# Federalism/States CP

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### Shell

#### Recent trends in the house and senate prove transportation infrastructure is moving towards devolution—plan reverses the trend

McGuigan, 2k11 (Patrick, “Transportation Federalism”, Capital Beat OK, http://capitolbeatok.com/reports/transportation-federalism-and-flexibility-proposed-in-new-bill-from-coburn-lankford)

A bill giving greater authority and control over transportation funding was introduced in Congress yesterday, with U.S. Sen. Tom Coburn of Muskogee and U.S. Rep. James Lankford of Oklahoma City as leading proponents. Governor Mary Fallin and Oklahoma Secretary of Transportation Gary Ridley applauded the proposal, as did a representative of the state's leading free market “think tank.” According to a press release from advocates in the nation's capital, “the State Transportation Flexibility Act that would allow state transportation departments to opt out of the Federal-Aid Highway and Mass Transit programs. Instead, these states would be able to manage and spend the gas tax revenue collected within their state on transportation projects without federal mandates or restrictions.” A total of of 14 members of the Senate and 24 members of the House of Representatives have joined as co-sponsors. Besides the pair of Oklahomans, supporters included Sens. John McCain of Arizona, David Vitter of Louisiana, Orrin Hatch of Utah, John Cornyn of Texas, Johnny Isakson of Georgia, Daniel Coats of Indiana, Mike Lee of Utah, and Rob Portman of Ohio. Rep. Jeff Flake of Arizona is advocating for the bill in Congress, alongside Lankford. In Oklahoma, a vice president at the Oklahoma Council of Public Affairs (OCPA) immediately applauded the bill's introduction. In his statement, sent to CapitolBeatOK, Sen. Coburn said, “Washington’s addiction to spending has bankrupted the Highway Trust Fund. For years, lower-priority projects like earmarks have crowded out important priorities in our states, such as repairing crumbling roads and bridges. “Instead of burdening states and micromanaging local transportation decisions from Washington, states like Oklahoma should be free to choose how their transportation dollars are spent. I have no doubt that Oklahoma’s Transportation Director Gary Ridley will do a much better job deciding how Oklahoma’s transportation dollars are spent than bureaucrats and politicians in Washington.” Lankford applauded Coburn's leadership in the matter, observing, “This has been one of my top priorities since coming to Congress, and I’m happy to join Senator Coburn in this effort. This bill is a giant step for states by increasing transportation flexibility while improving efficiency. “By allowing states to opt-out of the federal bureaucracy, they will be able to take more control of their own resources. It will free Oklahoma to keep our own federal gas taxes and to fund new projects at our own discretion.” Joel Kintsel, executive vice president at OCPA, told CapitolBeatOK, "I am so proud of the leadership shown by Senator Coburn and Congressman Lankford. Hopefully, this is the beginning of a broader effort by Congress to return to federalism and withdraw from areas of activity rightfully belonging to the States.” Sen. McCain, the 2008 Republican nominee for president, said, “As a Federalist, I have long advocated that states should retain the right to keep the revenue from gas taxes paid by drivers in their own state. This bill would allow for this to happen and prevent Arizonans from returning their hard earned money to Washington. Arizonans have always received 95 cents or less for every dollar they pay federal gas taxes. This continues to be unacceptable, and for that reason I am a proud supported of the State Highway Flexibility Act.” Sen. Vitter asserted, “It’s very apparent how badly Congress can mismanage tax dollars, especially the Highway Trust fund which has needed to be bailed out three times since 2008. The states know their transportation needs better than Congress, so let’s put them in the driver’s seat to manage their own gas tax.” Hatch contended, “The federal government’s one-size-fits all transportation policies and mandates are wasting billions of taxpayer dollars and causing inexcusable delays in the construction of highways, bridges and roads in Utah and across the nation. Sen. Cornyn said the Lone Star State can manage public transportation spending just fine, and the bill, “will provide Texas more flexibility to make transportation decisions locally and encourage innovative solutions to addressing our transportation infrastructure needs. Kintsel, whose areas of focus for OCPA include constitutional and other legal policy issues, said, “Federalism is an indispensable check and balance between the States and the federal government and remains an important feature of our constitutional system. Unless it is a power expressly reserved by the Constitution to the federal government, Congress should not attempt to control the decisions of individual states. The more local decision making is eroded by an overbearing national government, the less freedom and ingenuity survives in states and local communities. In this instance, Oklahoma leaders will know how to use these transportation dollars far more efficiently than anyone outside of Oklahoma.

#### Impact is global war --- U.S. federalism is modeled worldwide, solving conflict

Calabresi ’95 (Steven G., Assistant Prof – Northwestern U., Michigan Law Review, Lexis)

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  [\*831]  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. [232](http://www.lexis.com/research/retrieve?_m=0d1c8d1124ab6925bcdf86700c8d74fb&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLzVlz-zSkAz&_md5=2951dc93bccdcd0c83bda23a9b84b050&focBudTerms=The%20prevailing%20wisdom%20is%20that%20the%20Supreme%20Court%20should%20&focBudSel=all" \l "n232" \t "_self) 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. [233](http://www.lexis.com/research/retrieve?_m=0d1c8d1124ab6925bcdf86700c8d74fb&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLzVlz-zSkAz&_md5=2951dc93bccdcd0c83bda23a9b84b050&focBudTerms=The%20prevailing%20wisdom%20is%20that%20the%20Supreme%20Court%20should%20&focBudSel=all" \l "n233" \t "_self) 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.

## Uniqueness/Links

### Generic

#### Recent trends prove a move towards the states in the arena of transportation

Hurst and Boyd, 6-11(Nathan and John, CQ Staff, “Which Way to Turn on Transportation Issues?”, CQ Weekly, 6-11-12)

