# Notes

Refer back to a lot of the states work/states fail in the states counterplan file for solvency/solvency take outs

Lopez is basically just devolving federal power to the states – the net benefit can be federalism or politics.

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# Neg

## 1NC

**CP Text: The United States Supreme Court should, in a narrow ruling on the next available test case, rule that federal authority over \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ violates the Tenth Amendment and devolve authority to the fifty states and all relevant territories.**

**Here’s a solvency advocate – devolving power to the states leads to more efficient investment**

**Poole, 96** – director of transportation policy and Searle Freedom Trust Transportation Fellow at Reason Foundation (Robert W., October 1996, “ Defederalizing Transportation Funding,” Reason Foundation, http://reason.org/files/4883e8bd01480c4d96ce788feb1f2e05.pdf, Hensel)

Airports, highways, and mass transit systems are primarily state and local responsibilities. They are developed and operated by state and local governments (with increasing private-sector involvement) and funded primarily from state and local sources. Yet the federal government, by collecting transportation user taxes and using them to make grants for these systems, both raises the costs and exerts significant control over these state and local activities. **Congress should devolve transportation infrastructure funding and responsibilities to** cities and **states**, ending federal grant programs and their accompanying restrictions. Cities and states have been open to privatization, and most would welcome the flexibility and freedom from costly federal regulations which devolution would give them. Devolving transportation funding would lead to more-productive investment, greater intermodalism, more innovation, and new capital from the private sector. Conventional wisdom suggests that 21 states are net donors to the federal highway program and the rest are net recipients. But this paper's analysis, taking into account the real costs of federal funding and regulations, concludes that 33 states get back less than they contribute in highway taxes and would be better off if the funds were left in their states to begin with. By adding such major states as Illinois, New Jersey, New York, Pennsylvania, and Virginia to the donor-state category, this assessment could change the political dynamics in favor of devolution. Abundant evidence now exists that federal transit programs have stimulated investment in unviable rail systems and have needlessly boosted transit system operating costs. The flexibility created by repeal of federal transit regulations would permit changes (such as competitive contracting of transit operations) that could save enough to offset much of the loss of federal operating subsidies. It would be up to cities and states to decide whether to continue to invest in non-cost-effective rail transit. The only truly federal role in aviation is ensuring safety and facilitating the modernization of the air traffic control system. The latter can best be accomplished by divesting ATC to a user-funded corporation, as 16 other countries have done. Airports should be defederalized; all sizes of commercial airports could make up for the loss of federal grants with modest per-passenger charges. States could decide whether to subsidize unviable general aviation airports. Overall, the federal government would retain certain coordination and safety-regulation functions in transportation. But it would henceforth leave investment and management decisions to state, city, and private decision-makers.

## Description of Lopez

**Lopez allows the courts to use principles of federalism to limit federal action**

 **Werham, 2k** (Keith Werham, Washington & Lee University School of Law, "Checking Congress and Balancing Federalism: A Lesson from Separation-of-Powers Jurisprudence, Washington and Lee Law Review", Volume 57, Isuee 4, Article 5)

Yet, notwithstanding these soundings from Lopez and Morrison, neither case provided a final test for the current vitality of rational basis deference. As will be developed, the substantial effect analysis in both cases was dis-abled at the outset; because Congress had not regulated an economic or a commercial activity in either statute before the Court. 2 Thus, the Court has had no occasion, in Lopez or after, to evaluate a factual showing by Congress that purports to link a regulated commercial activity with interstate commerce. It is entirely possible that the Court, while maintaining the independence of its reviewing role, nevertheless might hesitate in all but the clearest cases to invalidate Congress's judgment with respect to the interstate impact of regulation the justices accepted as truly commercial in nature. Such a "clearly erroneous" middle ground between the near-complete deference of rational basis scrutiny and the near-complete judicial takeover of de novo review carries considerable promise for a balanced federalism jurisprudence. The post-New Deal Court's recognition that the Commerce Clause is a congressional power was fully consistent with the federalist understanding. So too was its sense that some measure of judicial modesty is appropriate in the review of Congress's use of its authority. To summarize, it is clear that Lopez/Morrison aligned contemporary doctrine with Jones & Laughlin by reemphasizing the substantiality requirement of the effect test, and it is likely that the justices also have dropped the rational basis dilution of that test. Even with that reassertion of judicial authority, the Court may, and should, exhibit considerable respect for congressional findings that link truly commercial regulation to interstate commerce. As an overall framework, the Lopez Court's categorization of Commerce Clause analysis reflects the federalist intuition to bring "a healthy balance" to federalism doctrine by integrating formal and functional methodologies. 3 ' The initial categorization of Commerce Clause jurisprudence into three doctrines provides a formal organization. 324 Within that structure, the Court's three doctrinal categories combine three lines of precedent, two formal and one functional. The Court's recognition that each of the three categories provides Congress "broad" sources of regulatory power offers an overall functional counterweight to the formal organization. 3 2 The Court's integration of formal and functional elements penetrates its approach to the crucial third category of the Lopez framework." The effect test of that category is the fulcrum of Commerce Clause jurisprudence. On one hand, Congress requires a broad, functional understanding of the test to enable the regulation of subjects it must address in order to control interstate commerce. On the other hand, an effective limit on this authority is necessary to prevent Congress from converting its jurisdiction over interstate commerce into a general regulatory power. The Lopez Court addressed this latter concern, in part, by tightening the functional limits on congressional power. The Court recommitted to the substantiality requirement and in combination with Morrison, likely eliminated the rational basis orientation of the effect test. Lopez's most suggestive move in limiting congressional authority, however, was in reintroducing a formal dimension to the effect analysis. The Court in Lopez counterbalanced the thoroughgoing finctionalism of the post-New Deal jurisprudence by requiring, as a threshold matter, that the regulated activity be "economic" or "commercial" in nature. 3 2 Lopez's introduction of this formal element in the effect test completes the Court's return to Gibbons, which the justices had begun in Jones & Laughlin. In the post-New Deal decisions, the Court had only incorporated the functional elements of the Marshall Court's approach to the Commerce Clause. By reemphasizing that congressional regulation pursuant to that authority must address subject matter within the category of "commerce," the Court finally returned Commerce Clause jurisprudence to its original, federalist balance. 32

**Lopez decision provides a basis for the court to use the principles of federalism to limit federal action**

**Boykin, 12**(SCOTT BOYKIN- Assistant Professor of Political Science, Georgia Gwinnett College. J.D., University of Alabama

School of Law, 1998; Ph.D., Tulane University, 1993. The Commerce Clause, American Democracy, and the Affordable Care Act. <https://gjlpp.files.wordpress.com/2012/03/boykin.pdf>)

Lopez is a decision of real historical signiﬁcance because it was the ﬁrst¶ decision invalidating an entire statute enacted under the Commerce Clause since¶ the 1937 “Court Revolution.” The majority opinion represents an effort to¶ impose some limitation on the commerce power under the substantial effects¶ test by limiting its application to “economic activity” that substantially affects¶ interstate commerce. The concurring justices assailed the economic-noneconomic distinction as impracticable and out of step with well-established precedents since Wickard.¶ 89¶ Indeed, the majority recognized that¶ [A] determination whether an intrastate activity is commercial or noncommercial may in some cases result in legal uncertainty. But, so long as Congress’¶ authority is limited to those powers enumerated in the Constitution, and so¶ long as those enumerated powers are interpreted as having judicially enforceable outer limits, congressional legislation under the Commerce Clause always will engender ‘legal uncertainty.’¶ 90

## Federalism Net Benefit

**Lopez set a precedent of New Federalism recently upheld by the Individual Mandate health care decision**

**Barnett 6/28** **(Randy, the Carmack Waterhouse Professor of Legal Theory at the Georgetown University Law Center, where he teaches constitutional law, “A weird victory for federalism”, http://www.scotusblog.com/2012/06/a-weird-victory-for-federalism/)//AMV**

