# Federalism DA – Spillover Version

## Notes

**Neg**

This DA should be read as a net benefit to the States CP. You won’t have fun trying to outweigh case with just the DA.

Because of Trump, this disad actually has uniqueness this year – the Trump Administration is a huge supporter of states’ rights.

1NC: Trump Administration means both Republicans and Democrats supports states’ rights. The aff is a major federal intervention in education policy, which is the most important factor for states’ rights. Strong states’ rights are key to solve X. The 1NC impact is warming, but there are internal links to the economy and terrorism. (you can read the constitution thing if you want but rip ethos)

The weakest part of the DA is that one USFG education policy spills over to change federalism writ large, i.e. uniqueness overwhelms the link. The Green 17 card does require some spin, but it exceeds expectations in terms of evidence actually making the spillover claim. Read multiple cards under “Link – General” on the spillover debate – in addition to talking about how education influences federalism, they also make a strong uniqueness argument as to the state of federal action in education in the squo.

**Aff**

The aff should make the analytic argument that uniqueness overwhelms the link – no one writes that “if the federal government changes one education policy, that will not change the structure of federalism” so you have to use logic. Sorry. (You could read the no link “federal involvement in education is consistent with federalism” but that’s not quite the same arg)

There are some kritiks of federalism, perhaps use these as reasons to reject the arg? I’m not sure.

**Cooperative federalism**

Here’s a separate section explaining cooperative federalism, even though it’s not a huge part of the file, because it’s complicated.

Both sides should be careful if they read these cards – you just need to know more about dual federalism vs. cooperative federalism than the other team and spin your scenarios as distinct in the way that helps you.

-The aff risks conceding the importance of federalism in solving climate change/education; you need to say the 1NC promotes dual federalism, while the aff solves cooperative federalism which is distinct. To access this as offense, the aff needs to read the cards saying they solve the shift to cooperative federalism (neg doesn’t get to say that the aff doesn’t shift the structure of federalism because their own arg is that that the aff spills over to change federalism writ large), and then say that cooperative federalism is good

-The neg risks nonuniquing their DA because the cards for “cooperative federalism doesn’t solve” also disprove the federalism impacts, so the card I cut was that cooperative federalism is the squo (Pruitt said the EPA will move towards cooperative federalism.) Barton 17 says cooperative federalism is the squo and that’s bad – just make sure you explain why the “cooperative federalism bad” arg doesn’t apply to federalism.

However, the best answer for the neg is to just say the aff hurts cooperative federalism. Say the links about education hurting federalism still apply. (don’t double turn yourself)

**Let me know if you have any questions.**

**-Victor Wu (CPS ’18)**

(Btw I didn’t cut the impact ev, feel free to replace with your preferred “X causes extinction” cards.)

## 1NC – Warming

#### There’s a growing return to federalism now – Trump administration has sparked a bipartisan return to states’ rights writ large

Somin 16

(Ilya, M.A. in political science from Harvard University, Professor of Law at George Mason University, 12.5.16, Washington Post, “Trump, federal power, and the left – why liberals should help make federalism great again,” <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/12/05/trump-federal-power-and-the-left-why-liberals-should-help-make-federalism-great-again/?utm_term=.49060a2dc0bd>, Accessed: 6.23.17)VW

One of the few beneficial effects of Donald Trump’s unexpected election victory has been a renewed interest in federalism among many on the left. In recent days, prominent liberal legal scholars Noah Feldman and Jeff Rosen, and political scientist Corey Brettschneider have all published notable articles on how state and local governments can use federalism to curb Trump and protect vulnerable minorities. All three argue that liberals should make use of constitutional constraints on federal power traditionally championed by conservatives and libertarians, including the conservative majority on the Supreme Court. Feldman’s article on how federalism can be used to protect sanctuary cities actually makes many of the same points as my own earlier piece on the same subject. Some conservatives and libertarians will be tempted to dismiss the new liberal interest in federalism as unprincipled opportunism. Until recently, most liberals forcefully opposed the pro-federalism Supreme Court decisions many now seek to rely on to shield blue states against Trump. The next time there is a liberal Democrat in the White House, perhaps they will do so again. “Fair weather federalism” is indeed a common phenomenon, on the right as well as the left. Both Democrats and Republicans tend to support expansive federal authority when their side is in power in Washington, and view it more skeptically when they are on the outs. It’s certainly possible that this will turn out to be just another iteration of the same old story. But if we want to break this sad pattern, we should spend less time on recriminations over past inconsistencies and more looking for ways to build a durable cross-ideological coalition in favor of stronger enforcement of constitutional limits on federal power. In this context, it is important to recognize that newfound liberal interest in federalism is not solely a result of their fear of Trump. In recent years, some on the left have shown a greater openness to setting limits on federal power, and scholars such as Heather Gerken have pointed out that state and local governments now often protect vulnerable minorities better than Washington does. Liberals could potentially build on these ideas to use federalism as a bulwark against Trumpian abuses. Their chances of succeeding in this endeavor, however, are likely to be greater if they can form a coalition with at least some like-minded conservatives and libertarians. A cross-ideological case for federalism is more likely to prevail in court challenges to Trump policies (which are likely to be heard a Supreme Court with a conservative majority), and more likely to succeed in the political arena as well. If Trump attempts to implement the populist/nationalist agenda he campaigned on, there might be more opportunities for such alliances than in the past. In addition to drawing opposition on the left, the Trumpist agenda on constitutional and other issues also includes many elements inimical to libertarians and a good many constitutional conservatives – myself most definitely included. Many of us have been arguing for tighter enforcement of constitutional limits on federal power for many years, and would welcome greater cross-ideological cooperation on that front. A good many liberals are understandably hesitant to commit to enforceable limits on the scope of federal power because of a fear that doing so might inhibit federal efforts to protect racial, ethnic, and other minorities against state and local oppression. But even very robust federal antidiscrimination efforts do not require virtually unlimited federal power to regulate anything that might have some effect on the economy, or nearly unconstrained federal authority to use conditional grants to pressure states and localities to do their bidding. Principled liberals can favor broad federal authority to protect minority groups under the Fourteenth Amendment, while simultaneously enforcing tighter limits on Washington’s power in other areas. We can make federalism a bulwark against national government oppression without returning to the bad old days when “states rights” was a shield for slavery and segregation. As the Trump agenda suggests, federal power that has few or no constraints across the board can actually be a menace to minority groups. Other things equal, oppressive federal policies may actually be even more dangerous than comparable state and local ones. Federal policies affect more people, and are more difficult to escape by “voting with your feet” in favor of more tolerant jurisdictions. It would be naive to expect left and right to reach a complete consensus on constitutional federalism anytime soon. There are still many obstacles to cross-ideological cooperation on these issues. Some liberals will continue to support nearly unconstrained federal power. All too many on the right will back Trump’s policies even when they go against their previous commitments on constitutional issues. And, obviously, there will be continued disagreements over interpretative methodology, such as the longstanding conflict between originalism and living constitutionalism (though the former has attracted some new left-wing support in recent years). But, in the wake of Trump, perhaps there can at least be broader agreement that there should be serious, judicially enforceable limits on federal power to coerce state governments (whether directly or through conditional grants), and on federal authority to regulate private activities that are not closely connected to interstate commerce. These, after all, are exactly the tools that a Trump-led GOP could potentially use to break the resistance of dissenting state and local governments. They can also be used to harm immigrants and other minorities in a wide variety of ways, and to stifle liberal state policies, such as marijuana legalization.

#### The aff reverses this trend – education is the litmus test for states rights and federalism as a political orientation

Green 17

(Emma, B.A. in Government, 1.4.17, The Atlantic, “The Ideological Reasons Why Democrats Have Neglected Local Politics,” <https://www.theatlantic.com/politics/archive/2017/01/the-ideological-reasons-why-democrats-have-neglected-local-politics/512024/>, Accessed: 6.24.17)VW

Not all progressives believe that most policymaking should happen at the federal level. Especially in recent years, some policymakers have looked to cities and municipalities to lead reform efforts. “Cities were the original sites of disruption: They disrupt class orders; they disrupt social practices; they disrupt businesses,” said Jennifer Bradley, the director of the Center for Urban Innovation at the Aspen Institute. No matter what Obama and other national Democrats may say, this work has already been in progress, she added. “This notion that Democrats were relying too heavily on the federal government is belied by eight years of what actually happened,” she said. In part because Washington is so dysfunctional, “cities and states have learned to rely less and less on the federal government, and I think that trend will sharply accelerate.” Practically speaking, the narrative that progressives favor federal policymaking while conservatives favor state and local action is far too simplistic. Both parties tend to use federal power when they have it. “George W. Bush, as a matter of ideology, cared a lot about states,” Young pointed out. “But the first thing he did as president was to shift power to the federal government in the area of education, which had been a terribly important area of state predominance.” Conversely, both parties have used state-level litigation to intervene in federal policymaking when they’ve been out of power. Take Massachusetts vs. Environmental Protection Agency, the Bush-era Supreme Court case in which 12 states, several cities, and advocacy groups sued to force the EPA to begin regulating greenhouse gases. During the Obama years, other states pulled a similar move—Texas sued the administration over deferred immigration enforcement for people in the country illegally, for example. “Broadly, I think federalism is not a conservative or liberal thing, or a Republican or Democrat thing,” Young said. “It offers a way of not having all your eggs in one basket when changes in who controls various institutions occur.” It’s also a way of making sure one party doesn’t force the other permanently out of power at the national level: As Democrats are now discovering, it’s hard to get elected in districts that Republican-heavy state legislatures have gerrymandered to favor their own party. But there’s a reason why the United States is not a constellation of self-determining city-states. Federalism is a political orientation, not a body of clear-cut policy prescriptions. The negotiation of power between national and state governments—and, relatedly, between state and local governments—is complicated and partisan. Larger bodies of government, led by Democrats and Republicans alike, often threaten smaller bodies with litigation or funding cuts if they don’t follow certain policies. During the Reagan years, the federal government famously used this method to get states to comply with its policy on the legal drinking age. And in 2016, the Obama administration used a similar method when it sent a letter to school districts instructing them to comply with federal guidance on accommodations for transgender students.

#### Federalism is key to solve warming – solves global spillover by leveling the playing field

Ibbitson 6/2

(John, M.A. in journalism, senior fellow at the Centre for International Governance Innovation, 6.2.17, The Globe and Mail, “Federalism might be our best hope in fighting climate change,” <https://www.theglobeandmail.com/news/politics/federalism-might-be-our-best-hope-in-fighting-climate-change/article35197342/>, Accessed: 6.26.17)VW

Federal systems of government are splendid things: robust, flexible, able to accommodate conflicting local values. When it comes to the fight against global warming, federalism is the ace up Canada’s sleeve, while south of the border it’s America’s last, best hope. Conservative prime minister Stephen Harper was right to withdraw Canada from the Kyoto Protocol on climate change in 2011. The Chrétien government had made promises at Kyoto that no Canadian government could keep without wrecking the economy. The expanding oil sands in Alberta had become a major driver of growth. The U.S. Congress was blocking president Barack Obama’s efforts to fight global warming. Any Canadian tax on carbon without an equivalent American action would simply kill Canadian jobs, without lowering the planet’s temperature even a smidgeon, Mr. Harper argued, and that argument made sense. But, although Ottawa wasn’t ready to fight climate change, some provincial governments thought differently. Quebec had a natural advantage, because most of its electricity is generated by hydro. The Liberal government in Ontario wanted to replace lost manufacturing jobs in traditional industries by developing green-energy technology. British Columbia premier Gordon Campbell believed that a carbon tax was the most business-friendly way to lower emissions. When Rachel Notley’s NDP came to power in Alberta, committed to bringing that province in line with others in the fight against climate change, Mr. Harper shrugged. Ottawa’s job, he believed, was to get a pipeline to tidewater somehow, somewhere. If the provinces wanted to go all green, they were welcome to knock themselves out. But then Mr. Harper was replaced by Justin Trudeau, and Mr. Obama by Donald Trump. The White House is now even more of a climate-change-denier than the House of Representatives or Senate, while the Liberal government is as enthusiastic about fighting climate change as any province. In Canada’s case, federalism worked to provide in advance what Ottawa now seeks: a national (if piecemeal) strategy to reduce carbon emissions through provincial cap-and-trade or carbon tax schemes, with only Saskatchewan’s Brad Wall seriously offside. In America’s case, federalism and the entrepreneurial energy of the private sector have combined to limit the damage inflicted by Washington. About 30 states have green-energy strategies in place. Elon Musk resigned Thursday from two of Mr. Trump’s advisory councils in protest over the President’s decision to withdraw the United States from the Paris accord on climate change. Of course he resigned: His Tesla Model 3 electric car will soon hit the streets in an increasingly competitive electric vehicle market, going head-to-head with, among other competitors, the Chevy Bolt and the Volkswagen eGolf. The battle in North America against global warming will be most successfully fought in dealer show rooms. Mr. Trump, with his Luddite refusal to recognize the transformation under way in his own country’s economy, is making that battle harder to win, which is why dozens of mayors and CEOs vowed to continue efforts to reduce carbon dioxide emissions in the wake of the President’s announcement.

#### Climate change causes extinction and turns all scenarios for nuclear war

**Scheffran et al 16**

Prof. Dr. Jurgen Scheffran (Professor at the Institute for Geography at the University of Hamburg and head of the Research Group Climate Change and Security in the CliSAP Cluster of Excellence and the Center for Earth System Research and Sustainability (CEN). He holds a Ph.D. in physics from Marburg University and has worked at Technical University of Darmstadt, the Potsdam Institute of Climate Impact Research and the University of Illinois), Dr. John Burroughs (Executive Director of the New York-based Lawyers Committee on Nuclear Policy (LCNP), the UN Office of International Association of Lawyers Against Nuclear Arms (IALANA). He represents LCNP and IALANA in Nuclear Non-Proliferation Treaty review proceedings, the United Nations, and other international forums), Anna Leidreiter (Senior Programme Manager Climate and Energy at the World Future Council. She carries out policy research and develops advocacy campaigns with the climate energy team), Rob van Riet (Coordinator of the Peace and Disarmament Programme at the World Future Council), and Alyn Ware (peace educator and nuclear disarmament consultant. He is the Global Coordinator of Parliamentarians for Nuclear Non-proliferation and Disarmament, Director of the Basel Peace Office, a Consultant for the International Association of Lawyers Against Nuclear Arms, a member of the World Future Council and co-chair of its Peace and Disarmament Programme). “The Climate-Nuclear Nexus: Exploring the linkages between climate change and nuclear threats.” World Future Council. Second Edition, April 2016. <http://www.worldfuturecouncil.org/file/2016/01/WFC_2015_The_Climate-Nuclear_Nexus.pdf>

Climate change and nuclear weapons represent two key threats of our time. Climate change endangers ecosystems and social systems all over the world. The degradation of natural resources, the decline of water and food supplies, forced migration, and more frequent and intense disasters will greatly affect population clusters, big and small. Climate-related shocks will add stress to the world’s existing conflicts and act as a “threat multiplier” in already fragile regions. This could contribute to a decline of international stability and trigger hostility between people and nations. Meanwhile, the 15,500 nuclear weapons that remain in the arsenals of only a few states possess the destructive force to destroy life on Earth as we know multiple times over. With nuclear deterrence strategies still in place, and hundreds of weapons on ‘hair trigger alert’, the risks of nuclear war caused by accident, miscalculation or intent remain plentiful and imminent. Despite growing recognition that climate change and nuclear weapons pose critical security risks, the linkages between both threats are largely ignored. However, nuclear and climate risks interfere with each other in a mutually enforcing way. Conflicts induced by climate change could contribute to global insecurity, which, in turn, could enhance the chance of a nuclear weapon being used, could create more fertile breeding grounds for terrorism, including nuclear terrorism, and could feed the ambitions among some states to acquire nuclear arms.

## Uniqueness

### Uniqueness – General

#### Trump is pulling the federal government out of K-12 education now

Miller 4/26

(S.A., B.A., White House Correspondent at the Washington Times, 4.26.17, The Washington Times, “Trump to pull feds out of K-12 education,” <http://www.washingtontimes.com/news/2017/apr/26/donald-trump-pull-feds-out-k-12-education/>, Accessed: 7.4.17)VW

President Trump signed an executive order Wednesday to start pulling the federal government out of K-12 education, following through on a campaign promise to return school control to state and local officials. The order, dubbed the “Education Federalism Executive Order,” will launch a 300-day review of Obama-era regulations and guidance for school districts and directs Education Secretary Betsy DeVos to modify or repeal measures she deems an overreach by the federal government. “For too long the government has imposed its will on state and local governments. The result has been education that spends more and achieves far, far, far less,” Mr. Trump said. “My administration has been working to reverse this federal power grab and give power back to families, cities [and] states — give power back to localities.” He said that previous administrations had increasingly forced schools to comply with “whims and dictates” from Washington, but his administration would break the trend. “We know local communities know it best and do it best,” said Mr. Trump, who was joined by several Republican governors for the signing. “The time has come to empower teachers and parents to make the decisions that help their students achieve success.” Ms. DeVos and Vice President Mike Pence were on hand for the ceremony, which was attended by about 25 people, including teachers, lawmakers and the governors.

#### The Trump administration has set a trend of state control over education reform and a limited federal role

Jacob 17

(Brian A., Senior Fellow at the Brookings Institution and the Walter H. Annenberg Professor of Education Policy, Professor of Economics, and Professor of Education at the University of Michigan, Co-Director of the Education Policy Initiative (EPI) and former director of the Center for Local, State and Urban Policy (CLOSUP), Research Associate at the National Bureau of Economic Research (NBER), 2.2.17, Brookings, “How the U.S. Department of Education can foster education reform in the era of Trump and ESSA,” <https://www.brookings.edu/research/how-the-u-s-department-of-education-can-foster-education-reform-in-the-era-of-trump-and-essa/>, Accessed: 6.22.17)VW

The current administration has vowed to leave education matters up to the states, continuing a movement started with the Every Student Succeeds Act (ESSA), which dramatically limited the federal government’s role in school accountability. While greater local control certainly has some benefits, it risks exacerbating the massive disparities in educational performance across states that already exists. In 2015, there was almost a 30 percentile point difference in 4th grade math proficiency rates between the top and bottom states, only some of which can be explained by state-level social and economic factors. The massive disparity in progress is perhaps even more disturbing. Between 2003 and 2015, student proficiency rates grew by over 40 percent in some states, while remaining flat or even declining in other states. The Department of Education (DoED) should take steps to highlight these disparities by identifying the lowest performing states and providing information on the status and progress of all states on a variety of educational metrics. The DoED might also provide modest funding and technical assistance to help demographically similar states work together to improve their public education systems. On the campaign trail, President Trump often called for giving more discretion over education policy to states and localities, critiquing Common Core and what he viewed as other instances of federal overreach. In her recent confirmation hearing, President Trump’s nominee for Education Secretary—Betsy DeVos—repeatedly argued for leaving education matters up to the states. And this desire for local control is not limited to the current administration. In 2015, Congress passed the Every Student Succeeds Act (ESSA) with strong bipartisan support. This legislation replaced the No Child Left Behind (NCLB) system of school accountability with a more narrowly tailored and flexible approach to school reform. Instead of requiring all schools to meet annual performance targets, ESSA requires states to focus on a small set of low-performing schools and gives them considerable latitude to design the interventions they deem appropriate. In discussing ESSA, chair of the Senate Education Committee Lamar Alexander claimed, “The department was in effect acting as a national school board for the 42 states with waivers—100,000 schools. The states were doing fine until the federal government stuck its nose into it…So it was important to get the balls back in the hands of the people who really should have it.”[i] But the evidence suggests that not all states are doing fine. Indeed, there are massive disparities across states in terms of current student performance, and these differences are not merely a factor of the social and economic conditions in the state. All states have been actively engaged in efforts to turnaround failing schools, but the effectiveness of such efforts has varied dramatically across jurisdictions. Public education will (and should) always be driven predominantly by local actors—teachers, administrators, school board members, and state legislators. Even under NCLB, states and districts had a mostly unfettered ability to run schools as they saw fit. But with autonomy comes the potential for greater disparity, as more capable, focused, and well-resourced states pull even further ahead of those with less capacity, fewer resources, and greater political dysfunction.

#### Trump is overturning federal education regulations now – shift to state authority

Brown 17

(Emma, MJ in Journalism, reporter at the Washington Post, 3.27.17, The Washington Post, “Trump signs bills overturning Obama-era education regulations,” <https://www.washingtonpost.com/news/education/wp/2017/03/27/trump-signs-bills-overturning-obama-era-education-regulations/?utm_term=.ab3c0e434996>, Accessed: 6.22.17)VW

President Trump signed bills Monday overturning two Obama-era education regulations, continuing the Republican majority’s effort to undo key pieces of the previous administration’s legacy. Trump’s move scraps new requirements for programs that train new K-12 teachers and rolls back a set of rules outlining how states must carry out the Every Student Succeeds Act, a bipartisan federal law meant to hold schools accountable for student performance. In a signing ceremony at the White House Monday, the president hailed the measures for “removing an additional layer of bureaucracy to encourage freedom in our schools.” Leaders of the Republican majority claimed that the accountability rules represented an executive overreach by former president Barack Obama. Democrats argued that rescinding the rules opens loopholes that states can use to shield poorly performing schools from scrutiny, especially when they fail to serve poor children, minorities, English-language learners and students with disabilities. Civil rights and business groups, including the U.S. Chamber of Commerce, also opposed doing away with the rules. The measure to repeal the regulations passed easily in the GOP-dominated House, but barely made it out of the Senate on a 50 to 49 vote, mostly along party lines. The teacher-preparation regulation, which stemmed from the Higher Education Act, required states to issue annual ratings for training programs within their borders. It was meant to ensure that novice teachers enter classrooms more prepared, but it was broadly unpopular from the start. Teachers unions said the regulations wrongly tied ratings of teacher-training programs to the performance of teachers’ students on standardized tests; colleges and states argued that the rules were onerous and expensive, and many Republicans argued that Obama’s Education Department had overstepped the bounds of executive authority. Both sets of rules were overturned using the Congressional Review Act, a rarely used law that empowers a new president and Congress to overturn regulations promulgated during the last 60 days of the previous administration.

#### States are currently emboldened to take independent action on key issues including climate change and social safety

Frank 17

(Robert H., Ph.D. in Economics, M.A. in statistics, economics professor at the Johnson Graduate School of Management at Cornell University, former Goldwin Smith Professor of Economics, Ethics, and Public Policy, 1.20.17, New York Times, “Federal Policy Will Shift. Not All States Will Shift With It,” <https://www.nytimes.com/2017/01/20/upshot/federal-policy-will-shift-not-all-states-will-shift-with-it.html?mcubz=1&_r=0>, Accessed: 6.22.17)VWkorea

Bitter divisions about the proper role of government in the United States have always been with us. Within broad limits, our Constitution’s response to this reality has been to empower states to adopt policies tailored to their own constituents’ beliefs and values. So in the wake of an unusually divisive presidential election, vigorous state-level actions to offset specific changes in federal policy are already underway. A case in point is the response of Gov. Jerry Brown of California to President Trump’s skepticism about the threat posed by climate change. Because effective measures to combat global warming must be planetary in scope, most scientists saw the recent 195-nation Paris agreement as a hopeful step. But many of Mr. Trump’s supporters have urged him to abandon that plan. In reaction, Mr. Brown, a Democrat, has doubled down on California’s efforts to negotiate carbon-reduction agreements with other states and countries. That strategy, he explained, can serve two ends: to demonstrate that such agreements not only do not destroy jobs, but actually increase employment, and to show that the agreements work, leading to significant reductions in emissions even as the struggle for broader action continues. Blue-state voters, who by definition tend to favor Democrats, are more likely than others to oppose the Trump agenda. Yet those states are also likely to find themselves in an intriguing financial position as a result of Mr. Trump’s policies. Consider that blue states send much more money to Washington than they receive, while the reverse is true for red states, which tend to favor Republicans. Blue states also enjoy significantly higher per capita income than red states and are home to a disproportionate share of the nation’s highest earners. The upshot is that if the Trump administration cuts taxes on top earners as expected, the federal tax burden on blue states will fall especially sharply. Those states will thus have new fiscal flexibility, should they choose to offset other aspects of the Trump agenda. Blue states, for example, are more likely to favor a generous social safety net. For the better part of a century in many states, that safety net has included the services of Planned Parenthood, which include the diagnosis and treatment of sexually transmitted infections, contraception and cancer screening. For every dollar spent on those services, the organization saves society many more dollars in future social costs, not to mention untold human heartache. But a small percentage of its services involve abortions, and Republicans in Congress have pledged to withdraw federal support for Planned Parenthood entirely. Texas recently took that step at the state level, amid reports that its maternal death rates have soared. Reasonable people can hold different views about how best to revere the sanctity of life. States that wish to maintain support for Planned Parenthood can do so by imposing higher state levies on those whose federal taxes were cut by Mr. Trump. Perhaps the most conspicuous problems for the social safety net arise from the Republican pledge to repeal the Affordable Care Act. As with efforts to curb greenhouse gases, the task of providing broad access to health care is much better handled at the federal level than at the state level. The concern is that guaranteeing coverage at the state level could attract new beneficiaries from neighboring states that don’t provide such guarantees, making the program prohibitively costly. But the health care initiative implemented by Mitt Romney during his governorship of Massachusetts, which was based on proposals by the conservative Heritage Foundation, effectively put that concern to rest. Repeal of Obamacare would mean large federal tax cuts for top earners in every state, creating budgetary headroom for states to adopt their own versions of Romneycare. States don’t have absolutely unlimited freedom to impose higher levies on top earners, because if any one state raised its rates, top earners could flee to neighboring states. And there have indeed been examples of individuals who have relocated in search of lower taxes. But here, too, experience in California is reassuring. Facing budget shortfalls and cutbacks in essential public services, the state’s voters approved Proposition 30 in 2012, which raised the state’s top marginal income tax rate to over 13 percent, significantly higher than that of any other. Opponents predicted that wealthy California taxpayers would flee in droves to Nevada, Oregon and beyond. But the Institute on Taxation and Economic Policy in Washington reports that these fears were overblown, citing a recent Stanford University study. It found that million-dollar income earners are actually less likely to move than Americans earning only average wages; fewer than 2 percent of the tiny fraction of those millionaires who did move cited taxes as a factor. Are wealthy blue-state voters chumps for not fleeing the higher taxes? Perhaps they believe, plausibly, that their lives are better with a more balanced mix of public and private consumption, with good parks and schools, highways and rail systems for everyone, and not just spectacular homes for themselves and their own families. They may also understand that their ability to bid successfully for things they prize — homesites with views, for instance — depends almost entirely on their relative purchasing power, which isn’t affected much when they and their peers face slightly higher tax rates. Which approach is best? The genius of the drafters of our Constitution was in eschewing attempts to answer such questions theoretically. They understood that progress would be far more likely if the states were free to experiment, often taking positions at odds with those of the federal government. When Democrats controlled the White House in the Obama administration, for example, red states like Kansas employed tax and service cuts to oppose federal budget policy. In the current climate, we can expect blue states to take analogous steps.

### Uniqueness – Regulation

#### Trump administration is decreasing regulations now – accountability, federal authority, and equity

Wong 17

(Kenneth K., 3.27.17, Brookings, “Redefining the federal role in public education: The 1st quarter of the Trump “insurgent” presidency,” <https://www.brookings.edu/blog/brown-center-chalkboard/2017/03/27/redefining-the-federal-role-in-public-education-the-1st-quarter-of-the-trump-insurgent-presidency/>, Accessed: 6.22.17)VW

POSSIBLE ROLLBACK ON THE FEDERAL ROLE IN EQUITY AND ACCOUNTABILITY Historically, equity has been a key justification for federal involvement in K-12 education. Since the civil rights movement and the Great Society agenda, federal education programs have been designed to promote equal educational opportunities for all students. Title I of the Elementary and Secondary Education Act of 1965 was part of the president’s War on Poverty. Since the presidency of Reagan, the federal government has broadened its focus to include performance-based accountability. The Trump administration is ready to reverse the federal-state dynamic on both equity and accountability, and the Trump White House has an opportunity to do so in the current political climate. First, the 2015 iteration of ESSA rebalanced federal-state relations by granting states much more control over school accountability and improvement strategies compared to the No Child Left Behind era. Second, the Republican-controlled Congress recently used the Congressional Review Act to further reduce federal authority under ESSA by repealing the “Accountability and State Plans” regulation published by the Obama administration. DeVos now has the opportunity to grant even more power to states as they implement ESSA. Third, the federal government may also choose to withdraw from some of the equity-oriented practices. DeVos is reviewing whether the Department of Education’s Office for Civil Rights will continue an effort that began in 1968 to collect biennial data on schooling opportunities and quality in public schools throughout the country.

## Link

#### Federal action on education trades off with state power and upsets the balance of federalism

Lawson 13

(Aaron, J.D., University of Michigan Law School, former Staff Attorney at the United States Court of Appeals for the Seventh Circuit, Associate at Edelson PC, Summer 3-1-2013, Brigham Young University Education and Law Journal, Volume 2013, Issue 2, Article 5, “Educational Federalism: A New Case for Reduced Federal Involvement in K-12 Education,” <http://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=1333&context=elj>, Accessed: 6.26.17)VW

Every state constitution, in contrast with the Federal Constitution, contains some guarantee of education.18 State courts split into two groups on how to give effect to these guarantees: (1) by evaluating education policy under Equal Protection by declaring education a fundamental right or by treating wealth as a suspect classification,19 or (2) by evaluating education policies under a framework of educational adequacy.20 In either case, these clauses establish substantive educational guarantees on the state level that do not exist at the federal level and provide the courts with a role in ensuring the fulfillment of these guarantees.21 These clauses also help to create a valuable political dynamic, which has inured to the benefit of children. As part of this political dynamic, courts define the contours of these affirmative guarantees, and the legislature fulfills its own constitutional duty by legislating between those boundaries.22 However, when the federal government legislates or regulates in a given field, it necessarily constrains the ability of states to legislate in that same field.23 In the field of education, the ability of courts to protect the rights of children is dependent on the ability of legislatures freely to react to courts. As such, anything that constrains state legislatures also constrains state courts and upsets this valuable political dynamic created by the interaction of state legislatures and state courts. An expansive federal role in educational policymaking is normatively undesirable when it threatens to interfere with this political dynamic. This dynamic receives scant attention in the literature described above. However, mindfulness of this dynamic is crucial to the proper placement of the educational policymaking and regulatory epicenter. Constraints on state legislatures would not be as problematic if the federal government had proven itself adept at guaranteeing adequate educational opportunity for all students. However, RTTT and NCLB have, in some cases, proven remarkably unhelpful for poor and minority students.24 These negative outcomes, of course, are not guaranteed. However, the fact that federal involvement in education has produced undesirable outcomes for poor and minority students should cause policymakers to reexamine whether it is most desirable for the federal government to play such a significant role in education. This Comment argues that it is not.