What About the States? There is a third option, but it would entail a wholesale reversal in the federal government’s role in shaping national surface transportation priorities — and handing the responsibility to the states. Supporters of preserving the federal role in transportation financing call the idea an abdication, but a growing group of congressional Republicans sees merit in the proposal. This idea, which its adherents refer to as “devolution,” has been a dream of several conservative and libertarian think tanks for years. At its most extreme, the notion is to take Washington out of the road-building business entirely, turning over to the states the choice of how and when to collect taxes and spend the money on infrastructure. Until recently, there was relatively little support for the idea on Capitol Hill, even among Republicans. A 1998 proposal by Reps. John R. Kasich of Ohio and Connie Mack of Florida to hand most non-interstate highway and transit programs to the states was rejected on a 98-318 vote, with fewer than two of every five Republicans in support. Opponents, including Pennsylvania Republican Bud Shuster, chairman of the House Transportation and Infrastructure Committee at the time, said the nation needed a coordinated transportation program and there was no guarantee the stateswould raise their taxes to offset reduced federal aid. But the idea is gaining traction. South Carolina Republican Sen. Jim DeMint offered an amendment to the highway bill earlier this year that would have cut the federal gasoline tax over five years to 3.7 cents a gallon from the current 18.4 cents. DeMint called the idea “commonsense” reform that would “empower states” and remove costly regulations. His amendment drew 30 “yea” votes — still a minority, but almost two-thirds of DeMint’s fellow Republicans joined him. In the House, meanwhile, a bloc of devolution advocates pressed for including in their highway bill at least a pilot program to let some states opt out of the federal system. “Many members want more of a commitment to devolution,” says Scott Garrett, the New Jersey Republican who pushed the idea. “Whenever you spend more money that you take in, that makes it harder to return the program to the states. If there is some compromise, we want progress toward devolution.” The effort contributed to the impasse among House Republicans that forced Speaker John A. Boehner of Ohio to abandon the planned five-year highway bill that Mica had written and that he had embraced. Devolution is certain to be part of the conversation whenever Congress next tackles a full highway programs authorization bill. A 2008 report from the Government Accountability Office said that states would face fiscal challenges in deciding whether to fully replace lost federal aid by raising their own gasoline taxes. “With states deciding what type of programs to continue there is no way to predict which federal programs would be replaced with equivalent state programs,” GAO reported. The GAO’s analysis of a scenario where virtually all transportation programs were turned back to states and the national tax on motor fuels was eliminated found that 27 states could maintain current highway and transit programs with a net per-gallon reduction in the combined state and federal gasoline taxes. But 24 states plus the District of Columbia would need increases above the current total state and federal tax burdens to maintain the same level of financing — some by significant amounts. The federal government has used the stick of reduced highway aid and the carrot of additional grants to encourage states to enact such safety measures as a 21-year-old minimum drinking age, mandatory seat belt requirements and minimum blood-alcohol levels to determine impaired driving. Eliminating federal highway aid programs would remove that tool to influence state policies. That’s one of the main selling points for devolution supporters, who chafe at what they see as federal meddling in state affairs. The devolution concept dovetails with broader conservative goals of shrinking the federal government and tilting power back to states.

#### State governments already pushing innovative transportation funding

NGA, 2009 (National Governors Association, Innovative State Transportation Funding and Financing: Policy Options for States, http://www.nga.org/cms/home/nga-center-for-best-practices/center-publications/page-eet-publications/col2-content/main-content-list/innovative-state-transportation.html, January 5, 2009)

Governors and states have long recognized the importance of investing in surface transportation. The nation’s roads, rails, and bridges provide for personal mobility and facilitate commerce and shipping.When operated efficiently, the surface transportation system can enhance the economic competitiveness of states and the nation, as well as increase safety and quality of life for users. However, a growing imbalance between use of the system and its capacity is leading to an increasingly strained system in many parts of the country. States are looking to a number of innovative funding and financing approaches to help meet the dual challenges of better managing demand, particularly in congested areas, and increasing investments in capacity.

Today, states and the federal government rely primarily on motor fuel taxes to fund the surface transportation system. Motor fuel taxes have offered revenue stability and predictability with a relatively low administrative burden. Compliance costs in paying motor fuel taxes are also limited, and there is a low risk of tax evasion. Fuel taxes can generate substantial amounts of revenue at a relatively low cost to individual users. By charging per gallon, fuel taxes provide an incentive for users to purchase more efficient vehicles.

#### State finance reform proves

KI, 2012

Scott Ki,[ News Reporter/Producer at Boise State Public Radio, Steering Committee Member and Volunteer Trail Leader at Santa Fe Conservation Trust, Part-Time Customer Service Specialist at REI, News Reporter/Producer at KSFR Santa Fe Public Radio, Senior Director at US Trade Representative, International Trade Analyst at United States International Trade Commission, Senior Consultant at MSI Consulting Group Degrees from University of California, San Diego, and Brown University] Boise State Public Radio, “Idaho Joins With 21 States To Support State Sovereignty” Wednesday May 30, 2012, http://www.boisestatepublicradio.org/post/idaho-joins-21-states-support-state-sovereignty

**The state of Idaho is now supporting Montana’s effort to keep the U.S. Supreme Court from changing that state's campaign finance laws.  In all, 22 states and the District of Columbia have joined Montana's cause.** **The case centers on a state’s ability to ban direct corporate spending on campaigns.  Montana wants to keep that right.  But the U.S. Supreme Court is mulling whether doing so would conflict with a ruling that allows unlimited corporate spending in federal campaigns. Brian Kane, with Idaho’s Attorney General’s office, says the state supports Montana’s restrictions for one reason.  "It absolutely is an issue regarding state sovereignty - state regulation of state systems."** Corporate interests account for nearly half of all money spent in Idaho campaigns according to the National Institute on Money in State Politics.  Idaho ranks in the top quarter of states when it comes to the percentage of campaign spending that comes from corporate interests.  Idaho has limits on campaign contributions to state candidates, but not to political action or state Party committees.

#### States exceedingly successful with transportation investment now , Kansas proves

Plautz, 2011 [Jason, Reporter at Environment & Energy Publishing, Writer at Mental\_floss, Research Intern at Federal Reserve Bank, Northwestern University] E&E Publishing, LLC, In I-bank debate, states provide successful model, http://www.eenews.net/public/EEDaily/2011/09/08/1, Thursday, September 8, 2011, Web June 28, 2012

And while states cannot offer a great deal of clarity about how a national bank should operate, they do provide a viable model for what might or might not work**.** Most of the state banks were established under authority from the 2005 federal highway authorization bill, although some were set up as early as the 1990s. Many have seen a relatively modest investment of state and federal money turn into hundreds of millions of dollars in loan guarantees. "In Kansas, we have communities that are small and couldn't do their projects otherwise. They couldn't get a bank to loan them money because of credit or they couldn't go into the bond market because of their size**,**" explained Danielle Martin, program manager of the Kansas Transportation Revolving Fund. **"**We can cover huge projects or a small community." Kansas -- which used $25 million of state money in 2004 for its first equity transfer -- has now funded some 120 projects with the TRF bank. Martin said that as of fiscal 2010, when it stopped loaning off the initial transfer, the bank had approved $135 million in loans off that initial $25 million. That places it among the largest and most successful state banks in the country. In fact, the success in states like Kansas and the ease of working with state officials has some leaders in Washington convinced that the best approach might not be setting up a structure in D.C., but simply offering more money to the states.

### Court Rulings

#### Court rulings prove regulation is moving towards the states

Joondeph, 2007 (Bradley W. , Associate Professor, Santa Clara University School of Law, “The Deregulatory Valence of Justice O’Connor’s Federalism,” Houston Law Review, Fall, 44 Hous. L. Rev. 507)