Who would have thought that we could win while losing? In 1995, when the Supreme Court in United States v. Lopez invalidated the Gun Free School Zone Act because it was regulating intrastate noneconomic activity, progressive commentators had two reactions. First, that Lopez represented an outrageous exercise of “conservative judicial activism” and, second, that the Supreme Court would defer to Congress if it merely offered better findings of fact to support its regulations. In 2000, when the Court invalidated the civil cause of action in the Violence Against Women Act, enacted after numerous hearings and supported by copious “findings,” progressive commentators again accused the Court of “activism,” but started to worry that the Court might just be serious about enforcing Article I’s enumerated powers scheme after all. However, in 2005, when the Court turned away the Commerce Clause challenge to the Controlled Substances Act in Gonzales v. Raich, progressives breathed a sigh of relief. They were right all along. The much-vilified “New Federalism” of the Rehnquist Court was either dead, or merely a symbolic limit on Congressional power, applicable only to small and peripheral legislation. **So when the constitutionality of the Affordable Care Act came under fire by Senate Republicans before its passage, their complaint was dismissed as frivolous**. Academic commentators predicted that legal challenges to the law were so baseless, they would trigger Rule 11 sanctions from federal courts. Even after the Court announced an historic 6 hours of oral argument over three days, supporters of the law insisted that the case would be decided by a 8-1 or 7-2 vote. Ironically, the very same academics who condemned the “activism” of Lopez and United States v. Morrison clung to them as hallowed precedents providing the only limits on the Commerce power. Today, **the Roberts Court reaffirmed the “first principle” announced by Chief Justice Rehnquist some 17 years ago in Lopez: the federal government is one of limited and enumerated powers.** It accepted all of our arguments about why the individual insurance mandate exceeded the commerce power: “The individual mandate cannot be upheld as an exercise of Congress’s power under the Commerce Clause,” wrote Chief Justice Roberts. “That Clause authorizes Congress to regulate interstate commerce, not to order individuals to engage in it.” **Then the Court went farther to invalidate the withholding of existing Medicaid funding as coercive, thereby finding an enforceable limit on the Spending Power**. In the 1930s & 40s, when Congress was asserting new powers to address the grave distress caused by the Great Depression, the Court relented and allowed it to reach wholly intrastate activity that, in the aggregate had a substantial effect on interstate commerce. This was interpreted by academics to mean that Congress now had a plenary power over anything that affected the national economy, which means any activity at all. The Court would always defer to Congress’s assertion of its Commerce Clause powers. The New Federalism was attacked precisely because it offered a different vision of the so-called “New Deal Settlement”: although the Court acquiesced to the constitutionality of New Deal-style regulations, when Congress goes beyond this already expansive reading of its powers, the Court will meet any further expansion with skepticism**. It will continue to insist on some judicially enforceable limit on federal power**. Congress cannot be the sole judge of the scope of its own powers. Today a majority of the Roberts Court reaffirmed this vision. **Academics are sure to react to today’s decision by declaring the New Federalism dead, but they would be wrong to do so. The Founders’ scheme of limited and enumerated powers has survived to fight another day.**

**Lopez sets a precedent for federalism – it is the return to an orignalist interpretation which limits federal power in the name of state autonomy**

**Lessig 95 (Lawrence, Director of the Edmond J. Safra Foundation Center for Ethics at Harvard University, and a Professor of Law at Harvard Law School, “Translating Federalism: United States v Lopez”, *The Supreme Court Review,* jstor, accessed: 7/20/12)//AMV**

The opportunity for this account is presented by federalism's latest twist, United States v. Lopez.8 In Lopez, for the first time in almost sixty years, the Court struck, as beyond Congress's "commerce power," an act of Congress that aimed at regulating citizens (rather than states). In the shock after the decision commentators attacked it as either political, or activist, or fundamentally flawed. Flawed it may be, and activist it certainly is. But it is a mistake to see Lopez as mere politics. **Lopez is an act of interpretive fidelity.** It is an effort to reconstruct something from the framing balance to be preserved in the current interpretive context. It also marks a shift, from (what I will argue is) a textualist account to an originalist account. The question is whether this shift is justified a, question for which I hazard an answer here. The argument that Lopez is a reading of fidelity begins with what all take as obvious: There is little doubt that the scope of the powers now exercised by Congress far exceeds that imagined by the framers. **They struggled over whether the commerce power included the power to build roads;** they wouldn't have struggled over its power to reach the possession of guns near schools. But against this there is a second obviousness: That in the current interpretive context, the language of the Constitution's power clauses, read according to the formula given us by founding federal powers opinions, plainly supports this expanse of federal power. This is the textualist account: That the Constitution gives Congress the power to regulate "commerce" "among the several states," and the power to pass laws "necessary and proper" to effect this regulation of commerce among the several states. Chief Justice Marshall's way of reading these words was quite expansive: So long as some activity could be said to "affect" the commerce of more than one state, that activity was within either the commerce power, or the necessary and proper power. As commerce today seems plainly to reach practically every activity of social life, it would seem to follow that Congress has the power to reach, through regulation, practically every activity of social life. Put another way: If America were to adopt a constitution today that had this grant of authority within it, it would be perfectly reasonable to read this grant to give Congress the power to regulate the full range of economic (and hence social) life in America. The textualist account conflicts with the originalist account. Yet for much of the past half-century the Court has followed this textualism. It has allowed Congress a power that reaches to the extreme of what the words of the power clauses allow. **And in so doing, it has ignored conventions and understanding, presupposed by the framers,** and inconsistent with this broad reach of federal power. **Lopez reverses all that**. It rejects this textualist reading of the power clauses, in the name of fidelity to a founding understanding about how far these powers of Congress were to reach. It finds implied in the constitutional structure limits on the federal government's power, limits that before may have been supported either by the understanding Tocqueville spoke of, or by the limits entailed by a diffuse national economy, but which today can be supported only by affirmative limits constructed by the Court. And so does the Court impose these limits, by artificial and incomplete readings of Congress's power clauses, rendered in the name of restoring a balance envisioned in the framing generation. **In this way is Lopez an act of fidelity**, or what I would call an act of translation. Like the very best of the Warren Court, it limits an otherwise apparently unlimited grant of governmental power in the name of a framing conception of autonomy. **Lopez limits federal power in the name of state autonomy;** the Warren Court limited state and federal power in the name of individual autonomy. But both limit governmental power in the name of implied limits given us by the framers. Both, that is, translate this framing vision into the current interpretive context. This is praise, not criticism, of the Lopez Court's work. For in my view, this effort at translation is essential if the American Constitution is to be something more than an ancient, dead text. This effort to breathe life into the structures originally established links Lopez with a long tradition of similar constructivism. Establishing this link will be my first aim in this essay-to offer a way to understand this recent revival of federalism jurisprudence not as some political anomaly from the right, but as part of a tradition that draws together much in our constitutional past. Justices might not like the pairings this understanding suggests, but that is of no matter. Their practices are the same, and the justification for their practices will stand or fall together.

**Court Action is necessary to uphold the principles of federalism**

Calabresi 01-[Steven G. Calabresi, Law Professor, Northwestern, 2001 (Annals of the American Academy of Political and Social Science, March, p. 29]

One advantage of constitutionally mandated decentralization is that it is more entrenched and is harder to dispense with than is decentralization done as a matter of national legislative grace. Requiring decentralization in a written constitution makes it more likely that it will actually occur, and that increases the chance that the benefits of decentralization will be experienced. We protect First Amendment freedoms in our written Constitution because we rightly fear that without constitutional and judicial protection, we will not get enough protection of freedom of speech and of the press. The same argument works to justify the need for constitutional and judicial protection of federalism. Without constitutional and judicial protection of the values of decentralization, we will get too much national lawmaking and especially too much federalization of the criminal law.

**CP sends a symbol of federalism**

**Young 04-[Ernest Young, Law Professor, University of Texas, TEXAS LAW REVIEW, November 2004, pp. 135-6]**

The structure of the Court's current Commerce Clause doctrine bears this conclusion out. The Court has conceded that the national economy has become integrated to the extent that there is no meaningful distinction  between intra-and inter-state commerce; rather, there is just "commerce." And the Court has also eschewed any effort to compartmentalize the various forms of economic activity, as it once sought to distinguish between "commerce" and "manufacturing" or "agriculture." Now all of these things are "commerce"; that term, the Court has made clear, comprehends all "economic activity." Nonetheless, it is important to maintain some enforceable limit on the Commerce Clause. Precisely because these cases are so high profile, they play an important symbolic role. As I have already suggested, they may serve an important process function of reminding Congress to consider the limits of its powers when it acts. At the same time, limits on the Commerce Clause are closely linked to the states' autonomy; those limits, after all, preserve a zone of regulatory authority that Congress may not preempt. This is true even though the particular statutes at issue in Lopez and Morrison were not preemptive - that is, they did not forbid parallel state legislation on the same subjects. If Congress were to attempt to supplant state autonomy to make regulatory decisions over physician-assisted suicide or gay marriage, for example, Lopez and Morrison would likely offer the most promising basis for challenging such legislation.

**Court Action is critical to enforce federalism**

Devins 04-[Neal Devins, Goodrich Professor of Law and Professor of Government, College of William and Mary, Northwestern University Law Review, Fall 2004, pp. 143-4]

By providing an alternative explanation as to why the political process does not value federalism, this Comment has sought to strengthen the central conclusion of Federalism vs. States Rights. Specifically, if the federal-state balance is to be policed, the courts must do that policing. In part, problems of voter asymmetry explain why voter/principals will not police federalism. Likewise, for reasons expertly detailed by McGinnis and Somin, state and federal officials often disregard federalism when pursuing first order policy priorities. But the problem is even deeper than McGinnis and Somin suggest. Informed voters are also likely to trade off federalism in order to advance favored policies. As detailed in Section II, Americans have always paid attention to their substantive policy preferences, not federalism. Moreover, as Section III explains, federalism rulings rarely foreclose democratic outlets. As such, these rulings do not figure in voter efforts to pressure lawmakers to pursue favored policies. Against this backdrop, the problem with federalism seems far more pervasive than the principal-agent theory advanced by McGinnis and Somin. In justifying their theory, McGinnis and Somin must do more than speculate that informed voters would place federalism first if they thought that federalism limits would be enforced across-the-board. Instead, they must come forward with evidence supporting their claims about the true preferences of voter/principals. Correspondingly, McGinnis and Somin go too far in suggesting that lawmakers and national lobbies are strongly committed to deferential judicial review of federalism. No doubt, as McGinnis and Somin explain, elected officials and national lobbies have strong incentives to understand the rule of the game. On the other hand, for reasons detailed in Section III, lawmakers and national interests have little sense of stake in federalism. Sometimes, the pursuit of their favored policies requires the sacrificing of federalism; other times, they see judicial enforcement of federalism as a way to limit the victories of their political opponents. Ironically, the very reasons that explain why the political process is unlikely to police federalism makes possible active judicial review of federalism. Because voters, interest groups, and lawmakers care more about underlying policy objectives than federalism, the court can enforce federalism limits so long as there is a democratic outlet available for lawmakers, voters, and interest groups to pursue their favored policies.