#### State action in education is key to federalism

Portz 11

(John, Ph.D. in Political Science, Professor of Political Science; Interim Chair, Department of Political Science, Fulbright Scholar at Northeastern University, November 2011, “Federalism and Education Policy In the United States: Allocating Authority and Responsibility Among Levels of Government,” <http://www.puc-rio.br/catedrafulbright/downloads/federalism_and_education_policy.pdf>, Accessed: 7.4.17)VW

Education policy in the United States is shaped fundamentally by the U.S. federal system. Like Brazil, the United States has a federal governmental system that divides authority and responsibility among national, state and local governments. In both countries, officials at all three levels of government play an important role in education policy, but the allocation of authority and responsibility is quite different. As we will see, in the United States the state level plays the most important role in elementary and secondary education, working primarily with local school districts that operate individual schools. The national level captures considerable public attention in education policy, but its role is actually less central in the funding and operation of schools. Constitutional Dimension. The structures and practices of American federalism are grounded in the U.S. Constitution, which is one of the oldest national constitutions in the world. Approved in 1789, the Constitution is based upon a broad ´framework´ approach to constitutional design. It is relatively short and provides general parameters for government structures and responsibilities, but few details. In contrast, the 1988 Brazilian Constitution is much longer and provides considerably more details on the structures and responsibilities of government. The U.S. Constitution, including its 27 amendments, is only 18 pages in length, whereas the Brazilian Constitution is over 110 pages. The U.S. Constitution focuses primarily on the structure and authority of the national government, along with some description of the powers and authority of state governments. With respect to the national government, specific powers are listed, such as supporting an army and providing for a national currency. Importantly, however, there is no reference to education; this word is not in the Constitution. Unlike the Brazilian Constitution that describes education as a right of all citizens and obligation of the government, the U.S. Constitution makes no reference to education. Furthermore, the U.S. Constitution makes no reference to municipalities or other local governments that could deliver educational services. Again, the Brazilian Constitution outlines an important role for municipalities in education policy, but the U.S. Constitution is silent on a local role in education and, in fact, makes no mention of local governments at all. What does this mean for education policy? From a constitutional perspective, it is not clear what role the national government might play in the development and delivery of educational services. Indeed, in the 1973 court case of San Antonio School District v. Rodriguez, which involved claims of inequitable financing for public schools, the U.S. Supreme Court declared that since there is no right to education in the U.S. Constitution, the national government is not responsible to address inequities in funding for public schools. The Court suggested that state government would be the more appropriate venue for such cases. The 50 states, then, are central actors in education policy. Each state has a constitution that includes a reference to the state’s responsibility to provide educational services for the citizens of the state. The Illinois Constitution, for example, declares that Illinois state government is responsible “to provide for an efficient system of high quality public educational institutions and services.” The New York Constitution states that “the legislature shall provide for the maintenance and support of free common schools, wherein all the children of this state may be educated.” Pursuant to these constitutional provisions, every state has created a system to provide educational services in that state.

#### The federalist nature of education is intergovernmental – funding and regulation

Portz 11

(John, Ph.D. in Political Science, Professor of Political Science; Interim Chair, Department of Political Science, Fulbright Scholar at Northeastern University, November 2011, “Federalism and Education Policy In the United States: Allocating Authority and Responsibility Among Levels of Government,” <http://www.puc-rio.br/catedrafulbright/downloads/federalism_and_education_policy.pdf>, Accessed: 7.4.17)VW

These parts of the Constitution give the national government potential authority, but the Tenth Amendment, approved in 1790, is viewed by many as an important limitation on the national government. This amendment states that powers not “delegated” to the national government or prohibited to the states are “reserved to the states or to the people.” Since education is not specifically delegated to the national government, the argument is often made that the national role in education policy should be very limited. From a constitutional perspective, then, the primary relationship in education policy is between the states and local units of government, principally school districts and municipalities, which are themselves created by the states (see figure 1). The national government plays a more ambiguous role and when it does act, it acts primarily through the states rather than directly with local school districts. Financial Dimension. The importance of federalism also is apparent when we consider the funding of public schools. In 2008-09, $605 billion was spent in the United States on elementary and secondary public education. This level of expenditure amounted to just over $10,000 per student.1 This is a considerable sum of money. What role does each level of government play in this financial dimension? The answer points again to the importance of state and local governments. If viewed from a revenue perspective, state governments raise 47% of the revenues used to support public education, while local governments raise 44% (see figure 2).2 For most states, the state income tax and sales tax are the key revenue sources; for most local governments the property tax is the largest revenue source. Only 9% of education revenues are raised by the national government. While national government officials often highlight the importance of public education and make claims around improving education, most of the money to support education comes from the other two levels of government. Of particular interest – from a federalist perspective – is that over half of this money is transferred between levels of government before it is directly spent on educational services. Almost all of the money raised by the national government is transferred to states (8%) and school districts (1%), with most of it going to states, which then transfer it to school districts. Similarly, almost all of the money raised by states for public education is transferred to school districts, where it is spent on teachers´ salaries, curriculum material, and other educational purposes. Thus, local school districts spend about 98% of all funds devoted to elementary and secondary education, but they raise less than half of that from their own revenue sources. This transfer of monies between levels of government points to the importance of intergovernmental grants as a critical part of education policy. Some of these funds are transferred based on competitive grant proposals, but most transfers are done through formulas. The national government, for example, transfers money to states based on a number of factors, with the number of low-income students a particularly prominent one. Also, most states have a basic grant program that allocates monies to school districts based on the number of students in the district and might also include income and other factors. These formulae can be quite complicated, and they are very important in discussions that take place around education policy. Building from our discussion on constitutional and financial dimensions, we focus now on the major roles and responsibilities of each level of government. State Governments. By their own constitutions, state governments have the responsibility to provide a public education for citizens of their state. Each state establishes a structure of school districts for the delivery of educational services and develops many of the major requirements and guidelines for education. Each has a state education agency that works closely with the federal government and local school districts to develop a quality educational system. Funding is one of the most important state roles. As noted above, on average, states raise almost half of the revenues used to support public education. State financial support for education, however, varies considerably across the country. The state of Vermont is on one end of this spectrum, providing 89% of the monies for total education spending, while state funding in Illinois provides only 30% of all revenues used in education spending. In Illinois, then, local governments must provide a major part of school funding through their own revenue sources, whereas in Vermont local governments provide a very small amount of the funding. The adequacy of state funding is a frequent source of controversy. Since the 1973 San Antonio court case in which the U.S. Supreme Court removed responsibility for such issues from the national government, state courts have become the frequent setting for such actions. Indeed, in forty states legal suits have been filed in state courts seeking changes in how schools are funded. In many cases the complaint is on equity grounds because poorer communities with limited property values are not able to raise as much money to support their schools as are more wealthy communities. In other cases, the complaint is that overall spending is not high enough to provide a quality education. In about half of these cases the state court has agreed and has requested that more funding be provided to poorer communities or overall to all schools. A political battle often follows between the legislature and governor over how to address the court’s request. New Jersey is a prominent example. In 1985, in a court case known as Abbott v. Burke, the New Jersey Supreme Court declared that state government was not fulfilling its constitutional responsibility “to provide for the maintenance and support of a thorough and efficient system of free public schools.” In particular, poor school districts in the state were not receiving adequate funding and program support. In 1985 and several subsequent decisions, the Court ordered additional funding and programmatic support for twenty-eight poor school districts. In 2009 the Court agreed that the state had met its responsibilities, but in 2011, when the state cut-back on funding, the Court stepped back in, ordering the governor and legislature to provide an additional $500 million in funding for education. State officials complied, but the controversy continues.3 In addition to funding, states usually provide overall guidance on learning standards, curriculum, and assessments that will be used in the public schools. Massachusetts, for example, established in the mid-1990s a set of learning standards for all grades and all subjects. Based on these broad guidelines, curriculum frameworks were developed in basic subject areas. Teachers used these frameworks to help develop their instructional plans. The state then developed an assessment system based on the curriculum frameworks. Known as the Massachusetts Comprehensive Assessment System (MCAS), tests are given in grades 3 through 10 in key subject areas. To graduate from high school, students must pass the mathematics and English language arts MCAS tests. Each state can develop its own approach to standards, curriculum and assessment. Some states develop very robust and detailed materials in this area, while others provide less material and leave more responsibility to local school districts. The result is a variety of standards, curriculum and assessment tools. Some argue that this diversity is a positive result of federalism, while others are more critical, raising concerns that some states are not providing a quality educational experience for their students. In response to this later critique, a recent effort known as the Common Core State Standards Initiative has gained considerable prominence. Supported by over forty states, common standards are being developed in mathematics and English language arts. A key question in the next few years will be whether and how states incorporate these standards into their own educational systems. States have a variety of other educational responsibilities. Each state establishes guidelines and requirements for the training of teachers, which is usually done through colleges and universities, and requirements for teachers to receive and retain a license to teach in particular subject areas. States also pass laws that outline labor-management relations in education, including the general role of unions and collective bargaining in those states that have public sector unions. Many states also play an important role in funding the construction of new school buildings and related facilities. School Districts. School districts are where educational services are delivered to children. In 2002, there were 15,014 school districts across the country. 4 Some districts include only a few schools, while large urban districts might have several hundred or more individual schools. Each state defines the structure and responsibilities of the district. In some cases, as noted earlier, a school district has the same boundaries as a municipality, but school districts more often overlap municipal boundaries, such as a regional school district that includes several municipalities or a school district that is coterminous with county boundaries. Governance and finances also vary. Most school districts have elected school boards with citizens chosen from the community to serve on the board. Often board members receive no compensation, serving on the board because of their interest in education and public service. They are responsible for hiring the superintendent and providing overall policy guidance for the district. In a smaller number of districts, but often in larger cities, the board members are appointed by mayors or other local government officials. With respect to finances, 90% of school districts are considered to be fiscally independent, which means they raise their own local revenues, principally through the property tax. The other 10% are fiscally dependent upon a county or municipality, relying upon that unit of government to raise the local monies needed to support education. School board members, superintendents, principals and teachers are responsible for delivering educational services at the local, school district level. Teachers develop lesson plans, local assessment tools and others aspects of the classroom experience. School districts typically support the professional development of teachers through workshops and other activities. In many states, the school district determines most of the high school graduation requirements, such as four years of high school English. In other states, officials at the state level determine some of these requirements. National Government. The national government plays the smallest role in public education – as measured by constitutional authority and finances – but it is still quite prominent and captures considerable public attention. President Obama and several of his predecessors have described themselves as ‘education presidents.’ Working with Congress, they have developed many programs to support the education of children in the country’s school districts. However, this national role can be contentious. Some government leaders cite the Constitution in their argument that education is primarily a responsibility of the states, not the national government. When the national government has acted, seeking a remedy to inequities is one prominent reason for its involvement in public education. As noted earlier, the 14th Amendment to the Constitution gives the national government authority to ensure that all citizens have “equal protection under the laws.” Using this standard, for example, federal district courts played a major role in the 1960s, ‘70s and ‘80s to address inequities by race. A number of cities were required to establish busing programs to transport students to schools other than their neighborhood school, thereby integrating the schools and providing more equality in terms of educational resources. In Boston, Massachusetts, for example, students from predominately black residential areas were transported by bus to schools in other parts of the city, and many white students also were transported to schools beyond their neighborhood. National government involvement targets a number of other areas, including low income families and students with special needs. For example, the national government provides extra funding to states and school districts with higher proportions of students from low-income families. These students typically need additional support. As another example, based on a law passed in 1975, the national government mandates that states and school districts provide a variety of educational services to students with additional learning, emotional, and physical needs. These special education requirements come with some national funding, but typically not enough to cover additional costs incurred by school districts. States and the districts themselves must meet this financial challenge. The Elementary and Secondary Education Act, first passed in 1965, is the single most prominent piece of national legislation in this area. It covers a variety of important topics, focusing particularly on financial support for schools with lowincome students. Every seven-to-eight years the law is reauthorized and has become broader in scope and more prescriptive. The most recent reauthorization came in 2002 and was titled No Child Left Behind (NCLB) by the Bush Administration. Emphasizing the popular trend towards standards and accountability, NCLB established a variety of requirements for states that accepted funding through the law. Included among the requirements are:  States must establish learning standards and proficiency requirements along with testing in grades 3-8 and 10.  All students must be “proficient” in reading and mathematics by 2013-14.  This proficiency standard applies to all students in a school, as well as separately to various subgroups of students, including by low income, race, ethnicity, disability, and limited English proficiency.  Schools must make “adequate yearly progress” in each subgroup to achieve this goal. If they don’t, they face increasing penalties and requirements, including the funding of supplemental learning services and school choice. Since 2002, NCLB has been a major part of the policy discussion in the education field. Many state officials complain that the national government is exceeding its authority, but ultimately states have put in place testing and accountability systems to meet the requirements of the new law. The law is praised for its focus on subgroups, but criticism mounted as an increasing number of schools are unable to meet the 2013-14 proficiency requirements. Many claim that it is unrealistic to expect all students to reach a proficiency level. Current Debates. The future of NCLB is one of the major topics of discussion today. It was scheduled for reauthorization in 2009, but members of Congress have been unable to agree upon a new version. Partisan politics has made a consensus very difficult to achieve, yet many agree that changes are needed. Each year, for example, more schools fail to meet adequate yearly progress, yet many of these schools are judged to be good schools by other standards. The 100% proficiency requirement is seen by many as unrealistic. Pressure to change the law mounts. Changing NCLB is supported by the Obama Administration, where education is a key priority. During the recent recession, the Administration and Congress provided $79.3 billion for elementary and secondary education in the American Adjustment and Recovery Act of 2009 (sometimes know as the “Stimulus Bill”). This was the largest ever one-time infusion of monies from the federal government into elementary and secondary education. School districts across the country used these funds to avoid teacher layoffs and to improve educational systems. As part of this initiative, the Obama Administration established its own set of priorities and a policy framework for moving forward. Rather than focus on a proficiency standard for 2013-14, the Administration encourages states to adopt standards and assessments that prepare all students to be “college and career ready.” Further, states should focus on the lowest performing schools, and the Administration is advocating a set of specific strategies to turn-around these schools. Also, states should develop performance evaluation systems for teachers and principals that include a measure of actual student achievement. In addition, states need to develop data systems that track individual student achievement and use this information to inform instructional practices.5 Seeking to put these priorities into practice, the Obama Administration in October 2011 announced that it would grant individual states broad waivers or exceptions to many of the NCLB requirements if the state would commit to implement key priorities of the Administration. This broad use of administrative waiver authority, which is usually exercised for narrow and specific circumstances, is unusual and has been criticized by some in Congress. Still, many states are preparing waiver proposals and identifying likely revisions to their accountability systems to match the Obama Administration framework. The debate over NCLB and the Obama Administration framework is most prominent today, but there are a number of other important policy issues that capture attention. Charter schools, for example, continue to be an important policy topic. Begun in Minnesota in the early 1990s, over half the states now have charter school laws that allow parents, teachers, and other groups to create charter schools, which receive public money and have open admissions, but operate outside the traditional school district. School choice is another important topic. Many states and school districts have various policies to promote intra-district or inter-district choice so students can attend a school other than their neighborhood school. Teacher compensation is a third popular, and often controversial, topic. Even before the prompt by the Obama Administration, states and school districts were exploring alternative compensation systems that incorporate some performance measures into determining compensation rather than the traditional criteria of a teacher’s years of service and highest education level. These debates and the ensuing policy responses will be fundamentally shaped by the American federal system. The national government will continue to be a very visible player, but it will be the states and local school districts that provide most of the funding and deliver educational services to children. Education policy is one of the most intergovernmental of policy areas in the American political system. As we move further into the 21st Century, this intergovernmental dynamic will be central to the success of American education in meeting its goals.

#### Government intervention is zero-sum – education centralization trades off with state autonomy

Marshall et al 13

(Jennifer, M.A. in Statecraft and World Politics, Lindsey Burke, Doctoral Student in Education Policy and Research Methods, Director of the Center for Education Policy at The Heritage Foundation, Rachel Sheffield, M.S., Senior Policy Advisor at Senate Joint Economic Committee, Brittany Corona, Sandra Stotsky, 10.7.13, Heritage Foundation, “Common Core National Standards and Tests: Empty Promises and Increased Federal Overreach Into Education,” <http://www.heritage.org/education/report/common-core-national-standards-and-tests-empty-promises-and-increased-federal>, Accessed: 7.4.17)VW

Americans who cherish limited government must be constantly vigilant of pushes to centralize various aspects of our lives. Government intervention is a zero-sum game; every act of centralization comes at the expense of liberty and the civil society institutions upon which this country was founded. Education is no exception. Growing federal intervention in education over the past half century has come at the expense of state and local school autonomy, and has done little to improve academic outcomes. Every new fad and program has brought not academic excellence but bureaucratic red tape for teachers and school leaders, while wresting away decision-making authority from parents. Despite significant growth in federal intervention, American students are hardly better off now than they were in the 1970s. Graduation rates for disadvantaged students, reading performance, and international competitiveness have remained relatively flat, despite a near tripling of real per-pupil federal expenditures and more than 100 federal education programs. Achievement gaps between children from low-income families and their more affluent peers, and between white and minority children, remain stubbornly persistent. While many of these problems stem from a lack of educational choice and a monopolistic public education system, the growth in federal intervention, programs, and spending has only exacerbated them.

#### Federal interference in education shifts the USFG’s role in relation to state governments – undermines structural protections against federal overreach

Sharma 13

(Elizabeth J., 11.25.13, “Education Reform and the Political Safeguards of Federalism,” ECI Interdisciplinary Journal for Legal and Social Policy: Vol. 3: Iss. 1, Article 3, <http://ecipublications.org/cgi/viewcontent.cgi?article=1021&context=ijlsp>, Accessed: 7.4.17)VW

The passage of the No Child Left Behind Act (NCLB) in 2001 sparked widespread controversy over the federal government’s proper role in public education. Opponents criticized the legislation as an unprecedented federal intrusion on state and local governments’ policymaking authority. Whereas previous incarnations of the Elementary and Secondary Education Act (ESEA) required local schools and districts to comply with detailed rules about how to spend categorical funds, federal moneys were never before made contingent on a rigorous testing and accountability regime. By requiring annual testing and tying federal funding to student outcomes, the new legislation signaled a shift in the federal government’s role vis à vis subnational governing bodies. This shift in authority led some to question whether state and local governments’ structural protections from federal overreaching are dead—at least in the field of public education. In The Political Safeguards of Federalism, Herbert Wechsler argued that because states’ rights are preserved through the legislative process, the Supreme Court need not intervene to protect states from federal regulatory intervention. The legislative process shelters state autonomy, Wechsler argued, by ensuring that federal legislation must gain the approval of the Senate, which is responsive to state interests, the House, whose congressional districts are dictated by state legislatures, and the president, who depends on states through the Electoral College system. According to critics, congressional acquiescence in President George W. Bush’s drive for top-down standards-based reform (SBR) demonstrates the failure of these traditional safeguards. Beginning in the 1990s, the Supreme Court stopped deferring to federal regulatory authority and began striking down legislation it deemed overly intrusive. According to the Court, national political institutions had failed to protect state interests, thus necessitating a more robust role for the judiciary in preserving the delicate balance between state and federal interests. Because federal legislators are under pressure to solve pressing national problems but are not responsible for implementation, they will inevitably pass the buck to state representatives by voting for coercive, unfunded mandates. Bipartisan support for NCLB brought together the likes of Representative Tom DeLay, a fierce opponent of federal intervention who once sought to eliminate the Department of Education, and liberal Democrats such as Senator Edward Kennedy, lending support to the Supreme Court’s more aggressive stance. It could be argued that federal representatives arrived at a legislative compromise without seriously considering NCLB’s impact on a broad spectrum of state and local constituents.

#### Federal involvement in education disrupts federalism – violates the Constitution

Hornbeck 5/10

(Dustin, Ph.D. Student in Educational Leadership and Policy, 5.10.17, Higher Ed Jobs, “Federal Role in Education Has a Long History,” <https://www.higheredjobs.com/Articles/articleDisplay.cfm?ID=1285>, Accessed: 7.4.17)VW

President Donald Trump has directed the United States Department of Education to evaluate whether the federal government has "overstepped its legal authority" in the field of education. This is not a new issue in American politics. Ever since the Department of Education became a Cabinet-level agency in 1979, opposition to federalized education has been a popular rallying cry among conservatives. Ronald Reagan advocated to dismantle the department while campaigning for his presidency, and many others since then have called for more power to be put back into the states' hands when it comes to educational policy. In February of this year, legislation was introduced to eliminate the Department of Education entirely. So, what is the role of the state versus the federal government in the world of K-12 education? As a researcher of education policy and politics, I have seen that people are divided on the role that the federal government should play in K-12 education -- a role that has changed over the course of history. Growth of Public Education in States The 10th Amendment to the United States Constitution states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." This leaves the power to create schools and a system for education in the hands of individual states, rather than the central national government. Today, all 50 states provide public schooling to their young people -- with 50 approaches to education within the borders of one nation. Public schooling on a state level began in 1790, when Pennsylvania became the first state to require free education. This service was extended only to poor families, assuming that wealthy people could afford to pay for their own education. New York followed suit in 1805. In 1820, Massachusetts was the first state to have a tuition-free high school for all, and also the first to require compulsory education.

## Impact

### Terrorism Module

#### Federalism solves terrorism – key to flexibility, authority, and innovation

Mayer 12

(Matt, former Acting Executive Director, Office of State and Local Government Coordination at the U.S. Department of Homeland Security, former Counselor to the Deputy Secretary of the U.S. Department of Homeland Security, Visiting Fellow on Domestic Security Issues at the American Enterprise Institute, 3.26.12, Heritage Foundation, “Federalism Allows Law Enforcement to Determine Counterterrorism Policies That Work Best,” <http://www.heritage.org/terrorism/report/federalism-allows-law-enforcement-determine-counterterrorism-policies-work-best>, Accessed: 6.29.17)VW

With an increase in the national response to terrorism, many people believe the principle of federalism has little utility today or that states do not have much to contribute in counterterrorism policy or activity. When it comes to domestic security, however, federalism is more relevant than ever, and the states have a vital role to play in counterterrorism. Local law enforcement agencies have the flexibility and authority to design counterterrorism programs that best fit their respective jurisdictions. With that flexibility and authority, our cities are more secure. One-Size-Fits-All Usually Fits Few Well The 10th Amendment of the U.S. Constitution simply states: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” Those 28 words confirm that states possess the ability to tailor policies that best address the issues they confront. Because of the various demographic differences among the states, a one-size-fits-all policy may not work or may not work most effectively and efficiently in a particular state. When the federal government nationalizes an inherently state or local issue, it ensures that whatever policy it produces will fail to solve the problems. We know from the welfare reforms in the 1990s that a policy solution in one state may not work well in another state, which demonstrated the importance of states maintaining the flexibility and authority to tackle issues as they see fit. A robust policy competition among the states will enable America to find out what works and what does not. Domestic counterterrorism policy is no different. Each Community Presents Unique Challenges Requiring Unique Solutions America, thankfully, does not have a national police force. The Federal Bureau of Investigation (FBI) has authority over federal crimes, including terrorism, and exercises its authority by investigating and arresting suspected terrorists. With only 15,000 agents for the entire United States, the FBI lacks the resources to protect every American city. Because of this inherent limitation, outside of constitutional and legislative protections, America’s law enforcement community is not covered by a one-size-fits-all policy on how best to protect U.S. cities.

#### Nuclear terror causes extinction

Cirincione 16 (Joe Cirincione, Joe Cirincione is the president of Ploughshares Fund, a global security foundation. He serves on the secretary of state's International Security Advisory Board., 4-1-2016, "Opinion: Nuclear terrorism threat very real," CNN, <http://www.cnn.com/2016/04/01/opinions/nuclear-terrorism-threat-cirincione/index.html>) CH

Nuclear policy experts can seem like Cassandra, constantly prophesizing apocalyptic futures. In case you haven't noticed, we don't live in a Mad Max world devastated by nuclear war. Terrorists have not blown up New York with a makeshift nuclear bomb. We haven't bankrupted ourselves, despite the trillions of dollars spent on Cold War weapons. Cassandra's curse, however, was not that she was wrong, but that no one believed her. I don't know a single nuclear expert who thinks that the threat of nuclear terrorism is shrinking. I don't know a single one who thinks that the actions taken by world leaders at this week's Nuclear Security Summit are enough. We are fearful. And you should be, too. Chills went down a lot of experts' spines last month when we saw the news that the Brussels bombers, the ISIS terrorists who blew up the airport and attacked the metro, were secretly videotaping a Belgian nuclear official. This official worked at a facility that had radiological material that terrorists could use for a "dirty bomb." We do not know if they were filming him or his family, if there was a kidnap plot in motion, or what their exact plans were. But this is not some Hollywood fantasy. This is real. A nuclear terrorist event may be closer than you think. What are the risks? First, that terrorists could steal a complete nuclear weapon, like SPECTRE in the James Bond thriller, "Thunderball." This is hard, but not impossible. The key risk is that the outside terrorists get insider help: For example, a radical jihadist working at a Pakistan weapon storage site. Or the Belgian base just outside Brussels where we still stash a half-dozen nuclear weapons left over from Cold War deployments. Or the Incirlik air base in Turkey where we keep an estimated 50 weapons just 200 miles from the Syrian border. Second, terrorists could steal the "stuff" of a bomb, highly enriched uranium or plutonium. They cannot make this themselves -- that requires huge, high-tech facilities that only nations can construct. But if they could get 50 or 100 pounds of uranium -- about the size of a bag of sugar -- they could construct a crude Hiroshima-style bomb. ISIS, with its money, territory and global networks, poses the greatest threat to do this that we have ever seen. Such a bomb brought by truck or ship or FedEx to an urban target could kill hundreds of thousands, destroy a city and put the world's economy and politics into shock. Third, there is the possibility of a dirty bomb. Frankly, many of us are surprised this has not happened already. I spoke to Jon Stewart on his show 15 years ago about the danger. This is not a nuclear explosion unleashed by splitting atoms, but simply a conventional explosive, like dynamite, laced with radioactive material, like cesium or strontium. A 10-pound satchel of dynamite mixed with less than 2 ounces of cesium (about the size of a pencil eraser) could spew a radioactive cloud over tens of square blocks. No one would die, unless they were right next to the explosion. But the material would stick to the buildings. Inhaling just a speck would greatly increase your risk of getting cancer. You could go into the buildings, but no one would. There would be mass panic and evacuations, and the bomb would render a port, financial district, or government complex unusable and uninhabitable for years until scrubbed clean. Economic losses could be in the trillions. Fourth, terrorists could just attack a nuclear power reactor, fuel storage or other site to trigger a massive radioactive release that could contaminate hundreds or thousands of square miles, like Chernobyl or Fukushima. While nuclear reactors are hardened against outside attack, including by the intentional crash of a medium-sized jet plane, larger planes could destroy them. Or a series of suicide truck bombers. But it might not even take a physical explosion. This week, it was reported the United States and the United Kingdom are to simulate a cyberattack on a nuclear power plant. Can we prevent these attacks? Yes, by eliminating, reducing and securing all supplies of nuclear materials so that terrorists would find it too difficult to get them. And by reducing and better protecting nuclear reactors and spent nuclear fuel. Are we doing enough? No. "The capabilities of some terrorist groups, particularly the Islamic State, have grown dramatically," says Harvard scholar and former Bush Administration official William Tobey, "In a net calculation, the risk of nuclear terrorism is higher than it was two years ago." The United States spends about $35 billion on nuclear weapons every year. This year, we will spend $1.8 billion on all our efforts to stop the spread these weapons and stop nuclear terrorism. You don't have to be a nuclear expert to know something is out of whack here. It is time we put our money where our threats are.