This much is not news: the Rehnquist Court reshaped the constitutional rules governing the respective roles of the national government and the states in our federal republic. [14](http://www.lexis.com/research/retrieve?_m=ee27cece3d24816ca3f9be03ebb9a41d&docnum=25&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzz-zSkAz&_md5=073590a69c4c0340333c09e78e42ca4f&focBudTerms=federalis%21%20w/50%20reviv%21&focBudSel=all#n14) The Court  [\*512]  articulated a new and arguably narrower standard for evaluating whether a federal statute falls within Congress's commerce power. [15](http://www.lexis.com/research/retrieve?_m=ee27cece3d24816ca3f9be03ebb9a41d&docnum=25&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzz-zSkAz&_md5=073590a69c4c0340333c09e78e42ca4f&focBudTerms=federalis%21%20w/50%20reviv%21&focBudSel=all#n15) It developed a fairly restrictive understanding of the breadth of Congress's legislative authority under Section Five of the Fourteenth Amendment, requiring that such legislation be  [\*513]  "congruent and proportional" to the constitutional violations that Congress seeks to remedy or prevent. [16](http://www.lexis.com/research/retrieve?_m=ee27cece3d24816ca3f9be03ebb9a41d&docnum=25&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzz-zSkAz&_md5=073590a69c4c0340333c09e78e42ca4f&focBudTerms=federalis%21%20w/50%20reviv%21&focBudSel=all#n16) It minted the so-called "anticommandeering" principle, which prohibits Congress from directing the states to enact or implement particular regulation. [17](http://www.lexis.com/research/retrieve?_m=ee27cece3d24816ca3f9be03ebb9a41d&docnum=25&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzz-zSkAz&_md5=073590a69c4c0340333c09e78e42ca4f&focBudTerms=federalis%21%20w/50%20reviv%21&focBudSel=all#n17) It held that Congress cannot use its Article I powers to enact legislation subjecting the states to suits for damages, [18](http://www.lexis.com/research/retrieve?_m=ee27cece3d24816ca3f9be03ebb9a41d&docnum=25&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzz-zSkAz&_md5=073590a69c4c0340333c09e78e42ca4f&focBudTerms=federalis%21%20w/50%20reviv%21&focBudSel=all#n18) overruling the relatively recent precedent of Pennsylvania v. Union Gas. [19](http://www.lexis.com/research/retrieve?_m=ee27cece3d24816ca3f9be03ebb9a41d&docnum=25&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzz-zSkAz&_md5=073590a69c4c0340333c09e78e42ca4f&focBudTerms=federalis%21%20w/50%20reviv%21&focBudSel=all#n19) Further, the Court extended this principle of sovereign immunity to suits brought in any court, whether state or federal, [20](http://www.lexis.com/research/retrieve?_m=ee27cece3d24816ca3f9be03ebb9a41d&docnum=25&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzz-zSkAz&_md5=073590a69c4c0340333c09e78e42ca4f&focBudTerms=federalis%21%20w/50%20reviv%21&focBudSel=all#n20) as well as to adjudicative proceedings before federal administrative agencies. [21](http://www.lexis.com/research/retrieve?_m=ee27cece3d24816ca3f9be03ebb9a41d&docnum=25&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzz-zSkAz&_md5=073590a69c4c0340333c09e78e42ca4f&focBudTerms=federalis%21%20w/50%20reviv%21&focBudSel=all#n21) Some have argued that, despite the considerable  [\*514]  attention these decisions have drawn, their practical effects have actually been quite modest. [22](http://www.lexis.com/research/retrieve?_m=ee27cece3d24816ca3f9be03ebb9a41d&docnum=25&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzz-zSkAz&_md5=073590a69c4c0340333c09e78e42ca4f&focBudTerms=federalis%21%20w/50%20reviv%21&focBudSel=all#n22) For instance, the Court's Commerce Clause decisions affect only a small spectrum of activity that Congress might otherwise regulate - activity that is noncommercial, noneconomic, and purely intrastate. [23](http://www.lexis.com/research/retrieve?_m=ee27cece3d24816ca3f9be03ebb9a41d&docnum=25&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzz-zSkAz&_md5=073590a69c4c0340333c09e78e42ca4f&focBudTerms=federalis%21%20w/50%20reviv%21&focBudSel=all#n23) Its sovereign immunity decisions leave open a host of alternative means for enforcing federal law against state governments, most notably suits for injunctions under Ex Parte Young. [24](http://www.lexis.com/research/retrieve?_m=ee27cece3d24816ca3f9be03ebb9a41d&docnum=25&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzz-zSkAz&_md5=073590a69c4c0340333c09e78e42ca4f&focBudTerms=federalis%21%20w/50%20reviv%21&focBudSel=all#n24) Its anticommandeering decisions prohibit a form of legislation that Congress had employed only rarely and for which there are typically a number of effective substitutes. [25](http://www.lexis.com/research/retrieve?_m=ee27cece3d24816ca3f9be03ebb9a41d&docnum=25&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzz-zSkAz&_md5=073590a69c4c0340333c09e78e42ca4f&focBudTerms=federalis%21%20w/50%20reviv%21&focBudSel=all#n25) Perhaps most significantly, the Rehnquist Court did nothing to trim Congress's authority under the Spending Clause, leaving Congress the ability to circumvent most of these constraints by enacting conditional spending legislation aimed at the states. [26](http://www.lexis.com/research/retrieve?_m=ee27cece3d24816ca3f9be03ebb9a41d&docnum=25&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzz-zSkAz&_md5=073590a69c4c0340333c09e78e42ca4f&focBudTerms=federalis%21%20w/50%20reviv%21&focBudSel=all#n26) Still, even if the Rehnquist Court's federalism decisions did not constitute a "federalism revolution," they seem to have done something. It is now clear, as it was not before 1995, that there are judicially enforceable limits on Congress's commerce power, particularly with respect to activities that have historically been regulated by the states. [27](http://www.lexis.com/research/retrieve?_m=ee27cece3d24816ca3f9be03ebb9a41d&docnum=25&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzz-zSkAz&_md5=073590a69c4c0340333c09e78e42ca4f&focBudTerms=federalis%21%20w/50%20reviv%21&focBudSel=all#n27) Congress's capacity to enact legislation to enforce the proscriptions of the Fourteenth Amendment has been narrowed, such that any legislative effort to enforce a constitutional right or to protect a class of citizens that the Court has not deemed deserving of heightened judicial scrutiny is  [\*515]  virtually per se invalid. [28](http://www.lexis.com/research/retrieve?_m=ee27cece3d24816ca3f9be03ebb9a41d&docnum=25&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzz-zSkAz&_md5=073590a69c4c0340333c09e78e42ca4f&focBudTerms=federalis%21%20w/50%20reviv%21&focBudSel=all#n28) And, because Congress can abrogate the sovereign immunity of states only through legislation enacted under the Reconstruction Amendments, [29](http://www.lexis.com/research/retrieve?_m=ee27cece3d24816ca3f9be03ebb9a41d&docnum=25&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzz-zSkAz&_md5=073590a69c4c0340333c09e78e42ca4f&focBudTerms=federalis%21%20w/50%20reviv%21&focBudSel=all#n29) Congress has lost an important means for enforcing federal law against the states. These consequences are not trivial. Moreover, if the Rehnquist Court did not move the law in revolutionary directions itself, it may nonetheless have laid the groundwork for a future Court to do so. As others have noted, the newly constituted Roberts Court could use the Rehnquist Court's precedents to disrupt some long-settled constitutional understandings. [30](http://www.lexis.com/research/retrieve?_m=ee27cece3d24816ca3f9be03ebb9a41d&docnum=25&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzz-zSkAz&_md5=073590a69c4c0340333c09e78e42ca4f&focBudTerms=federalis%21%20w/50%20reviv%21&focBudSel=all#n30) It could hold that landmark environmental legislation, such as the Endangered Species Act or the Clean Water Act, is beyond Congress's commerce power, at least in many of its applications, because the regulated activity is not sufficiently connected to interstate commerce. [31](http://www.lexis.com/research/retrieve?_m=ee27cece3d24816ca3f9be03ebb9a41d&docnum=25&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzz-zSkAz&_md5=073590a69c4c0340333c09e78e42ca4f&focBudTerms=federalis%21%20w/50%20reviv%21&focBudSel=all#n31) It could conclude that the anticommandeering decisions have effectively undermined Garcia and hold that Congress cannot use its commerce power to regulate certain functions of state governments. [32](http://www.lexis.com/research/retrieve?_m=ee27cece3d24816ca3f9be03ebb9a41d&docnum=25&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzz-zSkAz&_md5=073590a69c4c0340333c09e78e42ca4f&focBudTerms=federalis%21%20w/50%20reviv%21&focBudSel=all#n32) It could hold that the disparate impact provisions of Title VII of the Civil Rights Act of 1964 are unconstitutional as applied to state governments, at least with respect to private suits for damages, because they are not "congruent and proportional" to any purported constitutional violations. [33](http://www.lexis.com/research/retrieve?_m=ee27cece3d24816ca3f9be03ebb9a41d&docnum=25&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzz-zSkAz&_md5=073590a69c4c0340333c09e78e42ca4f&focBudTerms=federalis%21%20w/50%20reviv%21&focBudSel=all#n33)  [\*516]  Conceivably, though much less likely, it could hold that most federal antidiscrimination legislation is beyond Congress's commerce power because the regulated activity of discrimination - whether based on race, gender, religion, age, or disability - is not "economic" or "commercial" in nature. [34](http://www.lexis.com/research/retrieve?_m=ee27cece3d24816ca3f9be03ebb9a41d&docnum=25&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzz-zSkAz&_md5=073590a69c4c0340333c09e78e42ca4f&focBudTerms=federalis%21%20w/50%20reviv%21&focBudSel=all#n34)