## 2NC Solvency

**All transportation infrastructure projects should be devolved to the states – the government is inefficient and has no jurisdiction under the tenth amendment**

**Horowitz 10 (Daniel, American defense attorney, 1/19/2010, “Devolve Transportation Spending to the States”, http://www.redstate.com/dhorowitz3/2012/01/19/devolve-transportation-spending-to-states/)//AMV**

One of the numerous legislative deadlines that Congress will be forced to confront this session is the expiration of the 8th short-term extension of the 2005 surface transportation authorization law (SAFETEA-LU). With federal transportation spending growing beyond its revenue source, an imbalance between donor and recipient states, inefficient and superfluous construction projects popping up all over the country, and burdensome mass transit mandates on states, it is time to inject some federalism into transportation spending. Throughout the presidential campaign, many of the candidates have expressed broad views of state’s rights, while decrying the expansion of the federal government. In doing so, some of the candidates have expressed the conviction that states have the right to implement tyranny or pick winners and losers, as long as the federal government stays out of it. Romneycare and state subsidies for green energy are good examples. The reality is that states don’t have rights; they certainly don’t have the power to impose tyranny on citizens by forcing them to buy health insurance or regulating the water in their toilet bowels – to name a few. They do, however, reserve powers under our federalist system of governance to implement legitimate functions of government. **A quintessential example of such a legitimate power is control over transportation and infrastructure spending**. The Highway Trust Fund was established in 1956 to fund the Interstate Highway System (IHS). The fund, which is administered by the DOT’s Federal Highway Administration, has been purveyed by the federal gasoline tax, which now stands at 18.4 cents per gallon (24.4 for diesel fuel). Beginning in 1983, Congress began siphoning off some of the gas tax revenue for the great liberal sacred cow; the urban mass transit system. Today, mass transit receives $10.2 billion in annual appropriations, accounting for a whopping 20% of transportation spending. Additionally, the DOT mandates that states use as much as 10% of their funding for all sorts of local pork projects, such as bike paths and roadside flowers. As a result of the inefficiencies and wasteful mandates of our top-down approach to transportation spending, trust fund outlays have exceeded its revenue source by an average of $12 billion per year, even though the IHS – the catalyst for the gasoline tax – has been completed for 20 years. In 2008, the phantom trust fund was bailed out with $35 billion in general revenue, and has been running a deficit for the past few years. Congress has not passed a 6-year reauthorization bill since 2005, relying on a slew of short-term extensions, the last of which is scheduled to expire on March 31. Short-term funding is no way to plan for long-term infrastructure projects. In their alacrity to gobble up the short-term money before it runs out, state and local governments tend to use the funds on small time and indivisible projects, such as incessant road repaving, instead of better planned long-term projects. It’s time for a long-term solution**, one which will inject much-needed federalism and free-market solutions into our inefficient and expensive transportation policy**. It is time to abolish the Highway Trust Fund and its accompanying federal gasoline tax. Twenty years after the completion of the IHS, **we must devolve all transportation authority to the states,** with the exception of projects that are national in scope. Each state should be responsible for its own projects, including maintenance for its share of the IHS. Free of the burden of shouldering special interest pork projects of other states, each state would levy its own state gas tax to purvey its own transportation needs. If a state wants a robust mass transit system or pervasive bike lanes, let the residents of that state decide whether they want to pay for it. That is true federalism in action. The most prudent legislation that would transition responsibility for transportation spending back to the states is Rep. Scott Garrett’s STATE Act (HR 1737). Under this legislation, all states would have the option to opt out of the federal transportation system and keep 16.4 cents of their federal gasoline tax contribution. States would have the ability to use that money to raise their state gasoline tax and direct those funds more efficiently for their own needs. States would be free to use the funds for vital needs, instead of incessant repaving projects that are engendered by short-term federal stimulus grants, and which cause unnecessary traffic juggernauts. States could then experiment with new innovations and free-market solutions that open up infrastructure projects to the private sector. **The Tenth Amendment is not just a flag-waving principle; it works in the real world**. It takes a lot of impudence on the part of the President to blame Republicans for crumbling infrastructure. It is his support for a failed central government system that is stifling the requisite innovations that are needed to deal with state and local problems. There is no issue that is more appropriate for state solutions than transportation spending. Every Republican member should co-sponsor the STATE ACT so we can put an end to three decades of flushing transportation down the toilet. Also, with the news that Rick Perry will head up Newt Gingrich’s Tenth Amendment initiatives, this might be a good time to advocate for federalist solutions in transportation and infrastructure. When Obama starts ascribing blame for our “crumbling infrastructure” during his State of the Union Address, Perry and Gingrich should use their megaphone to pin the blame on the donkey’s stranglehold over the transportation needs of states. With only two months until the authorization for the federal gas tax expires, most other proposals will only further entrench the power of the

**Transportation authority should be devolved to the states**

**Horowitz 12**-[“Devolution of Transportation Authority is Solution to Earmark Problem” by Daniel Horowitz; Daniel Horowitz is an American defense attorney who has represented several high-profile clients including talk show host Michael Savage and is a frequent commentator in the media on criminal cases in the news; Thursday, May 3rd, 2012 <http://www.redstate.com/dhorowitz3/2012/05/03/devolution-of-transportation-authority-is-solution-to-earmark-problem/>]

**There is no doubt that many localities are in need of some infrastructure updates. But there is an obvious solution to this problem. Let’s stop pooling the gas tax revenue of all 50 states into one pile for the inane and inefficient process of federal transportation policy. Every state, due to diverse topography, population density, and economic orientation, has its own transportation needs.** By sucking up all the money into one pile in Washington, every district is forced to beg with open arms at the federal trough. Moreover, **a large portion of the transportation funds are consumed by federal mandates for wasteful projects, mass transit**, Davis-Bacon union wages, and environmental regulations. **This is why we need to devolve most authority for transportation projects to the states. That way every state can raise the requisite revenue needed to purvey its own infrastructure projects.** The residents of **the state,** who are presumably acquainted with those projects, **will easily be able to judge on the prudence of the projects and decide whether they are worth the higher taxes. If they want more airports, mass transit, or bike lanes, that’s fine – but let’s have that debate on a local level**. We have been promoting Tom Graves’s (H.R. 3264) devolution bill for some time in these pages. Since the completion of the interstate highway system, there is complete connectivity between the east and west coasts – the original purpose of the federal highway fund. Graves’s bill would leave a few cents of the gas tax revenue in the fund to cover projects that are still national in scope. The rest would be up to the states; freeing Washington of the paralysis, waste, and fraud that is associated with the lobbyist-driven earmarking process that has defined our transportation policy for far too long. The next time your members of Congress complains about being hamstrung from the earmark ban, ask them if they plan to cosponsor the devolution bill. There are only 37 cosponsors; 205 more to go. If members are worried about their state issues, then **make transportation a purely state issue.**

**Counterplan solves comparatively better- no funding inefficiencies.**

**Poole ’96** (Robert W. Poole, Jr - Searle Freedom Trust Transportation Fellow and Director of Transportation Policy at the Reason Foundation. "DEFEDERALIZING TRANSPORTATION FUNDING." The Reason Foundation. N.p., october 1996. Web. <reason.org/files/4883e8bd01480c4d96ce788feb1f2e05.pdf>.)

Federal transportation grant programs be they airport, mass transit, or highway are plagued by the problem of porkbarrel spending. Members of Congress traditionally derive great benefits from earmarking projects for their districts, ¶ regardless of cost-benefit ratios or the relative value of the project compared with alternate uses of the funds. Since trust fund dollars are always limited, this means that every Abad@ project which jumps the queue at the behest of a ¶ member of Congress necessarily displaces a better project (better in terms of adding real economic value). Thus, this process systematically wastes scarce transportation infrastructure resources. ¶ 2. The Free-Money Problem Providing federal grants that cover 75 to 90 percent of a project's cost encourages local officials to push for capital intensive solutions to transportation problems to build their way out of congestion. In some cases a less-costly solution e.g., an expanded bus system rather than a light-rail system may make greater economic sense, but if the federal program makes the costly approach look cheap, it is more likely to be chosen. In other cases, a Asoftware@¶ approach (peak-hour pricing) might make better sense than a hardware approach (another runway or freeway ¶ lane). As Harvard's David Luberoff notes, projects such as Miami's $30,000-a-rider rail system and Boston's Central ¶ Artery would never have been built if states and localities had to put up more than a token share of the money ¶ needed to fund them. The illusion of free federal money leads to decisions that would not have been taken were the local agency having to make the most cost-effective use of its own resources.