### Economy Module

#### Federalism is key to economic growth – increased efficiency and innovation, prefer our quals

Baskaran et al 16

(Thushyanthan Baskaran, Ph.D. in Economics, Lars P. Feld, Ph.D. in Economics, and Jan Schnellenbach, Ph.D. in Economics, Vol. 54, No. 3, July 2016, 1445–1463, Economic Inquiry, “Fiscal Federalism, Decentralization, and Economics Growth: A Meta-Analysis,” <http://onlinelibrary.wiley.com/store/10.1111/ecin.12331/asset/ecin12331.pdf?v=1&t=j48s2ndk&s=2e7c4411722392f1127395da28b12f1b00c2a5de>, Accessed: 6.22.17)VW

Within the framework of the Solow-Swan model (Solow 1956; Swan 1956), fiscal federalism may be associated with a different level of efficiency in governance than unitary systems, leading to a different value of Solow’s A, the level of technology. A regime change toward federalism would then be associated with temporarily different growth rates, and eventually different levels of income, but not with persistent growth differences. The same holds for a possible difference in the savings rate between federal and unitary states. Only if a theoretical link between, on the one hand, the growth rate of the technology level and, on the other hand, the level of government decentralization exists, decentralization would be expected to have a persistent impact on economic growth in this framework. There are indeed some contributions making this case. For example, from a Schumpeterian perspective, processes of creative destruction (Aghion and Howitt 2006; Caballero 2007) may be more efficiently managed in federal systems (Feld, Schnellenbach, and Baskaran 2012). From a politico-economic perspective, federalism may preserve the efficient properties of market economies from the threat of overregulation and rent-seeking (Weingast 1995). Using an overlapping generations model, Brueckner (1999) argues that sorting of different types of individuals along the lines of Tiebout (1956) implies that in a federal system, each type receives its idiosyncratic, utility-maximizing level of a publicly provided good. If young individuals preferred less of the public good than old ones, and if private and public consumptions were weak complements, the switch to federalism would lead to more savings of young individuals and higher growth. The effect would be temporary and restricted to the transition to a new steady-state capital stock. In a subsequent paper, Brueckner (2006) shows that permanent effects are possible by transferring the basic argument to an endogenous growth model. Another argument stems from core-periphery models of regional economics. Regions that manage to attract centers of productive activity benefit from a relatively faster accumulation of physical capital due to agglomeration forces (Baldwin and Martin 2004). Such agglomeration forces themselves may be at least partially influenced by regional policies. An example is the importance of specific human capital (Camagni 1995) whose presence can be influenced by education and other policies. In an important paper that links a standard notion of fiscal competition with agglomeration effects, Justman, Thisse, and van Ypersele (2002) show that regional politicians have an incentive to differentiate the supplies of public infrastructure in different regions in order to alleviate the pressures of fiscal competition. As a result, these regions will also attract different types of private capital. Justman et al. thus offer a politico-economic rationale for the endogenous emergence of regional heterogeneity, but the overall effect of fiscal competition on growth is ambiguous. The presence of strong agglomeration effects implies that peripheral regions that are eager to develop have little other policy alternatives than to attract businesses with a fiscal policy that is tailored to their specific conditions (Brakman, Garretsen, and Van Marrewijk 2002). However, transfers from a rich to a poor region will have temporary effects at best in a new economic geography model (Brakman, Garretsen, and Van Marrewijk 2006). The general point that catering to the specific conditions of heterogeneous regions may accelerate growth has been incorporated into growth models by Davoodi and Zou (1998) and Xie, Zou, and Davoodi (1999) as well as Cerniglia and Longaretti (2013) with regard to education policy. Importantly, in the model used by Xie, Zou, and Davoodi (1999), a regime change from a relatively inefficient unitary regime to a relatively efficient federal system would be associated with permanently higher growth rates for the more efficient regime, which, as seen above, is in contrast to the predictions of the Solow-Swan model. Taking a political economics perspective additionally helps to identify possible causal mechanisms that run from decentralization to growth. In particular, it can be shown that the effects of decentralization depend on the broader institutional framework and its quality (Enikolopov and Zhuravskaya 2007). For example, Oates (1972) has already pointed out that efficiency requires fiscal equivalence. Without fiscal equivalence, fiscal externalities can lead to problems. Devereux and Mansoorian (1992) analyze an endogenous growth model with two countries whose decisions on tax levels produce fiscal externalities. Coordination of fiscal policies improves welfare in their model, but not necessarily growth, because the decentralized equilibrium may be characterized by low public consumption and high public investment. It is therefore not possible to derive clear-cut predictions regarding growth effects of uncoordinated, decentralized policy from this model (see also Koethenbuerger and Lockwood 2011). In a different two-country endogenous growth model with imperfectly mobile capital, Lejour and Verbon (1997) show that uncoordinated source taxes on capital returns may actually imply too much redistribution. The reason is a growth externality: If one country levies a tax, it reduces investment at home, but by depleting the equilibrium return to capital in the entire economic union, also in the other region. Contrary to conventional wisdom, efficient coordination would then lead to lower public consumption and lower tax rates compared to an uncoordinated equilibrium. Edwards (2005) models a time-inconsistency problem in a neoclassical growth model where human capital investment drives growth. A unitary government cannot commit to low tax rates in the future, such that the unitary state is characterized by high taxes, low human capital, and low growth. Local governments, however, are exposed to the threat of emigration of fiscally expropriated factors. The exit option helps to solve the time-inconsistency problem, inducing a decentralized equilibrium with low taxes, high investment, and high growth rates. There is another politico-economic avenue via which federalism may have an impact on growth, namely that of fostering political innovation. Oates (1990, 1999) has hinted at the fact that federalism may be useful in this respect, by speaking of “laboratory federalism”—a system in which many, parallel small-scale experiments can be undertaken at the subcentral level. Relatedly, Besley and Case (1995) and Salmon (1987) have argued for the relevance of yardstick competition as a mechanism allowing voters to assess the competence of their own representatives by comparing their policies with political results in neighboring jurisdictions.

**Economic competitiveness solves great power war**

**Baru 9**

Sanjayais a Professor at the Lee Kuan Yew School in Singapore Geopolitical Implications of the Current Global Financial Crisis, Strategic Analysis, Volume 33, Issue 2 March 2009 , pages 163 – 168

Hence, economic policies and performance do have **strategic consequences**.2 In the modern era, the idea that strong economic performance is the foundation of power was argued most persuasively by historian Paul Kennedy. 'Victory (in war)', Kennedy claimed, 'has repeatedly gone to the side with more flourishing productive base'.3 Drawing attention to the interrelationships between economic wealth, technological innovation, and the ability of states to efficiently mobilize economic and technological resources for power projection and national defence, Kennedy argued that nations that were able to better combine military and economic strength scored over others. 'The fact remains', Kennedy argued, 'that all of the major shifts in the world's military-power balance have followed alterations in the productive balances; and further, that the rising and falling of the various empires and states in the international system has been confirmed by the outcomes of the **major Great Power wars**, where victory has always gone to the side with the greatest material resources'.4 In Kennedy's view, the geopolitical consequences of an economic crisis, or even decline, would be transmitted through a nation's inability to find adequate financial resources to simultaneously sustain economic growth and military power.

### Disease Module

#### Federalism solves disease – decentralization is key to information and resource distribution

Washington 9

(Emily, M.A., Policy Research Manager at Mercatus Center at George Mason University, 5.5.9, Mercatus Center at George Mason University: Neighborhood Effects, “Swine Flu and Federalism,” <http://neighborhoodeffects.mercatus.org/2009/05/05/swine-flu-and-federalism/>, Accessed: 7.12.17)VW

As Tyler Cowen writes in his recently published issue of Mercatus On Policy, “Detecting a pandemic, instituting protective measures, and applying treatment all require the effective cooperation of many individuals and institutions…. Local health-care institutions must therefore be both free and able to respond to crises.” A decentralized response to minimizing the spread of disease is the best option that we have because local knowledge is crucial to distribute medical supplies and to spread information about treatment and prevention of illness in communities across the country. Despite the practical need for city and regional governments to take over leadership during health disasters, the swine flu outbreak has demonstrated that around the world, national governments tend to take more activist roles during times of fear. In Mexico, President Felipe Calderon took executive action to shut down non-essential government work in Mexico City and asked to “shut their doors to reduce the spread of infection” across the country. While this response may seem Picture of a piglet warranted, it has come at a high economic cost by cutting down productivity in Mexico during a recession. Without President Calderon’s warnings, some municipalities may have determined that business as usual was appropriate if swine flu was not directly impacting their residents. In Egypt, a much more costly political decision is now widely judged to have been an overreaction: the Egyptian government required the slaughter of all of the nation’s pigs, even though there are no known cases of H1N1 flu in Egypt, and the virus is not spread by eating contaminated meat. This incident exemplifies the bluntness of nationwide policy actions where local governments could have made more nuanced decisions in crisis situations. The World Health Organization advises, “Scientific research based on mathematical modeling indicates that restricting travel will be of limited or no benefit in stopping the spread of disease. Historical records of previous influenza pandemics, as well as experience with SARS, have validated this point.” While the temptation to block out illnesses along national borders is strong, as exhibited by calls to close the U.S.-Mexican border during this outbreak, viruses do not recognize political boundaries, and attempting to take such action at the national level would direct scarce resources away from the local level where they could be used to treat and prevent illness on a case-by-case basis. Thankfully, Dr. Richard Besser, acting head of the Center for Disease Control and Prevention, has so far dealt with this public health threat by emphasizing the importance of community preparedness and avoiding making any statements that could cause mass panic. Thankfully, the H1N1 flu virus appears to be much less fatal and less contagious than the catastrophic Spanish flu of 1918 on which much of our knowledge of contagious disease management is based. In the event of a more serious virus, the federal government can be of assistance in funding medical research and vaccine stockpiles, but dissemination of medicine and information at the local level must be permitted by a federal government which avoids attempts at micromanagement.

#### Disease causes extinction – outweighs nuclear war

Guterl, executive editor – Scientific American, 11/28/’12

(Fred, “Armageddon 2.0,” Bulletin of the Atomic Scientists)

The world lived for half a century with the constant specter of nuclear war and its potentially devastating consequences. The end of the Cold War took the potency out of this Armageddon scenario, yet the existential dangers have only multiplied.Today the technologies that pose some of the biggest problems are not so much military as commercial. They come from biology, energy production, and the information sciences -- and are the very technologies that have fueled our prodigious growth as a species. They are far more seductive than nuclear weapons, and more difficult to extricate ourselves from. The technologies we worry about today form the basis of our global civilization and are essential to our survival. The mistake many of us make about the darker aspects of our high-tech civilization is in thinking that we have plenty of time to address them. We may, if we're lucky. But it's more likely that we have less time than we think. There may be a limited window of opportunity for preventing catastrophes such as pandemics, runaway climate change, and cyber attacks on national power grids. Emerging diseases. The influenza pandemic of 2009 is a case in point. Because of rising prosperity and travel, the world has grown more conducive to a destructive flu virus in recent years, many public health officials believe. Most people probably remember 2009 as a time when health officials overreacted. But in truth, the 2009 virus came from nowhere, and by the time it reached the radar screens of health officials, it was already well on its way to spreading far and wide. "H1N1 caught us all with our pants down," says flu expert Robert G. Webster of St. Jude Children's Research Hospital in Memphis, Tennessee. Before it became apparent that the virus was a mild one, health officials must have felt as if they were staring into the abyss. If the virus had been as deadly as, say, the 1918 flu virus or some more recent strains of bird flu, the result would have rivaled what the planners of the 1950s expected from a nuclear war. It would have been a "total disaster," Webster says. "You wouldn't get the gasoline for your car, you wouldn't get the electricity for your power, you wouldn't get the medicines you need. Society as we know it would fall apart."

### Constitution Module

#### Federalism is key to the constitution and separation of powers – Trump must set a precedent now

CBC 17

(Crawford Broadcasting Company, 2.20.17, “Federalism and the Separation of Powers,” <https://crawfordbroadcasting.com/federalism-and-the-separation-of-powers/>, Accessed: 6.26.17)VW

Recall my fellow Americans that our beloved Constitution separates POWER in the United States by apportioning that power between the three branches of the federal government (Presidential-Congressional-Judicial) on the one hand and among the states on the other. That of course is the real principle of federalism. James Madison, a founding father wrote in the federalist papers that such separation of powers creates “a double security” for liberty. The principle, said Madison, of different governments will control each other, at the same time that each will be controlled by itself. In short, for liberty to thrive, there must be check and balance among all powers, including a check and balance between the three federal branches of power and of course the powers granted to and reserved by the states, which at that time were 13 (now of course 50). If those powers become constitutionally imbalanced, the liberties our founding fathers wished more than anything to preserve become endangered. The Obama Administration says Rivkin and Foley have “spurned this core Constitutional principle.” Then President Obama aggrandized executive power at the expense of Congress and the states. The Obama Administration and our former President rewrote the laws and disregarded the Constitutional duty to faithfully execute them. The infamous Obama PEN AND PHONE literally rewrote the Constitution. With regard to ObamaCare, Obama without compunction delayed statutory deadlines. The former President extended tax credits to groups Congress never intended. Obama and company exempted unions from fees. The former President and the agency Health and Human Services (HSS) expanded hardship waivers beyond even recognition and even created certain preferences for certain employers. In short, Obama twisted ObamaCare to suit his own purposes and utterly ignored Congress in the process. Obama even usurped Congress power of the purse, spending billions for cost sharing subsidies that pay ObamaCare insurers for subsidizing deductibles and copays. In the process, Obama and HSS shifted monies which were then appropriated for other purposes. His actions were so egregious that the House of Representatives even sued to defend its Constitutional prerogatives (the power of the purse) which caused the federal courts to rule against the administration, but too little too late. The Obama Presidency, in an attempt to permanently change the balance of power and elevate the Presidency, issued Executive Orders which exempted five million illegal immigrants from being deported. That so even though Congress had unequivocally declared that all such illegals were in fact eligible for deportation. Not done, Obama waived the mandatory work requirement of the 1996 welfare reform. In his infinite wisdom, he redefined sexual discrimination under Title IX, forcing schools to allow transgender students to use bathrooms of their non-biological gender and threatened to withdraw funds if colleges refused to reduce any due process protections for individuals accused of sexual assault! This power hungry President ran roughshod over the Constitution any time and in any way he could. Obama in unconstitutionally elevating the Presidency exhibited a particular disdain for the United States Senate and its advice and consent duty. With impunity, Obama made unilateral appointments to the National Labor Relations Board (NLRB) while the Senate was in session and perhaps the most unconstitutional and worst decision Barack Hussein Obama made was to UNILATERALLY commit our great nation to a most unpopular nuclear treaty with Iran utterly bypassing the Senate’s treaty ratification power. Obama did whatever he wanted with that horrendously unconstitutional PEN AND PHONE. President Barack Hussein Obama struck serious blows at the states and consequently federalism. The Obama EPA rewrote the 1970 Clean Air Act by ordering states to revamp electricity generation and the power distribution infrastructure. The Obama EPA also rewrote the 1972 Clean Water Act, claiming vast new power to regulate ditches and streams under the notion that they are “navigable waters.” Those acts of Presidential commission were followed by other acts of omission. Obama and our various agencies refused to enforce existing federal drug laws which at least indirectly empowered states to legalize the use of marijuana. The Obama Administration in so many ways would be characterized, the true legacy of the man with which he was almost obsessed, by indeed a Presidential disdain for the separation of powers. The Obama Administration was emboldened and enabled by the media an academia. They encouraged the former President’s unconstitutional behavior simply because they supported its politics and policy agenda. In the face of that usurpation of power, the Framers of the Constitution expected members of Congress to jealously defend Congressional power against executive encroachment, even if that President came from the very same political party. Control, said the Framers, the unconstitutional and egocentric ambition of any President. They forgot the words of Founder James Madison who said: “Ambition must be made to counteract ambition. The interest of the man must be connected with the Constitutional Rights of the place.” The Founder so feared a runaway President, egocentric and narcissistic, ambitious to the extreme like Franklin Delano Roosevelt (FDR) and Barack Hussain Obama that they charged the Congress with protecting and defending the balance of powers. Obama was so aloof and independent that, in his 2014 State of the Union Address, he said that he would implement his agenda: “Wherever and whenever I can.” And of course without Congressional involvement. The Democrats in the audience, sycophants to the core, erupted in thunderous applause. And as a result, in November 2014, Democratic Senators urged the President to vastly expand his unilateral amnesty for illegal immigrants! Incredible Presidential precedent was set. There now exists serious Presidential overreach and the out-of-control presumed Presidential power to issue Executive Orders to the disregard of Congress. Now comes President Donald John Trump, a man as private citizen so very accustomed to issue private Presidential orders who can himself continue this disastrous, unconstitutional Presidential process. But Trump and the Republicans in control of both House and Senate must restore the balance of powers, the separation of powers and provide a new and returned respect for the states and federalism. Trump can start, as he has, by rescinding much of the Obama Administration’s unconstitutional Executive Orders. But that is only a beginning. The United States Congress must step up and introduce by legislation vitally necessary reforms. That can be done in the following ways. FIRST, Congress should amend the 1996 Congressional Review Act so that it would require affirmative approval of major Executive Branch regulations. The law now allows regulations to go into effect automatically if Congress does not disapprove them. In essence, the law allows the President to do as he wishes for he himself can veto any congressional attempt to disavow his Executive Orders. But the law should be changed so that if Congress does not affirmatively approve a regulation, it never goes into effect. SECOND, Congress should prohibit what is known as CHEVRON DEFERENCE. That so called doctrine allows federal courts to defer to the Executive Branch (President) and his interpretation of ambiguous statutes. If Congress would negate such deference, it can at the same time reduce Executive Power and encourage itself to legislate with far greater specificity. Much legislation is gray, general and ambiguous so as to be appropriate for the times. Any autocratic President can take advantage of that ambiguity and essentially issue Executive Orders as he wishes. Legislative specificity can put an end to that. THIRD, Congress can and should expand the contempt power granted to the Congress by the Constitution. The criminal contempt statute should require the U.S. Attorney (Attorney General) to convene a grand jury upon referral by the HOUSE OR SENATE without exercising prosecutorial discretion. Congress could also extend the civil contempt statute to the House, not merely the Senate and enact a new law specifying a process for using the longstanding but rarely invoked inherent contempt authority and truly enforce it. That would be an excellent check and balance and curbing of runaway Executive Power. FOURTH, Congress can and should require that all major international commitments be formulated as a TREATY, an international one, which would require the approval and ratification by the U.S. Senate. In short, no major international commitment with any other nation should be unilaterally accomplished by a President, but only with, as a treaty, the advice and consent of the Senate. The domestic Obama pen and phone have extended themselves to international matters, further disdain of the Senate and the Constitution. Such an unambiguous requirement would not only provide clarification to the judiciary, but it would also encourage communication and negotiation between Congress and the President. FIFTH, Congress should enact a law which restricts the President’s ability to coerce states into adopting federal policies or threatening states who do not with the elimination of federal funding. Such a law would not only provide clear guidelines for the states and the judiciary, but as well reinvigorate a solid commitment to Constitutionalism and Federalism. Restoring and respecting the separation of powers is absolutely necessary and possible for the survival of our Constitutional and Democratic way of life. Scholars, politicians and even right-thinking academics regard that as the highest priority of the Trump Administration and the Republican Congress. That most serious priority depends to a great extent on new President Trump. Trump may in fact wield the very same Presidential power so greatly expanded as Obama. Trump himself may carry the issuing of Executive Orders to the next level. Trump has potentially signaled that he will work with Congress provided that he, like Obama, gets what he wants. Trump may have his own PEN AND PHONE and ignore like Obama the Congress and defy the courts. If so, the Constitution will be at even further risk of deterioration and disrespect. But hopefully, Trump and his advisors will understand how government should really work, introduce a new respect for the Constitution and return our country to a firm system of Constitutional check and balance on the one hand and separation of powers on the other.

#### The Constitution solves extinction – quals

Henkin 2002

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Lawyers, even constitutional layers, argue “technically” with references to text and principles of con-struction, drawing lines, insisting on sharp distinctions. Such discussion sometimes seems ludicrous when it addresses issues of life and death and Armageddon. But behind the words of the Constitution and the tech-nicalities of constitutional construction lie the basic values of the United States – limited government even at the cost of some inefficiency, safeguards against autarchy and oligarchy, democratic values represented differently in the Presidency and in Congress and in the intelligent participation and consent of the governed. In the nuclear age, the technicalities of constitutionalism and of constitu-tional jurisprudence safeguard also the values and con-cerns of all civilized people committed to human survival.

### More Warming Ev

#### Strong federalism now is key to solve warming – reverses Trump’s agenda

Economist 17

(The Economist, 1.21.17, “Democrats are learning to invoke states’ rights,” <http://www.economist.com/news/united-states/21715039-americas-most-progressive-state-set-lead-new-fight-against-federal>, Accessed: 6.24.17)VW

“Today, we woke up feeling like strangers in a foreign land, because yesterday Americans expressed their views on a pluralistic and democratic society that are clearly inconsistent with the values of the people of California,” it read. “We will lead the resistance to any effort that would shred our social fabric or our constitution.” As Mr Trump takes residence in the White House, California’s lawmakers are putting their words into action. They will have plenty of examples to follow. During the Obama administration, Texas and Oklahoma were strident advocates for state sovereignty. Several other states also challenged the federal government in court and by making their own laws. Indeed calls for states’ rights and limited federal power have been a defining feature of American conservatism since the New Deal, says Ilya Somin, a federalism expert at George Mason University. But with the election of Mr Trump, whose party controls both houses of Congress and who plans to appoint conservatives to the Supreme Court, it is Democrats who find themselves turning to the states as bulwarks of resistance. California, America’s most populous and progressive state, will lead the blue-state opposition. California has plumped for Democrats since the early 1990s—Hillary Clinton won by a margin of 30 percentage points. It is one of six states where Democrats hold the governor’s mansion and both houses of the state legislature. But Californians’ opposition to Mr Trump goes beyond partisanship. If America’s new president honours his promises to deport illegal immigrants, repeal the Affordable Care Act (better known as Obamacare) and relax environmental protections, California—America’s largest economy—stands to lose more than any other state. More than 3m undocumented immigrants call the Golden State home, reckons the Migration Policy Institute, a think-tank. (Texas, the second most popular state for undocumented foreigners, has less than half as many.) These workers make up nearly 10% of the workforce and contribute $130bn—or about 5%—of the state’s annual output, according to a 2014 study. Health Access California, a consumer advocacy group, estimates that the state government could lose $22bn in federal funding annually if Obamacare is gutted; some 5m Californians could find themselves without health coverage. And even though Mr Trump has vowed to axe Barack Obama’s Clean Power Plan, which would have regulated carbon emissions from power plants, California is likely to continue complying with—or even exceed—the requirements laid out in the framework. But its companies might find themselves at a competitive disadvantage if other states do not. Politicians from California and other blue states plan to resist Mr Trump using three main tools: legislation, litigation and circumvention. Start with legislation. On December 5th California’s lawmakers introduced a package of laws to impede mass deportation. One bill would create a programme to fund legal representation for immigrants in deportation hearings. Andrew Cuomo, the governor of New York, announced earlier this month that he would launch a similar fund. A recent national study found that immigrants with legal counsel were five-and-a-half times more likely to avoid deportation than if they represented themselves. Yet only 14% of detained immigrants in deportation proceedings had lawyers. Gun control, health care and environmental policy are other areas where Democrat-dominated states might focus in the coming years, says John Hudak, a fellow at the Brookings Institution. The leaves are brown Several states are also getting ready to challenge the Trump administration in court. Maura Healey, the attorney-general of Massachusetts, which has a Republican governor, and Eric Schneiderman, the attorney-general of New York, have both expressed their willingness to square off against the federal government. Earlier this month the California State Legislature announced that it had retained Eric Holder, who served as Mr Obama’s attorney-general, as outside counsel. He will work with the state’s next attorney-general to bring suits against the federal government. California’s decision to hire outside counsel is distinctive, but litigation as a means of stalling the federal government is hardly new. In 2010 a group of mostly Republican attorneys-general filed a lawsuit to block Obamacare. According to analysis by the Texas Tribune, the Lone Star State sued the Obama administration at least 48 times during Mr Obama’s term. Hiring Mr Holder “sends a message to the administration about the state’s resolve to defend our people, our diversity, and economic output,” says Mr de León. Some potential suits are starting to take shape. Gavin Newsom, California’s lieutenant-governor who will run for governor in 2018, has said that the state could sue under the California Environmental Quality Act or its federal equivalent to quash Mr Trump’s plans for a wall along the border with Mexico. The argument would rest on the claim that construction of the wall could upset water flows and quality as well as wildlife. Richard Revesz, an environmental-policy expert at New York University’s School of Law, says Democratic states could also sue to slow the repeal of the Clean Power Plan.

### More Terrorism ev

#### Federalism solves terrorism – decentralization means less incentive for terrorist attacks and mitigated effects

Frey 10

(Bruno S., Ph.D. in Economics, Research Director of the Center for Research in Economics, Management and the Arts, Review of Law & Economics: Vol. 6: Iss. 3, Article 9, 2010, “Federalism as an Effective Antidote to Terrorism,” )

2. Effectiveness of Decentralization in Dealing with Terrorism A coercive response that relies on brute force is not the only possible anti-terrorism policy. The alternative anti-terrorism policies proposed here emphasize the advantage of decentralized economic, political and social structures as a decentralized society is less vulnerable to terrorist attacks. A system composed of many different centers is more stable due to its variety, which allows for any part to stand in for another. When one part of the system is negatively affected, one or several other parts can take over. Decentralization is an effective tool to reduce risk and uncertainty. It reminds of the old saying that it is wise “not to put lal of your eggs in one basket” (see Dahl and Lindblom, 1953). This fundamental insight from the field of socio-biology (see, e.g., Hirshleifre and Martinez Coll, 2001) also applies to terrorism. A target’s vulnerability is lower in a society composed of many centers rather than in a centralized society. The more centers of power there are in a country, the smaller are the chances that terrorists will be able to harm it. In a decentralized system, terrorists do not know where to strike, because they are aware that each part can substitute for the other, so that a strike is not likely to achieve much. Decentralization thus reduces both the probability of terrorists launching an attack and the extent of the damage caused in case of an attack. For those two reasons, terrorists have a lower incentive to attack decentralized rather than centralized societies. In contrast, in a centralized system, most decision-making power with respect to the economy, polity and society is located in one place. This central power is an ideal target for terrorists, and therefore is in greater danger of being attacked. This possibility creates huge costs. If the center is attacked and hit, the entire decision-making structure may also collapse and so lead to chaos. In addition, there are high costs connected to fending off possible attacks. They not only fetter human and material resources, but also promote a bunker mentality in the minds of the central power. A ruler may be driven into isolation, become subject to “group think,” and lose contact with the people. As a result, a gap between the central power and the people emerges, which will have bad effects on both sides. In particular, the ruler disregards the people’s wishes, as he is afraid of leaving the bunker’s (presumed) security. The vulnerability of the two systems to terrorism varies and may be illustrated by two examples. The attack on the twin towers in New York on September 11, 2001 represents a triumph for the market as an institution, although it is rarely seen in the terms. Though this was the gravest terrorists attack in humankind’s history so far, the economic system as a whole was hardly affected. Due to its decentralized market economy, the United States’ economy was only very marginally hit; the many other centers of economic activity, for example in Chicago, Los Angeles, Seattle or Boston, were not directly affected at all. They went on functioning without any problem. The estimated damage of 10, 20 or even 50 billion dollars is small compared to the US GNP of 10 trillion dollars. Even in Manhattan, the recovery was remarkably quick; most parts of the financial community were ready to take up work again in a few days or even a few hours after the attack. This does not, of course, mean that there were no human or material losses. But the point is that not even this dreadful blow was able to seriously damage a decentralized economy like the American one. Much of the high costs incurred were the result of the political response to the attack (such as grounding the entire civilian air traffic and closing the Wall Street stock exchange), and not from the result of the attack itself. Viewed from this perspective, the attack was far from being a victory for the terrorists, but rather demonstrated the strength of a decentralized economic system. The Catholic Church with the Pope as absolute, and (in the case of church dogma) even infallible, head is an example of a strictly hierarchical, highly centralized organization. Nobody can substitute for the Pope. Accordingly, the Pope represents an attractive target for terrorists and assassins alike. Indeed, there have been several attempts to assassinate the Pope. To some extent, the American President who possesses far-reaching powers also is a worthwhile target for terrorists and assassins. This position’s vulnerability is mitigated by the fact that there exists a well-designed constitution which exactly specifies who will replace a president who has been assassinated. There have indeed been many attempts to assassinate American presidents, some of which were successful. A political system with a committee of equals at the top is much less vulnerable. This is, for instance, the case in Switzerland, where the government consists of seven members (the Bundesrat), each of whom has exactly the same amount of formal power. To attack one, or even several of them, would not endanger the stability of the political system. That the system indeed works in this manner has been demonstrated by a recent incident in Switzerland. In September 2001, a man ran amok (he was not a terrorist) in the parliamentary building of the Swiss canton Zug. He shot and killed no less than three of the seven members of the government council (Regierungsrat), as well as eleven members of parliament. He also injured a significant number of other government and parliament members. Nevertheless, within a very short period of time, the government was functional again, not least because the heads of the partly autonomous communes were able to take over. A similar incident in Armenia plunged the entire country into a political crisis. In October 1999, five gunmen burst into Armenia’s parliament, assassinating the Prime Minister, Parliamentary Speaker and seven other government officials. Armenia’s Defense minister stated that the situation created by this incident was fraught with uncertainty, and that both the internal and external security of the state were in great danger. Because of the centralized nature of Armenia’s political system, the killings left a power vacuum. There were no people at lower federal levels able to take over. The next sections discuss decentralization in the economy, polity, and other parts of society. 2.1. Economic Decentralization A market economy is based on an extreme form of decentralization of decision-making an implementation (Von Hayek, 1978). Indeed, the advantages of the market economy as an efficient resource allocation mechanism start to break down when it is centralized via oligopolics or monopolies. Under competitive conditions, the suppliers are able to completely substitute each other. Even if one of them is incapacitated due to a terrorist attack, the other suppliers are able to fill the void immediately. They are prepared, and have an incentive, to step in. No special governmental plans have to be set up for such substitution. Of course, most economic sectors are not perfectly competitive. But as long as there exists some amount of competition, there are always actual or potential suppliers who can take over. It follows that the more an economy functions according to market principles, the less vulnerable it is to terrorist attacks. The strategy of decentralization is immediately applicable to business. Many enterprises are faced with immediate or at least potential terrorist threats. This applies in particular to firms located in developing countries where local terrorism exists (e.g., in South America, Africa, and Asia), but is also important for firms in developed countries. If the principal part of an enterprise, most importantly headquarters, is located in one prominent building, it offers an attractive target to terrorists. If an attack is successful current business may be severely disrupted, valuable documents and the contents of computers destroyed, and fear and uncertainty may spread among the employees. The ensuing costs tend to be out of proportion compared to the rather low cost of an actual attack or even of a threat of an attack. In many cases headquarters of large firms are landmark buildings, sometimes even “icons.” This makes them even more attractive targets to terrorists, especially as one of the major ambitions of most terrorists is to receive media attention (Frey, 1988; Frey and Rohner, 2007). If headquarters and other important parts of an enterprise are decentralized, the terrorists’ destructive task is made much more difficult. They can no longer be sure where they should attack, and even if they do, the damage caused will be much lower than if the firm had been centralized in one location. In several respects, firms already pursue a decentralization strategy. In particular, they disperse the safety backups of computer contents in different locations. In the case of the terrorist attack against the firms in the New York World trade Center Towers this strategy proved to be very beneficial. Decentralization also helps to avoid and reduce the harm done by terrorist attacks in the case of monopolistic and oligopolistic sectors of the economy. Network industries, such as those for water, electricity, or transportation, are less vulnerable if sub-units function independently. An effective anti-terrorist policy supports economic decentralization and competitive structures, as this greatly reduces the country’s vulnerability. Obviously, an anti-terrorist policy which concentrates on decentralization offers other attractive benefits: it strengthens democracy and liberalism. 2.2. Political Decentralizatoin A second antidote to terrorism is political decentralization. It takes two forms, which are outlinted below. 2.2.1. Classical Division of Power Political authority is distributed among a number of different political actors. Most important is the classical division of power between government, legislature and the judicial system. Moreover, the media must be decentralized so that a terrorist attack will not threaten the flow of information. It is no accident that persons attempting a coup d’etat commonly first try to gain control over the TV broadcasting station. However, if there exist several different TV broadcasting stations and these are located in many different places, this effort will be doomed to fail. Also, the public administration should have at least some measure of independence, as it needs to be able to act when a terrorist attack is imminent. This applies in particular to the police, the secret service, and the military. Public bureaucracy is further insulated against terrorism when it itself is decentralized. A centralized organization will invite attacks by terrorists, partly because of its functions, but also partly because of its symbolic value. Thus, the planned concentration of the European Union’s bureaucracy in one location in Brussels is likely to have a counter-productive effect on security. Any such building would be a particularly attractive target for terrorists. While it may be less costly to control and secure the sole access to such a building than it would be if the offices were widely dispersed, an actual or even suspected terrorist attack could still result in huge costs. If, for instance, it were suspected that terrorsits had planted a bomb in the building, work would grind to a halt and all employees would need to be evacuated. This applies even for false alarms; so when public administration is centralized, the costs imposed by terrorist threats turn out to be very substantial. In many countries, other actors also enjoy considerable independence. Most prominent is the central bank that has the power to pursue whichever monetary policy it sees fit. But there are also regulatory authorities that enjoy a degree of independence from other political decision-makers. The reasons for such (partial) independence are based on considerations that have nothing to do with terrorism. In many countries, central bank independence has been established because it is expected that such an organization will adopt a more long-run-oriented policy than governments. The latter are (usually every four years) subject to reelection pressures, inducing them to produce short-term political business cycles that work in their own favor. But such a degree of independence turns out to be an effective means of lowering the vulnerability to terrorist threats. This effect is strengthened when the central bank itself is decentralized, as is the case for the American Federal Reserve, which is composed of various central banks located in a number of cities. 2.2.2. Spatial Decentralization Political power can also be divided between various levels of government. In federal (i.e., spatially decentralized) countries, there are the federal, state/provincial/cantonal, and communal levels. In some countries, there also exists a fourth, regional level between communes and provinces (see, e.g., Bird, 1986; Oates, 1991). It is possible to go one step further by granting far-reaching autonomy to functional, overlapping, and competing jurisdictions, or FOCJ. As each of these jurisdictions extends over a different area and is governed by an independent political body, such a system is quite immune to terrorist attacks. The high population density typical for large urban areas makes them ideal targets for terrorists and other aggressors. Studies (Glaeser and Shapiro, 2002) suggest indeed that there is a statistical link between terrorism and urbanization, though they were only able to identify a weak relationship. A spatial decentralization of the population is of special importance in cases where terrorists use biological and chemical weapons. In areas of high population density, viruses (such as smallpox) introduced by terrorists may spread quickly, leading to many casualties within a short period of time. The risk of this is not as pronounced when people do not live so closely together. Strengthening political decentralization via the division of power and federalism strongly contributes to a country being less vulnerable to terrorist attacks. The attraction for terrorists to take aggressive action is diminished.