#### Now is a key time for a return to federalism—Supreme Court battles prove

Harrison, 12 (David, CQ Staff Writer, “A Supreme Test of Federal Power”, CQ Weekly, March 26)

The fate of President Obama’s signature domestic accomplishment is not all that’s hanging in the balance this week as the Supreme Court hears oral arguments on the 2010 health care overhaul. The unusual three-day hearing also presents the highest-profile debate in generations over government power. It goes beyond the core question of Congress’ power to regulate under the Commerce Clause, too. The case addresses overarching fundamentals about how the federal government wields its power over the states and also how the judiciary wields authority over those elected to govern. The fact that the arguments come a month before the court hears a case from Arizona, testing the powers of the states to legislate in the field of immigration, gives this court term particular potential for defining the contours of Washington’s authority. All in all it is a signal year, combining into a series of cases many of the animating issues of the era at the same time they are being fought out in congressional and presidential election campaigns. The ultimate significance will depend on whether the court can get its own act together. It takes four votes on the court to decide to review a case, but five to form a majority. And the majority must agree on a particular line of reasoning — as opposed to just a result — in order for an opinion to offer lasting direction. The first big affirmative action decision — Regents of the University of California v. Bakke — was fragmented to the point of being indecipherable. For now, though, no one wants to contemplate anticlimax. “This could be the watershed case of a generation, depending on how it comes down,” says historian Jeff Shesol, a former speechwriter for President Bill Clinton and author of a book on President Franklin D. Roosevelt’s battle against the Supreme Court. “This decision could be the undoing of big elements of what’s been called the Constitutional Revolution of 1937. You can’t undo it all in one fell swoop, but [the justices] can do an enormous amount of damage if they so choose.” It’s time for this discussion, says Utah Republican Sen. Mike Lee, a former law clerk to Justice Samuel A. Alito. Full scrutiny “has occurred far too infrequently and has not been nearly as robust as it should be in recent decades, in part because the court’s standards have been so permissive that Congress has tended to see those standards as a perpetual green light,” he says. “There needs to be some identifiable limit somewhere.” The breadth of the controversy embodied in the health care cases stems from its three primary parts. The Commerce Clause question revolves around the provision of the law requiring uninsured people to buy health insurance. The government argues that the mandate is permissible as a regulation of economic activity. Opponents say the law dramatically expands the government’s reach by regulating inactivity, requiring people to buy a product. Federalism, while permeating the entire case, is most directly invoked by the health care law’s provision that expands Medicaid, a joint federal-state program offering health care to low-income people. A group of 26 states suing the federal government argues that the law is coercive because it would withhold billions of dollars from any state that defied the expansion. The court’s decision on the federalism question could dramatically recast the relationship between Congress and the states, observers say, because scores of federal laws — from highway legislation to education — involve such conditional grants of federal funding. The Supreme Court’s authority is always at issue when it’s being asked to overturn acts of Congress, which are, by the court’s own precedents, presumed to be constitutional. But another unusual part of the health care case more directly raises the question of the court’s jurisdiction. The justices will consider whether federal tax law bars them from hearing the challenge to the health care mandate until someone actually is penalized for violating it, which would be some time in 2015 at the earliest. While some have wondered how seriously the court might take this claim, the justices did not really have to consider it but chose to do so anyway. New Case, Long History The broad issues reach back to the 18th- century debates over the ratification of the Constitution, and the resistance of the so-called anti-federalists such as Patrick Henry to the creation of a national government with so much power. The conflict continued as America’s political parties evolved and fought over whether the Constitution included not only explicit powers, but also “implied powers,” such that the government could create a Bank of the United States that the Framers failed to mention. Roosevelt’s New Deal produced precedents that addressed similar questions about the federal government’s power. Roosevelt and an overwhelmingly Democratic Congress worked together to pass a series of popular laws expanding the government’s reach in areas that had been off-limits before then. One law allowed the government to regulate working hours and wages. Another used the tax system to control the price of agricultural commodities. A third established a national railroad pension plan. But in 1935 and 1936, the Supreme Court knocked down those laws, ruling that the Constitution’s narrow listing of powers granted to Congress did not include the authority that Roosevelt was claiming, such as the ability to intervene in wage disputes or to regulate a sector of the economy. An outraged Roosevelt threatened to enlarge the court with at least six new members to tilt the balance in favor of his enacted legislation. Soon, Justice Owen J. Roberts abandoned the court’s conservative majority and joined the liberal wing in arguing in favor of broad new federal powers to regulate the economy. With Roberts’ backing, the court handed down a series of cases on March 29, 1937, upholding minimum-wage laws, collective bargaining rights and government aid to farmers. The cases dramatically increased Congress’ power under the Commerce Clause and effectively killed the earlier doctrine limiting congressional authority. By the time the Supreme Court took up civil rights cases in 1964, a more liberal group of justices repeatedly found that Congress had the right under the Commerce Clause to forbid race-based discrimination in the private sector. Since then, the New Deal decisions have come to seem more routine than revolutionary. For almost 60 years, the court did not strike down a single law for going beyond the scope of the government’s interstate commerce power, says Erwin Chemerinsky, a constitutional law scholar and the dean of the law school at University of California, Irvine. After a while, Washington politicians stopped asking where their power ended. And the courts, still under Roosevelt’s influence, deferred to Congress. The 20th-century expansion of federal power did not come overnight, says J. Mitchell Pickerill, a political science professor at Northern Illinois University who has studied the interaction between Congress and the courts. “But the ultimate consequence is that Congress really did stop thinking about it. It’s hard to find evidence that Congress was interested in debating the scope of its own power.” The Supreme Court under Chief Justice William H. Rehnquist attempted to revive that interest by chipping away at Congress’ power. In 1995, for instance, justices struck down a federal law banning guns near schools, declaring that only the states — not Congress — had the power to regulate the carrying of guns in school areas. That case, U.S. v. Lopez, was the first case since 1935 in which the court struck down a major law based on Congress’ power to regulate commerce. Five years later, in U.S. v. Morrison, the court invalidated parts of the Violence Against Women Act, saying Congress had “exceeded its constitutional bounds” by making gender-based violence a federal crime. “The Supreme Court has really over the last decade started knocking Congress down a peg or two when it comes to exercises of federal power,” says Charles Geyh, a law professor at Indiana University. The current conflict has in many respects been forced by the tea party movement, which ushered into Congress a wave of rookie lawmakers intent on rolling back the power of the very institution to which they had been elected. All of a sudden, the debate over the scope and extent of the federal government’s power — which had largely been relegated to legal seminars and think tanks – became the most pressing political question around. A law professor working with tea party groups on constitutional issues, Georgetown University Law School’s Randy Barnett, is considered the intellectual father of the challenge to the individual mandate, which many other scholars dismissed as frivolous. With the health care suit, the new small-government advocates in Congress are hoping to lay down a marker for future generations that will set a firm boundary on the government’s power in all aspects of the economy. “If the individual mandate is upheld, then one could argue that the concept of limited enumerated powers has evolved into something of a fiction,” says Lee, one of the new conservative lawmakers. “If the court decides in this case that Congress acted legitimately within its power under the Commerce Clause, then it’s difficult to imagine almost any regulatory scheme that would not be under Congress’ power as long as it utters the magic words,” Lee says. Ilya Somin, a George Mason University law professor and co-author of an amicus brief against the law, says a ruling upholding it would give Congress “a nearly unconstrained” power to set new mandates. “It’s easy to imagine that there are lots of industries out there that have considerable political clout that would love to lobby Congress to have people buy their products,” he says. The government scoffs at these claims in its court briefs. “There is no reason to think that a democratically accountable Congress would ever exercise a power to compel” such purchases, Solicitor General Donald B. Verrilli Jr. argued in a response to the challengers. “Quite the contrary,” he wrote, noting that although the challengers agree that the states have the power to enact mandates, there are no examples of “any state ever having compelled its citizens to buy cars, agricultural products, gym memberships or any other consumer product.” “I would guess that it wouldn’t have significant implications in other policy areas immediately, but I would anticipate it would be used by opportunistic policy makers and lawmakers down the road,” Pickerill says. If, on the other hand, the Supreme Court sides with the plaintiffs and strikes down all or part of the law, it could have a dampening effect on ambitious government programs in the future. In particular, striking down the Medicaid provision could lead to challenges of such major pieces of legislation as the 2002 education law known as No Child Left Behind. But striking down the individual mandate on “very narrow” grounds “will have much less in the way of a longer-term impact,” says Chemerinsky. The states argue that the expansion in Medicaid goes beyond the federal government’s usual conditional grant programs that send money to states provided state governments fulfill certain requirements. Because the loss of federal Medicaid grants would be devastating to state budgets, the states argue that the federal government is coercing them to expand their Medicaid programs. That, they say, violates the Constitution’s clause allowing the federal government to tax and spend. “The court really hasn’t found conditions under the spending clause that it finds coercive enough,” Pickerill says. “If they did in this case, that could have more profound implications for Congress than striking down the individual mandate.” The What-Ifs State governments will soon have another opportunity to challenge federal power, when the Supreme Court takes up Arizona’s immigration law. The Justice Department says the federal government’s authority over immigration matters pre-empts the state law, while the states argue that they are merely enforcing an existing statute. The Arizona case, which the court will hear in April, rests squarely on this question of state versus federal power. Arizona’s statute requires that state and local law enforcement check the immigration status of people they suspect of being in the country illegally if they stop them for another reason. Critics say it encourages racial profiling and empowers state officials to take over a responsibility that currently belongs to the federal government. The state says that since the federal government has not been carrying out its responsibility to enforce federal immigration law, it has no choice but to take matters into its own hands. Since the Arizona law was passed, five other states have enacted similar laws, and several more are considering them. All have been challenged in federal courts. Advocates on both sides say they are waiting for the Supreme Court to draw the line between state and federal responsibility. As both sides gear up for the political battle that will be waged around the court’s decision, it’s clear that not everyone has come to grips with the idea that members of Congress — in this case the conservatives — could actively try to diminish their own power.