**Devolution solves- the private sector will get on board**

**Poole ’96** (Robert W. Poole, Jr - Searle Freedom Trust Transportation Fellow and Director of Transportation Policy at the Reason Foundation. "DEFEDERALIZING TRANSPORTATION FUNDING." The Reason Foundation. N.p., october 1996. Web. <reason.org/files/4883e8bd01480c4d96ce788feb1f2e05.pdf>.)

As prospects for increased federal infrastructure investment have given way to likely decreases (as part of budgetbalancing efforts), the federal government has attempted to encourage innovative financing and the investment of private capital. The 1991 ISTEA measure included provisions for public-private partnerships and innovative ¶ financing. In addition, the Bush administration issued Executive Order 12803 (in 1992) on infrastructure ¶ privatization, and the Clinton administration followed up with a complementary measure, Executive Order 12893, in ¶ 1994. But little real activity has been generated by these measures. Instead, it is the states and cities that have been the principal innovators. By the end of 1995, 12 states and Puerto Rico had enacted public-private partnership measures for surface transportation infrastructure, and three private toll ¶ projects had been financed and opened to traffic. A growing number of mayors and governors are proposing to sell or lease airports and other infrastructure facilities, seeking to substitute private capital for increasingly limited public capital (so that the latter can be reserved for more inherently governmental needs). This disparity between federal and state/local governments suggests that greater innovation and new forms of private investment would occur if the federal government devolved the responsibility and funding authority for most infrastructure to the state level.

**Devolution solves- feds fail at effective transportation policy and allocating funds**

**Poole ’96** (Robert W. Poole, Jr - Searle Freedom Trust Transportation Fellow and Director of Transportation Policy at the Reason Foundation. "DEFEDERALIZING TRANSPORTATION FUNDING." The Reason Foundation. N.p., october 1996. Web. <reason.org/files/4883e8bd01480c4d96ce788feb1f2e05.pdf>.)

In a 1990 analysis prior to the adoption of ISTEA, transportation economist Gabriel Roth summarized the strengths ¶ and weaknesses of the Highway Trust Fund.¶ 7¶ Its main strength is that it has achieved its objective of greatly ¶ improving U.S. highways at relatively low cost to its users. But Roth also noted a number of weaknesses. ¶ ! Divided Responsibilities. Federal funding and regulations are overlaid on state highway agencies which are the actual owners, operators, and part-funders of the Afederal@ highway system. This division of responsibilities hinders sound investment decision-making and businesslike management of our highways. Costly Federal Requirements. States must comply with costly and burdensome regulations as a condition of using federal highway funds. Davis-Bacon Act wage provisions, Buy America provisions, and various setasides requirements increase construction costs by 20 percent.¶ 8¶ Many other requirements, such as (recently ¶ repealed) maximum speed limits and minimum drinking age, do not directly increase highway costs but may ¶ conflict with state policy priorities. Still others, such as metric conversion requirements, increase operating ¶ costs. In addition, Roth estimates that the administrative costs of federal grant programs are on the order of 1.5 percent at the federal level and 5 to 7 percent at the state level. ¶ ! The Free-Money Effect. The availability of 80 percent or more federal funding for a new facility leads to a certain amount of gold-plating of projects funded with federal money compared with comparable projects funded solely with state funds. For example, in Phoenix, AZ those portions of the urban freeway system that ¶ are state-funded are relatively austere, whereas the federally funded portions boast landscaping, and one ¶ portion was built as a cut-and-cover tunnel with an urban park above it at considerably greater cost. Highway engineers can provide numerous examples of this effect. Redistribution Among States. The trust fund distributes federal funds among the states according to complex formulas which significantly redistribute resources. Many states are net donors; others are net recipients. ¶ While such redistribution may have been necessary to develop the Interstate system, its continuation is ¶ questionable now that this system is complete and operational. Supply and demand more accurately reflects the real need for additional transportation investment than the trust fund's arcane formulas. Use for Non-Highway Purposes. Administrations and Congress are routinely tempted to use the trust fund ¶ for deficit-management purposes. ISTEA devoted a portion of its fuel-tax increase to federal deficit reduction ¶ rather than to the trust fund. In addition, federal budgets frequently appropriate less from the Trust Fund than ¶ is collected in a given year, in order to Ahold down the deficit,@ thereby accumulating multi-billion dollar balances in the Trust Fund. This practice tends to starve the transportation system of needed investment, even ¶ though these funds can only be spent on transportation. Moreover, as of 1996, only 12 cents out of each 18.4 ¶ cents paid by highway users in gasoline taxes actually goes for highways; 4.3 cents goes for Adeficit ¶ reduction@ and another 2 cents goes for mass transit.

**Devolution solves highways- States are more efficient**

**Poole ’96** (Robert W. Poole, Jr - Searle Freedom Trust Transportation Fellow and Director of Transportation Policy at the Reason Foundation. "DEFEDERALIZING TRANSPORTATION FUNDING." The Reason Foundation. N.p., october 1996. Web. <reason.org/files/4883e8bd01480c4d96ce788feb1f2e05.pdf>.)

This analysis suggests that it may be politically feasible to devolve surface transportation funding and responsibility to the state level, reducing the Federal Highway Administration to a small cadre that would maintain uniform ¶ standards for Interstate system planning and design. States and metro areas, working with the private sector as they chose, would assume all responsibilities for funding, construction, and operation of highways. The federal gasoline tax would be abolished and states would be free to increase their own gasoline taxes (or other funding sources) to raise the funds necessary to maintain their system at the desired level. The remaining federal ban on tolling Interstate ¶ highways would be repealed as part of the change-over. ¶ The benefits of such a change could be very large. Among them would be the following: ¶ ! More Productive Investment. As noted above, that portion of our highway system constructed with federal aid costs at least 21.5 percent more than highways constructed without that aid. Thus, the same total dollars invested by states and the private sector could produce more needed infrastructure; alternatively, some states might keep net investment levels the same as at present, freeing the remaining resources for other societal ¶ needs. ¶ ! Intermodalism. In conjunction with defederalization of airports (discussed below), the devolution of ¶ surface transportation responsibilities from DOT to the states and cities would get rid of the rigid Amodal@¶ categories of funding, in which transit funds can only be used for transit, highway funds only for highways, ¶ and airport funds only for airports. The present system has made it extremely difficult to fund truly intermodal infrastructure, such as surface transportation access to airports. Decentralizing the funding to where the needs are would facilitate the development of needed intermodal facilities. ¶ ! Freedom for Innovation. Overly prescriptive federal regulations and standards have stymied innovation in ¶ transportation infrastructure. For example, two decades of federal speed-limit mandates precluded ¶ potentially large economic gains from the time savings involved in high-speed heavy-truck-oriented ¶ tollways, such as the proposed Chicago-Kansas City Tollway and Colorado's Front Range Toll Road. ¶ ! Private Investment. The private sector has stepped up to the plate in the 12 states where the law has been ¶ amended in recent years to encourage private investment in surface transportation. Yet because of the higher ¶ costs involved, private firms have shied away from public-private partnerships involving federal highway ¶ funds. Devolving these responsibilities to the states is more likely to encourage greater private-sector ¶ investment than is further attempts to fine-tune the federal public-private partnership provisions.

**Devolution solves airports- reduces costs and improves airport.**

**Poole ’96** (Robert W. Poole, Jr - Searle Freedom Trust Transportation Fellow and Director of Transportation Policy at the Reason Foundation. "DEFEDERALIZING TRANSPORTATION FUNDING." The Reason Foundation. N.p., october 1996. Web. <reason.org/files/4883e8bd01480c4d96ce788feb1f2e05.pdf>.)

For air-carrier airports, the benefits of the defederalization would be several, and parallel to those of devolving ¶ surface transportation to the states. ¶ ! More Productive Investment. For air-carrier airports, the present AIP system shifts resources from the ¶ busiest, most-congested airports (which collect the largest amounts of ticket taxes) to relatively smaller and ¶ less-congested airports. Defederalization would permit the busiest airports to generate and keep funds for ¶ expansion. Together with the other policy changes discussed in this paper, it would attract capital (including ¶ private capital) to those airports and metro areas which most needed to expand airport capacity. ¶ ! Intermodalism. Getting rid of the federal modal categories of grant funding would permit states, cities, and ¶ the private sector to devise and fund truly intermodal solutions to transportation problems (such as better ¶ road and rail access to airports, where this made economic sense). ¶ ! Freedom for Innovation. Ending federal micromanagement of airport finances would encourage new ways of adding value to airports via intensive retail/concessions development and value-maximizing land uses on airport properties. It would also permit airports to use market-based landing fee structures to spread out their ¶ peak traffic, thereby making greater use of their present capacity. ¶ ! Private Investment. Some cities and counties have wanted to sell or lease their airports to private firms, or ¶ to franchise new-terminal development to private firms. They have been deterred by provisions of FAA ¶ grant assurances. Defederalization will remove these barriers, permitting private capital to flow into airports and airport-development projects. ¶ The principal objection to defederalization is the argument that a federal grant system and its accompanying ¶ regulations are necessary in order to preserve and expand a Anational airport system.@ It is not clear what this term is ¶ supposed to mean when it comes to air-carrier airports. As noted previously, some cities may be under some degree ¶ of pressure to close down money-losing, subsidized general-aviation airfields in order to put the land to use for ¶ activities that do not require subsidies and will be part of the tax base. State grants for general aviation airports could ¶ help preserve that Asystem@ of airports, should a state desire to make such expenditures.