### More Disease Ev

#### Federalism is key to public health – state control over Essential Health Benefits is necessary

Weil 12

(Alan, JD, MPP, master’s degree from Harvard University’s John F. Kennedy School of Government and a law degree from Harvard Law School, editor-in-chief of Health Affairs, a multidisciplinary peer-reviewed health policy journal, elected member of the National Academy of Medicine and served six years on its Board on Health Care Services, trustee of the Consumer Health Foundation and a member of the Kaiser Commission on Medicaid and the Uninsured, previously served as executive director of the National Academy for State Health Policy, director of the Urban Institute’s Assessing the New Federalism Project, executive director of the Colorado Department of Health Care Policy and Financing, and assistant general counsel in the Massachusetts Department of Medical Security, 2.23.12, The New England Journal of Medicine, “The Value of Federalism in Defining Essential Health Benefits,” <http://www.nejm.org/doi/pdf/10.1056/NEJMp1200693>, Accessed: 7.12.17)VW

The Value of Federalism in Defining Essential Health Benefits The promise of nearly universal health insurance coverage embodied in the Affordable Care Act (ACA) has meaning in part because it is tied to a minimum set of covered services called essential health benefits (EHBs). Health and Human Services Secretary Kathleen Sebelius surprised the health care community when, on December 16, 2011, she announced that there would not be one single national definition for EHBs.1 Rather, each state will have 10 options to choose from in defining the EHBs, 7 of which are tied to existing coverage in that state’s small-group, state-employee, and health maintenance organization markets. Although critics of this decision grudgingly acknowledge that it was good politics to avoid a high-profile national battle over benefit design, they generally see little substantive merit in the secretary’s approach. Yet her decision is sound public policy and capitalizes on the strengths of American federalism that run throughout the new health care reform law. The ACA sets forth 10 services that must be included in the EHBs, and it explains that the EHBs must be based on a “typical employer plan.”2 Under the secretary’s approach, states will need to consider two factors when selecting from among their EHB options. First, they must consider how the plans define the scope of each of the 10 services. This question captures issues such as whether or not particular highcost drugs should be included in the prescription-drug benefit. Second, states must consider whether to include benefits beyond the 10 enumerated in the federal law. This consideration captures issues such as whether in vitro fertilization and applied behavior analysis for autism — the subjects of state-level mandates in 8 and 29 states, respectively — should be included. Under the principles of federalism that have guided the development and implementation of policy in this country since it was founded, there are three potential benefits associated with permitting states to make these decisions with respect to the EHBs. These three advantages relate to learning what works, tailoring policies to local conditions, and reflecting citizens’ values. The metaphor that states are the laboratories of democracy is most apt when applied to situations in which we truly don’t know what the best policy would be. A perfect example is the statutory requirement that the EHBs include habilitative services. As the Department of Health and Human Services (DHHS) noted when it released its bulletin, habilitative services are not defined in a consistent way in existing commercial insurance plans. Supporters of a single federal standard for the EHBs would have the federal government craft a definition of this benefit. But when it comes to something new and unknown, there is value in testing various conceptions and definitions before settling on a single, national standard. A more challenging example involves defining the scope of a given benefit. Allowing for variation, particularly with regard to the boundaries of coverage, is an excellent way to learn both the value and the cost of that coverage. The fraught history of coverage for autologous bone marrow transplantation in the 1990s, when insurers were pressured through legal and political means to cover a treatment that had a limited evidence base and that ultimately proved to be ineffective, serves as a reminder that early judgments regarding the efficacy of a given procedure — particularly when influenced by politics — may be erroneous.3 With regard to whether high-cost services should be included in the EHBs, faith that the judgment of the federal government would be better than that of the states is misplaced. The second reason to define EHBs at the state level is to match policy to the local context and conditions. Secretary Sebelius’s approach is minimally disruptive in that it enables coverage to remain largely unchanged for people who have it and assures that those who gain coverage have a plan that looks similar to what their neighbors already have. The Institute of Medicine recommended that affordability be taken into account in the development of the EHBs.4 Substantial regional variation in health care spending makes that task impossible at the national level. Allowing states to define the EHBs in terms of one of the dominant plans already in place within their jurisdiction means that they can select a plan that has already met a market test of affordability. A single, national set of EHBs could require insurance carriers around the country to modify their benefit offerings to include new services or exclude services they have historically covered, resulting in conservative (high) pricing because of uncertainty. The third reason to allow states to choose the EHBs is to better match policy to local values. Fundamentally, decisions regarding the scope and scale of the EHBs are decisions regarding the portion of health care costs that should be shared rather than borne by the individual. A national compromise on this matter is likely to disappoint everyone. Of course, federalism has some costs as well. The primary weakness of the secretary’s approach is its potential inefficiency. One must ask whether it’s a good use of resources to have 50 individual states analyze the relative merits of 10 different options for EHBs while also considering the very complex matter of the fiscal liability that those options will create for the state.5 And in the current political environment, giving states yet one more choice creates yet another opportunity for opponents of the law to delay its implementation. The most common, but least convincing, argument against the secretary’s federalist approach has to do with equity. It is a truism that state flexibility will yield differences within the country and that those differences cannot be defended on the basis of differing basic human needs for health care services. But those inequities must be viewed in context. The law is quite specific regarding the composition of the EHBs. The degree of variation among states’ 10 options, and among the options that states ultimately select, is likely to be small. As the Institute of Medicine noted, the primary type of variation in health insurance products is in cost sharing (deductibles, copayments, and coinsurance), which defines the four benefit tiers outlined by the ACA but is unrelated to the choice of services included in the EHBs. Meanwhile, the major provisions of the ACA represent a tremendous step toward interstate equity. The ACA establishes a national eligibility standard for Medicaid and a single, national formula for tax credits that subsidize the purchase of health insurance by middle-income families that cannot obtain affordable coverage through an employer. The quite narrow variation in state approaches to defining EHBs that is likely to result from the secretary’s decision represents a modest potential source of inequity relative to the overall direction of the law. The secretary’s decision is consistent with the overall federalist structure of the ACA and the U.S. health care system as a whole. Under the ACA, states are responsible for establishing health insurance exchanges, retain primary responsibility for regulating private health insurance, and continue to have a great deal of discretion in the design and administration of the Medicaid program. Uniform national standards are fair — and are always appealing to people who believe that the chosen standards will conform to their values and preferences. But in this environment of uncertainty, with sizable preexisting local variability in insurance markets and substantial disagreement surrounding the fundamental value of sharing risk, embracing federalism in defining the EHBs is not just good politics — it is good policy.

### More Constitution ev

#### The Constitution leaves education specifically up to the states – the federal government shouldn’t regulate or fund

Vance 16

(Laurence M., policy advisor, associated scholar of the Ludwig von Mises Institute, 11.2.16, The Future of Freedom Foundation, “The Supreme Court, Federalism, and Limited Government,” <https://www.fff.org/explore-freedom/article/supreme-court-federalism-limited-government/>, Accessed: 7.1.17)VW

The United States was set up as a federal system of government where the states, through the Constitution, granted a limited number of powers to a central government. As explained by James Madison in Federalist No. 45, The powers delegated by the proposed Constitution to the Federal Government, are few and defined. Those which are to remain in the State Governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will for the most part be connected. The powers reserved to the several States will extend to all the objects, which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people; and the internal order, improvement, and prosperity of the State. There are about thirty enumerated congressional powers listed throughout the Constitution. Everything else is reserved to the states just as Madison says — even without the addition of the Tenth Amendment. The Constitution nowhere authorizes the federal government to have anything to do with education or even mentions education. Under the American federal system of government, if there are to be public schools, they must be totally and completely under the authority of state governments — all of which currently have provisions in their constitutions for the operation of K-12 schools, colleges, and universities in their state. That means that on the federal level, there should be no Elementary and Secondary Education Act, no Title IX, no Higher Education Act, no Common Core, no Pell Grants, no student loans, no teacher-certification standards, no school accreditation, no No Child Left Behind Act, no school breakfast or lunch programs, no Head Start funding, no bilingual-education mandates, no teacher-education requirements, no vouchers, no busing mandates, no Education for All Handicapped Children Act, no standardized-testing requirements, no special-education mandates, no math and science initiatives, no diversity mandates, no Race to the Top funds, no research grants, no regulations, and no funding. And of course, there should be no Office of Civil Rights in the Department of Education because there should be no Department of Education in the first place. It doesn’t matter what one believes about the merits of public education. The Constitution is clear: the federal government should have nothing to do with schools, colleges, universities, or the education of any adults or their children.

## AT: Cooperative Federalism

#### The aff hurts all federalism – that’s the link debate. They have no explanation of why the aff shifts the structure of government to cooperative federalism

Or (try not to double turn yourself)

#### Cooperative federalism is the status quo – destroys the environment

Barton 17

(Brooke, M.A., Research Associate of the Social Enterprise Initiative at Harvard, Senior Director of the Water and Food Programs at Ceres, 3.6.17, Eco Watch, “Why Pruitt's 'Cooperative Federalism' Spells Trouble for Clean Water Protection,” <https://www.ecowatch.com/clean-water-epa-pruitt-2303183613.html>, Accessed: 7.7.17)VW \*edited for ableist language

But they should be very worried that the basic human expectations of healthy air and safe water will quickly turn cloudy if the new U.S. Environmental Protection Agency (EPA) administrator's pledge to regulate through "cooperative federalism" becomes a reality. Cooperative federalism, at its most benign, is about allowing each state to tailor its own approach to enforcing environmental rules. At its worst, it's about the federal government ~~turning a blind eye to~~ [ignoring] states that shirk the nation's environmental laws or that simply don't have the coffers to pay for monitoring and enforcement. "Process, rule of law and cooperative federalism, that is going to be the heart of how we do business at the EPA," said EPA Administrator Scott Pruitt, who has promised to follow the Trump administration's will to slash EPA's budget and soften its rules. To see how cooperative federalism erodes environmental protection, look no further than the 2015 Waters of the United States rule. President Trump issued an executive order last week announcing plans to undo the rule, which clarifies the federal government's authority to limit pollution in bodies of water not explicitly covered by the Clean Water Act. Those smaller bodies of water—typically streams, wetlands and rivers, which account for more than half of the nation's freshwater resources—feed into larger water bodies that provide key drinking water and recreational opportunities for the public, as well as water supplies for business. Keeping them clean is vital for the nation's health and economic prosperity. The executive order, coupled with the administration's penchant for cooperative federalism, send a strong message that if states choose not to protect smaller streams and wetlands, they won't get pushback from the federal government. And as state environmental budgets shrink, many simply don't have the resources to ensure healthy streams and clean drinking water on their own, even if they wanted to. Forty state environmental agencies have reduced staff in recent years, with the biggest cuts being in North Carolina, Florida, Michigan, New York, Illinois and Arizona, according to a fall 2016 report by the Center for Public Integrity. Pruitt's home state, Oklahoma, for example, spends a paltry $13 million on environmental protection. Compare that to Connecticut, which has an environmental budget twice the size of Oklahoma's but less than one-tenth the land mass or with neighboring Arkansas, with a budget nearly triple the size of Oklahoma's. Water pollution from industrial-sized poultry farms operating in the northeast corner of Oklahoma and in neighboring Arkansas, has been a source of huge controversy, health concerns and lawsuits for more than 25 years. Phosphorus, the primary pollutant in poultry manure, can trigger toxic algae blooms, threatening rivers, lakes and other waterways that feed into the Illinois River. Cooperative federalism gives Oklahoma and Arkansas more opportunity to ~~turn a blind eye to~~ [ignore] manure runoff and other untreated pollution in waterways covered by the Waters of the United States rule. Similarly, though the U.S. Geological Survey has linked oil and gas hydraulic fracturing drilling to groundwater and surface water pollution, Oklahoma has yet to identify whether its surface waters face pollution threats from fracking activity. J.D. Strong, executive director of the Oklahoma Water Resources Board said that Oklahoma does not have the budget for widespread testing in the state. These same challenges can be found in states across the country. North Carolina has a long history of water pollution from coal ash spills and manure lagoons—a legacy that gained national prominence last fall when Hurricane Matthew triggered massive flooding and pollution overflows from thousands of hog farms. At the same time, contentious political battles in that state have contributed to a dramatic decrease in its environmental budget, from $126 million in 2011 to just $81 million in 2015. Even states with larger environmental budgets may struggle to protect smaller waterways under cooperative federalism because of political fights that play out at the state level. In Kentucky, regulators and utilities are pushing to loosen regulations on the state's coal ash ponds and landfills. Yet over the past six years, arsenic and selenium have been found to be leaching from a coal ash pond at a major power station into groundwater and directly into Herrington Lake. Despite remedial measures taken by Louisville Gas & Electric and Kentucky Utilities, the pollution persists and is poisoning fish in the lake. In Florida, Gov. Rick Scott has gutted the state environmental agency—earning him a scathing "environmental disaster" editorial in the Tampa Bay Tribune. In addition to cutting support for clean water and conservation programs, state-driven enforcement has disappeared nearly altogether—enforcement cases fell by 81 percent from 2010 to 2015. Pruitt's cooperative federalism mantra, where states should see us as "partners, not adversaries," sends us down a perilous path of continued diminishment of precious natural resources across the country. Leaving states on their own to protect the nation's vital water resources, without holding them to minimum standards or supporting them financially, is a slippery slope indeed towards a dirtier America—an America that the vast majority does not want.

## Aff

### Aff Uniqueness

#### DeVos has flipped her promises of state control – she’s supporting expansive federal action

Green 7/7

(Erica L., M.S. in Journalism, Education Reporter at The New York Times, 7.7.17, The New York Times, “DeVos’s Hard Line on New Education Law Surprises States,” <https://www.nytimes.com/2017/07/07/us/politics/devos-federal-education-law-states.html?mcubz=1&_r=0>, Accessed: 7.14.17)VW

Education Secretary Betsy DeVos, who made a career of promoting local control of education, has signaled a surprisingly hard-line approach to carrying out an expansive new federal education law, issuing critical feedback that has rattled state school chiefs and conservative education experts alike. President Barack Obama signed the Every Student Succeeds Act in 2015 as the less intrusive successor to the No Child Left Behind law, which was maligned by many in both political parties as punitive and prescriptive. But in the Education Department’s feedback to states about their plans to put the new law into effect, it applied strict interpretations of statutes, required extensive detail and even deemed some state education goals lackluster. In one case, the acting assistant secretary for elementary and secondary education, Jason Botel, wrote to the State of Delaware that its long-term goals for student achievement were not “ambitious.” “It is mind-boggling that the department could decide that it’s going to challenge them on what’s ambitious,” said Michael J. Petrilli, the president of the conservative-leaning Thomas B. Fordham Institute, who worked in the Education Department under President George W. Bush. He called the letter “directly in opposition to the rhetoric and the promises of DeVos.” After more than a decade of strict federal education standards and standardized testing regimes, the Every Student Succeeds Act was to return latitude to the states to come up with plans to improve student achievement and hold schools accountable for student performance. It sought to relieve states from the federal pressures of its predecessor, which required that 100 percent of the students of every school reach proficiency on state tests or the school would face harsh penalties and aggressive interventions. Unlike No Child Left Behind, the new law does not set numerical achievement targets, nor does it mandate how a state should intervene if a school fails to reach them. The law does require that states set such benchmarks on their own. Proponents, especially congressional Republicans and conservative education advocates, believed that a new era of local control would flourish under Ms. DeVos, who pointed to the new law as illustrative of the state-level empowerment she champions. But her department’s feedback reflects a tension between ideology and legal responsibility: While she has said she would like to see her office’s role in running the nation’s public schools diminished, she has also said she will uphold the law. “All of the signals she has been sending is that she’s going to approve any plan that follows the law,” Mr. Petrilli said. “And when in doubt, she’s going to give the states the benefit of the doubt.” Mr. Botel defended the department’s feedback, saying it was measuring state plans against federal statutes — including a requirement that plans be ambitious. “Because the statute does not define the word ‘ambitious,’ the secretary has the responsibility of determining whether a state’s long-term goals are ambitious,” Mr. Botel said. In the department’s letter to Delaware — which incited the most outrage from conservative observers — Mr. Botel took aim at the state’s plan to halve the number of students not meeting proficiency rates in the next decade. Such a goal would have resulted in only one-half to two thirds of some groups of students achieving proficiency, he noted. The department deemed those long-term goals, as well as those for English-language learners, not ambitious, and directed the state to revise its plans to make them more so. So far, 16 states and the District of Columbia have submitted plans, and more states will present plans in the fall. Delaware, New Mexico and Nevada were the first three to be reviewed by Education Department staff and a panel of peer reviewers. State education officials in Delaware said they had spent a year engaging the community on their plan and would resubmit it with clarifications. But Atnre Alleyne, the executive director of DelawareCAN, an advocacy group that helped draft the plan, agreed with the department’s findings. He said that his group had challenged the state about accountability measures, such as setting firm goals and consequences for failing to meet them, and found that “there was a lot of fear about being bold or aggressive” after No Child Left Behind. “Ultimately this has to be about every student succeeding, so to say that one-third are going to be proficient in 10 years, the department is right to call that into question,” Mr. Alleyne said. “A lot of people thought it was just going to be a breeze. I was glad to see it was a push.” Since Ms. DeVos was confirmed, civil rights and education advocates have expressed concern that state plans would get assembly-line approval and states would be allowed to skirt responsibility for low-performing and historically underserved students. For all of its flaws, the No Child Left Behind Act was praised for holding schools accountable for performance data. Under the law, a school was considered failing if all of its student groups, including all racial and ethnic groups, English-language learners and students with disabilities, did not meet annual achievement targets. By the end of the law, more than half of the nation’s schools were considered failures. But even after the first round of feedback, the advocates would like the department to be more aggressive and reject any state plan that lacks specifics on how they will account for the performance of historically underperforming and underserved student populations. “Pushback and feedback in and of themselves are of no interest and of no value,” said Liz King, the director of education policy at the Leadership Conference on Civil and Human Rights. Chad Aldeman, a principal at Bellwether Education Partners, who led an independent examination of state plans, said that some states, like Louisiana, New Mexico and Tennessee, had innovative plans to improve student achievement. But Mr. Aldeman agreed that many state plans reflected “process without specificity” when it came to the two most important parts of the new law — identifying how schools will account for the performance of all students, and how states plan to intervene in low-performing schools. And Ms. DeVos and Republican lawmakers were partly to blame. “The administration has signaled that they’re willing to take plans that are half-baked, and we’re seeing plans that aren’t finished and are not complete,” Mr. Aldeman said. Christopher Ruszkowski, the acting secretary for the New Mexico Public Education Department, said the idea that the new law would yield total state control was merely “rhetoric from the Beltway.” “I think a lot of the euphoria over return to local control was an overpromise,” he said. “What this signals is that U.S.D.E. will continue to play the role they’ve always played in the years ahead.” In feedback for five more states — Connecticut, Louisiana, New Jersey, Oregon and Tennessee — the Education Department avoided criticizing the ambitions of the state plans. But it did maintain its scrutiny. For example, the department noted that Tennessee neglected to identify, as the law requires, languages other than English spoken among its student population because it considers itself “an English-only state.” According to the state’s population profile, nearly 50,000 students speak English as a second language. And in Connecticut’s plan, the department pointed out that the state discussed ways to identify schools that had “consistently underperforming” student groups, but did not actually define what that meant. The state was also criticized for its use of an alternative system for measuring academic performance instead of more standard “proficiency” measurements on state tests, as the law requires. Such feedback signaled that the department “appears to be resorting to very traditional and narrow ways of interpreting student and school performance,” said Laura Stefon, chief of staff for the Connecticut State Department of Education.

#### Trump says he wants state control of education but he’s expanding the federal government’s role more than ever – Common Core, school choice, and merit pay

Hiler and Hatalsky 16

(Tamara, M.A. in Public Policy & Administration, Senior Policy Advisor for Education at Third Way, Lanae Erickson, J.D., member of President Obama's third Advisory Council on Faith-Based and Neighborhood Partnerships, Legislative Counsel at Alliance for Justice, Vice President for the Social Policy & Politics Program at Third Way, 9.13.16, Third Way, “Trump’s Big Government Takeover of Education,” <http://www.thirdway.org/memo/trumps-big-government-takeover-of-education>, Accessed: 6.22.17)VW

With 60 days left before the presidential election, Donald Trump finally released his plan for our nation’s schools. Quizzically, it consists entirely of federal mandates that would require throwing out the new law Congress passed last year to overhaul No Child Left Behind, which garnered wide bipartisan support (359 to 64 in the House and 85 to 12 in the Senate). In fact, if taken seriously, Trump’s proposals could give the federal government more power to override the wishes of states and local communities than anyone in the Bush or Obama Administrations ever considered in their wildest dreams. There are three major policies Trump promises he would implement from the top down, forcing every state, district, and school across the nation to comply. 1. “End Common Core.” The most extensive and oft-repeated education proposal coming from Donald Trump on the campaign trail has been his plan to “repeal” the Common Core State Standards (CCSS) because, as he says, “it’s a total disaster.”1 But the federal government plays no role in Common Core. The National Governors Association and the Council of Chief State School Officers led that effort to create a set of uniform math and reading standards as a way to ensure that every child graduates from high school college- and career-ready regardless of the state where they live or how many times they move during the course of their education.2 Today, 42 states and the District of Columbia have voluntarily adopted the Common Core State Standards because they want to ensure that children in their local schools are being held to a consistent and high standard of academic learning.3 Donald Trump says he “wouldn’t let it continue” if he were elected president. To actually accomplish that goal and force 42 states and DC to change their standards, Trump would have to convince Congress to repeal the education law it just passed last December—a law that more than 80% of both the House and the Senate supported. That law explicitly prohibits the federal government from meddling in a state’s ability to select educational standards, including the Common Core State Standards, which are explicitly mentioned by name as an area where the federal government has no business interfering.4 Those provisions were included almost by acclamation in the new law, as policymakers across the political spectrum think the choice of standards should be a state and local decision. Apparently, Trump is in the minority on this one. 2. “Help Parents Send Their Kids to a Safe School of Their Choice.” In addition to his edicts around Common Core, Donald Trump’s latest proposal focuses heavily on increasing “school choice.”5 Specifically, a press release on Trump’s website (which is the full extent of his current education plan) proposes to create a $20 billion grant program that would allow “every disadvantaged child to be able to choose the local public, private, charter, or magnet school that is best for them and their family.” In addition to the $20 billion he expects the federal government to allocate towards this mission, an amount equal to about a third of the budget of the Department of Education, he also expects states to pony up an additional $110 billion of their own funding—a brazen demand given that only 13 states have even been able to restore per-pupil spending to pre-recession levels.6 To put the scale of this mandate into perspective, the Obama Administration’s entire Race to the Top program, which incentivized states to make changes to their education systems and was maligned by many on the right as federal government overreach, cost the federal government a total of $4.35 billion.7 Trump plans to spend more than four and a half times more to induce states to broaden voucher and other school choice programs, and he expects those states to chip in 25 times more than the federal government spent on Race to the Top to carry out his plan. Trump would not only be enforcing his will unilaterally on states through this proposal but also imposing a policy that was explicitly rejected by Congress just last year. The newly passed No Child Left Behind overhaul rejected these “let the money follow the kid” arguments because such policies divert limited resources away from the poorest schools and place them in more affluent ones, including directly transferring money out of the public school system and into wealthier private schools.8 So not only would this component of the Trump plan compel states to empty their education coffers according to his wishes, it would also override the considered judgement of a Republican-controlled Congress. 3. “Institute Merit Pay and Get Rid of Tenure.” Lastly, Donald Trump threw in a new, third component to the end of his education plan: to “support merit-pay for teachers, so that great teachers are rewarded instead of the failed tenure system that currently exists.”9 The specifics for how Mr. Trump would like to accomplish this goal are absent from this vague, one-line statement, but it is clear that any federal effort to move to merit pay systems and eliminate tenure would have to involve another major expansion of the federal government’s role in education. Teacher compensation and tenure policies are determined either at the district or state levels, and while some states have been moving to modernize their compensation structures in recent years, only two states in the nation have no teacher tenure laws whatsoever on the books.10 In addition, in order to implement a merit pay system, you must first be able to evaluate teacher performance in the classroom. But requiring states to implement a rigorous teacher evaluation system was also explicitly prohibited by Congress when it replaced No Child Left Behind last year.11 This means the only way Trump could force states to move to merit pay or abolish teacher tenure would be to pressure Congress to pass a new law allowing the federal government to dictate state and local teacher compensation policies, or to simply act in defiance of current law which bars the federal government from doing exactly that. This Trump edict could also require the federal government to step into local districts and renegotiate teacher contracts on a district-by-district basis—or simply pass a law to void those contracts entirely (which could arguably be unconstitutional). Either way, to carry out this plan, a Trump administration would need to significantly expand the reach of the federal government and ignore state and district decisions about how best to run their local schools. Those who complained about federal overreach under Presidents George W. Bush and Obama should gird their loins. Conclusion The Republican nominee wants to dictate from Washington that states massively overhaul their standards, vastly increase their spending, and upend their compensation and tenure systems. These are all decrees that Members of Congress from both sides of the aisle have already wholeheartedly rejected. And implementing this massive federal takeover of education policy would be complicated even further if Trump truly “cuts the Department of Education”—a statement he has haphazardly thrown around on the campaign trail.”12 Despite Donald Trump’s claims that he would like to return education to the local level, there is nothing small-government about his current slate of policy proposals. In fact, if taken seriously, each of his three policy planks alone represents a broad expansion of the federal government’s power that would be the envy of any big government liberal.