### A2: Health Care

#### The Supreme Court ruling on Obamacare limits federal power –

Adler, June 28 [2012, Obamacare ruling limits federal power;

It’s unfortunate that Chief Justice John Roberts joined the liberal justices to uphold; http://www.ocregister.com/opinion/jonathan-361166-adler-obamacare.html]

The individual mandate as a tax.  Yet as I understand the ruling, the opinion does very little to enlarge the federal government’s power and, in key respects, reinforced federalism limitations on federal power.  According to SCOTUSBlog, while Chief Justice Roberts concluded the mandate is a tax, he also rejected the Commerce Clause arguments in favor of the mandate.  This is significant, because it will limit the ability of Congress to adopt additional mandates in the future.  No one will be able to claim such requirements are not a tax, and this will make such requirements more difficult to enact. Equally important, the majority narrowed the Medicaid provisions substantially in a way that reinforces the principle that Congress’ power to impose conditions on the receipt of federal spending.   Specifically, the Court held that Congress may attach conditions on the receipt of new money — in this case the Medicaid expansion, but that Congress may not condition the receipt of funds for separate, pre-existing programs on compliance with the conditions for the new program.  In other words, if states refuse to go along with the Medicaid expansion, they don’t lose existing Medicaid funds. If my understanding is accurate, this opinion would mark the firmest limit on use of the spending power in decades, and could constrain lots of future mischief.

### Roads/Bridges

#### Funding for new bridge and road infrastructure is devolving towards the state

Hurst and Boyd, 6-11(Nathan and John, CQ Staff, “Which Way to Turn on Transportation Issues?”, CQ Weekly, 6-11-12)

