how much the answer is likely to still matter in five years rather than five months. A state that works through them honestly will know, by the end, roughly which of the models in this paper its issue calls for, and roughly what building that model will actually require: whether it needs new legislation or can be created by executive order, whether it needs a dedicated budget line or can be resourced within an existing agency, whether it needs a defined end date or should be built to outlast the officials currently in office.

The remaining question is not analytical. It is the one this paper has been building toward from the start: whether the answer these questions produce is one a state's current leadership is willing to act on, even when that answer means building something they will not fully control.

Decision Tree

From the three-condition test to Model B or C to build



SECTION 7

The Confluence PSG Advantage

Confluence PSG is a process facilitation and design firm working with state and local governments, public-private partnerships, and nonprofits across the country. The firm was founded in Colorado, and its most extensive body of work has been built there, but its practice is not confined to any one state's politics or geography. The structural mismatch this paper describes exists wherever state government does, and Confluence works wherever a state is asking the question this paper poses.

The firm's work spans two related but distinct kinds of engagement. In the first, Confluence designs and facilitates the independent process itself, or serves as the neutral facilitator inside a body that includes non-legislator authority, for issues where the convening institution cannot credibly claim neutrality about the outcome or lacks the capacity to effectively manage the process and needs someone outside government to run the room. In the second, Confluence advises states building standing capacity of their own, helping design a body's structure, membership, and authority before the state staffs and operates it independently going forward. These are different engagements with different endpoints, and a state does not need to know in advance which one it needs. That is itself one of the questions this paper's framework is built to help answer.

Readers come to this paper from different starting points, and Confluence's engagement model reflects that directly rather than routing every conversation toward the same outcome. Some will want to hire a firm to run a process from start to finish. Some will want a design partner to help build capacity they intend to own and operate themselves once it exists. Some will want a conversation before either of those questions has an answer, offered without a fee attached, consistent with a firm that believes the first conversation about a hard problem should not be the one with a cost attached to it. And some readers will take the framework in this paper and use it without ever picking up the phone, building the capacity their state needs on their own terms. That is a good outcome in its own right, and one this paper is written to make that possible.

SECTION 8

Recent Projects & Team Experience

Confluence PSG has facilitated work groups and task forces spanning nearly every issue area of state and local government; civil rights, education, criminal justice, transit, healthcare, housing, land use, and workforce among them. What follows is a small, curated sample of that portfolio, chosen to illustrate range across domain and structure, not an exhaustive account of the firm's work.

Confluence as the Process

Colorado AI Policy Working Group (SB26-189). Unanimous industry, civil rights, labor, and consumer consensus on a revised regulatory framework after two years of legislative stalemate; the resulting bill passed within thirteen days of floor consideration.

RTD Accountability Committee (SB26-150). A divided governance vote that moved from six-to-five to eleven-to-two over two weeks of facilitated deliberation; thirty-one recommendations, several codified directly into legislation.

HB23-1296 Disability Rights Task Force. Fifty-eight recommendations produced across four simultaneous subcommittees on the rights and services available to Coloradans with disabilities.

Working Group on Transforming Criminal and Juvenile Justice (TCJJ). Full consensus among historic adversaries, prosecutors, defense counsel, law enforcement, and advocates, on the mission, structure, and membership for two successor commissions, following a sixteen-year predecessor body and a twenty-year history of stalemate on the underlying question.

CBI Forensic Services Committee. Ongoing quarterly facilitation advising the CBI Director on forensic laboratory quality, integrity, and transparency, established by executive order following the discovery of former-analyst misconduct.

Educator Safety Task Force (ESTF). A seventeen-member task force created by HB24-1320, a statewide survey of more than 1,100 educators, and a published report now informing state and district-level action on educator and staff safety.

Colorado Medicaid Innovation, Sustainability & Opportunities (MISO). A multi-phase stakeholder engagement for the Department of Health Care Policy and Financing, moving from a landscape briefing through policy-specific small group sessions to policy-ready stakeholder input across six Medicaid sustainability policy areas, completed in a matter of months.

Two engagements in this list are worth reading side by side. MISO was a state agency's own initiative, commissioned and completed in a matter of months, wrapping in spring 2026. The Long-Term Services and Supports Work Group, discussed earlier in this paper, launched that same summer and sits at the opposite end of nearly every structural axis: convened entirely outside government, funded philanthropically, and built to run eighteen months in total, a sustained, standing-style commitment rather than a compressed sprint. Different convener, different timeline, different relationship to government entirely. The discipline underneath both engagements did not change.

Confluence as Capacity-Design Partner

Clean Transit Enterprise (CTE), FY2026–FY2030 Strategic Plan. A full-day Board retreat that surfaced five candidate strategic goals and forced explicit engagement with the enterprise's central identity question, funding partner or accountability-focused entity, ahead of a five-year plan now in development as a living document with built-in review points.

Colorado Department of Local Affairs (DOLA) Strategic Plan. Division-by-division leadership interviews, two leadership retreats, and all-staff engagement sessions across the department, culminating in a three-year strategic plan drafted and finalized with agency leadership.

Division of Criminal Justice (DCJ) Transition & Strategic Plan. Staff survey, focus groups, and a parallel external stakeholder survey compiled into findings that directly informed a new Director's transition and the division's strategic plan.



City of Longmont, City Council Strategic Planning Retreat. A two-day retreat commissioned specifically so the City Manager could participate in the conversation rather than run it, a distinction he described as making facilitating and thinking incompatible jobs in the same room. Playdough and fidget toys sat at every seat alongside notepads and pens, a small, deliberate signal that this would not be an ordinary retreat. It unlocked a years-stalled council conversation about the municipal airport's future and grounded the council's ambitions in what city staff confirmed was already within reach.



The Educator Preparation and Innovation Coalition, the Colorado Safer Schools Initiative, and the Education System Resilience and Innovation Initiative were each initiatives this paper's author conceived and led independently, in partnership with state leaders and key stakeholders, several alongside a nonprofit subject-matter partner as well.

SECTION 9

About the Author



Berrick Abramson is President and Founder of Confluence PSG, founded on the conviction that many of government's most contested and complex problems are not unsolvable. They are unresolved because the processes applied to them were not designed well enough. Over more than twenty-five years, he has served as process architect and neutral facilitator for the collaborative governance processes described throughout this paper and dozens of others across state and local government, spanning civil rights, education, criminal justice, transportation, public safety, housing, healthcare, and workforce development.

Before founding Confluence, he began his career on the institutional sales and trading desk of one of the nation's largest investment banks, led debt and municipal underwriting for a mid-sized firm, and founded a boutique venture consulting firm involved in more than a billion dollars in transactions. He subsequently led the policy and government affairs team of a four-hundred-person national nonprofit and built the good-government, education, and workforce practices at a policy and mediation organization.

Berrick has served on the Colorado Commission on Higher Education since 2019, appointed by Governor Polis and reappointed to a second term in 2023, and has mentored founders through TechStars and its Workforce Development Accelerator for six years. He splits his time between Colorado and North Carolina, where he is focused on growing the firm's work and impact nationally. Berrick is an avid skydiver, adventure race competitor and long-distance ocean paddler. He has been active in Crohn's disease awareness and research since 2019.



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