#### The federal role in education has already been greatly expanded

Robinson 15

(Kimberly, J.D. from Harvard, this article won the 2016 Steven S. Goldberg Award for Distinguished Scholarship in Education Law from the Education Law Association, “Disrupting Education Federalism,” 92 Wash. U. L. Rev. 959 (2015), Law Faculty Publications, <http://scholarship.richmond.edu/cgi/viewcontent.cgi?article=2246&context=law-faculty-publications>, Accessed: 7.1.17)VW

My theory for disrupting education federalism is particularly timely for two reasons. First, the United States is undergoing an unprecedented expansion of the federal role in education and an accompanying shift in its approach to education federalism. The American Recovery and Reinvestment Act of 2009,23 also known as the stimulus bill, authorized an unprecedented $100 billion to invest in education funding, tuition tax credits, and college grants which President Obama trumpeted as "the largest investment in education in our nation's history."2 4 The stimulus bill included $4.35 billion for the Race to the Top (RTTT) program, which represented far more discretionary finding than all of Secretary of Education Arne Duncan's predecessors. 25 Although RTTT has its shortcomings,26 it has sparked significant education reform, including greater state support for the common core standards, charter schools, and revisions to state laws regarding the use of student testing data to evaluate 27 teachers. In a number of states and districts, the two years following the creation of RTTT sparked more reform than those locations had seen in the preceding twenty years.28 The stimulus bill built on the substantial expansion of the federal role in education created by the No Child Left Behind Act of 2001 (NCLB).29 NCLB represents the most expansive education reform law in the history of the United States. 30 For example, the law's far-reaching provisions required annual testing in math and reading in third through eighth grade and once in grades ten through twelve and periodically in science.3 The law also instituted public reporting of results of student assessments on the content of state standards, launched disaggregation of this data for a variety of student characteristics including race and ethnicity, created accountability interventions for Title I schools, and set minimum requirements for highly qualified teachers.32 Although NCLB also established a new federal role in education, it did not provide an accompanying new understanding of education federalism that could help to guide this role. 3 3 Given congressional failure to reauthorize the law in a timely manner, the U.S. Department of Education continues to wield this expansive federal authority through waivers of NCLB requirements if states will agree to new conditions on the receipt of federal aid.34 Second, my theory is particularly timely given the current national focus on improving educational performance of poor schoolchildren and reducing achievement and opportunity gaps. For instance, a 2013 report from the Equity and Excellence Commission, a panel of education policy experts convened by President Barack Obama, proposed a variety of far reaching reforms that would greatly expand federal responsibility for ensuring equal educational opportunity. 36 Scholars similarly have offered a variety of thoughtful proposals for how to reduce the opportunity gap that would require greatly expanding federal authority over education and thereby restructuring education federalism. 37

#### Trump is increasing federal funding for schools now – school choice

Wong 17

(Kenneth K., Ph.D. in Political Science, Walter and Leonore Annenberg Professor for Education Policy, Professor of Political Science, Public Policy, and Urban Studies, Director of the Urban Education Policy Program, 3.27.17, Brookings, “Redefining the federal role in public education: The 1st quarter of the Trump “insurgent” presidency,” <https://www.brookings.edu/blog/brown-center-chalkboard/2017/03/27/redefining-the-federal-role-in-public-education-the-1st-quarter-of-the-trump-insurgent-presidency/>, Accessed: 6.22.17)VW

SCHOOL CHOICE AS A FEDERAL PRIORITY The appointment of U.S. Secretary of Education Betsy DeVos signals a strong commitment to school choice from the Trump administration. To be sure, this is not the first time a U.S. president advocated for school choice: Ronald Reagan was a strong proponent of school choice, but was unable to gain much congressional support. President George H. Bush was receptive to the notion of charter schooling, when AFT President Albert Shanker first proposed it in the 1980s. Further, President Bill Clinton popularized charter schools with federal startup funding, a position endorsed by both presidents George W. Bush and Barack Obama. But unlike his predecessors, Trump hopes to scale up his school choice initiatives with a large infusion of federal funds. He first made this promise on the campaign trail, pledging $20 billion in federal funding. In his first presidential appearance before a joint session of Congress on Feb. 28, 2017, Trump echoed his campaign promise, proposing a bill that provides federal funding for school choice. The new governing landscape seems supportive of school choice expansion. First, the administration can rely on the state policymaking authority under ESSA. Second, with two-thirds of the states under one-party Republican control in both houses, Trump’s school choice initiative has received favorable response in several state houses. Third, charter schools have continued to receive steady, favorable preference among parents in minority communities (though some minority groups, including the NAACP, have grown more critical). It was a calculated move on Trump’s part to mention that school choice will benefit African-Americans in his joint session address last month.

### Turn – Cooperative Federalism

#### Educational federalism now is flawed – aff is key to solve cooperative federalism and educational quality

Bowman 16

(Kristi L., J.D., M.A., Vice Dean for Academic Affairs and Professor of Law, 11.28.16, “The Failure of Education Federalism,” University of Michigan Journal of Law Reform, Forthcoming, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2876889>, Accessed: 7.7.17)VW

Education federalism is failing our children. Especially since the Great Recession, states have been increasingly unlikely to invest in public schools and have been even less amenable to structural education reform initiatives. As a result, state-level legislative inaction, executive acquiescence, and judicial abdication can combine to create a situation in which the quality of traditional public schools declines sharply. This is the case in Michigan, which is an unusually important state not only because the dynamics that are emerging in some other states are mature in Michigan, but also because Michigan is the home state of newly-confirmed Secretary of Education Betsy DeVos, who has influenced the state’s education policy substantially. Yet, under the current model of education federalism (dual federalism), glaring gaps in educational quality like those in Michigan are not the federal government’s problem, and in some ways the federal government’s hands are tied when it comes to being part of the solution. This must change. Dual federalism does not reflect the current reality of many federal-state-local relationships, and it is sorely outdated in the context of public education. Accordingly, I argue for a larger, though by no means exclusive, federal role in K-12 public education with the goal of establishing a floor of educational quality for students across the country. In addition to proposing legislative and agency-based changes, I advance the novel litigation strategy of pairing a minimal educational quality right via Substantive Due Process with rational basis with bite review under the Equal Protection Clause. In these ways and others, we must move to a new model of federalism in education— cooperative federalism. Without this shift, a floor of educational quality will continue to be uneven both among and within states, and in more and more places like Michigan, the floor will rot and students will fall through.

#### Education federalism now is flawed – the aff is key to shift to cooperative federalism, empirics

Bowman 16

(Kristi L., J.D., M.A., Vice Dean for Academic Affairs and Professor of Law, 11.28.16, “The Failure of Education Federalism,” University of Michigan Journal of Law Reform, Forthcoming, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2876889>, Accessed: 7.7.17)VW

CONCLUSION Unlike many countries around the world, in the United States there is no positive right to education in federal law.233 Such a right exists only at the state level and it varies from one state to another. Part of this variation occurs because similar language in state constitutions has been interpreted as creating moderate to robust education rights in one state and weak to nonexistent education rights in another.234 The blame is not entirely at the feet of state courts though—in a state with a failing level of educational quality, all three branches of government are complicit. Michigan shows us precisely what it looks like when the proverbial floor rots and children fall through: in one small district, a native English speaker without a learning disability matriculates to seventh grade while reading only at first grade level and sometimes misspelling his or her own name, and in a neighboring major district, the percentage of eighth graders proficient in reading is in the single digits.235 Under the current model of education federalism, these glaring gaps in educational quality are not the federal government’s problem, and in some ways the federal government’s hands are tied when it comes to being part of the solution. This must change. The current model of dual federalism does not reflect the current reality of many federal-state-local relationships, and it is sorely outdated in the context of public education. The interest of having a population across the country with at least a minimal level of education—indeed, the interest in avoiding creating an permanent underclass through our own public schools—is an interest all citizens and all levels of government share. It is grounded in both liberty and equality, and especially since the Great Recession it is threatened. The present reality of public education in Michigan shows us what is likely to occur in a growing number of states unless at least one branch of the federal government intervenes. Adopting a model of cooperative federalism in education would enable us to avoid a dystopic future by establishing a federal floor of minimal educational quality. The children of this country deserve no less.

### Cooperative Federalism – Warming

#### Current environmental policy is coercive federalism – cooperative federalism is key

Yeatman 17

(William, M.A. in International Administration, B.A. in Environmental Sciences, CEI's senior fellow specializing in environmental policy, energy markets, and administrative law, 1.17.17, Competitive Enterprise Institute, “Advice for EPA, Part 3: How to Restore Cooperative Federalism,” <https://cei.org/blog/advice-epa-part-3-how-restore-cooperative-federalism>, Accessed: 7.7.17)VW

When it crafted legislation providing for federal environmental policymaking, Congress relied on America’s unique system of federalism. Virtually all of EPA’s enabling acts establish a division of responsibilities between the state and federal governments commonly known as “cooperative federalism.” In practice, this means that the federal agency sets standards which states are left to meet however they see fit, subject to EPA approval. States shoulder 95 percent of the costs of implementing federal environmental statutes, according to the Environmental Council of States. Over the last 8 years, the relationship between states and the EPA has broken down, as cooperative federalism has ceded to coercive federalism. Two facts attest to this point. First, the number of federal takeovers of state regulatory programs is way, way up. During the three presidential administrations prior to Obama, the EPA imposed 5 total Clean Air Act takeovers. During the Obama administration, EPA has imposed 56 federal plans on the states. Second, an unprecedented and diverse number of states are suing the agency over its actions. For example, both of the EPA’s signature regulations—the Clean Power Plan and the Waters of the United States rule—were challenged by more than half of all states. By my count, 218 states (attorneys general, governors, or state regulatory bodies) participated in 12 lawsuits against major Obama-era regulations. This is not normal, and it evinces a troubling unwillingness of EPA to accommodate state interests. In this context, Pruitt has an opportunity to restore a proper working relationship between the states and EPA on environmental policymaking. To this end, I recommend the following:

#### Cooperative federalism is key to solve warming

Canale 12

(John A.T., J.D., 6.1.12, Boston College Environmental Affairs Law Review, “Putting the Pieces Together: How Using Cooperative Federalism Can Help Solve the Climate Change Puzzle,” p. 416-418, 39 B.C. Envtl. Aff. L. Rev. 391 (2012), <http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=2081&context=ealr>, Accessed: 7.7.17)VW

Mary Nichols, a prominent scholar in the arena, recommends that the federal government use California’s programs as a model for a cooperative federalism framework for the nation.256 The federal government should start regulate the effects of land-use on GHGs and air pol-lutants, and thus follow the lead of Georgia and California. The government could set floors for regulation for GHG emission similar to the NAAQS in the CAA.257 Then the government should delegate to the states the methods of compliance with the federally mandated floor. This structure would be similar to the CAA, or could possibly become a part of the CAA. A cooperative federalism approach is best because there will be some resistance to any federal land-use planning—even to control GHG emissions—but this resistance can be softened by letting state and local governments design and implement individualized plans to meet local needs.258 The federal government should mix incentives with mandates by providing funding incentives like SB 375 and working with an empowered state partner, much like the GRTA program.259 There should be meaningful mandates, which are missing from SB 375, to achieve the reductions necessary to abate climate change.260 In addition to meaningful mandates, there should be in place in each state or region an entity with the power to enforce the state or regional mandates. Some of these powers could be modeled after the powers given to GRTA.261 Therefore, some general land-use powers may stay with localities, but the regional or state power could have the ability to veto projects.262 Legislation should be comprehensive and apply to the United States as a whole. SB 375 covers thirty-seven of California’s fifty-eight counties,263 and GRTA only covers areas that are non-attainment.264 A federal land-use law must cover all areas to prevent GHG emitting sources from moving to different locales to avoid regulation. Smart growth is a promising approach to significantly curbing GHG emissions.265 Incentivizing developers to align with smart growth objectives through a federally imposed land-use plan, or some form of a regional plan, would reduce VMTs, lessen the effect of GHGs, and avoid federal- ism issues.266 The United States needs this type of regulation to avoid the catastrophic consequences of climate change.267 Conclusion Because of the United States’s tremendous amount of GHG emissions relative to its population, it must take a leadership role in reducing GHGs. Although the CAA represents progress toward that goal, it is insufficient to solve the problem in its entirety because it puts no limit on GHG emissions. Local governments may also limit GHG emissions, but this might only happen when pushed by funding or threat of regulation. The United States and the international community cannot rely on states to take action like California or Georgia. Instead, the best approach would be to institute a cooperative federalism framework, set a national floor for GHG emissions, and use a combination of mandates and incentives based upon the California and Georgia examples. Only through nationally comprehensive land-use policy can the United States alleviate the pressures of climate change and reverse the planning mistakes of the past seventy years.

#### Cooperative federalism is necessary to solve climate change – any other approach fails, must engage all levels of government

Salkin 10

(Patricia E., served an appointed member of the National Environmental Justice Advisory Council, a Federal Advisory Committee to the U.S. Environmental Protection Agency, Raymond and Ella Smith Distinguished Professor of Law at Albany Law School and Director of the Government Law School, co-chair of the New York State Bar Association’s Standing Committee on Legal Education and Admission to the Bar, past chair of the American Association of Law School’s State & Local Government Law Section, 6-2010, Environmental Law Reporter, “Cooperative Federalism and Climate Change: New Meaning to “Think Globally—Act Locally”,” <https://law.pace.edu/lawschool/files/landuse/SalkinCooprtveFederalismClmtChng.pdf>, Accessed: 7.11.17)VW

Cooperative Federalism and Climate Change The potential impacts of global warming and climate change are well documented in the international scientific literature. In the United States, James Hansen, a leading National Aeronautics and Space Administration (NASA) scientist, warned that there is only a brief window of opportunity to meaningfully address this world crisis. From an international policy standpoint, it may be easy to point fingers at other countries and stall activity until others demonstrate movement. Further, the negotiation of traditional treaties, accords, and international diplomacy on these issues can take years to reach realization. Nationally, the federal government has only recently acknowledged the critical importance of more immediate action,1 and while much more must be done at the federal level, most state governments have not waited, and governors have made climate change mitigation strategies state priorities.2 What has been missing at the federal and state levels is recognition of the critically important role and responsibility that local governments have to play in addressing the root causes of greenhouse gas (GHG) emissions and the implementation of effective strategies. While the federal government, through the U.S. Environmental Protection Agency (EPA), has subtly begun to recognize the opportunities of municipal government partnerships, the fact remains that more must be done. EPA recently issued for comment a report on the connections between local land use controls and climate change in the area of land preservation,3 and there is a special area of the EPA website focused on local government.4 EPA’s Local Climate Program attempts to provide local governments with the resources and tools they will need to develop and implement their own climate action plans.5 The program’s primary focus is on reducing GHG emissions, with an emphasis on promoting energy efficiency and renewable energy. Some of the resources available to local governments include strategy guides, training, and information from groups working in collaboration with EPA.6 In 2009, EPA allocated $10 million to assist local governments in reducing their GHG emissions as well as other climate change activities.7 The goal of the Climate Showcase Communities Grant program is “to create replicable models of sustainable community action that generate cost-effective and persistent greenhouse gas reductions while improving environmental . . . conditions in the community.”8 Awards are expected to be announced in the first quarter of 2010.9 The federal government must, however, do more to incentivize increased cooperative federalism to more aggressively engage local governments in programs and policies that are national priorities.10 Although state governments have, in large number, appointed task forces and study commissions on climate change and adopted climate action plans,11 the fact remains that most of these efforts focus almost exclusively on opportunities and recommendations for state-level agencies to improve their own actions, e.g., energy efficiency initiatives for agencies’ buildings and construction projects, greening state vehicle fleets, green procurement strategies, etc. What is missing from the majority of the states’ plans are goals and strategies for the involvement of local government officials and recognition of the benefits of municipal actions.12 The lack of focus on local governments is troubling. It will be impossible for the United States to meaningfully respond to the complexities of climate change without a full partnership between local governments and governments at other levels, since local governments possess broad local land use planning and control authority,13 and in many states, they are on the front line of local environmental review, conducting National Environmental Policy Act-type evaluations that may include GHG emissions and carbon footprint-reduction strategies.14 This Article briefly discusses examples of the limited involvement and recognition states have carved out for local governments in state-level climate action plans. The main focus of the Article follows with an examination of the high level of largely uncoordinated activity taking place at the local government level, including innovative strategies worthy of replication throughout the country. The Article concludes with recommendations for cooperative approaches to be introduced at the federal and state levels to harness the power and opportunities of acting locally to address significant global challenges. II. State Recognition of the Local Role in Addressing Climate Change Mitigation State climate action plans issued to date can best be analogized to comprehensive land use plans: they are reports that set forth a goal (usually a percentage of GHG reduction by a certain date) and they offer a series of recommendations, strategies, and options that could be implemented to achieve the goal.15 With respect to local government, California articulated it best: “Local governments have the power to affect the main sources of pollution directly linked to climate change through infrastructure investments, land use decisions, building codes, and municipal service management.”16 However, many of the states’ planning efforts have focused on interagency approaches that have failed to include local government representation, and when municipal representation has been welcome, it has been minimal.17 Some of the recommendations identified across the country most relevant to municipal governments can be organized into the following categories: • Energy Efficiency in Buildings (green building standards, appliance efficiency standards, loans/grants/ incentives for energy retrofits, modified electricity pricing)18; • Energy Efficiency in Transportation (reduction of vehicle miles traveled)19; • Carbon Sequestration (reforestation programs, agricultural soil carbon management)20; • Public Education and Outreach21; • Energy-Efficient Land Use (smart growth, infill, increased density, transit- and pedestrian-oriented design, urban tree planting, encouraged telecommuting, bicycling)22; • Climate Change Adaptation23; • Development of Local Climate Action Plans24; and • Training Specifically Targeted to Local Governments.25 There are many other important strategies that also relate to local initiatives including: agricultural uses and solid waste issues, e.g., methane gas reduction; renewable energy issues, e.g., siting issues with wind and solar energy; disaster preparedness and adaptation; green procurement; mass transit; etc. Outside of coordinated state climate action plan activities, some individual state agencies have recognized the key role municipalities play in addressing GHG reduction.26 Local government stakeholders need to be more fully engaged, however, and the federal and state governments’ failure to involve them in the development of climate action plans will undoubtedly lead to missed opportunities. III. Factoring in the Key Role of Municipalities to Achieve a Reduced Carbon Footprint According to the U.S. Census Bureau, in 2007, there were 89,476 units of local government throughout the United States.27 They are the units of government that have direct authority when it comes to land use planning, adoption and enforcement of building codes, and transportation planning for efficiency and reliability. While climate change is not exclusively a land use issue, some of the most effective strategies to slow climate change can be accomplished through modifications to building codes, zoning ordinances, and other land use regulations. However, to be truly effective and to attain quantifiable results, local governments must implement a variety of tools and techniques and send a consistent message to residents. Local governments must look at opportunities for energy efficiency in municipally owned buildings and in services provided, as well as for methods that can be utilized by residents to promote conservation and increased efficiency.28 Municipalities are collectively the largest government consumer of buildings, infrastructure, and products, and together they have the potential to make significant progress in the implementation of strategies to slow climate change. Emissions reductions could be immediately realized if, for example, every municipality converted its traffic lights to LED bulbs, and municipal fleets were replaced with green vehicles.29 Further, major cultural shifts are possible if local governments, as a group, use their land use planning and control authority to plan for and implement various green development stan dards, transit-oriented development strategies, and adaptation measures. In a newly published book exploring the legal and planning response to global climate change, Prof. James Kushner explores the broad changes that will be necessary at all levels of government, as well as specific policies needed to implement the identified changes.30 By outlining the possible local responses in the areas of agriculture and food policy, brownfield redevelopment, consumption and conservation, economic development, education, emergency preparedness, energy, housing and construction, management of federal lands and agencies, oceans and seas, population, smart growth, species protection, technology, transportation, and water management,31 it becomes readily apparent that the possible benefits of collective action are staggering. The good news is that, individually, local governments are not waiting for Washington and the statehouses, and they are taking steps on their own to study and develop plans and implementation strategies to advance climate change mitigation goals.32 However, given the large number of units of local government, anecdotally, most local governments have not yet taken action. What follows are examples of how some local governments are addressing key aspects of climate change mitigation. It is impossible to catalogue all of the initiatives, as new proposals are being introduced, adopted, and implemented almost daily.33 Research reveals that while there are clear trends and similarities in the types of goals and initiatives identified by local governments, the reality is that local governments are this country’s laboratory for innovation and experimentation in this area, and their actions must be carefully studied and their successes benchmarked to best inform future policies and implementation strategies at all levels of government. IV. Climate Change Action Plans Similar to state responses, typically the first step in addressing climate change at the local level is the passage of a resolution or local law appointing a committee or task force to inventory existing programs and develop an action plan or recommendations for future action. Many of the efforts ultimately result in local climate action plans (identified by various names)34 that most often seek to significantly reduce GHG emissions within a given time frame. For example, in 2007, New York City enacted the Climate Change Protection Act with the goal of reducing the city’s operational GHG emis- sions by 30% of 2006 levels by 2017,35 and by 2011, Denver’s Greenprint plan aims to reduce emissions 10% from 1990 levels and to reduce energy use 5% from the 2006 rate.36 San Francisco,37 Atlanta,38 Dallas,39 and many other cities have also adopted GHG reduction goals as part of a climate action plan. Generally, the local climate action plan serves as the “greenprint” for municipalities as they strive to reach stated goals in carbon footprint-reduction within their jurisdiction. While progress toward climate action plan goals must be measured and assessed at varying intervals, it is evident from reviewing dozens of plans that more must be done to ensure that plans incorporate requirements to track progress, benchmark success, and reevaluate goals at regular intervals. Nationally, regionalism and intermunicipal cooperation have been part of the local government lingo and mindset in the planning and environmental arenas for some time. The literature is replete with examples of local cooperative actions arising out of the realization that the impacts of local land use decisions know no political boundaries. The same is true when it comes to implementing meaningful strategies in the climate change area. The impacts of methane gas releases, for example, are the same when farming practices cross municipal boundaries, and transit-oriented development works best when viewed within the context of interjurisdictional travel patterns. One example of a joint climate change strategy is Multnomah County-City of Portland, Oregon, Local Action Plan on Global Warming, which articulates goals including green jobs generation, aiding community members in adapting to climate change and an overall reduction in carbon emissions by transforming transportation systems, and achieving energy efficiency in local structures.40 Collaborative efforts have also been initiated in cities including Fort Collins, Colorado, whose climate action plan stimulated enthusiasm for a neighboring county that is now discussing adopting its very own climate change action plan.41 V. Energy Efficiency in Buildings Many local plans articulate goals of reducing energy use in older buildings and achieving zero net GHG emissions in all new buildings and homes. In order to achieve these goals, cities are retrofitting buildings, weatherizing homes, trading in old appliances, and installing new HVAC systems. Albuquerque offers reduced impacts fees and density bonuses for energy-efficient building projects.42 The Houston Airport System is taking special steps to address the environmental issues at the three airports in the Houston area. Its “Environmental Management System will govern how the . . . employees apply environmental objectives in day-to-day activities.” The Airport System also plans to implement low-cost measures, such as cutting the energy supply and turning off lights in rooms not being used.43 The city of Seattle is attempting to offset the expense of switching to green efficiency strategies by offering subsidized audits to homeowners. A select number of homeowners will receive an Energy Performance Score indicating “how a home’s energy use and carbon emissions stack up against Seattle’s averages and goals.”44 The utility industry has also spurred partnerships with local governments to achieve energy efficiency goals. For example, in New York, Babylon, Brookhaven, Great Neck, Greenburgh, Huntington, North Haven, North Hempstead, Oyster Bay, Riverhead, and Southampton have all joined the Long Island Power Authority Energy Star Homes program and incorporated Energy Star requirements into their building codes.45 Pacific Gas and Electric has partnered with 17 cities, counties, and agencies in California as part of its Energy Watch program, which focuses on outreach, energy efficiency options for residential and commercial customers, and developing local energy policies to promote efficiency.46 Municipalities must be mindful, however, of the intergovernmental dynamics of regulating energy efficiency standards. The issue of preemption or conflict with state and federal statutes and regulations has already started to surface in litigation. In October 2008, a federal district court issued a preliminary injunction barring enforcement of the city of Albuquerque’s green building code pending the outcome of a lawsuit, brought by HVAC and water heating-equipment trade organizations, contractors, and distributors, on the grounds that it was preempted by federal law.47 Among other things, the green building code called for a 30% increase in energy efficiency for new commercial and residential buildings, as well as for those undergoing substantial renovations. To achieve this goal, the code provided that single-family homes should have more insulation, more efficient heating, cooling and ventilating, water heating, and lighting; and commercial and residential structures would also have to undergo thermal bypass inspections.48 The judge wrote: The City’s goals in enacting [the disputed code] are laudable. Unfortunately, the drafters of the Code were unaware of the long-standing federal statutes governing the energy efficiency of certain HVAC and water heating products and expressly preempting state regulation of these products when the Code was drafted and, as a result, the Code, as enacted, infringes on an area preempted by federal law.49 VI. Green Development Overlapping in many respects with energy efficiency programs is the growing trend of adopting ordinances that encourage development of green buildings. Some green building ordinances apply only to municipal construction/ renovation projects50; some apply to private projects that receive public funding51; and others apply to both public and private construction/renovation projects.52 Green building requirements that apply to private construction are varied. Some apply only to construction projects larger than a certain size,53 and some are restricted to only particular types of buildings.54 While the Energy Star and Leadership in Energy and Environmental Design (LEED) systems are common, some municipalities use other rating systems, or create their own.55 Some green building regulations also permit developers to meet LEED “equivalents” or to merely comply with LEED guidelines without receiving LEED certification. While this allows for flexibility in the development approval process and lets developers avoid the time and expense required by the LEED certification process, it may obstruct the goals of green building regulations if local regulators do not require strict compliance with LEED criteria.56 The ordinances also differ in other ways, including which level of LEED criteria must be sought, and whether waivers are available.57 New York City’s green building law was enacted in 2005 and requires municipal projects costing more than $2 million to be designed to meet LEED silver criteria, although actual certification is unnecessary.58 In addition to city projects, the LEED requirements apply to private developments that receive more than 50% city funding or more than $10 million of city money. Also in New York, Nassau County’s 2007 green building requirements, like New York City’s, apply to publicly funded projects, as well as to public works construction and renovation projects.59 The law generally mandates compliance with the requirements for the LEED silver rating, but actual certification is not required, and exemptions can be granted on a number of financial grounds.60 In California, the city of San Rafael adopted a Green Building Ordinance that requires all new dwelling units to be Green Point Rated, using standards developed by Build It Green, and that requires new commercial or civic buildings to meet LEED standards.”61 Santa Monica requires projects to comply with either performance or prescriptive energy code regulations in addition to green building requirements. Santa Monica’s green building ordinance also requires solar water heaters to be installed for certain projects, like swimming pools and car washes.62 More than 30 other California municipalities have also adopted green building requirements.63 The Washington, D.C., Green Building Advisory Council has monitoring and enforcement responsibilities that ensure compliance with its 2006 Green Building Act. The Act calls for the requirements applying to privately owned projects to be monitored by either an agency or a consultant selected by the mayor, and the owners of any buildings that do not meet their verification requirements may be required to forfeit performance bonds to the city for deposit in the Green Building Fund. The fund finances staffing and operation costs for plan review, inspections, and monitoring of covered buildings, as well as education, training, and outreach activities. In many cities, moreover, certificates of occupancy will not be issued unless completed buildings pass compliance inspections.64 VII. Alternative Energy Sources Through their land use control authority, local governments are adopting a variety of ordinances and regulations to ensure that solar, wind, and geothermal energy sources can all be appropriately utilized in a community. For example, local governments are adopting zoning ordinances that will allow residential wind power generators to be constructed.65 Commercial wind farm projects probably present the greatest challenge for municipalities in terms of siting decisions. In some states, the decision is made at the state level, but in the vast majority of states, it is a locally based land use decision that encompasses all aspects of siting, construction, operation, and decommissioning of wind turbines. Wind turbines may be specifically permitted in some zoning districts, and prohibited from others, or they may be allowed only in wind overlay zones.66 Some type of special permit is typically required, often in conjunction with site design and environmental review.67 Municipalities are also consumers of alternative energy. A contract for wind energy was negotiated by the city of Houston with the hopes that by the year 2010, “the City will utilize fifty megawatts of wind energy.”68 Municipal regulations may allow solar energy collectors as permitted accessory uses in some or all zoning districts,69 or provide exemptions from height restrictions for solar energy equipment.70 The town of Oro Valley requires that all singlefamily and two-family residences be built to accommodate the future connection of solar systems.71 Another example of local innovation is from Chattanooga, Tennessee, where “The Green Power Switch Program” was initiated for local energy providers to offer environmentally friendly electric energy to consumers.72 This program combines with efforts to encourage community members to utilize alternative energy sources, such as solar panels and wind turbines, to help promote the city’s efforts to reduce emissions.73 VIII. Green Procurement Green procurement laws at the local level require municipalities to incorporate environmental factors into their purchasing decisions. In New York, Erie County’s 2007 Energy Efficient Products Act, which requires the county to purchase Energy Star-rated products when available, is an example of a green procurement law. Under the law, county agencies must include Energy Star preferences in procurement bid specifications, and they may only refuse to purchase Energy Star products when “the agency can demonstrate, in writing, that the interests of the County would be better served by procuring non-Energy Star rated equipment.”74 Nassau County, New York, enacted a similar law in 2008, although its green procurement guidelines are not based on the Energy Star rating system.75 Under the Nassau County law, the office of purchasing is directed to establish green purchasing standards for a variety of things, including office supplies and equipment, cleaning supplies, food, landscaping and construction materials, parks and recreation supplies, vehicles, and transportation supplies.76 The purchasing criteria are to be established, in part, by reference to green purchasing guides produced by EPA and other environmental advocacy groups, and after consultation with a committee made up of representatives of relevant county departments and local environmental groups.77 Both King County and Seattle, Washington, also have environmentally focused purchasing policies. In King County, “Departments shall purchase recycled and other environmentally preferable products whenever practicable” and “The county shall require its contractors and consultants to use recycled and other environmentally preferable products whenever practicable.”78 Departments in Seattle, when making purchasing decisions, “are directed to consider life cycle effects from: pollution; energy consumption; recycled material content; depletion of natural resources; [and] potential impact on health and nature[.]”79 IX. Public Education and Outreach Educating the public about the importance of climate change plans is an integral part of gaining support and enthusiasm. Cities have begun developing websites where community members can calculate their energy use and find ways to decrease their emissions.80 Other programs seek to educate business owners about climate-friendly practices.81 Albuquerque plans to “educate and develop climate-friendly business practices by coordinating with trade groups to develop education programs that can then be advertised and targeted to business and industry.”82 Local governments have also begun to reach out beyond just individuals and other government entities, forming collaborative efforts with local colleges and universities. For example, Houston has collaborated with local students in engineering disciplines to develop programs to reduce diesel usage.83 X. Other Green Measures Some municipalities are starting to convert their vehicle fleets to more energy-efficient models. For example, last year, the mayor of Seattle signed an agreement with Nissan North America to make the city one of the first areas of the country where its new all-electric car will be released.84 Outdated buses, commuter trains, and rapid-transit vehicles are being replaced with newer, more efficient models. For example, the city of Chicago’s public transportation system switched to cleaner fuels.85 Cities are also expanding their transit coverage areas, making public transportation a viable option for people who do not live within the immediate city limits.86 In an effort to promote alternative modes of transportation, cities are expanding their bicycle lanes and walkways to be more pedestrian-friendly. Cities have added anywhere from 25-100 miles of bike lanes in the past few years.87 These improved biking conditions have shown a 15% increase in biking in Seattle between 2007 and 2009.88 The plan for the city of Miami calls for encouraging the development of energy-efficient transportation and better quality sidewalks, as well as redevelopment enabling personal and professional activities to be more accessible.89 Alternative work options are also being explored by municipalities. Houston introduced a “Flex in the City” program that encourages employers to consider alternative work options for employees, such as telecommuting, flexible start and end times, and shorter work weeks.90 In many cities, municipal recycling programs are being reinvigorated, and the list of recyclables is being expanded to include such things as aluminum foil, plastic bags, plastic cups, aerosol cans, electronics, and used motor oil.91 Organic waste materials are being collected to generate alternative sources of energy.92 The city of Chicago’s efforts to encourage the onsite capture and reuse of stormwater resulted in a stormwater ordinance that requires large developments to capture at least the first half-inch of rainfall on-site.93 In 2008, Tucson, Arizona, enacted an ordinance that requires all commercial developments to include a rainwater harvesting plan in their site plan applications.94 XI. Incentives Human nature responds to rewards or incentives when it comes to changing behaviors. From manufacturer coupons and rebates to get consumers to purchase products, to stores offering specials for early-bird shoppers, municipal governments serious about changing behaviors of the their residents have realized that incentives can be a cost-effective tool to achieving GHG reduction goals. For example, the city of Albuquerque is developing ground-source heat pumps, offering rebates and tax credits, as well as working with local electric utility companies to fund the initial costs for a program to help it achieve the 2020 and 2050 GHG reduction goal.95 Municipalities that desire to promote solar energy have offered a variety of incentives, including reduced permit fees for projects that include solar improvements,96 and rebates for installation of solar energy systems.97 These types of incentives can be easily transferred to encourage other types of choices and behaviors aimed at GHG reduction. Evaluating zoning codes and offering incentives to developers who build within current structures in densely populated areas is becoming popular in urban centers.98 Offering property tax reductions for those property owners with renewable energy systems,99 as well as free transit passes for city employees,100 grants,101 density or height bonuses,102 and expedited permit approval,103 are examples of other incentives currently offered. XII Recommendations The following recommendations are offered to the federal and state governments as strategies that can be employed to ensure that local governments have the tools, resources, authority, and support needed to continue and to grow the seed work that has already begun in the implementation of plans and actions to slow the impacts of climate change, one community at a time. A. Federal Government 1. Funding should be made available for the development and adoption of local climate action plans. This can be accomplished with funding to the state governments for this purpose, similar to the old Housing and Urban Development HUD 701 Program for land use plans 2. Provide incentives to state governments for local plans. An example, the Stafford Act. The federal government incentivized the states to get local governments to develop local disaster-mitigation plans by providing additional support for states with enhanced mitigation plans (meaning local plans coordinated with a state plan). 3. Provide more technical assistance specifically aimed toward local governments to enhance the work that EPA has started. More must be done, and more federal agencies must follow this lead. 4. Climate Change and Communities has to become a theme within each agency for program dollars and support to localities, similar to what happened with the livable communities agenda during the Clinton Administration, when a coordinated federal effort was made to promote smart growth principles. 5. Examine laws and programs that may have a preemptive effect on local actions and determine whether the federal regulation or local initiatives will go farther in achieving GHG reduction goals. 6. Support the development of a national clearinghouse on local climate action initiatives. 7. Provide avenues for recognition of local officials and communities who are engaged in replicable initiatives that have demonstrated a record of success. B. State Governments 1. State governments must include municipal stakeholders in the development of statewide climate action plans and energy plans. 2. States should develop a one-stop portal for local governments on climate change technical assistance and funding opportunities. Many state agencies provide different types of technical assistance, funding, and incentives for different aspects of climate change mitigation. A one-stop portal would allow municipal officials and advocates to search one database for desired information. This would save time and increase the ability for swifter and more informed local actions. 3. States should provide funding and other incentives to municipalities who adopt local climate action plans and strategies, including funding for initial inventories to support the development of a plan. 4. States should require local governments to include a climate change element as part of the local comprehensive land use plan. 5. States should provide avenues for recognition of local officials and communities who are engaged in replicable initiatives that have demonstrated a record of success. XIII. Conclusion What is clear is that when it comes to ideas and the imple - mentation of real and immediate actions that can, today, start to reduce GHG emissions, there is no denying that local governments are the country’s first line of offense. The preceding discussion, while packed with actual examples of ideas and strategies, barely begins to scratch the surface of the hundreds of other things being done in communities across the country. A true partnership or system of coopera - tive federalism is needed to comprehensively address climate change mitigation in a coordinated and thoughtful manner with local governments serving as the foundation for imple - mentation and benchmarking. Information sharing, techni - cal and fiscal assistance, and the articulation of broad public policy goals are appropriate and necessary supporting roles for the federal and state governments. Global climate change mitigation cannot be adequately accomplished without effec - tive, immediate, and coordinated local action. The examples provided throughout this Article demonstrate that local governments are ready, willing, and able to meet the challenges with direction, incentives, and needed support.