LaHood, a Republican who represented Illinois in the House for 14 years, already had said he was open to new ways of financing highway construction, a perennial issue that is becoming increasingly acute as Americans buy ever-more-efficient cars and gasoline tax collections slump. But when he mused about switching to a mileage-based highway tax, LaHood instantly stoked fears that the Obama administration was plotting to boost taxes and spy on the travels of motorists. That prompted an immediate admonishment from the White House, and the mileage tax idea was shelved. The episode underscored the perils of even discussing ways to reverse chronic transportation revenue shortfalls and helps explain why a vehicle mileage tax — or even a simple increase in current fuel taxes — is missing from the current highway bill debate. The absence of discussion about the revenue issue is all the more surprising because the architect of a five-year extension of highway programs, House Transportation and Infrastructure Chairman John L. Mica, says he first planted the idea of a mileage-based tax with LaHood. But the Florida Republican never so much as floated the idea of a new taxing scheme in his legislation. And a scaled-down, two-year highway bill that House-Senate conferees are trying to wrap up this month will need billions of dollars in budget transfers to maintain its spending levels because the subject of money isn’t being addressed. No Trust in the Fund All evidence suggests that Congress once again will defer difficult decisions about highway financing that it has been ducking for a decade. Experts charged with finding solutions have spelled out the options. But talk of raising gasoline taxes or moving to a conceivably more sustainable mode of transportation financing is entirely missing from the current debate. Plainly, despite repeated efforts to put new ideas on the table, Congress has no appetite for the subject. “It’s a disaster,” says Robert D. Atkinson, president of the Information Technology and Innovation Foundation, who says lawmakers are acting in ways that will only make the situation worse. For two years, Atkinson chaired the congressionally chartered National Surface Transportation Infrastructure Financing Commission. Its February 2009 final report called for major changes in the way national transportation programs are financed, including a switch to a mileage tax. “They simply don’t understand or are unwilling to confront the problem,” Atkinson says. Such criticisms aside, there is broad agreement about the need to overhaul the Highway Trust Fund — which spent $44 billion more from 2001 to 2011 than it took in through tax receipts — just no consensus about how to accomplish it. A Congressional Budget Office estimate last month lent new urgency to the call for action, projecting that the gap between highway revenue and spending will grow to about $147 billion over the next decade and that new fuel efficiency mandates will make the hole even deeper. Once fully implemented, CBO says fuel economy rules will reduce gasoline tax receipts by 21 percent. Raising the existing taxes on gasoline and diesel purchases would be the most straightforward way to boost revenue quickly, but that’s a non-starter in a weak economy and anti-tax political climate. Gasoline taxes also give the owners of electric cars and high-mileage hybrid vehicles a free ride, undercutting the “user pays” principle that has been the foundation of the federal highway program since it was created in 1956. At the same time, a mileage tax raises concerns that the electronic devices installed to record road use — and conceivably even assess higher charges for travel on the most congested roads or at peak times — also might allow the government to track a motorist’s every movement. A small but growing group of conservative Republicans would like to get the federal government out of the business of building roads and bridges entirely and turn the responsibility over to the states — including the need to pay for infrastructure improvements. So far, that idea lacks broad support, and many Republicans who are small-government advocates still regard transportation spending as one of the few things Washington should be doing. It was, after all, Republican President Dwight D. Eisenhower who sold the construction of a nationwide Interstate Highway System as a national security imperative. The resulting stalemate has paralyzed efforts to enact another multi-year authorization since the last highway bill expired in 2009 and has frustrated the broad coalition of business and labor groups advocating big investments in transportation infrastructure. Times have changed since Eisenhower was promoting the Interstate system. “We’re past that point and the goals aren’t as clear,” says Jack L. Schenendorf, a transportation lobbyist who was a Republican chief of staff on the House Transportation and Infrastructure Committee and served on a second commission charged with looking into the issue in the past decade. Schenendorf worries that the financing issue is “so toxic that none of the real solutions are viable right now.” That doesn’t mean Congress should continue to defer the debate, he says. “It’s crystal clear that the gas tax is not going to be a viable way to pay for infrastructure going forward.”

### National Infrastructure Bank

#### NIB undercut states and local governments authority over projects.

Staley 2010

Samuel, Fellow at the Reason Foundation and author of Mobility First: A New Vision for Transportation in a Globally Competitive 21st Century, Reason Foundation, 13 May 2010, http://reason.org/news/show/infrastructure-bank-testimony

Fourth, an unanticipated outcome of a NIB might be to weaken the authority of state and local governments in setting policy and investment priorities. This might be more likely if a NIB is established without a clear national or federal project mandate incorporated into its mission and purpose. Currently, states and local governments are given deference in funding since they are often in the best position to evaluate the potential benefits of infrastructure investments. A NIB that has wide discretionary authority over funding may well undermine this implicit recognition of the efficiencies provided by local knowledge of needs and requirements.

### Inland Waterways

#### Federal control of Inland Waterways violates the Land Use Act and upsets the balance of federalism.

Oluwole 2008 Josiah, By Abuja Lagos demands state control of inland waterways Published: Wednesday, 28 May 2008 Babatunde is a Nigerian Legislator in the city of Lagos http://babatundeogala.blogspot.com/2008/06/lagos-demands-control-of-inland.html

The Lagos State Government has demanded that the states of the federation should be allowed to have authority over the administration of the waterways within their states. Speaking at the Senate public hearing on the Inland Waterways Authority Act on Tuesday, Mr. Babatunde Ogala, who is the Chairman of the Lagos State House Committee on the Judiciary, said it was against the spirit of federalism and the Constitution for the National Assembly to make laws for the administration of inland waters in the states. He argued that the issue of transportation was a matter on the residual list of the Constitution in which the state legislature had powers to make laws.He also argued that just as the states had powers to intervene in matters of road construction and traffic matters, they should also have powers to make laws in matters relating to water transportation. He also rejected the provision in the proposed bill giving powers to NIWA to regulate developments in lands contiguous to the right of way of the navigable waters He said, “We wish to observe that the Land Use Act, which has constitutional force, places the powers of land administration on state governments. The act cannot be amended by any bill or act of the National Assembly. “The control of land and the issues of land development cannot be within the jurisdiction of the National Assembly.”

## Link Helpers

### Zero-Sum

#### Federalism is a zero-sum game

**Callen 11**, Zachery Callen, “Congress and the Railroads : Federalism, American Political Development, and the Migration of Policy Responsibility,” Sage Journals, 11/23/2011, http://apr.sagepub.com/content/40/2/293.full.pdf+html, FM

The federal government gained responsibility over a range of new policy areas, each of which greatly expanded the national state’s power to control its territory. Significantly, this growth in national power was not solely the result new state powers being invented from whole cloth. Rather, the expansion of national power consistently resulted from shifts “in governing authority” Specifically, the 19th-century state building resulted from changes in American federalism, with local issues shifting upward to become congressional responsibilities that increasingly served national ends.1

### A2: Drop in the Bucket

#### Every decision matters—the threat is incremental

Lack ’95 (James, Senator – New York, Serial No. J-104-31, 7-11, p. 11)

Every year Congress considers bills, federal agencies consider rules, and international agencies consider cases that would supplant state statutory or common law. Adverse decisions may result not only in nullifying state laws and court decisions, but also in narrowing the range of issues that legislatures may address. The threat is the steady, incremental, year-by-year erosion of the jurisdiction of state legislatures.

#### Slippery Slope- Implementing federal programs through states leads to federal commandeering of state governments, also violates court rulings

Somin 2 Ilya Somin, Ph.D. Candidate, Department of Government, Harvard University; J.D., Yale Law School, 2001; M.A., Harvard University. Georgetown Law Journal, “Closing the Pandora’s Box Federalism: The Case for Judicial Restriction of Federal Subsidies to State Governments,” January 2002 FM

The danger of federal control over state legislatures and executive bureaucracies is the touchstone of the Supreme Court's anticommandeering decisions, New York v. United States and Printz v. United States. In these cases the Court established the principle that "the Federal Government may not compel the States to implement, by legislation or executive action, federal regulatory programs." Federal commandeering of state governments is condemned because it takes control of state bureaucracies away from their own governments and "reduces [them] to puppets of a ventriloquist Congress." According to the Court, Congress "may not conscript state governments as its agents."