**Federal transportation infrastructure should be devolved to the states – less regulations, more private sector encouragement, and more innovation**

**Poole ’96** (Robert W. Poole, Jr - Searle Freedom Trust Transportation Fellow and Director of Transportation Policy at the Reason Foundation. "DEFEDERALIZING TRANSPORTATION FUNDING." The Reason Foundation. N.p., october 1996. Web. <reason.org/files/4883e8bd01480c4d96ce788feb1f2e05.pdf>.)

EXECUTIVE SUMMARY Airports, highways, and mass transit systems are primarily state and local responsibilities. They are developed and operated by state and local governments (with increasing private-sector involvement) and funded primarily from state and local sources. Yet the federal government, by collecting transportation user taxes and using them to make grants for these systems, both raises the costs and exerts significant control over these state and local activities. Congress should devolve transportation infrastructure funding and responsibilities to cities and states, ending federal grant programs and their accompanying restrictions. Cities and states have been open to privatization, and most would welcome the flexibility and freedom from costly federal regulations which devolution would give them. Devolving transportation funding would lead to more-productive investment, greater intermodalism, more innovation, and new capital from the private sector. Conventional wisdom suggests that 21 states are net donors to the federal highway program and the rest are net recipients. But this paper's analysis, taking into account the real costs of federal funding and regulations, concludes that 33 states get back less than they contribute in highway taxes and would be better off if the funds were left in their states to begin with. By adding such major states as Illinois, New Jersey, New York, Pennsylvania, and Virginia to the donor-state category, this assessment could change the political dynamics in favor of devolution. Abundant evidence now exists that federal transit programs have stimulated investment in unviable rail systems and have needlessly boosted transit system operating costs. The flexibility created by repeal of federal transit regulations would permit changes (such as competitive contracting of transit operations) that could save enough to offset much of the loss of federal operating subsidies. It would be up to cities and states to decide whether to continue to Ainvest@ in non-cost-effective rail transit. The only truly federal role in aviation is ensuring safety and facilitating the modernization of the air traffic control system. The latter can best be accomplished by divesting ATC to a user-funded corporation, as 16 other countries have done. Airports should be defederalized; all sizes of commercial airports could make up for the loss of federal grants with modest per-passenger charges. States could decide whether to subsidize unviable general aviation airports. Overall, the federal government would retain certain coordination and safety-regulation functions in transportation. But it would henceforth leave investment and management decisions to state, city, and private decision-makers.

**The SC should extend the Lopez decision to limit federal action and uphold federalism**

Calabresi 95-[**Steven G. Calabresi, Law Professor, Northwestern, 1995; Michigan Law Review, December pp. 830‑1]**

The prevailing wisdom is that the Supreme Court should abstain from enforcing constitutional limits on federal power for reasons of judicial competence and because the Court should spend essentially all its political capital enforcing the Fourteenth Amendment against the states instead. This view is wrong. First, the rules of constitutional federalism should be enforced because federalism is a good thing, and it is the best and most important structural feature of the U.S. Constitution. Second, the political branches cannot be relied upon to enforce constitutional federalism, notwithstanding the contrary writings of Professor Jesse Choper. Third, the Supreme Court is institutionally competent to enforce constitutional federalism. Fourth, the Court is at least as qualified to act in this area as it is in the Fourteenth Amendment area. And, fifth, the doctrine of stare decisis does not pose a barrier to the creation of any new, prospectively applicable Commerce Clause case law. The conventional wisdom is that Lopez is nothing more than a flash in the pan. Elite opinion holds that the future of American constitutional law will involve the continuing elaboration of the Court's national codes on matters like abortion regulation, pornography, rules on holiday displays, and rules on how the states should conduct their own criminal investigations and trials. Public choice theory suggests many reasons why it is likely that the Court will continue to pick on the states and give Congress a free ride. But, it would be a very good thing for this country if the Court decided to surprise us and continued on its way down the Lopez path. Those of us who comment on the Court's work, whether in the law reviews or in the newspapers, should encourage the Court to follow the path on which it has now embarked. The country and the world would be a better place if it did. We have seen that a desire for both international and devolutionary federalism has swept across the world in recent years. To a significant extent, this is due to global fascination with and emulation of our own American federalism success story. The global trend toward federalism is an enormously positive development that greatly increases the likelihood of future peace, free trade, economic growth, respect for social and cultural diversity, and protection of individual human rights. It depends for its success on the willingness of sovereign nations to strike federalism deals in the belief that those deals will be kept. The U.S. Supreme Court can do its part to encourage the future striking of such deals by enforcing vigorously our own American federalism deal. Lopez could be a first step in that process, if only the Justices and the legal academy would wake up to the importance of what is at stake.

**Lopez limits federal action—States are legally effective [this defines the intent of the commerce clause]**

Thomas 08-[“Federalism, State Sovereignty, and the Constitution: Basis and Limits of Congressional Power,” by Kenneth R. Thomas; Legislative Attorney; American Law Division; February 1, 2008; CRS Report for congress; http://www.fas.org/sgp/crs/misc/RL30315.pdf]

The Commerce Clause As noted above, the U.S. Constitution provides that Congress shall have the power to regulate commerce with foreign nations and among the various states.29 This power has been cited as the constitutional basis for a significant portion of the laws passed by Congress over the last 50 years, and it currently represents one of the broadest bases for the exercise of congressional powers. In United States v. Lopez,30 however, the Supreme Court brought into question the extent to which Congress can rely on the Commerce Clause as a basis for federal jurisdiction. Under the Gun-Free School Zones Act of 1990, Congress made it a federal offense for “any individual knowingly to possess a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone.”31 In Lopez, the Court held that, because the act neither regulated a commercial activity nor contained a requirement that the possession was connected to interstate commerce, the act exceeded the authority of Congress under the Commerce Clause. Although the Court did not explicitly overrule any previous rulings upholding federal statutes passed under the authority of the Commerce Clause, the decision would appear to suggest new limits to Congress’s legislative authority. The scope and extent of the Commerce Clause does not appear to have been of particular concern to the framers of the Constitution.32 There are indications that the founding fathers considered the federal regulation of commerce to be an important power of the new Constitution primarily as a means of facilitating trade and of raising revenue.33 While the Anti-Federalists argued that the new Constitution gave too much power to the federal government, they apparently did not raise significant objections to the granting of power to regulate interstate commerce.34 The Supreme Court, however, developed an expansive view of the Commerce Clause relatively early in the history of judicial review. For instance, Chief Justice Marshall wrote in 1824 that “the power over commerce ... is vested in Congress as absolutely as it would be in a single government ...” and that “the influence which their constituents possess at elections, are ... the sole restraints” on this power.35 However, the issue in most of the early Supreme Court Commerce Clause cases dealt not with the limits of Congressional authority, but on the implied limitation of the Commerce Clause on a state’s ability to regulate commerce.36 It has been suggested that the Commerce Clause should be restricted to the regulation of “selling, buying, bartering and transporting.”37 In fact, much of the federal legislation approved of by the Supreme Court early in the 20th century did relate to issues such as the regulation of lottery tickets,38 the transporting of adulterated food,39 and the interstate transportation of prostitutes.40 Moreover, during the early 1900s, the Supreme Court struck down a series of federal statutes that attempted to extend commerce regulation to activities such as “production,” “manufacturing,”41 and “mining.”42

**Lopez does not threaten federal regulation of commerce**

Rotunda 03-[Ronald Rotunda, Professor of Law, University of Illinois College of Law, ARKANSAS LAW REVIEW, 2003, p. 799]

This "New Commerce Clause" is a very different animal than the old Commerce Clause of the pre-1937 Court. Supporters of Franklin Delano Roosevelt complained at the time that the Court - using various clauses of the Constitution - was simply trying to prevent both state governments and the Federal Government from regulating economic and commercial activities. In contrast, the New Commerce Clause does not prevent the Federal Government from enacting any commercial regulation that would be necessary for a central government to enact, as even many commentators across the political spectrum concede.

**Courts wont ignore federal right protrections**

Rotunda 03-[Ronald Rotunda, Professor of Law, University of Illinois College of Law, ARKANSAS LAW REVIEW, 2003, p. 800]

The New Commerce Clause cases also do not undermine federal power to enforce the guarantees of equal protection, but they do guard against a central government of unlimited powers. Although the Court in Katzenbach v. Morgan n224 upheld a broad congressional power under Section 5 to determine that state practice interferes with Fourteenth Amendment rights, it also examined the federal statute for consistency with constitutional requirements. The Court's analysis in later cases confirms that federal courts will scrutinize congressional action under Section 5 in order to protect basic principles of federalism. These precedents herald a greater protection for the structure of the federal system and for the liberty that this structure protects. They should not be read to herald a Federal Government stripped of its important powers that are necessary to protect suspect classes

## A2 States Fail/Gov Key

**Federal government’s not key**

**Poole, 96** – director of transportation policy and Searle Freedom Trust Transportation Fellow at Reason Foundation (Robert W., October 1996, “ Defederalizing Transportation Funding,” Reason Foundation, http://reason.org/files/4883e8bd01480c4d96ce788feb1f2e05.pdf, Hensel)

There are three principal reasons for considering the devolution of transportation investment to lower levels of government. First, the responsibility for building, owning, and operating these systems is primarily regional or local, not national. Now that the Interstate highway system has been completed, the federal role in highways can be dramatically reduced, and the federal role in aviation is primarily concerned with the national air traffic control system, not local airports. There is no national interest (as apart from a regional or local interest) in whether San Francisco extends its BART system to the airport or whether Boston puts its Central Artery underground. Second, there are major disadvantages with the centralized federal trust-fund approach to funding transportation infrastructure, as will be discussed below. Third, it is cities and states not the federal government that have been most innovative in seeking new and better ways to invest in infrastructure and improve its performance, by making use of public-private partnerships.