#### Cooperative federalism is key – preserves federalism while solving the environment – consensus of experts

Andreen et. al 08

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All of the nation’s major environmental laws “divide the job” among federal, state, and local government because the task of protecting the environment is too big for one level of government to tackle alone. This cooperative federalism model establishes a framework for federal, state, and local governments to work together to protect the environment. 26 Each level of government has a particular role to play. The federal government is generally responsible for issuing the minimum standards to protect the environment. States then have the option to administer various programs to achieve the standards. In most instances, Congress explicitly gives states the authority to adopt standards that are more protective than federal standards. Local governments may have enforcement and monitoring responsibilities, as well as implement grants and demonstration projects. Today, federal efforts to prevent environmental harm - particularly those relating to climate change - have fallen on extremely hard times. The Bush Administration has systematically opposed efforts to strengthen the federal government’s responsibility (and particularly the responsibility of the Environmental Protection Agency (EPA)) to mitigate climate change. Budget cuts have left the Agency’s resources and expertise decimated. 27 By necessity, state and local governments have had to fill the void left by EPA’s refusal to acknowledge that climate change is a serious problem or the nation’s responsibility to address it in a meaningful fashion. As a result, these governments have served as “laboratories of democracy” by tailoring regulation to address local needs and conditions. 28 If not for state and local efforts, the nation’s track record on climate change would be even more abysmal than it has been to date. The forward-looking state and local initiatives on climate change initiated in recent years have been made possible only because of the structure of our federal system of government. The Supreme Court has described “our federalism” as a governmental system that “require[s] that Congress treat the States in a manner consistent with their status as residuary sovereigns and joint participants in the governance of the Nation.”29 The Court has established a presumption against preempting state authority, because “an essential principle of federalism is that states retain broad sovereign authority to regulate for the well-being of their people.”30 Conversely, the Court has required that on the rare occasion that Congress decides to preempt state and local authority, it must make an explicit statement articulating the reasons why federal programs will achieve a better outcome than state and local action. 31 If Congress has the constitutional power to legislate in a particular area, it has the authority, in theory, to preclude all state and local activity in that area by completely “occupying the field” covered by federal legislation. Congress has almost never exercised that authority to completely oust state laws designed to protect the public health, safety, and the environment. Instead, Congress has engaged in what is commonly referred to as “floor preemption” by creating a minimum level of federal protection and then allowing states to exceed this minimum standard by adopting more protective state laws. As noted earlier, floor preemption is the predominant approach reflected in almost all of the major federal environmental laws. By limiting its power to displace state law to floor preemption, Congress accomplishes at least two goals. First, it mandates a minimum level of environmental protection for the entire nation that states must not undercut. Second, by preserving state authority to adopt more protective programs, it provides opportunities for the creation of genuine partnerships among federal, state, and local governments in achieving desirable levels of health, safety, and environmental protection. 32 Congress has repeatedly chosen to preempt only state laws that are weaker than corresponding federal standards for several reasons: n Transboundary Pollution. Pollution is “transboundary” in the sense that it does not respect arbitrary jurisdictional dividing lines, traveling easily from one state to another. Since the states tend to lack the incentive to control the extent to which their own industries create spillover effects in other states, Congress has wisely chosen to vest in the federal government the authority to abate transboundary pollution. At the same time, if states want to go beyond the minimum federal standards, there is no reason not to allow them to do so. n Races to the Bottom. Minimum, nationally applicable federal standards (often administered with the assistance of state and local officials) level the playing field by prohibiting states from participating in a “race-to-the-bottom” by promulgating weaker standards than those in effect in other states competing for the same industries. Again, if state or local governments see fit to exceed the federal standards, the race-to-the-bottom rationale provides no basis for prohibiting them from doing so. n Laboratories for Democracy. Floor preemption preserves the important concept of states serving as “laboratories of democracy,” exercising their ability to generate and test new ideas, often prompting the development of new technologies. By deferring to states’ rights and giving states the authority to innovate and to enact more protective regulations as they see fit, the resulting flexibility creates benefits outside of the state’s boundaries, because other states and the federal government get the opportunity to learn from a particular state’s unique approach. 33 Congress has long recognized the benefits of such an approach. As explained more fully below, it decided to allow California to regulate motor vehicle emissions in part because it valued the knowledge and experience California was able to provide to the federal government on the basis of the state’s early regulatory efforts, which preceded those of EPA. Had Congress chosen to completely preempt the field of climate change regulation, for example, the wide array of state and local programs that deal with climate change would never have been allowed to develop. n Minimum Environmental Protection. A consistent system of regulatory requirements promotes uniform, minimum protection of public health and natural resources.34 At worst, residents of each state are assured of a level of protection deemed adequate by federal officials. If state or local officials decide they wish to provide additional protections to satisfy the demands of their constituents, they are free to do so. n Avoiding one-size-fits-all. Regulatory floors, coupled with the preservation of state and local authority to go beyond them, overcome the problem of a “one-size-fitsall” approach. States have diverse geography, climate, natural resources, and population patterns.35 Giving them authority to tailor more stringent requirements to their own situations allows flexible and efficient decision-making. 36 In contrast, rigid edicts from Washington that preclude adaptation in a manner consistent with federal objectives or supplementation at the state and local level often straitjacket local initiative, infuriating state and local officials. 37 n Institutional Diversity. The combination of floor preemption and state and local discretion to establish more protective regimes also creates “institutional diversity,” by empowering various actors to pursue diverse policies for tackling difficult environmental problems.38 Such diversity not only fosters much-needed cooperation in meeting federal statutory goals, but also creates an institutional backup, so that a state, for example, is able to address an environmental problem when the federal government does not. 39 The almost universal decision by federal legislators to preempt weaker, but not stronger or supplemental state and local programs, not only makes sense as a matter of federal environmental policy. States historically have strongly favored this approach for several reasons as well: n Public Choice. State and local officials often feel strongly that the adoption of measures that provide levels of health, safety, and environmental protection that go beyond those mandated by federal law is necessary to meet the demands of their constituents.40 Floor preemption provides them with the ability to satisfy those demands. n Green Competition. Some states and localities also have a strong interest in “being green” to attract new residents and businesses who place a high value on environmental amenities. 41 Put simply, doing business in an energy-efficient state saves money for producers and consumers alike. “The cost and quality of electric service in a state is now a significant factor informing location decisions of intensively computerized businesses[.]”42 n Areas of Exclusive Jurisdiction. Regulation of land use has long been the traditional province of local government, and Congress has been very careful to respect local and state authority in this area. Local and state governments are working to address transportation concerns, create workable land use policies, and create reliable and efficient energy supplies. Floor preemption allows states and local governments to continue these efforts as long as they do not conflict with federal requirements. n Low Income Energy Assistance and Other Social Policy Goals. Preservation of state and local authority to exceed or supplement federal environmental protection standards sometimes allows these governments to pursue other social policy objectives that are not being met by the federal government. For example, states also have an incentive to promote energy efficiency and reduce carbon emissions to help poor and moderate income households. 43 Investment in energy efficient appliances and weatherizing low-income housing not only reduces energy costs for individual residents, it also reduces demands on state and governments to provide energy assistance to low- income residents in winter. In this way, reducing carbon emissions is a way to bring savings to the entire state. 44 n Green Development. Many states see climate change not only as a threat but also as an economic opportunity and are working to position themselves as market leaders in “producing and selling alternative fuels, ramping up renewable energy exports, attracting high-tech business, and selling greenhouse gas emission reduction credits.”45 Floor, but not complete, preemption allows states to retain their crucial role in pursuing policies that promote both environmental protection and economic development, as well as address their unique problems and utilize their different resources. n Partnership. Many state and local officials are convinced that a top-down, “onesize-fits-all” approach is detrimental to regulatory effectiveness.46 Instead of following such a rigid approach, state and local governments want to work hand-in-hand with the federal government in the effort to achieve environmental protection objectives. Indeed, since the major environmental laws were passed in the 1970s, states have increasingly accumulated sophisticated expertise and qualified employees to implement federal environmental programs.47 The combination of the delegation of authority to the states to implement federal legislation and the preservation of state power to exceed or supplement federal requirements provides states with the flexibility they believe is needed to provide optimal levels of protection for health, safety, and welfare as well as encourages inter-governmental cooperation that redounds to the benefit of all. For all of these reasons, environmental “statutes reflect the understanding that, despite the creation of an extensive body of federal environmental restrictions, the states would continue to play an important role in the adoption and implementation of environmental policy, and that, in particular, they would remain free to supplement or exceed federally established goals or standards.”48 Under the Clean Water Act, for example, federal pollution control standards establish a floor by setting minimum standards of protection that apply in all states. The statute requires all states to adopt and implement water quality standards sufficient to meet the statute’s fishable-swimmable waters goal. It also leaves them free to pass additional, more protective standards or “any requirement respecting control or abatement of pollution” if it would be consistent with local policies or voter preferences that they do so. 49 The CAA, the principal federal statute for controlling air pollution, also exemplifies this model of cooperative federalism. 50 Under the CAA, states are responsible for implementing National Ambient Air Quality Standards (NAAQS). NAAQS are set for “criteria pollutants” and must “protect the public health” within an “adequate margin of safety.”51 Once EPA issues the NAAQS, the statute requires that each state develop “state implementation plans” (SIPs) to meet the standards. 52 As the Supreme Court has recognized, Congress consciously chose to leave to the states the freedom to adopt whatever mix of emission controls they feel are an appropriate way to meet the NAAQS.53 In this way, the 1970 CAA compels the achievement of uniform standards deemed necessary by EPA to protect the public health and welfare, but allows the states as a general matter to decide how to achieve these standards by crafting plant-specific and industry-specific reduction strategies appropriate to each state’s own economic, social, and environmental needs. And the statute preserves the states’ authority to protect air quality by imposing more stringent controls on stationary sources than EPA has adopted. Indeed, the cooperative federalism approach so undergirds our environmental laws that, even when Congress concludes that preemption is necessary in certain rare contexts, it does its best to preserve state and local authority. Complete preemption is a drastic approach because it “leav[es] states with no power whatsoever to protect the health, safety, and welfare of their citizens.”54 It involves a judgment that providing certainty by vesting in the federal government the exclusive power to operate within a certain field is preferable to encouraging regulatory innovation, preserving state authority, and maximizing cooperative efforts among multiple sovereigns.55 Product design or engineering is the most common area for federal requirements that preempt all state activity, even more stringent regulation. 56 Congress has decided to oust states completely from certain aspects of product design or engineering, but it has defined those aspects narrowly so as to minimize intrusion on state and local authority. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 57 for example, completely preempts states from regulating pesticide labeling and packaging. 58 It specifically saves state power, however, to regulate the use and sale of such products, as long as the regulations do not clash with federal requirements.59 Similarly, the Toxic Substances Control Act prohibits states from implementing manufacturing requirements on toxic substances, but preserves state authority to regulate the sale and use of toxic substances. 60 In addition, as mentioned earlier, the California car provisions of the CAA establish a balance between establishing uniform standards and preserving state authority. When it adopted the CAA in 1970, Congress sought to reduce the potential for multiple state tailpipe emission requirements in order to avoid subjecting the auto manufacturers to a multiplicity of varied, and potentially conflicting state requirements. Accordingly, the CAA preempts the states from adopting their own tailpipe emission standards. Even in this area, however, the statute contains an important exception: Congress chose to empower California to apply to EPA for a waiver of the state preemption provisions.61 Congress decided to preserve California’s ability to exceed federal standards in recognition of the state’s historical leadership in combating air pollution. Under § 209(b) of the Act, if California determines that mobile source controls that are more protective than those adopted by EPA are needed to deal with the state’s air pollution problems, it may apply to EPA for a waiver of the CAA’s preemption of state tailpipe emission controls. Once Congress recognized the wisdom of allowing California to adopt a second set of auto emission controls, it saw no need to constrain other states from following California’s example. Once EPA grants a waiver to California, any other state is free to adopt standards that are identical to those adopted by California. The result is a compromise that protects the auto manufacturers from the need to comply with multiple state standards, while also protecting the federalism values and advantages discussed above by affording all states the option of adopting any California standards approved by EPA. California has taken full advantage of this accommodation. It has requested, and EPA has granted, § 209(b) waivers 53 times. 62 California’s ability to obtain a waiver of the CAA’s prohibition on the adoption by states of any auto emission standard represents a Congressional effort to strike a balance. On the one hand, the statute authorizes EPA to establish uniform and preemptive standards that provide minimal levels of protection for all residents in the United States without subjecting the auto manufacturers to a welter of regulatory standards. On the other hand, the provisions that allow California to adopt (and other states to emulate) its own more protective standards if it meets the CAA’s requirements for doing so promote federalism values by preserving meaningful albeit limited state authority to go beyond federal requirements to further protect its citizens and the environment. In effect, since 1970, the United States has had two standards for controlling various kinds of emissions from mobile sources. In establishing this regime, Congress concluded that having two possible standards as opposed to fifty would “minimize economic disruption and provide emission control systems at lower costs to the people of the Nation.”63 On its own, California is the world’s tenth largest economy with 32 million cars – easily large enough that it makes economic sense for automobile manufacturers to build cars that comply with California standards. As a result, “the compromise has given the country the benefit of California’s continual efforts to reduce auto pollution and push technology forward.”64 The compromise also rewards California and other states for excelling in environmental protection. Most importantly, the compromise retained the states’ historic role in protecting public health and safety, in this case by allowing them to adopt more protective standards under precisely defined circumstances. The CAA waiver provision for California auto emission standards is therefore a prime example of Congress’s recognition of the desirability of exercising its federal preemptive authority conservatively and cautiously — in a way that preserves state authority, establishes workable national standards, and furthers the ultimate environmental goal of the CAA, namely, that cleaner air is achieved. 65 Keeping the Cooperative Federalism Balance: Why it Matters for Climate Change Complete preemption of state and local authority to address climate change would not only be inconsistent with federalism values and with nearly forty years of federal environmental regulation, it also would prevent the United States from taking the steps needed to avoid the potentially devastating effects of climate change. In particular, prohibiting state and local governments from acting in areas that have always been within their exclusive jurisdiction – including the regulation of electric utilities, land use control, agriculture, landfills, and building codes – would make it impossible for the United States to achieve the carbon reductions needed to avoid catastrophic climate change. States are now targeting these sources in creative and innovative ways, including renewable portfolio standards, emissions trading programs, and policies relating to residential energy usage, transportation planning, taxation, and waste reduction. Preempting these efforts will be detrimental to reducing carbon emissions for the following reasons: A “top-down” approach characterized by complete preemption of state and local climate change programs ignores the reality of climate change, namely that it is a problem caused by disparate and diverse sources and that all of these sources must reduce their carbon emissions if we want to address the problem effectively. As many states have already shown, a rational and effective climate change policy requires the use of many different tools. Such a “portfolio” approach affords state and local governments the flexibility they need to implement the policies and programs that serve their unique constituencies best. In addition, “[d]iversification enhances a state’s resilience to external energy challenges,” allowing states to be better prepared when prices spike. 66 Complete preemption would both preclude flexibility and impair effectiveness in the nation’s quest to minimize the adverse effects of climate change. Not only are state and local governments able to use legal tools that are not available to the national government, they are far better suited to motivate the lifestyle changes among their citizens that will prove essential to an effective climate change policy over the long run. Unless individuals bear some of the burden of combating climate change, the entire task will be thrust upon the industries responsible for generating most of the nation’s GHGs (although compliance with climate change requirements by industries such as electric utilities obviously will affect individual citizens indirectly). Lifestyle changes will require “local commitment, down to individuals, to accomplish the type of economic and societal transformations that will be necessary to achieve very large reductions in carbon.”67 The kinds of emissions trading regimes envisioned under most pending federal climate change bills will not be enough to combat climate change. Development and transportation decisions made by local governments will be key to reducing carbon emissions. One estimate finds that “if 60 percent of new growth” consists of “compact” or “high-density” development,”68 up to 85 million metric tons of carbon gas emissions could be prevented from reaching the atmosphere each year by 2030,” the equivalent of a 28 percent increase in federal vehicle efficiency standards.69 This is five percent greater than the levels of emissions reductions predicted to be generated by the increased vehicle efficiency standards mandated by the 2007 Energy Independence Security Act – reduction predictions that notably do not take into account the likelihood that driving will continue to increase. 70 State and local governments recognize that they must promote less driving, not more, if carbon emissions are to be reduced significantly. Another reason to preserve state and local authority to address climate change, notwithstanding the establishment of federal programs, is to preserve state and local authority to deal with the divergent impacts that climate change is likely to have in different parts of the country. Regional variation in the impacts of climate change is likely to be significant.71 Some regions will experience severe droughts. Others will lose coastlines. Still others will suffer from flooding caused by severe weather events. States will need the authority to enact more stringent programs or supplemental programs tailored to address the unique impacts that climate change will have on their populations and natural resources. States will also play crucial roles in adaptation planning. Although we know that the impacts of climate change will differ by region, we cannot predict with certainty what these differences will be. In the face of such uncertainty, straitjacketing states by forcing them to conform to a single, minimally protective federal regime would be both unnecessarily limiting and unwise. States and localities often serve as the federal government’s agent or partner in the implementation of federal environmental legislation, and the freedom to apply the experience and expertise they have developed over the past four decades by creating programs that supplement federal climate change efforts will be invaluable and necessary if federal climate change programs are to succeed. A cooperative approach that retains state and local authority better utilizes state and local resources than an approach that vests the exclusive power to deal with climate change in the federal government. EPA’s decision to deny California’s waiver request to enforce its GHG emission reduction rules is a glaring example of how broad federal preemption of state and local climate change initiatives could cripple innovative and concrete state efforts to combat climate change. 72 If California’s waiver had been granted, it would have reduced California GHG emissions more than twice as much as the new federal CAFE standard would by 2016. 73 By 2020, the GHGs eliminated by California’s standards would have equated to taking 6.5 million cars off of the road. 74 Twelve states have adopted California’s program, waiting only for EPA’s approval of California’s waiver request to begin implementation. 75 Five additional states – Florida, Arizona, Nevada, Colorado, and Iowa — have gubernatorial commitments to adopt.76 Together these states represent approximately 45 percent of the population and 45 percent of the cars in the United States. If California’s rule were implemented in these additional 12 states by 2016, the result would be a reduction in GHG emissions that would be an 89 percent improvement over the new federal CAFE standards. 77 By 2020, the resulting reductions would be equivalent to the elimination of GHG emissions from approximately 22 million vehicles.78 Unless Congress intends to adopt emissions reduction standards more stringent than California’s proposed standards, preempting this effort will result in significantly fewer carbon reductions, or reductions achieved more slowly, a result we cannot afford. Preempting regional and state efforts to reduce GHG emissions in the electricity sector would also hamper the nation’s ability to achieve the degree of GHG emission reductions necessary to make a significant impact on climate change. For example, approximately 26 states use renewable portfolio standards (RPS) – policies that require utilities operating in a state to designate a portion of their power generation to come from renewable resources such as wind or solar energy – to reduce GHG emissions. 79 These states account for more than half of the electricity sold in the United States.80 Some of these programs are far-reaching. New York, for example, plans for 25 percent of its electricity to derive from renewable energy by 2013. 81 California has mandated 20 percent by 2010. 82 State RPSs also represent a consistent trend in state climate change mitigation activity – they “maintain many common design features and yet are tailored to the particular realities of each individual state.”83 Interestingly, the support for RPSs has been bipartisan. “Among the 22 RPSs established [as of 2006], 16 were enacted with a Republican governor, five with a Democrat, and one with an Independent.”84 States are very concerned that the federal government will undermine their progress in developing RPSs, and this concern crosses partisan and regional lines. 85 “In particular, state officials are opposed to any federal legislation that would preempt or constrain existing state policies and are very concerned about any steps that would penalize them for taking early actions.”86 A decision to enact complete preemption of state and local climate change programs would fly in the face of these concerns. Building codes, land use policies, and transportation policies will also contribute greatly to reducing GHG emissions. Energy use in residential, commercial, and industrial buildings constitutes 43 percent of U.S. carbon emissions. 87 Moreover, this percentage will increase if current trends are not reversed. “GHG emissions from the building sector in the United States have been increasing at almost two percent per year since 1990, and CO2 emissions from residential and commercial buildings are expected to continue to increase at a rate of 1.4 percent annually through 2025.”88 State and municipal energy codes are the primary way to promote energy efficiency in buildings. 89 By applying currently available technologies to new buildings, GHG emissions can be reduced 30 to 40 percent. 90 An effective climate change strategy requires state and local participation and commitment to reducing emissions, and that participation would be precluded by broad preemption of federal and state climate change programs. Local land use policies and transportation initiatives are also crucial to combating climate change. The transportation sector is responsible for about one-third of GHG emissions. 91 Urban sprawl contributes greatly to GHG emissions because it creates inefficient traffic patterns.92 To address this problem, local governments are investing in municipal fleets that rely on alternative fuels, improving mass transportation, and providing alternative means of transportation.93 In addition, local land use policies promoting higher-density and mixeduse developments have the potential to reduce GHG emissions significantly, because there is a direct correlation between the number of dwellings per acre and the level of GHG emissions released. Emissions per suburban households located in a density of 4 homes per acre are about 25 percent higher than in neighborhoods with 20 homes per acre. 94 Experience has shown that Congress does not want to go into the business of dictating state and local land use policies. Nor should it. It would therefore be particularly foolish for Congress to preclude states and localities from adapting their land use policies to achieve climate change protections that the federal government is not going to provide. The ‘Patchwork’ Argument: Smokescreen for Deregulation The notion that a patchwork of environmental protection requirements imposes an unacceptable burden on interstate commerce is both spurious and ahistorical. States have contributed significantly to the country’s efforts to protect public health since the country was founded. 95 The CAA, for example, was enacted only after California established automobile tailpipe standards and other states were working toward their own vehicle emission standards.96 The federal government only established energy efficiency standards for appliances after states began doing so. Acid rain provisions were added to the CAA only after states began imposing aggressive sulfur dioxide controls. 97 Regulated industries typically raise the patchwork argument only with respect to state requirements that are tougher than their federal counterparts, suggesting that deregulation is their true agenda. Nevertheless, business has simultaneously argued that devolution of federal authority to control environmentally damaging activities is desirable to state governments. If a patchwork of state requirements is truly anathema to business interests, then pressing for local control makes no sense – unless the agenda is to roll back federal regulation with the hope that weaker state regulation will take its place. 98 When it appears that state regulation will be stronger than federal regulation, however, industry suddenly cries foul. Put simply, industry favors the weakest standards – and will press for whatever forum – local, state, or federal – it perceives to be most aligned with its deregulatory agenda. Moreover, most industries, including the ones that are the most vociferous in their opposition to federal climate change regulation, have systems in place to ensure their compliance not only with different federal, state, and local laws, but also with the differing international legal regimes that affect their increasingly globalized business. The idea that large multinational companies are overburdened by more stringent state laws for administrative reasons is therefore not credible. Finally, presenting environmental regulation as an “either/or” proposition obscures the benefits of promoting a cooperative and potentially dynamic relationship among local, state, and federal authorities to protect public health and the environment. 99 Local, state, and federal governments routinely address issues that are simultaneously local, regional, national, and even international in nature. Indeed, the effects of environmental harm are often disparate, making their impact difficult to sort out. “Real-world” environmental federalism consists of a partnership between federal and state regulators, and an acknowledgement that different levels of government are best situated to take the lead on an issue at different times. Calls for complete preemption of state and local efforts ignore this real-world partnership and subvert the environmental protection potential it provides. It is hard to escape the conclusion that the proponents of complete preemption understand all too well the adverse implications of ousting state and local authority on the ability to combat climate change, and that their position is based primarily on their goal of doing whatever it takes to ensure that the steps necessary to address climate change will affect their own interests as little as possible. Conclusion Combating climate change is the greatest environmental challenge America and the world have ever faced. Indeed, it is not an exaggeration to say that all other environmental programs could look in retrospect like a dry run for this main event. Pushing state and local governments out of this effort not only will sabotage its effectiveness, but also would ignore forty years of painful lessons in how best to protect public health and natural resources in the wake of the unforeseen harms of industrial development. Continued adherence in the climate change context to historic cooperative federalism principles would not only preserve cherished federalism values. It also would generate long-run benefits to the health and welfare of the nation’s people that are likely to far outweigh whatever inconvenience might flow from a climate change agenda that is, in some respects, multi-level. If America expects to lead the world in this monumental effort, we must begin by honoring the constitutional structure of government in our own country.

### No Link – Constitution

#### USFG action is justified through multiple clauses in the Constitution

Portz 11

(John, Ph.D. in Political Science, Professor of Political Science; Interim Chair, Department of Political Science, Fulbright Scholar at Northeastern University, November 2011, “Federalism and Education Policy In the United States: Allocating Authority and Responsibility Among Levels of Government,” <http://www.puc-rio.br/catedrafulbright/downloads/federalism_and_education_policy.pdf>, Accessed: 7.4.17)VW

Does this leave the national government without a role in education policy? No, but from a constitutional perspective, the national government must turn to other, less specific, parts of the Constitution for its bases of action. For example, there are several important clauses or sections of the Constitution that create opportunities for a more expansive national role, if the national government should pursue such a path. These clauses include:  The “necessary and proper” clause empowers the national government to engage in activities needed – “necessary and proper” – to carry out existing powers.  The “general welfare” clause empowers the national government to engage in activities that support the general welfare of the country.  The “interstate commerce” clause allows the national government to regulate activities between the states. The “equal protection of the laws” clause in the 14th Amendment empowers the national government to remedy discriminatory actions that might exist in states, such as racial discrimination in the assignment of children to schools. These clauses raise the possibility that the national government might engage in activities beyond the ones specifically mentioned in the Constitution. If aspects of education policy, for example, are considered to be part of the “general welfare” or subject to “equal protection of the laws,” the national government might use this as a basis for direct involvement in education policy. Furthermore, Article VI of the Constitution states that the Constitution, and all laws passed by the national government, shall be the “supreme law of the land.” This statement appears to make clear that national laws are supreme over laws passed by state governments, should there be a conflict.