#### Small decisions are the greatest threat

Lebow ’97 (Cynthia C., Associate Dir – RAND, U. Tennessee Law Review, Spring, Lexis)

n162 See [Southland, 465 U.S. at 21](http://www.lexis.com/research/buttonTFLink?_m=7263d1de93ed95ac1b5c1ee7448b1369&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b64%20Tenn.%20L.%20Rev.%20665%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=288&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b465%20U.S.%201%2cat%2021%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=14&_startdoc=1&wchp=dGLbVzb-zSkAk&_md5=e4c29e2408b36765a90b9cf609a3a944" \t "_parent) (O'Connor, J., dissenting) (noting Rehnquist, C.J., joining opinion of O'Connor, J.); [FERC, 456 U.S. at 775](http://www.lexis.com/research/buttonTFLink?_m=7263d1de93ed95ac1b5c1ee7448b1369&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b64%20Tenn.%20L.%20Rev.%20665%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=289&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b456%20U.S.%20742%2cat%20775%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=14&_startdoc=1&wchp=dGLbVzb-zSkAk&_md5=4ee0618b85ed6116095593c126d11191" \t "_parent) (O'Connor, J., concurring in part and dissenting in part) (noting Rehnquist, C.J., joining in opinion of O'Connor, J.). Justice Powell filed his own partial dissent in FERC that also deserves mention. [FERC, 456 U.S. at 771](http://www.lexis.com/research/buttonTFLink?_m=7263d1de93ed95ac1b5c1ee7448b1369&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b64%20Tenn.%20L.%20Rev.%20665%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=290&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b456%20U.S.%20742%2cat%20771%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=14&_startdoc=1&wchp=dGLbVzb-zSkAk&_md5=f527f8f8e7d8022686fae5be5ae3ba6b" \t "_parent) (Powell, J., concurring in part and dissenting in part). Lauding the "appeal" and "wisdom" of Justice O'Connor's dissent, Powell stated that PURPA "intrusively requires [states] to make a place on their administrative agenda for consideration and potential adoption of federally proposed standards.'" [Id. at 771, 775](http://www.lexis.com/research/buttonTFLink?_m=7263d1de93ed95ac1b5c1ee7448b1369&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b64%20Tenn.%20L.%20Rev.%20665%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=291&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b456%20U.S.%20742%2cat%20771%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=14&_startdoc=1&wchp=dGLbVzb-zSkAk&_md5=d07e57db00f641917e6a2ca51d264ec3" \t "_parent) (Powell, J., concurring in part and dissenting in part). While finding that precedents of the Court supported the constitutionality of the substantive provisions of PURPA "on this facial attack," Powell also evoked principles of federalism to warn against the encroachment of federal authority into state affairs: But I know of no other attempt by the Federal Government to supplant state-prescribed procedures that in part define the nature of their administrative agencies. If Congress may do this, presumably it has the power to pre-empt state-court rules of civil procedure and judicial review in classes of cases found to affect commerce. This would be the type of gradual encroachment hypothesized by Professor Tribe: "Of course, no one expects Congress to obliterate the states, at least in one fell swoop. If there is any danger, it lies in the tyranny of small decisions in the prospect that Congress will nibble away at state sovereignty, bit by bit, until someday essentially nothing is left but a gutted shell." [Id. at 774-75](http://www.lexis.com/research/buttonTFLink?_m=7263d1de93ed95ac1b5c1ee7448b1369&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b64%20Tenn.%20L.%20Rev.%20665%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=292&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b456%20U.S.%20742%2cat%20774%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=14&_startdoc=1&wchp=dGLbVzb-zSkAk&_md5=f20395c54da5629ec69d2b8338523754" \t "_parent) (Powell, J., concurring in part and dissenting in part) (quoting Laurence H. Tribe, American Constitutional Law 302 (1978)). Despite his warning, Justice Powell could probably never have envisioned the degree to which Congress would attempt to preempt state court procedures with respect to tort and product liability actions, areas so traditionally anchored in state common law.

## Impacts

### Modeling

#### U.S. constitutional federalism is modeled internationally

Calebresi ’95 [Stephen, Associate Professor, Northwestern University School of Law. B.A. 1980, J.D. 1983, Yale, “Reflections on United States v. Lopez: "A GOVERNMENT OF LIMITED AND ENUMERATED POWERS": IN DEFENSE OF UNITED STATES v. LOPEZ,” 94 Mich. L. Rev. 752, Michigan Law Review, December, 1995]

At the same time, U.S.-style constitutional federalism has become the order of the day in an extraordinarily large number of  [\*760]  very important countries, some of which once might have been thought of as pure nation-states. Thus, the Federal Republic of Germany, the Republic of Austria, the Russian Federation, Spain, India, and Nigeria all have decentralized power by adopting constitutions that are significantly more federalist than the ones they replaced. n25 Many other nations that had been influenced long ago by American federalism have chosen to retain and formalize their federal structures. Thus, the federalist constitutions of Australia, Canada, Brazil, Argentina, and Mexico, for example, all are basically alive and well today. As one surveys the world in 1995, American-style federalism of some kind or another is everywhere triumphant, while the forces of nationalism, although still dangerous, seem to be contained or in retreat. The few remaining highly centralized democratic nation-states like Great Britain, n26 France, and Italy all face serious secessionist or devolutionary crises. n27 Other highly centralized nation-states, like China, also seem ripe for a federalist, as well as a democratic, change. Even many existing federal and confederal entities seem to face serious pressure to devolve power further than they have done so far: thus, Russia, Spain, Canada, and Belgium all have very serious devolutionary or secessionist movements of some kind. Indeed, secessionist pressure has been so great that some federal structures recently have collapsed under its weight, as has happened in Czechoslovakia, Yugoslavia, and the former Soviet Union. All of this still could be threatened, of course, by a resurgence of nationalism in Russia or elsewhere, but the long-term antinationalist trend seems fairly secure. There is no serious intellectual support for nationalism anywhere in the world today, whereas everywhere people seem interested in exploring new transnational [\*761]  and devolutionary federal forms. n28 The democratic revolution that was launched in Philadelphia in 1776 has won, and now it seems that democrats everywhere join Madison in "cherishing the spirit and supporting the character of federalists." n29

#### US federalism modeled

Tarr, 2k5 ( Alan, Chair of the Department of Political Science at Rutgers University “United States of America” appearing in John Kincaid and G. Alan Tarr, editors Constituional Origins, structure and change in federal democracies” McGill Queen’s University Press, Montreal and Kingston: 2005 pg 382)

The United States of America is the world's oldest, continuing, modern federal democracy. Indeed, the framers of the United States Constitution are widely regarded as the inventors of modern federalism, as distinct from ancient forms of federalism, especially confederalism. The US Constitution has been influential as a model of federal democracy, and key principles of the Constitution - such as federalism, the separation of powers, an independent judiciary, and individual rights - have gained acceptance worldwide. Americans believe that the nation's success owes much to the brilliance of the Constiution's drafters. Yet neither the Constitution, nor the federal polity it created, has remained static. Amendments adopted after the Civil War (186 1 -65) altered the federal-state balance, and the authorization of a federal income tax in the Sixteenth Amendment (1913) greatly augmented the fiscal power of the federal government. The Constitution has also both influenced and been influenced by political and social developments, including the transformation of the United States from a few states hugging the Atlantic Coast to a continental nation and also from a country recently liberated from colonial rule to an economic and military superpower.