Only states solve

Katz, 12 – vice president and director, Metropolitan Policy Program, Brookings Institute (Bruce, February 16, 2012, “Remaking Federalism to Remake the American Economy,” Brookings Institution, http://www.brookings.edu/research/papers/2012/02/16-federalism-katz, Hensel)

Second, states and metropolitan areas must innovate where they should to drive and enable bottom-up economic strategies that fully align with the distinctive competitive assets and advantages of disparate places. That will require a radical restructuring of the federal government. As Mark Muro wrote in his seminal MetroPolicy treatise in 2008: New technologies, globalization, and deregulation, ha[ve] brought a new era of speed, entrepreneurship, innovation, flux and complexity—as well as new challenges—for organizations. . . . Compelled by the new conditions, firms, governments and organizations of all types have embarked upon an urgent search for new, more flexible and effective forms of organization out of which the outlines of a distinctive 21st century style of governance have begun to emerge. Top-down planning and control structures are giving way to decentralized, “federated” systems —because pre-set central plans cannot encompass the complexity and variation of contemporary reality—to build in space for decisive front-line responsiveness, problem-solving, experimentation, and learning (emphasis added). Against this backdrop, the federal government largely remains a legacy government rooted in a different era. The current federal agencies are siloed and stove-piped, highly compartmentalized and specialized, allergic to risk in the face of challenges that are multi-dimensional and multi-layered. Most federal structures, policies, programs and rules are prescriptive and technocratic, narrowly defined, poorly coordinated and, in general, ill-suited to support creative state and metropolitan problem-solving. The proliferation of federal programs is alarming. The Simpson-Bowles Commission, for example, found that there are over 44 job training programs across nine different federal agencies, and 105 programs meant to encourage STEM education. Throughout the federal government, an inspector-general culture prevails, stifling innovation and limiting latitude for invention and experimentation. Despite the diversity of the country, a “one size fits all” categorical approach drives national investment, enticing different regions to compete for discrete federal funds whether they need them or not. One can imagine multiple ways—for example, consolidating trade agencies with similar missions, consolidating workforce programs under a performance block grant—to modernize the federal government to leverage the possibilities of a differentiated economy. The most direct way might be to apply a variant of the Race to the Top education competition to the economic restructuring arena. The federal government could challenge states and metropolitan regions to articulate how they would attain a critical economic goal (say, doubling exports) over a set period of time. A consolidated competition could then be held to group together federal programs across a broad and diverse range of activities and policy areas. An export competition could group together programs that fund advanced manufacturing, workforce, freight infrastructure, brownfield remediation and export promotion and financing. The competition could challenge a broad cross-section of leaders in states and metropolitan areas to: (a) articulate a bold economic vision that builds from their special assets and advantages; (b) design strategies that carry out that vision through tangible projects and investments; (c) reform state and local policies and governance in support of these strategies; and (d) hold themselves accountable on a regular basis through transparent performance measures. Finally, a nonpartisan group of business, state and regional leaders could be tasked to recommend the goals and parameters of the competition and could even be designated to assess disparate applications. This proposal would differ from Race to the Top in one critical dimension. The focus would be on catalyzing innovation, rather than using competitive resources to drive adoption of a series of predetermined and preferred reforms. Race to the Top followed 20 years of school reform at the state and local levels. Yet no state “has it right” on maximizing the elements of the next economy and pursuing an integrated approach between, say, advanced research and development, advanced manufacturing, clean technology, foreign direct investment, skilled workers, infrastructure and exports. With the national and global economy in a period of disruptive change, now is a good time to challenge states and metropolitan areas to invent the next growth model. Several states and metros might, for example, pioneer a new way of supporting advanced manufacturing. Others might do the same with exports and foreign direct investment or with upgrading the skills of key advanced industry workers. With federal direction, this could be a golden period of state and metropolitan innovation in shaping a more productive, sustainable and inclusive economy.

States are key to jump starting the economy

Katz, 12 – vice president and director, Metropolitan Policy Program, Brookings Institute (Bruce, February 16, 2012, “Remaking Federalism to Remake the American Economy,” Brookings Institution, http://www.brookings.edu/research/papers/2012/02/16-federalism-katz, Hensel)

At the most basic level, the U.S. needs more jobs— 12.1 million by one estimate—to recover the jobs lost during the downturn and keep pace with population growth and labor market dynamics. Beyond pure job growth, the U.S. needs better jobs, to grow wages and incomes for lower- and middle-class workers and reverse the troubling decades-long rise in inequality. To achieve these twin goals, the U.S. needs to restructure the economy from one focused inward and characterized by excessive consumption and debt, to one globally engaged and driven by production and innovation. It must do so while contending with a new cadre of global competitors that aim to best the United States in the next industrial revolution and while leveraging the distinctive assets and advantages of different parts of the country, particularly the major cities and metropolitan areas that are the engines of national prosperity. This is the tallest of economic orders and it is well beyond the scope of exclusive federal solutions, the traditional focus of presidential candidates in both political parties. Rather, the next President must look beyond Washington and enlist states and metropolitan areas as active co-partners in the restructuring of the national economy. Remaking the economy, in essence, requires a remaking of federalism so that governments at all levels “collaborate to compete” and work closely with each other and the private and civic sectors to burnish American competitiveness in the new global economic order. The time for remaking federalism could not be more propitious. With Washington mired in partisan gridlock, the states and metropolitan areas are once again playing their traditional roles as “laboratories of democracy” and centers of economic and policy innovation. An enormous opportunity exists for the next president to mobilize these federalist partners in a focused campaign for national economic renewal. Given global competition, the next president should adopt a vision of collaborative federalism in which: the federal government leads where it must and sets a robust platform for productive and innovative growth via a few transformative investments and interventions; states and metropolitan areas innovate where they should to design and implement bottom-up economic strategies that fully align with their distinctive competitive assets and advantages; and a refreshed set of federalist institutions maximize results by accelerating the replication of innovations across the federal, state and metropolitan levels.

**State governments are more effective**

Freemark 12-[Clearing it Up on Federal Transportation Expenditures Yonah Freemark; Yonah Freemark is an independent researcher currently working in France on comparative urban development as part of a Gordon Grand Fellowship from Yale University, from which he graduated in May 2008 with a BA in architecture. He writes about transportation and land use issues for The Transport Politic and The Infrastructurist<February 16th, 2012 http://www.thetransportpolitic.com/2012/02/16/clearing-it-up-on-federal-transportation-expenditures/]

The reaction to President Obama’s 2013 budget for transportation has ranged from the dismissive — “it’s too big to be part of the discussion” — to the supportive (myself, among others), most of the commentary revolving around the proposed program’s large size. Another theme, however, has reemerged in the discussion: **The role of the federal government in funding transportation. It’s not a new conversation,** of course; in American transportation circles, the roles of the three major levels of government are constantly being put into question. The argument goes something like this: **The federal government, because of its national power and ability to collect revenues from the fuel taxes it administers, is a wasteful spender and it chooses to invest in projects that are inappropriate enough that they wouldn’t be financed by local governments if they were in charge. Harvard Economist Edward Glaeser argues for the de-federalization of transport spending, suggesting “Whenever the person paying isn’t the person who benefits, there will always be a push for more largesse and little check on spending efficiency**. Would Detroit’s People Mover have ever been built if the people of Detroit had to pay for it? **We should move toward a system in which states and localities take more responsibility for the infrastructure that serves their citizens.”** He also suggests, somewhat contradictorily, that federal funding “tie spending to need or performance.“\* USC’s Lisa Schweitzer asserts that if cities want improved sidewalks or public transportation, they should pay for them themselves. ”The typical arguments [are] that “those things are good for us!”,” she writes. “Of course they are. Why can’t you fund them at the city, or in the case of transit, the state level?” [She adds that she will defend federal investment in a future discussion.] Bruce Katz of Brookings chimes in. “The states and metropolitan areas are once again playing their traditional roles as “laboratories of democracy” and centers of economic and policy innovation,” he adds. “An enormous opportunity exists for the next president to mobilize these federalist partn ers in a focused campaign for national economic renewal.” **The federal government**, it is implied, **is just too intrusive to make the right decisions**. Here’s the thing: **The large majority of decisions on transportation spending with federal dollars is already made at the state and local levels. And state and local governments already contribute huge sums to the operation, maintenance, and expansion of their transportation programs.** Once the federal government collects tax revenue, it distributes funding to the states based on formulas agreed upon by members of Congress. For the most, part, the money goes back to the states and to metropolitan areas, which then fund projects based on the priority lists that they generate. It is true that Washington allocates some money for transit and some for highways, but within those categories, states and local governments generally have power to pay for the projects they want.