### No Link – Funding

#### USFG education funding is necessary and consistent with federalism – federal involvement is inevitable

Gregory and Kaufman 10

(Erin R., M.A., Dean, J.D. from the University of Michigan Law School, Founding Director of Education Law and Policy Institute, Director of Institute for Investor Protection, Spring 2010, Education Law & Policy, “Education and Federalism: The Role for the Federal Government in Education Reform,” http://www.luc.edu/media/lucedu/law/centers/childlaw/childed/pdfs/2010studentpapers/Erin\_Gregory.pdf, Accessed: 6.29.17)VW

Federal government involvement in education policy is inevitable as education continues to be at the forefront of national issues due to the United States’ declining global rankings.32 However, the role of the federal government should be limited to establishing national goals for education and providing funding in the form of incentives to states that are capable of meeting those standards as well as ensuring compliance with civil rights. The ideal role for the federal government, then, is to encourage states to come up with creative, practical solutions to improve education through rewarding success rather than punishing failures. Such a plan would require evaluation of progress through national testing and development of standards by the federal government rather than allowing states to come up with their own educational standards.33 An incentive program would not be coercive but would instead encourage states to develop innovative ways of meeting the national goals, rather than the NCLB system which encourages states to lower standards and avoid federal penalties. This type of incentive based answer to the education problem is entirely consistent with constitutional principles of federalism. Such a program would allow states to do what they do best—devising creative strategies to solve pervasive problems and tailoring the solutions to the unique needs of the population of that state—while the federal government facilitates innovation through deregulation.

### Warming UQ

#### The federal government supports state control of the environment in the squo

Henry 17

(Devin, B.A. in Journalism and Political Science, 1.18.17, The Hill, “Pruitt says his EPA will work with the states,” <http://thehill.com/policy/energy-environment/314786-pruitt-says-his-epa-will-work-with-the-states>, Accessed: 7.11.17)VW

President-elect Donald Trump’s pick to lead the Environmental Protection Agency (EPA) told a Senate committee on Wednesday that states should play a bigger role in environmental regulation. “I believe the role of the regulator is to make things regular,” Scott Pruitt said early in his confirmation hearing. “This public participation, cooperative federalism, the rule of law being the focus of how we do things at the EPA is center to restoring confidence in the EPA.” The main theme of Pruitt’s opening statement — that the EPA should work with states to protect clean air and water — was expected from Trump’s pick to be the nation’s top environmental regulator. Pruitt, Oklahoma's attorney general, is a frequent foe of President Obama's EPA. He has argued in legal filings that it overused its power as Obama increasingly focused on climate change regulations. Like most Republicans, he argued Wednesday that EPA rules have hurt jobs around the country. “Environmental regulations should not occur in an economic vacuum. We can simultaneously pursue the mutual goals of environmental protection and economic growth,” he wrote in the opening statement he filed with the committee. “But that can only happen if the EPA listens — listens to the views of all interested stakeholders, including the states, so that it can determine how to realize its missions while considering true pragmatic impacts of its decisions on jobs, communities and most importantly families.” Republicans support Pruitt’s approach, with Senate Environment and Public Works Committee Chairman John Barrasso (R-Wyo.) saying recent EPA work has “created broad and legally questionable new regulations which have undermined the American people’s faith in the agency.” “Far from being an enemy of the environment, Scott Pruitt has proven to be an expert at balancing economic growth with environment stewardship,” Sen. Jim Inhofe (R-Okla.), the former chairman of the committee, said, previewing Democratic arguments against Pruitt.

### AT: Disease I/L

#### Federalism hurts public health – inefficiencies, delays, and state differences

Weil 12

(Alan, JD, MPP, master’s degree from Harvard University’s John F. Kennedy School of Government and a law degree from Harvard Law School, editor-in-chief of Health Affairs, a multidisciplinary peer-reviewed health policy journal, elected member of the National Academy of Medicine and served six years on its Board on Health Care Services, trustee of the Consumer Health Foundation and a member of the Kaiser Commission on Medicaid and the Uninsured, previously served as executive director of the National Academy for State Health Policy, director of the Urban Institute’s Assessing the New Federalism Project, executive director of the Colorado Department of Health Care Policy and Financing, and assistant general counsel in the Massachusetts Department of Medical Security, 2.23.12, The New England Journal of Medicine, “The Value of Federalism in Defining Essential Health Benefits,” <http://www.nejm.org/doi/pdf/10.1056/NEJMp1200693>, Accessed: 7.12.17)VW

Of course, federalism has some costs as well. The primary weakness of the secretary’s approach is its potential inefficiency. One must ask whether it’s a good use of resources to have 50 individual states analyze the relative merits of 10 different options for EHBs while also considering the very complex matter of the fiscal liability that those options will create for the state.5 And in the current political environment, giving states yet one more choice creates yet another opportunity for opponents of the law to delay its implementation. The most common, but least convincing, argument against the secretary’s federalist approach has to do with equity. It is a truism that state flexibility will yield differences within the country and that those differences cannot be defended on the basis of differing basic human needs for health care services. But those inequities must be viewed in context. The law is quite specific regarding the composition of the EHBs. The degree of variation among states’ 10 options, and among the options that states ultimately select, is likely to be small. As the Institute of Medicine noted, the primary type of variation in health insurance products is in cost sharing (deductibles, copayments, and coinsurance), which defines the four benefit tiers outlined by the ACA but is unrelated to the choice of services included in the EHBs.

#### Federalism prevents effective responses to epidemics – fragmentation and disparities

Price 14

(Polly J., J.D. from Harvard, M.A. from Emory, Professor of Law and Associated Faculty, Department of History, Emory University, 2014, Legislation and Public Policy ,Vol. 17:919, “Sovereignty, Citizenship, and Public Health in the United States,” <http://www.nyujlpp.org/wp-content/uploads/2015/03/Price-Sovereignty-Citizenship-and-the-Public-Health-in-the-United-States-17nyujlpp920.pdf>, Accessed: 7.12.17)VW

Whatever one’s view of the desirability of immigration, governmental distinctions between citizens and non-citizens undermine public health in the United States in a number of ways. The federal and state governments confront a stark division of authority with respect to non-citizens: The federal government decides which non-citizens to admit into the country and the terms under which they may stay, while states must cover the cost of foreign nationals who present a public health threat within the United States. Local governments pay for U.S. diplomatic and humanitarian goals. Our system of federalism and a fragmented public health infrastructure result in the cost of health control measures falling on state and local governments, with uneven effectiveness and greatly disproportionate impact in some communities. The main impediment is thus systemic: the fragmented structure of public health agencies in the United States can prevent an effective response to even wholly local epidemics. Nonetheless, because immigration laws affect public health in many complicated ways, I suggest that we can make progress by addressing these externalities through creative approaches to immigration law.

### AT: Economy I/L

#### Federalism has no effect on economic growth at best and at worst it hurts economic growth – conclusive and statistical literature review of 449 peer-reviewed empirical models

Baskaran et al 16

(Thushyanthan Baskaran, Ph.D. in Economics, Lars P. Feld, Ph.D. in Economics, and Jan Schnellenbach, Ph.D. in Economics, Vol. 54, No. 3, July 2016, 1445–1463, Economic Inquiry, “Fiscal Federalism, Decentralization, and Economics Growth: A Meta-Analysis,” <http://onlinelibrary.wiley.com/store/10.1111/ecin.12331/asset/ecin12331.pdf?v=1&t=j48s2ndk&s=2e7c4411722392f1127395da28b12f1b00c2a5de>, Accessed: 6.22.17)VW

The argument on political innovation is not uncontested. Rose-Ackerman (1980) argued that information resulting from political experiments is a pure public good, implying free-riding incentives. Kotsogiannis and Schwager (2006) hold that self-interested representatives can even use policy innovations to increase their scope for extracting rents from office, because voters are uncertain about what could have been achieved with a different policy. As far as free-riding is concerned, Strumpf (2002) shows that the argument depends on the degree of heterogeneity between regions. As soon as regions become sufficiently heterogeneous, the learning externality loses relevance and free-riding ceases to matter. In light of these theoretical arguments, we can state that sign and magnitude of the effect of fiscal decentralization on growth are ambiguous. Different plausible transmission channels have been identified, but it is also likely that the relative importance of these channels is contingent on other factors, such as the level of development of the countries observed or the quality of their other political institutions. It will therefore be of interest to analyze whether the empirically observed effects depend systematically on the empirical methodology, the kind of countries that are present in the sample, or the way decentralization is measured. III. THE RESULTS OF PREVIOUS EMPIRICAL WORK The empirical studies on fiscal decentralization and economic growth can be largely distinguished by whether they use cross-country or single-country samples. We discuss these two strands of the literature in turn. Given the number of studies, we do not review each explicitly, but provide a comprehensive list in Tables 1–3. A. Cross-Country Studies The majority of cross-country studies interprets fiscal federalism as a decentralized organization of government activities and measures decentralization by the fraction of subfederal spending (revenue) from total public spending (revenue) using the International Monetary Fund’s Government Finance Statistics (GFS). This approach is problematic as theoretical analyses presume autonomy of subfederal decision making on provision and financing of public goods, while spending decentralization might simply indicate the extent of administrative federalism with states, provinces, or cantons providing public services according to federal mandates and financed by the federal government (Rodden 2004; Stegarescu 2005; Treisman 2002). As long as fiscal transfers from other jurisdictions (or proxies for autonomy) are not controlled for, the estimates for spending decentralization may thus be biased. Given the measurement problems, the authors of the early cross-country studies on the impact of federalism on economic growth unsurprisingly end up with ambiguous results (see Table 1). Davoodi and Zou (1998), for instance, find a weakly significant negative correlation between decentralization and the average growth rate of gross domestic product (GDP) per capita for a sample of 46 countries and the period from 1970 to 1989. This effect is not significant for the subsample of developed countries. The negative effect for the subsample of developing countries is robust, though only weakly significant. According to these estimates, an additional decentralization of functions by 10% reduces the growth of real GDP per capita in developing countries by 0.7–0.8 percentage points. Woller and Phillips (1998) do not report a robust relation between economic growth and decentralization either, using a sample with a lower number of developing countries and a shorter period. They also analyze, in addition to the 5- year averages of growth, the annual growth rates in a panel. Both studies use fixed effects (FE) models. In contrast to Davoodi and Zou (1998), Woller and Phillips (1998) consider a common time trend. Iimi (2005) uses more recent data for 51 countries, average growth between 1997 and 2001, and applies an instrumental variables (IV) approach. Spending decentralization turns out to be highly significant such that a 10% higher decentralization of spending increases growth of real GDP per capita by 0.6 percentage points. In subsequent cross-country studies, the focus of the analysis shifts to revenue decentralization. While earlier studies have not been interested in exactly measuring the extent of actual tax autonomy of subfederal jurisdictions, the collection of data according to the Organization for Economic Co-operation and Development (OECD) (1999) methodology, in particular by Stegarescu (2005), allows for capturing to what extent subfederal jurisdictions determine the tax rates or bases of the tax revenue collected. Thornton (2007) uses the measure originally constructed by the OECD (1999). These data are only available for 19 countries such that he analyzes a cross-section of average GDP growth between 1980 and 2000. This in turn implies that the results, which indicate that there is no robust relation between fiscal decentralization and economic growth, might be distorted due to unobserved heterogeneity and/or small-sample biases. Bodman (2011), however, corroborates these findings using the Stegarescu annual data and reports that tax decentralization has no robust significant effect on economic growth for 18 OECD countries and a yearly panel between 1981 and 1998. These findings are contested by subsequent studies, but with contradictory results. Baskaran and Feld (2013) and Feld (2008) also use the new annual data provided by Stegarescu (2005). They find that subnational tax autonomy has a moderately, but relatively robust negative effect on real GDP growth per capita in a panel of 23 OECD countries between 1975 and 2008. Gemmell, Kneller, and Sanz (2013) use almost the same annual panel data set, that is, 23 OECD countries between 1972 and 2005, particularly focusing on the Stegarescu data of revenue autonomy. Overall, their study is sophisticated as they estimate pooled mean group regressions and IV regressions with third and fourth lagged values as instruments. According to their results spending decentralization tends to reduce economic growth, while a decentralization of revenue on which subfederal governments autonomously decide significantly increases growth. These contradicting results may not be surprising given the different methodologies used. Asatryan and Feld (2015) follow a Bayesian model averaging (BMA) approach, which tests the robustness of the tax autonomy effect on economic growth, using the Stegarescu data and controlling for spending decentralization, by allowing any subset of up to 25 potential growth determinants to enter the regressions. Overall, more than 33 million different models are estimated by this approach. The initial negative effect of tax autonomy on GDP growth is not robust to the inclusion of FE, to the use of 5-year averages, and to influential observations, in particular Switzerland. B. Single-Country Studies The empirical results concerning the impact of decentralization on economic growth for individual countries at first sight are no less ambiguous. Asking which type of internal arrangement of a country favors regional development, analyses have been conducted for China, the Ukraine, India, Russia (Table 2), and the United States, Spain, Switzerland, and Germany (Table 3). Zhang and Zou (1998, 2001), for example, report a significantly negative effect of expenditure decentralization on economic growth in 28 (29) Chinese provinces, using annual data between 1987 and 1993. Jin, Qian, and Weingast (2005), however, find a weakly significant positive effect of expenditure decentralization on economic growth for almost the same sample of Chinese provinces over time. The most important difference between the studies—aside relatively small differences in the explanatory variables—is that Zhang and Zou (1998, 2001) do not use time dummies. Consequently, the common positive and negative economic shocks in China are inadequately controlled for as compared to Jin, Qian, and Weingast (2005). Qiao, Martinez-Vazquez, and Xu (2008) report similarly positive growth results for expenditure decentralization even without any FE. Lin and Liu (2000) corroborate the result of a positive impact of decentralization on economic growth in Chinese provinces for the period 1970 to 1993 also for the revenue side. Moreover, a higher responsibility for public budgets at the provincial level is associated with increased economic growth. These authors, too, use time dummies in addition to cross-section FE. Jin and Zou (2005) present evidence that a higher divergence between local expenditure and revenue increases growth. The relevance for the estimates of using time dummies points to the strong economic dynamics in China. Structural variables cannot exclusively cover the sometimes enormously high Chinese growth rates, such that dummy variables for the individual years are necessary for specifying the model. The fact that Zhang and Zou neglect them must be interpreted as a mis-specification of the model. Thus, for China, decentralization of government activity has rather a positive impact on economic growth. This assessment is corroborated by the time series analysis by Feltenstein and Iwata (2005). Much the same holds for individual developed countries. Exploring American economic development between 1790 and 1840, Wallis (1999) argues that fiscal federalism was an important institutional precondition that fostered economic growth of the United States. In a time series analysis for the U.S. general government from 1951 to 1992, Xie, Zou, and Davoodi (1999) claim that the United States find themselves in a decentralization equilibrium because differences in decentralization at the state level or at the local level do not have statistically significant effects on real GDP growth. Akai and Sakata (2002), however, offer evidence to the contrary for U.S. states. Taking into account additional explanatory variables and various indicators for the degree of fiscal federalism, they underline the positive influence on economic growth. If expenditure decentralization increases by 10%, then the growth of GDP per capita increases by 1.6–3.2 percentage points. However, decentralization on the revenue side and indicators for fiscal autonomy of subnational levels, measured by the share of own revenue in total revenue, do not have any significant impact. Stansel (2005) develops a different approach by testing the impact of local fragmentation on growth of local real per capita money income. Similarly, Hatfield and Kosec (2013) report evidence that a doubling of the number of county governments in a metropolitan area increases the average annual growth rate of earnings per employee by 17% in the period from 1969 to 2006. These studies are related to the fragmentation argument by Brennan and Buchanan (1980) according to which a higher fragmentation of a polity into different jurisdictions increases the intensity of interjurisdictional competition and thus restricts Leviathan governments. Indeed, Hatfield and Kosec (2013) interpret their findings as the result of interjurisdictional competition. Feld, Schnellenbach, and Baskaran (2012) study structural change in Germany. They proxy for structural change by the declining share of relative employment in steel and mining industries in the regions of Saarland (in Germany), Lorraine (in France), and Luxembourg. In a time series analysis from 1961 to 2004, they report a (Granger-) causal link from employment shares in declining industries to intergovernmental transfers, but not vice versa. It thus appears that transfers from the fiscal equalization system do not promote structural change, but respond to the declining relative employment share in old industries (Feld and Schnellenbach 2011). IV. QUANTITATIVE LITERATURE REVIEW In the next two sections, we discuss the literature on decentralization and economic growth more systematically by conducting a quantitative literature review. For this, we have constructed a database consisting of information on altogether 449 empirical models estimated in the 31 studies listed in Tables 1–3. Our goal has been to include all empirical studies that have been conducted until 2013, identifying relevant studies by using both academic databases and Google searches. The database encompasses both published papers and the latest unpublished working paper versions.1 A. Descriptive Statistics on the Studies Included The literature on fiscal federalism and economic growth is heterogeneous along many dimensions. We coded the characteristics of the studies included in our database with dummy and continuous variables. There are some generalizations involved when classifying individual studies with their idiosyncratic characteristics into somewhat general groups. For example, while all studies classified as using crosscountry data have multiple countries in the sample, they vary along many other dimensions. The major advantage of a meta-analysis compared to traditional reviews is that the independent effect of each study characteristic can be explicitly retrieved. With this advantage of meta-analyses in mind, we describe in the following the broad characteristics of the 31 studies in our database quantitatively. First, both single-country and cross-country studies have been conducted on decentralization and growth. Each of the two groups of studies can be further subdivided according to whether they consider developed or developing countries, or, in the case of cross-section studies, both. Within the subgroup of single-country studies, a further differentiation according to individual countries is possible. Overall, 16 single and 15 cross-country studies make up our database. Table 4 provides crosstabulations of single- and cross-country studies against studies on developed and developing countries. Out of the 15 cross-country studies, 3 are exclusively on countries from the developing world, 7 are exclusively on countries from the developed world, and 5 consider countries from the developing and the developed world at the same time. Out of the 18 single-country studies, 11 cover developing and 7 developed countries. There are 12 studies (3 cross-country and 9 single-country), which exclusively focus on developing countries. The majority of these studies (seven) are single-country studies for China. One of these studies, Zhang and Zou (2001), provides separate analyses for China and India. This is the reason why in Tables 2 and 3, the number of rows sum up to 17. On the other hand, there are 14 studies exclusively focusing on developed countries. Overall, it appears that single-country studies are primarily conducted with developing countries, while cross-country studies tend to focus on developed countries. B. Summary Statistics on Estimated Models In each of the 31 studies, a varying number of models are estimated. These regressions result altogether in 449 point estimates of the effect of decentralization on economic growth. Because we will focus on these point estimates in the meta-regressions, we provide separate summary statistics for them. The majority of studies in our database, 21, are journal articles, 5 are unpublished (discussion papers, working papers, etc.), 2 are master’s or PhD theses, and 1 is a book chapter. According to Figure 1, most of the estimates, around 85%, in our sample thus derive from journal articles. These models, having passed peer review, should satisfy some minimum quality standards. Around 9% are obtained from unpublished manuscripts and discussion papers, while all other publication types together contribute around 6% to the sample. Given the large number of estimates published in journal articles, the effects of publication bias usually reported in meta-studies should be limited (Feld and Heckemeyer 2011; Stanley 2005). The point estimates can be further differentiated by the particular models specified. Figure 2 provides information as to whether the dependent variable and the decentralization variable have been specified in level or log form. This figure shows that the majority of point estimates originate from models specified in the level-level form, other specifications are quite rare, and not a single model was estimated with a specification that facilitates an interpretation of the effect of fiscal decentralization on growth as elasticity, that is, with a log-log specification. In Figure 3, we collect information on the type of data used. The majority of estimates use panel data. However, there are also a significant number of estimates deriving from cross-section models. Time series models, on the other hand, are rare. According to Table 5, almost half of the point estimates are from models where only FE for cross-section units are included. A small share of the estimates, around 2.5%, derive from models with only time FE. About 25% of all estimated models include both cross-section and time effects. About 16% of models consider nonlinearities, notably interaction and quadratic terms. However, none use both simultaneously, that is, about 14% of the models use quadratic terms and about 2% exclusively interaction effects. Several measures of decentralization have been used in the literature, for instance, expenditure and revenue shares, the divergence between central and subnational government spending or revenue, and measures that capture the tax autonomy of subnational governments. Figure 4 provides information on the relative frequency of these measures. The expenditure share of subnational governments or closely related measures is used as the decentralization variable in about 44% of models and revenue decentralization is used in about 22% of models. The OECD measure (OECD 1999) that takes the extent of subnational tax autonomy into account is used in 5% of the models, and each of the remaining measures, except the (weighted) average of expenditure and revenue decentralization, is used in 5%–10% of all estimated models. The distribution of the estimated coefficients is depicted in Figure 5. Since the estimated coefficient is a measure with a dimension, the spread originating simply due to the use of particular units can be substantial. We found that the minimum value of the estimated coefficients in our database is −3623 while the maximum is +5391. In order to maintain some informative content in the histogram, we have excluded extreme outliers, and included all coefficients with an absolute value of less than 10. Moreover, we have not used coefficient estimates from nonlinear models as they do not result in a single relevant estimate (most studies operating with nonlinear terms also do not provide estimates at some characteristic values, for example, the sample average). We have also excluded one estimate from Zhang and Zou (2001) because it had inconsistent signs for the coefficient and the corresponding t-statistic. Thus, only 367 of the 449 observations are used for this histogram. Figure 6 presents a histogram on the t-statistics or, respectively, the z-statistics, depending on what is reported in the original studies. (Note that we use in the following the term t-statistic to describe both t- and asymptotic z-statistics.) This histogram does not exclude outliers. The number of observations is only 376, that is, less than the full sample of 449 observations. This is again due to the fact that nonlinear models do not result in one single relevant estimate and because most authors do not provide separate t-statistics at some characteristic value. Nor do they provide the variance-covariance matrix of the estimated coefficients, so that we cannot calculate the t-statistics on our own at such characteristic values. As in the histogram for the estimated coefficients, we find that the t-statistic histogram is centered around zero. In Figure 7, we provide a histogram on the number of control variables other than the constant, country or time FE. On average, a model has about 7–8 controls. However, the dataset also contains estimates from bivariate regressions and from models with a more extensive list of control variables. In Figure 8, we depict a histogram on the number of observations showing that a large number of models have been estimated with less than 100 observations. On average, a study has about 250 observations. There are also models with more than 1,000 observations. V. META-REGRESSIONS A. The Meta-Regression Model In this section, we study how the idiosyncratic characteristics of an empirical model determine the magnitude and the sign of the estimated effects. That is, we explore how the choice of a particular measure of decentralization, a particular set of countries, or a particular specification affects the estimated effects. The most widely used technique for explaining heterogeneous findings across models is meta-regressions.2 The applicability of the meta-regression approach in the current context relies on the premise that individual studies estimate models whose specification roughly resembles the following equation: (1) Y = Xφ+γDEC + ν, where Y is a measure of economic growth, X is a vector of control variables including a constant, DEC a measure of decentralization, and ν is an error term that either conforms to the assumptions of the classical regression model or can be transformed appropriately. By fitting the model to the data by some technique, for example ordinary least squares (OLS), an estimate of the true effect of decentralization on economic growth, ̂γ, is obtained. This framework suggests that a meta-regression model can explain diverse findings in the original regressions. Consequently, a meta-regression model for our sample of studies could be specified as follows: (2) ̂γij = a + Zijβ+εij (i = 1, … 35; j = 1, … , L) where ̂γij is the estimated coefficient j in study i, Zij is a vector of variables which describe the characteristics of the particular model that resulted in the estimate ̂γij, and εij is the metaregression error term. A problem with using the plain coefficients is that different studies use different units in the variables through which they operationalize decentralization and growth. The estimated coefficients are not dimensionless and therefore not directly comparable across studies without some standardization. Therefore, we use the variability of the estimate as a scaling parameter, that is, instead of the plain coefficient in model (2), the t-statistic is used as the dependent variable in our meta-regressions. The t-statistic is a dimensionless measure that can be compared across different models. We are aware of the fact that the t-statistic itself is not a perfect measure. For example, it is sensitive to the number of observations used in the original regression. Nevertheless, a division of the coefficient with its standard error is the most straightforward strategy to ensure that the dependent variable is independent of scaling. Moreover, the statistical significance of an estimated coefficient relies on the t-statistic, and if there is publication bias in favor of significant estimates, we should expect that researchers care about the t-statistics rather than about the coefficients as such. We specify our meta-regression model therefore as: (3) tj = ̂γj∕sdj =α+ Zjβ+ηj (j = 1, … L) . The control variables (i.e., the characteristics of the original models) that we include in our meta-regression models are listed in Table 6. Results Ideally, we should rely only on results from FE models to establish how the t-statistics change with varying model characteristics within a given study. However, a number of study characteristics cannot be included in FE models because they do not vary within studies, such as the publication status or the type of countries (developed vs. developing) included in the sample. Therefore, in addition to FE models, we estimate pooled OLS and random effects (RE) models. In Table 7, pooled OLS estimates are denoted as OLS1 and OLS2, RE estimates as RE1 and RE2, and FE estimates as FE1 and FE2. Hypothesis tests are always based on heteroscedasticity robust standard errors. Standard errors are additionally clustered at the study level in the pooled OLS models. The results reported in Table 7 confirm that several study characteristics significantly influence the t-statistics. First, estimates based on models using subnational expenditures as share of total expenditures, subnational revenues as share of total revenues or the OECD tax autonomy measure as proxies for decentralization find larger (more positive) t-statistics than those based on remaining proxies for decentralization, which are treated as the baseline (however, the coefficient for the OECD measures is not significant). The group of proxies that represent the baseline comprises several different nonstandard decentralization measures.3 Unlike the standard proxies mentioned above, the remaining proxies are thus not a well-defined category. One reasonable interpretation of our meta-regressions is thus that their baseline is the average effect of the nonstandard proxies. The decentralization proxies that are explicitly stated can then be interpreted as the effect net of the average effect of all nonstandard proxies. Second, models using (time or country) FE report significantly smaller t-statistics. Interestingly, the Observations variable is insignificant. Generally, it is likely that the number of observations used for a model has a significant effect on the t-statistic because, ceteris paribus, standard errors should decrease as the size of the sample increases. However, recall that we use the raw t-statistics as dependent variables (and not the absolute value), and thus any increase in precision may on average cancel out if both 3. These are, for example, divergence between expenditure and revenue decentralization, the weighted average of expenditure and revenue decentralization or non-OECD tax autonomy measures of own-source revenues. negative and positive coefficients “benefit” equally from the increase in precision.4 Third, models using a level-log specification display higher t-statistics than models using the linear-linear one; the estimated coefficient is significantly positive in the FE specifications. We also find that models in which the extent of political freedom is controlled for display higher t-statistics. In addition, the results suggest that controlling for total government revenues or expenditures as share of GDP leads to significantly smaller t-statistics. The estimated models that use data from a single country tend to produce higher t-statistics. However, this conclusion relies on the results in the pooled OLS and RE models, as the single-country dummy cannot be included in the FE models. Any attempt to account for the possible endogeneity of fiscal decentralization, typically by means of an IV strategy, tends to increase the estimated t-statistic, but the coefficient estimate for control for endogeneity variable in the metaregression is only significant in model OLS2. Finally, it seems to matter which country is studied. In particular, models using data from China, Germany, or Switzerland find smaller t-statistics than studies for Russia, India, Spain, and Ukraine (which comprise the base group). For China, this even holds when we include study FE. However, only Zhang and Zou (2001) display within-study variation for this dummy. One drawback of the previous regressions is that published and unpublished studies are analyzed together as it is possible that the impact of some study characteristics varies between published and unpublished studies. For example, editors who are ideologically biased toward centralization may more readily accept studies that find a more positive t-statistic (Feld and Heckemeyer 2011; Stanley 2005). If this holds, then researchers have an incentive to report only those models that are in line with such biases, and papers that have been published have (apart from obvious quality differences) different characteristics than unpublished papers. To explore whether our results are affected by such considerations, we re-estimate Equation (3) separately for published and unpublished studies. Note that some control variables cannot be included in each of the two sets of regressions because there is sometimes no variation within the subsamples. Most obviously, the Published dummy has to be dropped because both subsamples cannot, by definition, vary in this variable. In addition, we also found that there is no or only little variation within the unpublished subsample for the Level-log specification, Log-level specification, Freedom, Governance, and the country dummy variables. The results for the published and unpublished subsamples are reported in Table 8. They suggest that the relation between study characteristics and estimated t-statistics differs somewhat between published and unpublished studies. The effect of including cross-section FE, for example, tends to be negative within the group of published studies, but significantly positive within the group of unpublished studies. Second, using the OECD measure of decentralization leads to significantly higher t-statistics within the class of unpublished studies but not within the class of published studies. Third, the number of control variables is positively related to the t-statistic for unpublished studies while being insignificant in the group of published studies. Also controlling for endogeneity has significantly different effects on the t-statistics in the group of published versus unpublished studies. While this modeling choice has either no or a slightly positive effect on the estimated t-statistics in the group of published studies, it has a significantly negative effect in the group of unpublished studies. Such diverging results between published and unpublished studies suggest that there are significant differences between these two groups. This might on the one hand indicate that the publication process is indeed effective in distinguishing between high-quality and low-quality studies. On the other hand, they might also suggest the presence of publication bias. Finally, we explore in Table 9 whether study characteristics are equally important for the sign of the estimated coefficients as for the t-statistics. We thus estimate the baseline models after replacing the t-statistic with a dummy for whether the estimated coefficient is positive as dependent variable in the meta-regression. Given that results ostensibly differ according to whether a study is published or not, we again differentiate between published and unpublished studies. We observe, first, that as before results differ to some extent between published and unpublished studies. Moreover, results are not much different qualitatively. For example, using the OECD measure for decentralization increases the probability of finding a positive effect significantly among the unpublished studies, even though we also observe a positive coefficient in the FE model for published studies. Including cross-section FE tends to decrease the likelihood of estimating a positive coefficient among published studies, while being neutral among unpublished studies. Thus, while there are some differences compared to the models where t-statistics are the dependent variables, using a dummy for positive coefficients produces qualitatively roughly similar results. Overall, our meta-analysis leads to three conclusions. First, the choice of the variable with which decentralization is measured is important for the sign and significance of the estimate. Using traditional expenditure and revenue decentralization measures leads to larger t-statistics and thus to more significant results than other measures of fiscal decentralization. The effect of the OECD style measure, which takes into account subnational tax autonomy, has diverging effects in published and unpublished studies. It tends to be insignificant in the published subsample and increases t-statistics in the unpublished subsample. Related to this observation, the second conclusion that follows from our results is that the impact of study characteristics varies to some extent between the groups of published and unpublished studies. In particular, including FE tends to lead to negative coefficients within the group of published studies, but positive ones within the group of unpublished studies. Finally, our results also suggest that the inclusion or omission of certain control variables significantly influences the estimates. In particular, the inclusion of a variable measuring political freedom and controlling for either total government revenues or expenditures leads to significantly smaller t-statistics. VI. DISCUSSION OF THE RESULTS AND CONCLUDING REMARKS Our review of theoretical and empirical studies on fiscal decentralization and economic growth and the meta-analysis of the estimated effects provides interesting insights into the empirical literature and partial explanations for the sometimes widely diverging results. For example, single-country studies tend to find a positive effect of decentralization on growth. This may be because they are able to analyze the impact of decentralization within a common institutional framework, whereas cross-country studies may have more difficulties in isolating the effect of decentralization from other institutional determinants of economic growth. In general, our meta-regressions show that the idiosyncratic characteristics of the original empirical models and the sample used to estimate them affect the results significantly. Our results also suggest that future empirical research on the relationship between decentralization and economic growth needs to improve on the empirical specifications. According to our meta-regressions, the sign and significance of the estimates varies according to the choice of control variables. It is therefore imperative to devote additional theoretical effort to establishing the transmission channels through which decentralization may affect economic growth. This will allow empirical researchers to identify more appropriate specifications for their models. Furthermore, the importance of including FE must be discussed as well. Finally, our meta-regressions show that the particular choice of the empirical measure for decentralization has a large effect on the t-statistic. Therefore, no final agreement can be reached regarding the impact of decentralization on economic growth without a consensus as to how to measure decentralization in the first place.