**States can increase transportation spending –they are more effective**

Horowitz 12**-[“**Devolve Transportation Spending to States” by Daniel Horowitz; is an American defense attorney who has represented several high-profile clients including talk show host Michael Savage and is a frequent commentator in the media on criminal cases in the news ; January 19th; http://www.redstate.com/dhorowitz3/2012/01/19/devolve-transportation-spending-to-states/]

One of the numerous legislative deadlines that Congress will be forced to confront this session is the expiration of the 8th short-term extension of the 2005 surface transportation authorization law (SAFETEA-LU). **With federal transportation spending growing beyond its revenue source, an imbalance between donor and recipient states, inefficient and superfluous construction projects popping up all over the country, and burdensome mass transit mandates on states, it is time to inject some federalism into transportation spending.** Throughout the presidential campaign, many of the candidates have expressed broad views of state’s rights, while decrying the expansion of the federal government. In doing so, some of the candidates have expressed the conviction that states have the right to implement tyranny or pick winners and losers, as long as the federal government stays out of it. Romneycare and state subsidies for green energy are good examples. The reality is that **states** don’t have rights; they certainly don’t have the power to impose tyranny on citizens by forcing them to buy health insurance or regulating the water in their toilet bowels – to name a few. They do, however, **reserve powers under our federalist system of governance to implement legitimate functions of government. A quintessential example of such a legitimate power is control over transportation and infrastructure spending.** The Highway Trust Fund was established in 1956 to fund the Interstate Highway System (IHS). The fund, which is administered by the DOT’s Federal Highway Administration, has been purveyed by the federal gasoline tax, which now stands at 18.4 cents per gallon (24.4 for diesel fuel). Beginning in 1983, Congress began siphoning off some of the gas tax revenue for the great liberal sacred cow; the urban mass transit system. Today, mass transit receives $10.2 billion in annual appropriations, accounting for a whopping 20% of transportation spending. Additionally, the DOT mandates that states use as much as 10% of their funding for all sorts of local pork projects, such as bike paths and roadside flowers. As a result of the inefficiencies and wasteful mandates of our top-down approach to transportation spending, trust fund outlays have exceeded its revenue source by an average of $12 billion per year, even though the IHS – the catalyst for the gasoline tax – has been completed for 20 years. In 2008, the phantom trust fund was bailed out with $35 billion in general revenue, and has been running a deficit for the past few years. Congress has not passed a 6-year reauthorization bill since 2005, relying on a slew of short-term extensions, the last of which is scheduled to expire on March 31. **Short-term funding is no way to plan for long-term infrastructure projects. In their alacrity to gobble up the short-term money before it runs out, state and local governments tend to use the funds on small time and indivisible projects, such as incessant road repaving, instead of better planned long-term projects.** It’s time for a long-term solution, one which will inject much-needed federalism and free-market solutions into our inefficient and expensive transportation policy. It is time to abolish the Highway Trust Fund and its accompanying federal gasoline tax. Twenty years after the completion of the IHS, we must devolve all transportation authority to the states, with the exception of projects that are national in scope. Each state should be responsible for its own projects, including maintenance for its share of the IHS. Free of the burden of shouldering special interest pork projects of other states, each state would levy its own state gas tax to purvey its own transportation needs. If a state wants a robust mass transit system or pervasive bike lanes, let the residents of that state decide whether they want to pay for it. That is true federalism in action. **The most prudent legislation that would transition responsibility for transportation spending back to the states is Rep. Scott Garrett’s STATE Act (HR 1737). Under this legislation, all states would have the option to opt out of the federal transportation system and keep 16.4 cents of their federal gasoline tax contribution. States would have the ability to use that money to raise their state gasoline tax and direct those funds more efficiently for their own needs.** States would be free to use the funds for vital needs, instead of incessant repaving projects that are engendered by short-term federal stimulus grants, and which cause unnecessary traffic juggernauts. **States could then experiment with new innovations and free-market solutions that open up infrastructure projects to the private sector.** The Tenth Amendment is not just a flag-waving principle; it works in the real world. **It takes a lot of impudence on the part of the President to blame Republicans for crumbling infrastructure. It is his support for a failed central government system that is stifling the requisite innovations that are needed to deal with state and local problems. There is no issue that is more appropriate for state solutions than transportation spending**. Every Republican member should co-sponsor the STATE ACT so we can put an end to three decades of flushing transportation down the toilet. Also, with the news that Rick Perry will head up Newt Gingrich’s Tenth Amendment initiatives, this might be a good time to advocate for federalist solutions in transportation and infrastructure. When Obama starts ascribing blame for our “crumbling infrastructure” during his State of the Union Address, Perry and Gingrich should use their megaphone to pin the blame on the donkey’s stranglehold over the transportation needs of states. With only two months until the authorization for the federal gas tax expires, most other proposals will only further entrench the power of the federal government. Call your members of Congress and ask them to co-sponsor Scott Garrett’s HR 1737 and stand for bold conservative solutions.

**State authority on transportation is growing**

**Russell 11-[Nicholas, Russell. "Six Ideas for Fixing the Nation's Infrastructure Problems." *Governing -the States and Localities*. N.p., June 2011. Web. 30 June 2012. <http://www.governing.com/topics/transportation-infrastructure/six-ideas-for-fixing-the-nations-infrastructure-problems.html]**

States pay for about two-thirds of surface transportation spending. With less money available from the feds, their portion may need to grow -- an increasingly familiar storyline in all areas of funding right now. Given that dynamic, states and localities are asking for more flexibility on how they can spend federal dollars and are endorsing plans that would allow the federal government to leverage the limited funds that are available. One idea that has received bipartisan support is a plan known ass America Fast Forward. It’s a proposal to expand a federal program of the Transportation Infrastructure Finance and Innovation Act (TIFIA) that provides low-interest loans for transportation projects. The proposal’s biggest cheerleader is Los Angeles Mayor Antonio Villaraigosa. In 2008, Angelinos approved a sales-tax hike for a set of highway and transit projects; but rather than funneling that revenue into new projects outright, Villaraigosa’s goal is to use the money to pay debt on a federal transportation loan. An upfront loan would allow the city to complete its projects rapidly while using the proceeds of its 30-year sales-tax hike to pay it back over time. Currently TIFIA isn’t big enough to accommodate such large-scale plans, which is why Los Angeles has backed a national push to expand the program from $122 million annually to $375 million, and to raise its cap from 33 percent of project costs to 49 percent. “It’s an idea that’s different from a grant program,” says L.A. Deputy Mayor for Transportation Jaime de la Vega. “We’re coming to the table with money and saying we need a partnership. It’s not a handout.” State leaders are also backing a plan to reduce the number of federal highway programs from 55 to five, in an effort to gain greater flexibility in how the dollars are spent. That would help clear up what some people see as troublesome inconsistencies in how funds are meted out. For example, federal aid can be used for preventive maintenance of highways, but routine maintenance is considered a state responsibility. Rhode Island Transportation Director Michael Lewis recently testified before Congress that his state has to take on debt just to get the required match to receive transportation funds, when that money could have been used to perform maintenance. “Now is not the time to tie our hands and limit the use of transportation dollars and assets,” Lewis told Congress. Other options that would grant more power to states have been gaining traction in D.C., including creating an infrastructure bank, expanding public-private partnerships and allowing tolling on interstate highways (an idea LaHood has said he’s open to). However, flexibility can be a double-edged sword, cautions Leslie Wollack, program director for infrastructure and sustainability at the National League of Cities. “If flexibility means a state doesn’t want to spend any [of its own] money on transportation enhancement or transit or to collaborate on what’s going on at the local level, then we see that as a problem.”

## A2 Links To Ptx

**Republicans support the CP**

**Snider and Everett 3/19** [Adam Snider is a transportation reporter for POLITICO Pro., winner of the Beltz Award for Editorial Excellence, Snider studied English and communications at Clemson University in South Carolina. John Burgess Everett is a transportation reporter for POLITICO Pro., a University of Maryland graduate. “GOP paves way for states to retake road funding” March 19th, 2012 <http://www.politico.com/news/stories/0312/74196.html> SMerchant]

Congress may be on the road to re-upping the transportation bill, but there’s still a cadre of lawmakers who say it’s not too late to get the federal government out of the road-building and gas tax business. If anything, some Republicans say they are excited about finally getting some votes on what has long been a conservative dream. Sen. Jim DeMint (R-S.C.) got a vote last week on his amendment to the Senate-passed bill that would send many transportation policy and funding decisions back to the states. The amendment was the first time in years senators got a serious chance to weigh in on the issue, and 30 senators (all Republicans) supported the long-shot attempt. A second devolution offering from Sen. Rob Portman (R-Ohio) failed but also got 30 votes. In the House, GOP Reps. Tom Graves of Georgia, and Jeb Hensarling and Kevin Brady, both of Texas, hope to vote on a similar amendment whenever the House takes up a highway bill. “We’re going to continue the debate in the House,” Graves told POLITICO. “It’s going to be a new debate about how you fund transportation. Do you continue [a program] that adds to the deficit or do you do one that empowers the states? Conservatives see DeMint’s vote and Graves’s offering as good starting points, reminiscent of the long-fought battle over earmarks, now banned for the 112th Congress. Dan Holler, communications director of Heritage Action for America, said the conversation has been changed already. “A floor of 30 senators is a great place to start,” he said. Sen. Barbara Boxer (D-Calif.), who took the lead on both selling and writing the two-year Senate bill, acknowledged, “That vote was too close for my liking.” DeMint says his amendment would cut government redundancy while keeping services intact and efficiently returning spending to the states. “Every time we have a bureaucracy and an administration [in Washington], every state duplicates that. Fifty state highway departments following federal rules and then their own,” DeMint said in an interview. “We can begin to downsize that. So the point is, if we ever want to balance our budget, the way to do it is not to just cut a little, but off every federal function.”

States should have transportation infrastructure responsibility – it’s popular

Rogers, 04 – contributing editor for *The Nation* (Joel, August 30, 2004, “Devolve this! Progressives urgently need a strategy to take back the states from the GOP,” The Nation, Academic OneFile, Hensel)

We want states to get on the "high road" of high-wage, low-waste, democratically accountable economic development, with firms competing on product quality, innovation and distinctness, and drawing on a wide range of productive public goods. We want to close off the "low road" alternative, in which firms compete chiefly on price, and wind up in an endless race-to-the-bottom on labor and environmental standards and the evasion of social responsibility. And we want to reinvent government our way--with a clean and more democratic process, and greater input from popular organizations outside the states--to make it more efficient and capable. Based on years of work, we even know what this "high road" looks like in its different parts--education and training, transportation and infrastructure, land use and energy, democratic reform and administration. We just need to connect the dots into a picture, and display that more hopeful future to the public. We know this program would be popular. We know this not only because it is in the interests of a vast majority of voters--labor, most people of color, most women, high-roading business and the many residents of inner-ring suburbs, depressed rural communities and central cities who are getting killed by present low-roading policy--but because our own organizing experience over the past decade has shown repeatedly that, given a choice, this is the one the majority makes.

**Devolution is politically popular**

**Poole ’96** (Robert W. Poole, Jr - Searle Freedom Trust Transportation Fellow and Director of Transportation Policy at the Reason Foundation. "DEFEDERALIZING TRANSPORTATION FUNDING." The Reason Foundation. N.p., october 1996. Web. <reason.org/files/4883e8bd01480c4d96ce788feb1f2e05.pdf>.)

The general climate of opinion in 1995-96 has favored devolution of responsibilities from Washington, DC to lower ¶ levels of government. For example, the Republican Governors Conference in spring 1995 unanimously adopted the ¶ Williamsburg Resolve, which strongly supports the devolution of responsibilities from the federal government to the ¶ states. ¶ But in addition, two important windows of opportunity have opened for transportation devolution. First, the current ¶ federal highway and transit programs (and the underlying federal gasoline tax) expire in 1997, with the expiration of ¶ the Intermodal Surface Transportation Efficiency Act (ISTEA). Were Congress to simply do nothing, the gasoline ¶ tax would disappear and states would be left to their own devices albeit with some messy transition problems. ¶ ISTEA=s expiration offers the opportunity for an orderly devolution of surface transportation responsibilities to the ¶ states and urban areas. ¶ Second, federal aviation taxes were suspended between January and August 1996. During that period, ongoing FAA ¶ programs (air traffic control, safety regulation, and AIP grants) were funded by drawing down the balance in the ¶ Aviation Trust Fund. The suspension of these taxes led to serious efforts by the major airlines to replace them with ¶ air traffic control user fees. Although Congress has temporarily reinstated the taxes (through the end of 1996), the ¶ debate on future aviation funding remains open. ¶ An additional issue arose during 1996: taking the transportation trust funds off budget. This proposal would impede, ¶ rather than assist, transportation devolution.

## A2 Commerce Clause

**Commerce clause doesn’t apply to marine transportation**

**ASCE, 07** (American Society of Civil Engineers, July 19, 2007, “Testimony of The American Society of Civil Engineers Before The Transportation and Infrastructure Committee U.S. House of Representatives on the Status of the Nation's Waters, Including Wetlands, Under the Jurisdiction of The Federal Water Pollution Control Act,” http://www.asce.org/uploadedFiles/Government\_Relations\_-\_New/ASCE\_TI\_wetlands\_7\_19\_2007(5).pdf, Hensel)

For 125 years, the Supreme Court accepted broad congressional power under the Commerce Clause over interstate commerce, including commerce on navigable waterways engaged in intrastate commerce. 26 The Commerce Clause applied to commercial activities crossing state lines as well as “to those activities intrastate which so affect interstate commerce or the exercise of the power of Congress over it as to make regulation of them appropriate means to the attainment of a legitimate end, the exercise of the granted power of Congress to regulate interstate commerce.” 27 But in 1995 the Court began limiting congressional sway over what a bare majority of justices saw as purely local, intrastate commerce. 28 With respect to the Clean Water Act, the new Commerce Clause direction had an immediate impact on federal regulation of U.S. waters. The Court had first attempted to define federal jurisdiction under the Act in United States v. Riverside Bayview Homes, 29 when it held that the U.S. Army Corps of Engineers (Corps) had broad power to regulate wetlands adjacent to navigable bodies of water and their tributaries under section 404. These wetlands, the Court concluded, could reasonably be regulated if the Corps found that they were “inseparably bound up” with “waters of the United States” that were subject to the Clean Water Act. 30 The Court also discarded a prerequisite that the regulated lands be under water. 31 In January 2001, however, the opinion in Solid Waste Agency of Northern Cook County (SWANCC) v. United States Army Corps of Engineers 32 retreated from the broad ruling in Riverside Bayview Homes and restricted federal jurisdiction over intrastate waters for the first time. To come within federal protection, the SWANCC Court said, the wetlands need to exhibit a “significant nexus” to navigable waters, a conclusion, the majority argued, that was in fact based on a principle in Riverside Bayview Homes. 33 The decision eliminated federal jurisdiction over isolated wetlands that were (or could be) used by migratory birds. The **SWANCC** Court **indicated that the states could fill the gap left by the shortened federal leash over intrastate waters**. Notwithstanding the holding’s narrow application to migratory bird habitats, the opinion seemed to indicate that all waters within a single state eventually could be beyond the reach of the Clean Water Act absent a clear connection to interstate commerce. Even though the SWANCC holding was limited only to certain isolated waters, its practical effect was to leave remote wetlands at risk of destruction from - 10 industrial activities due to the uncertainty in the minds of federal and state regulators over the reach of the 404 program. “The concepts of ‘tributary,’ ‘adjacency,’ and ‘significant nexus’ are the main jurisdictional issues in the post-SWANCC debate.” 34 The decision was seen by many as a major revision to the Act. “In ruling that the Corps and the [Environmental Protection Agency] no longer had jurisdiction over isolated intrastate waters, the Court fundamentally changed section 404 wetlands regulatory programs.” 35

**CP is legally effective—the plan erodes the original intent of the commerce clause**

**Anderson 11**-[“The Commerce Clause as a Mechanism to Expand the Federal Government” February 14, 2011 | By Brian Anderson; Brian Anderson is a Colorado native and graduate of Regis University where he earned a Bachelor of Science in Business Administration. He is a graduate student at the University of Colorado Denver working on a Master of Arts in Political Science. His area of study is American Politics with an emphasis in addressing community issues via local government and nonprofit development; <http://alos.rootshq.net/policy/commerce-clause-mechanism-expand-federal-government>]

Patient Protection and Affordable Care Act of 2010 (a.k.a. ObamaCare) supporters maintain that the act is constitutional under Article I, Section 8, Clause 3 of the Constitution, which is commonly referred to as the Commerce Clause. Article I, Section 8 describes Congress' powers. **The clause states that Congress has the power, "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." Proponents of a strong federal government argue that "among the several states" grants the federal government power to regulate economic activity and impose laws on states and individuals for the general welfare of the country. The framers of the Constitution, however, had a much narrower intent of the clause.** The framers established a federalist system of government wherein power was divided between the federal government and the states. Federalism limited the power of the federal government and protected the sovereignty of the states and the individuals therein. **Interpreting the Commerce Clause to impose federal government mandates upon the states and individuals is antithetical to the framers' intent. Thus, using the Commerce Clause as an instrument to expand the power of the federal government erodes the original intent of the Constitution and fundamentally alters its authority. The framers wrote the Commerce Clause to erode the trade barriers that states had erected to protect their own economic interests.** Like national governments do in international markets, the states implemented their own protectionist policies within US borders. The framers understood that there would be negative consequences of protectionism between the states. During the Constitutional Conventional, therefore, the framers had little debate over the Commerce Clause as they intended that the federal government's role in interstate commerce would be to regulate -- to make regular, which meant to make an even, stable market -- the environment in which the states would facilitate interstate commerce. **Contrary to the original intent of the framers, the Commerce Clause has been the primary instrument by which the federal government has expanded its powers and control over the states and individuals. No other Constitutional clause has been more disputed in the courts.**

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