### AT: Terrorism I/L

#### There’s no trade off and the perm solves best – state and federal law enforcement can work together

Mayer 12

(Matt, former Acting Executive Director, Office of State and Local Government Coordination at the U.S. Department of Homeland Security, former Counselor to the Deputy Secretary of the U.S. Department of Homeland Security, Visiting Fellow on Domestic Security Issues at the American Enterprise Institute, 3.26.12, Heritage Foundation, “Federalism Allows Law Enforcement to Determine Counterterrorism Policies That Work Best,” <http://www.heritage.org/terrorism/report/federalism-allows-law-enforcement-determine-counterterrorism-policies-work-best>, Accessed: 6.29.17)VW

State and local law enforcement entities are not displaced by federal authorities (except in some very narrow areas of national control) and instead retain their inherent sovereign authority to design counterterrorism programs that are tailored to the needs of each community. These needs are typically defined by demographics, risk assessments, community norms, and other factors unique to each jurisdiction. The ideal outcome for Americans is one where there is strong cooperation and true partnering between the FBI and other federal law enforcement agencies and state and local law enforcement entities. We are getting closer to that ideal with each passing year.

### Constitution UQ

#### Obama already destroyed federalism as per the Constitution – Obamacare, tax credits, union fees, cost sharing subsidies, and immigration

CBC 17

(Crawford Broadcasting Company, 2.20.17, “Federalism and the Separation of Powers,” <https://crawfordbroadcasting.com/federalism-and-the-separation-of-powers/>, Accessed: 6.26.17)VW

The Obama Administration says Rivkin and Foley have “spurned this core Constitutional principle.” Then President Obama aggrandized executive power at the expense of Congress and the states. The Obama Administration and our former President rewrote the laws and disregarded the Constitutional duty to faithfully execute them. The infamous Obama PEN AND PHONE literally rewrote the Constitution. With regard to ObamaCare, Obama without compunction delayed statutory deadlines. The former President extended tax credits to groups Congress never intended. Obama and company exempted unions from fees. The former President and the agency Health and Human Services (HSS) expanded hardship waivers beyond even recognition and even created certain preferences for certain employers. In short, Obama twisted ObamaCare to suit his own purposes and utterly ignored Congress in the process. Obama even usurped Congress power of the purse, spending billions for cost sharing subsidies that pay ObamaCare insurers for subsidizing deductibles and copays. In the process, Obama and HSS shifted monies which were then appropriated for other purposes. His actions were so egregious that the House of Representatives even sued to defend its Constitutional prerogatives (the power of the purse) which caused the federal courts to rule against the administration, but too little too late. The Obama Presidency, in an attempt to permanently change the balance of power and elevate the Presidency, issued Executive Orders which exempted five million illegal immigrants from being deported. That so even though Congress had unequivocally declared that all such illegals were in fact eligible for deportation. Not done, Obama waived the mandatory work requirement of the 1996 welfare reform. In his infinite wisdom, he redefined sexual discrimination under Title IX, forcing schools to allow transgender students to use bathrooms of their non-biological gender and threatened to withdraw funds if colleges refused to reduce any due process protections for individuals accused of sexual assault! This power hungry President ran roughshod over the Constitution any time and in any way he could. Obama in unconstitutionally elevating the Presidency exhibited a particular disdain for the United States Senate and its advice and consent duty. With impunity, Obama made unilateral appointments to the National Labor Relations Board (NLRB) while the Senate was in session and perhaps the most unconstitutional and worst decision Barack Hussein Obama made was to UNILATERALLY commit our great nation to a most unpopular nuclear treaty with Iran utterly bypassing the Senate’s treaty ratification power. Obama did whatever he wanted with that horrendously unconstitutional PEN AND PHONE. President Barack Hussein Obama struck serious blows at the states and consequently federalism. The Obama EPA rewrote the 1970 Clean Air Act by ordering states to revamp electricity generation and the power distribution infrastructure. The Obama EPA also rewrote the 1972 Clean Water Act, claiming vast new power to regulate ditches and streams under the notion that they are “navigable waters.” Those acts of Presidential commission were followed by other acts of omission. Obama and our various agencies refused to enforce existing federal drug laws which at least indirectly empowered states to legalize the use of marijuana. The Obama Administration in so many ways would be characterized, the true legacy of the man with which he was almost obsessed, by indeed a Presidential disdain for the separation of powers. The Obama Administration was emboldened and enabled by the media an academia. They encouraged the former President’s unconstitutional behavior simply because they supported its politics and policy agenda. In the face of that usurpation of power, the Framers of the Constitution expected members of Congress to jealously defend Congressional power against executive encroachment, even if that President came from the very same political party. Control, said the Framers, the unconstitutional and egocentric ambition of any President. They forgot the words of Founder James Madison who said: “Ambition must be made to counteract ambition. The interest of the man must be connected with the Constitutional Rights of the place.” The Founder so feared a runaway President, egocentric and narcissistic, ambitious to the extreme like Franklin Delano Roosevelt (FDR) and Barack Hussain Obama that they charged the Congress with protecting and defending the balance of powers. Obama was so aloof and independent that, in his 2014 State of the Union Address, he said that he would implement his agenda: “Wherever and whenever I can.”

### Kritik – Racism

#### Federalism exacerbates racial inequality – stagnates progress and legitimizes racial stratification

Miller 10

(Lisa L., Ph.D. in Political Science, Visiting Scholar at the Program in Law and Public Affairs in the Woodrow Wilson School of Government at Princeton University, (Fall 2010), Law and Society Review, “The Invisible Black Victim: How American Federalism Perpetuates Racial Inequality in Criminal Justice,” <http://www.eagleton.rutgers.edu/research/documents/Invisible_Black_Victim.pdf>, Accessed: 7.8.17)VW

Abstract The promise of civil rights is the promise of inclusion and yet the vast disparity in incarceration rates between Blacks, Latinos and whites stands as an ugly reminder of the nation’s long history of race-based exclusionary practices. In this paper, I argue that an important aspect of understanding race and the law in the 21st century is an appreciation of the American federal system that structures legal authority, political mobilization and policy solutions and serve as important and overlooked obstacles to more complete and sustained racial equality in crime and punishment in the United States. In contrast to the conventional wisdom about the role of the national government in protecting the rights of minorities and other disadvantaged groups, I suggest that crime and justice are arenas where the nationalization of issues has left the most important constituents behind. In fact, local crime politics provides a space in which there is regular and ongoing articulation of the inclusionary goals of the civil rights agenda and sustained efforts to move forward in realizing that agenda through meaningful community involvement in promoting public safety, economic development and social justice. This paper explores these themes and offers a discussion of the linkages between federalism, racial inequality and crime, victimization and punishment. I. Introduction One of the most discouraging facts of racial inequality at the dawn of the 21st century in the United States is the disproportionate impact of crime, violence, arrest and incarceration on African-Americans and Latinos compared to Whites. While one in 106 White men over the age of 18 was incarcerated in 2007, the figure for Latino men is one in 36, and for African-American men it is a staggering one in 15 (Bureau of Justice Statistics). At virtually any point in the justice system, Blacks and Latinos are substantially over-represented relative to their proportion of the population (Walker, Spohn and DeLeone 2006). At the same time, Blacks and Latinos also experience crime and violent victimization at far higher rates than Whites. Overall homicide rates for blacks are over seven times that of whites and the homicide rate for black males 18-24 is more nine times that of whites of the same age (Bureau of Justice Statistics). There is strong empirical evidence that both victims and incarcerated populations are heavily drawn from poor areas with high concentrations of racial minorities, and that this concentration has serious consequences for children, families, marriage, neighborhood vitality and economic opportunity (Clear 2007). The promise of civil rights is the promise of inclusion and yet these vast disparities stand as stark reminders of the nation’s long history of racist exclusionary practices. How are we to make sense of these disparities half a century after Brown v. Board of Education, Civil Rights Act of 1964 and the Voting Rights Act of 1965? The alarming data on minorities, crime and victimization undermine claims of racial progress and threaten to limit or even reverse the movement towards greater racial equality. While we know much about how individual racial attitudes shape preferences and legal norms on crime and violence, and that developments in law and order have often traded on racial cues, we know much less about how America’s racialized past continues to provide mechanisms for social policymaking and legal decision-making that perpetuate such deep inequities (see Murakawa 2005; Gilliam and Iyengar 2000; Mendenberg 1997; Provine 2007; Wacquant 2001; Weaver 2007). I argue that no general account of race, inequality, crime and punishment in the United States is complete without an understanding of the distinctive character of American federalism.1 Federalism in the United States was forged in part as a mechanism for accommodating slavery and it facilitated resistance to racial progress for blacks long after the Civil War (Dahl 2003; Finkelman 1981; Frymer, Strolovitch, Warren 2007; Katznelson 2005; Lieberman 2005; Lowndes, Novkov and Warren 2008; Riker 1964). American federalism limits the authority and political incentives of the central government to address a wide range of social problems that give rise to crime and diffuses political power across multiple venues that make it difficult for the poor and low-resources groups to access decision-making. As a result, federalism renders largely invisible the only political terrain – urban areas – in which minority victims are routinely visible, both as victims of violence and political and economic marginalization. In order to address racial inequality in criminal justice, advocates for racial progress must overcome a dizzying array of fragmented lawmaking venues and commandeer the lawmaking powers of the central government, formidable tasks that have usually occurred when a confluence of exogenous factors, such as wars, social movements, shifts in demographics, economic catastrophe or other calamities have come into play (see Feeley and Rubin 2008 for a related discussion). Conventional narratives of federalism and racial inequality in the U.S. typically focus on the problems of regional politics at the state and local levels and the successes of national political strategies in forcing these governments to accept more equitable legal standards and political outcomes. In contrast, the analysis of crime, law and political mobilization presented here suggests that the limitations of American federalism run far deeper, and are not confined to the parochialisms of regional politics. For much of the nation’s history, American-style federalism has allowed the national government to escape pressure and responsibility for addressing inequality and stagnation in racial progress (see Riker 1964). Today, it continues to winnow debates about crime and justice in ways that undermine the political voice, representation and empowerment of those most affected by crime and criminal justice – urban racial minorities. The effect of federalism on crime and punishment is to reinforce existing racially-stratified access to power by: Balkanizing mobilization efforts among urban minority groups that would otherwise be natural allies; diffusing political pressure about poverty across a wide range of political and legal venues; and limiting the scope and tenor of the central government’s power to address social problems. The nature of the American federal system thus makes it difficult to see disparities in crime and punishment as linked to broader socio-economic patterns of racialized policymaking and the reframing of crime and punishment from local to national venues changes not only the participants involved but also the very nature of the problem itself, such that minority interests are at best obfuscated and, at worst, rendered invisible. This paper proceeds in four sections: I begin with a more detailed discussion of the features of American federalism that impose obstacles to the political voice of urban minorities for addressing crime and violence. Then, drawing on congressional hearings data, I investigate the interaction of federalism and group dynamics in national politics in order to understand how minority political mobilization and Blacks as victims of long-standing racialized practices of exclusion are largely obscured. Third, I compare this to the political mobilization around crime and violence in two urban areas, Philadelphia and Pittsburgh, to identify the primary players, problem definitions and legal frames presented to lawmakers in these venues. While the two sites represent a small slice of the urban minority experience, they provide an illustration of the issues, politics and political agitation that characterizes many urban centers (see Gregory 1999; Anderson 1999; Lyons 1999; Carr, Napolitano and Keating 2007). In this context, we find a wide range of groups fighting their way into the political process, including citizens representing low-income, minority neighborhoods. I conclude with a discussion of how the nature of the American federal system makes it difficult to see disparities in crime, violence and punishment as linked to broader socio-economic patterns of racialized policymaking and how recognition of these features of the U.S. political system might promote productive political engagement on racial equality. II. Federalism, race and criminal justice disparities One of the most common explanations for persistent racial inequities in crime, punishment and criminal justice is that they represent a continuation of the long history of exclusionary practices in the United States beginning with slavery, continuing through the Jim Crow south, white flight and race riots in northern ghettos, and culminating most recently in the prison state. Analysis of congressional drug policy, for example, illustrates how race and ethnic imagery have long been smuggled into drug policy debates and can be seen in contemporary discourse about crack cocaine and inner-city blacks (Provine 2007; see also Morone 2003). Others have drawn attention to the interaction between the civil rights movement, urban riots, moral panics and exploitation of the law and order issue by political parties (Barker 2006, 2009; Beckett 1997, Flamm 2005; Jacobs and Carmichael 2001; Murakawa 2005; Tonry 1995, 2004; Weaver 2007; see also Wacquant 2001). These approaches provide rich insight into national crime politics and serve as foundational analyses for understanding the persistence of racial inequalities in crime and punishment. There are, however, several reasons to expand the discussion beyond national politics and to flesh out more specifically the mechanisms through which racial hierarchies are perpetuated in crime and punishment. First, most citizens experience victimization in their neighborhoods and encounter police and the justice system at the local level. Local legislatures face these realities and the manner in which they respond to the people experiencing them deserves attention (Scheingold 1984). Congressional crime politics, by contrast, occupies a rather idiosyncratic political space since Congress has no need – and little constitutional mandate– to legislate on run of the mill criminal activity. Thus, very different political incentives and policy frameworks emerge at different levels of government with implications for the interests that are represented and the way issues are framed. Second, there are enormous differences in victimization across racial groups. While African-American and Latino young males have experienced the long arm of the law in unprecedented numbers, they are also victims of violence in numbers that far outpace any other demographic group and overall declines in violent crime in recent years have been far less significant in minority communities than in whiter, more affluent areas (Thacher 2004). Any discussion of the racialized nature of crime and punishment in the United States, then, must take account of the day to day violence that inheres in many Black and Latino neighborhoods and the political mobilization of these communities for greater public safety. While scholars have been attentive to the role that primarily white victims groups have played in the politics of crime and punishment, we have far less to say about the political agitation by groups representing minority victims (see Barker 2006; Gottschalk 2006; Zimring, Hawkins and Kamin 2001). As this paper will demonstrate, people living in high crime areas often place enormous demands on local elected officials and police departments to do more to keep citizens safe, including pressuring the police for more patrols and more arrests, along with improvements in schools, recreational opportunities for youth and reducing with urban blight (Carr, et. al, 2007; Lyons 1999; Miller 2008). That these demands often translate into little more than top-down, aggressive policing activities may tell us as much about the interaction of federalism and racialized group interests in the U.S. as it does about the racial attitudes of local officials or support for law and order punishment practices among the American public. In contrast to extant approaches then, I consider racial inequality in modern crime politics at the foundations of American political institutions. For this reason, I compare here the political representation and framing of crime and punishment at the national level, on which much of our understanding of race, punishment and inequality is based and where we often expect solutions to emerge, to that of local politics, where Blacks and Latinos experience the daily inequities of victimization and involvement with the justice system and where minority political and legal interests are most visible. Of course, most criminal law and criminal punishment is meted out in state legislatures and courts but the goal of this paper is twofold: first, to illustrate the asymmetric distribution of power and interests under our constitutional design between the locale where minorities experience crime, victimization and punishment and the national venue that is expected to ameliorate these realities; and second, to give voice to the largely invisible efforts of minority activists pressuring lawmakers to address the social conditions that give rise to crime and violence (see Miller 2008 for a detailed comparison with state politics). This requires a detailed analysis of the capacity of the central government to address these problems and the problem definitions and legal narratives about crime, violence and victimization that are visible in urban, minority communities. This approach reveals not just differential access to power but differential institutional capacities across the varied and complex landscape of American federalism. Thus, this paper does not address specific policy outcomes per se but, rather, reveals why particular problem definitions, policy frames and legal narratives about crime, victimization and punishment are more likely in some venues than others. This can help us understand how racial hierarchies can be perpetuated in the absence of formal legal discrimination and even when discriminatory attitudes are mitigated. As Leiberman notes, “racial bias in a race-laden policy need not be the result of racism per se. It may instead result from institutions that mobilize and perpetuate racial bias in a society and its politics, even in institutions that appear to be racially neutral” (Lieberman 1998, 7). I suggest here that racial inequities in crime, punishment and victimization have at least some of their roots in the racialized access to power at the foundation of the U.S. constitutional system. Federalism and its limitations for progressive social action on crime Several features of the federal structure put into place at the Constitutional Convention have had enduring effects on the political and legal struggle for racial equality (Lieberman 1998; Riker 1964; Finkelmen 1981). First, the division of power between the states and the new national government left intact virtually of all the states’ traditional police powers – powers used to address a wide range of citizen concerns, including the health, safety and morals of the state’s citizens. This choice was an obvious one, as the territorial and geographic allegiances to the colonies pre-dated the American Revolution, but leaving these powers in the hands of the states also allowed the new nation to avoid conflict over the most important jurisdictional issue of the day: human bondage (see Derthick 1992; Federalist #10). Most critiques of American federalism focus on how this allowed recalcitrant states and localities to block racial progress (Graber 2006; Lieberman 1998; Riker 1964; Finkelman 1981; Frymer, et. al., 2006). The strength of state governments under the U.S. Constitution provided pro-slavery advocates with powerful legal and political claims to maintaining their ‘peculiar institution’ and, as Frymer et. al. note in their discussion of Hurricane Katrina, continues to “provide opponents of civil rights with a powerful, legitimate, and seemingly “race-neutral” narrative through which to stymie progress on this front” (Frymer, et. al. 2007, 48; see also Graber 2006). Such assessments suggest that the problem of federalism for racial progress is that the progressive possibilities at the national level are all too often diluted at lower levels of government (Lieberman 1998). There are two other features of the distinctive American system, however, that serve as equally significant barriers to addressing racial inequalities in crime and punishment. The first is the relatively anemic nature of congressional power (Frymer, et. al. 2007; Esping-Anderson 1990; Kincaid 1999; see also de Tocqueville 2004). Limited by design, the United States Congress has a narrower jurisdictional breadth than state governments with respect to addressing major social policy issues. Certainly, congressional power has grown over the course of the nation’s history and when a national consensus emerges, constitutional divisions of power are frequently glossed over in favor of national authority (Feeley and Rubin 2008). Lacking a clear, decisive national consensus, however, congressional authority is inhibited by the fact that it lacks a constitutional mandate to legislate on broad social welfare issues. While the federal courts have given Congress a wide berth in its exercise of the commerce clause powers since the New Deal, the Supreme Court does occasionally limit the scope of Congress’ power based on its reading of the commerce clause in Article I, Section 8 and the 10th Amendment and continues to hear cases challenging congressional authority to address major social policy domains.2 While these challenges are rarely sustained, they can provide sufficient opposition to fracture fragile coalitions or cause them to lose momentum (Dinan 2002). The recent constitutional challenges by fourteen state Attorneys General to the congressional health care bill represent the most recent example of this long and storied history.3 More importantly, the fact that Congress has expanded the reach of its domestic policymaking does not alter the fact that most social policy that affects the day to day lives of citizens – public safety, education, transportation, public works, health care, for example – is still enacted by state and local governments. As a result, Congress not only has an episodic mandate to address a great many social issues that affect rates of criminal offending and victimization, it also has few political incentives to address these thorny issues. Put in stark terms, the United States government does not have clear constitutional authority to address a broad range of social welfare issues. In fact, no level of government in the United States has responsibility and accountability for legislating on the health, safety and social welfare needs of the polity as a whole. When Congress does legislate on broad social issues – public safety, social welfare, education or the environment, for example – it often does so by shoehorning policy into Article I, Section 8 or relying on enabling legislation from constitutional amendments. While these strategies are often sufficient in the context of broad national consensus, they represent weak grounds for the kind of policy that is demanded by vast and deep inequalities across racial groups. Even on economic issues, where Congress’ authority is clearer, national lawmakers are frequently asked to justify the ability of Congress to trump state power in this realm.4 A second distinctive feature of American federalism that has implications for understanding racial inequality in crime and punishment is the multiple legal and legislative venues for participation. This porousness can provide citizens with multiple locations for participation (Baumgartner and Jones 2002; Pralle 2006). However, multiple centers of power also make it difficult for the poor and low-resources groups to sustain pressure across a political landscape that is navigable largely through sustained human, social and fiscal capital. Multiple venues can reinforce and exacerbate classic collective action problems which disproportionately disadvantage the poor and racial minorities (Manza 2007; Miller 2007). Social movement scholars have long recognized the importance of a group’s capacity to mobilize resources in order to successfully function as a pressure group (McCarthy and Zald 1987). These resources need not be financial but can include significant numbers of highly motivated, preference-intense people, and/or a public image that is highly favorable (see Fiorina 1999; Schneider and Ingram 1993). Coupled with fiscal resources, these forms of capital can help launch a narrowly focused interest group into a wide range of political and legal venues, while others – with less financial support, more diffuse supporters or a less positive public image – struggle to maintain pressure at just one legislative locale. Thus, federalism is an important element in understanding racial inequality not only because of the space it has allowed states in blocking reform but also because of the limitations it imposes on the power of the national government to ameliorate the conditions giving rise to crime and violence and the obstacles it erects to collective action efforts of poorly resourced groups.

#### Federalism exacerbates racial inequalities – three warrants

Miller 10

(Lisa L., Ph.D. in Political Science, Visiting Scholar at the Program in Law and Public Affairs in the Woodrow Wilson School of Government at Princeton University, (Fall 2010), Law and Society Review, “The Invisible Black Victim: How American Federalism Perpetuates Racial Inequality in Criminal Justice,” <http://www.eagleton.rutgers.edu/research/documents/Invisible_Black_Victim.pdf>, Accessed: 7.8.17)VW

V. Conclusion A wide range of inter-disciplinary scholarship directly connects the high rates of arrest and incarceration of Blacks and Latinos to their living conditions (Massey and Denton 1992; Sampson and Morenoff 2002; Walker, Spohn and DeLeone 1996) but the lawmakers in the political venues best situated to address these conditions are largely insulated from the political pressure to do so. What does this insulation mean for the politics of crime and punishment and racial inequality in the United States? This analysis has suggested three ways in which American federalism structures representation on crime and violence in ways that disadvantage low-income racial minorities. First, the American political system makes it fairly easy to de-couple crime and punishment from larger socio-economic inequalities through a central lawmaking apparatus that is ill-equipped to sustain attention to the connection between crime and larger social issues. Members of Congress are rarely held accountable for their positions on local crime problems but there are multiple incentives for them to respond to single-issue interest groups, professional associations and criminal justice agencies eager to have their missions enhanced. These groups are more likely to converge on increasing punishment than on ameliorating poor living conditions. In contrast, while many broad citizen interest groups are not opposed to more punishment, they also exhibit a strong pragmatic streak and are wary of policy prescriptions that have little visible impact on the condition of their communities. Local lawmakers must respond to these demands for community revitalization but are highly constrained in their ability to significantly address economic conditions. The disconnect between those held accountable and those with the means to promote viable solutions is substantial. Second, federalism reinforces existing race and class stratification by creating a system of multiple political venues that makes it difficult for poorly resourced groups to navigate and by driving several layers of government between citizens who experience these problems and lawmakers who have the capacity to ameliorate them. Creating and sustaining groups is a difficult enterprise under the best of circumstances, but having the resources and knowledge to sustain a presence on multiple legislative venues simultaneously requires extraordinarily wellorganized and highly resourced participants. These groups are unlikely to regularly include the interests of poor, urban minorities. While multiple legislative venues may provide a more open political system in some respects, it also creates a political context that perpetuates racial hierarchy by creating opportunities for highly resourced groups to control the terms of the debate and forcing the less organized onto their terrain, no matter how they may initially frame the problem. This is dramatically illustrated by how local pressures for improvements to neighborhood public safety and quality of life are truncated and transformed in national discourse into dichotomous debates over more or less drug enforcement, gun control or policing. None of those debates strike at the heart of the urban conditions that drive so many people into local politics to advocate on behalf of their communities. Finally, federalism exacerbates classic collection action problems by Balkanizing urban areas from one another and forcing groups to fight battles locally without the resources, support and political power of similarly situated groups around their own state, much less around the country. Urban areas around the country have sought to reduce gun violence and the allure of the drug trade in remarkably similar ways but each locale is largely on its own to lobby state and national lawmakers for support. The issue is less a question of how much centralization in policymaking is necessary and more a question of how to keep policymakers with substantial resources accountable to the publics that are most affected by serious crime. Occasionally, a series of events will force these issues onto the national agenda, as when the urban riots and violence of the late 1960s and early 1970s provided greater opportunity for groups representing the urban poor to find a voice in the political process. But once these events subside, congressional attention reverts to repeat players with the capacity to remain active, long after specific issues and events have subsided. The implication for thinking about federalism is that the representation and voice of poor citizens and many racial minorities are largely muted except when exogenous factors temporarily open up new opportunities. Theorizing the relationship between federalism and inequality, then, requires more systematic attention to the incentives, opportunities and possibilities for vindicating the interests of racial minorities in national politics as time and context-sensitive questions.

### Kritik – Sexism

#### Federalism is sexist – maintains patriarchal dominance and is driven by gender exclusion

MacKinnon 5

(Catharine, Ph.D. from Yale, 2005, Harvard University Press, “Women's Lives, Men's Laws,” <https://books.google.com/books?id=N48y66ArkIcC&pg=PA235&lpg=PA235&dq#v=onepage&q&f=false>, Accessed: 7.7.17)VW

To the ear of violated women, the same obligato in two different keys plays beneath the Morrison majority opinion: keep her at home. In the Morrison Court’s view, to address violence against women federally was to make a category mistake: to treat the local as if it were national, the noneconomic as if it were economic, the private as if it were public. The VAWA just felt wrong to them. These conventional reflexes were by no means universally shared, just as the outcome was by no means doctrinally preordained, the dissenters made clear. Justice Souter could not see why wheat and corn are national but women are not, or why wheat grown for consumption “right on the farm” was reachable under the commerce power but domestic violence was not. Justice Breyer queried why drugs for home consumption and home fireplaces were federally regulable but violence against women in the home was not. Given that VAWA civil remedy could readily have been upheld on precedent, why did the Supreme Court majority prevent violated women from pursuing accountability for bigoted violence against them? The answer may lie less with the imperatives of institutional forces the majority invoked than with the gender relations that impel those forces. The institutional doctrines on which the majority relied to invalidate Section 13981 is, the “traditional” allocation to state authorities of the governmental response to men’s violence against women, an allocation respectfully invoked by majority and dissenters alike, is built on nothing more than that: a historical tradition of men (men who had power among men) dividing up power among themselves under conditions in which women had no authoritative say and over which no substantive sex equality principles reigned or, since Morrison, yet reign. What “has always been,” whether addressed from a gray stone building in Washington, D.C., or a red brick building upstate, is nothing more than that: two “spheres” from which women “ha[ve] always been” excluded, and in which they are not yet at home. Categorical formalism may have become newly attractive in service of this particular federalism, 215 but what explains the attraction of this particular federalism? Do its categories cover substance with form? Analyzing substantively the abstract institutional commitments in the name of which the VAWA was invalidated requires asking what this federalism is concretely about, specifically whose interests its dynamics are constructed to favor. Is male dominance served by ensuring that men keep control of certain things at close range? Could it be that men keep their power over women by keeping it local and private? If so, federalism is an abstract institutional arrangement embodying judgments of those concerns that men want to control themselves, at home, and those over which they are willing to share control with other men farther removed. The VAWA squarely confronted this gentlemen's agreement by creating an entitlement to an equality for women that has not "always been." Gender, on this analysis, drives this federalism, explaining as sexual politics a result that eludes explanation otherwise. On this reading, Morrison is not just another case in the march of the new federalism but may be its bottom line. Put another way, doctrine required the Court to confront, under the Commerce Clause, whether the economy is hurt by violence against women, and, under the Fourteenth Amendment, whether the states are hurt by the VAWA. (The answers were, respectively: yes, but that does not make it economic; and yes, whether they think so or not.) But no doctrine required the Court even to ask whether women are hurt by invalidating this law against violence against women. Leaving the answer to the political branches, as Justice Breyer advocated, 216 is no answer when a doctrine like federalism, built in women's silence and on women's exclusion, and the constitutional standards for what is and is not economic, which do not value women's material contributions, can set the terms under which Congress's decision is authoritatively judged. This is not to say that the Court correctly assessed the VAWA's constitutionality under existing federalism, commerce, or equality doctrines. It did not. It is to observe that no doctrine - not federalism, not commerce, not yet equality - requires that women's interest in living as equals free from gender-based violence be judicially accorded the same level of constitutional priority as the states' interests in their traditional sphere of action or localities' interests in their economic autonomy. Nothing in the design of the system exposes the gender bias built into the history and tradition of the Constitution's structure and doctrines. Nothing requires that women's interests as such be given any consideration at all.