#### US domestic federalism modeled

London, 2k **(**Herbert, President of the Hudson Institute, London, President of the Hudson Institute and Professor Emeritus at NYU “The Enemy Within” April 1st, 2001 <http://www.hudson.org/index.cfm?fuseaction=publication_details&id=1398&pubType=HI_Articles>)

Fourth, the United States possesses a sense of moral universalism that exists nowhere else. When one talks **about** some sort of example—a model of human rights, constitutionalism, subsidiarity, rule of law, and property rights—the United States stands alone. It is the model. Not long ago several Hudson Institute scholars had the opportunity to spend some time in Indonesia, and we found that Indonesia does not turn for its models to China or Japan; it looks to the United States. The new Indonesian president is very keen on establishing a form of federalism. What does he look to? The American Constitution. Fifth and last, the rest of the world looks to the United States for answers. Very recently, an American deputy secretary of state said, “Everyone’s crisis is America’s crisis.” Why? Because the world looks to the United States as its model. As a consequence, there is no question that the United States will maintain its extraordinary leadership.

### War

#### Federalism solves war

Calabresi ’95 (Steven G., Assistant Prof – Northwestern U., Michigan Law Review, Lexis)

Small state federalism is a big part of what keeps the peace in countries like the United States and Switzerland. It is a big part of the reason why we do not have a Bosnia or a Northern Ireland or a Basque country or a Chechnya or a Corsica or a Quebec problem. [51](http://www.lexis.com/research/retrieve?_m=ee7ca1d6fbb003c7a6ecec5c625b6564&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAk&_md5=89cd79e3cd743db7d961de6128b607f0" \l "n51" \t "_self) American federalism in the end is not a trivial matter or a quaint historical anachronism. American-style federalism is a thriving and vital institutional arrangement - partly planned by the Framers, partly the accident of history - and it prevents violence and war. It prevents religious warfare, it prevents secessionist warfare, and it prevents racial warfare. It is part of the reason why democratic majoritarianism in the United States has not produced violence or secession for 130 years, unlike the situation for example, in England, France, Germany, Russia, Czechoslovakia, Yugoslavia, Cyprus, or Spain. There is nothing in the U.S. Constitution that is more important or that has done more to promote peace, prosperity, and freedom than the federal structure of that great document. There is nothing in the U.S. Constitution that shouldabsorb more completely the attention of the U.S. Supreme Court.

#### Federalism prevents war

Calabresi ’95 (Steven G., Assistant Prof – Northwestern U., Michigan Law Review, Lexis)

Some of the best arguments for centripetal international federalism, then, resemble some of the best arguments for centrifugal devolutionary federalism: in both cases - and for differing reasons - federalism helps prevent bloodshed and war. It is no wonder, then, that we live in an age of federalism at both the international and subnational level. Under the right circumstances, federalism can help to promote peace, prosperity, and happiness. It can alleviate the threat of majority tyranny - which is the central flaw of democracy. In some situations, it can reduce the visibility of dangerous social fault lines, thereby preventing bloodshed and violence. This necessarily brief comparative, historical, and empirical survey of the world's experience with federalism amply demonstrates the benefits at least of American-style small-state federalism. **[61](http://www.lexis.com/research/retrieve?_m=ee7ca1d6fbb003c7a6ecec5c625b6564&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAk&_md5=89cd79e3cd743db7d961de6128b607f0" \l "n61" \t "_self)** In light of this evidence, the United States would be foolish indeed to abandon its federal system.  [\*774]

### Trade

#### Federalism promotes global free trade

Calebresi ’95 [Stephen, Associate Professor, Northwestern University School of Law. B.A. 1980, J.D. 1983, Yale, “Reflections on United States v. Lopez: "A GOVERNMENT OF LIMITED AND ENUMERATED POWERS": IN DEFENSE OF UNITED STATES v. LOPEZ,” 94 Mich. L. Rev. 752, Michigan Law Review, December, 1995]

A fourth and vital advantage to international federations is that they can promote the free movement of goods and labor both among the components of the federation by reducing internal transaction costs and internationally by providing a unified front that reduces the costs of collective action when bargaining with other federations and nations. This reduces the barriers to an enormous range of utility-maximizing transactions thereby producing an enormous increase in social wealth. Many federations have been formed in part for this reason, including the United States, the European Union, and the British Commonwealth, as well as all the trade-specific "federations" like the GATT and NAFTA.

#### Free trade solves nuclear war

Copley News Service ’99 [Dec 1, LN]

For decades, many children in America and other countries went to bed fearing annihilation by nuclear war. The specter of nuclear winter freezing the life out of planet Earth seemed very real. Activists protesting the World Trade Organization's meeting in Seattle apparently have forgotten that threat. The truth is that nations join together in groups like the WTO not just to further their own prosperity, but also to forestall conflict with other nations. In a way, our planet has traded in the threat of a worldwide nuclear war for the benefit of cooperative global economics. Some Seattle protesters clearly fancy themselves to be in the mold of nuclear disarmament or anti-Vietnam War protesters of decades past. But they're not. They're special-interest activists, whether the cause is environmental, labor or paranoia about global government. Actually, most of the demonstrators in Seattle are very much unlike yesterday's peace activists, such as Beatle John Lennon or philosopher Bertrand Russell, the father of the nuclear disarmament movement, both of whom urged people and nations to work together rather than strive against each other. These and other war protesters would probably approve of 135 WTO nations sitting down peacefully to discuss economic issues that in the past might have been settled by bullets and bombs. As long as nations are trading peacefully, and their economies are built on exports to other countries, they have a major disincentive to wage war. That's why bringing China, a budding superpower, into the WTO is so important. As exports to the United States and the rest of the world feed Chinese prosperity, and that prosperity increases demand for the goods we produce, the threat of hostility diminishes. Many anti-trade protesters in Seattle claim that only multinational corporations benefit from global trade, and that it's the everyday wage earners who get hurt. That's just plain wrong. First of all, it's not the military-industrial complex benefiting. It's U.S. companies that make high-tech goods. And those companies provide a growing number of jobs for Americans. In San Diego, many people have good jobs at Qualcomm, Solar Turbines and other companies for whom overseas markets are essential. In Seattle, many of the 100,000 people who work at Boeing would lose their livelihoods without world trade. Foreign trade today accounts for 30 percent of our gross domestic product. That's a lot of jobs for everyday workers. Growing global prosperity has helped counter the specter of nuclear winter. Nations of the world are learning to live and work together, like the singers of anti-war songs once imagined. Those who care about world peace shouldn't be protesting world trade. They should be celebrating it.

### Democracy

#### Federalism is key to global democracy

Wright, 97 (Robin, a contributing correspondent of The Washington Quarterly, covers the patterns of democratization and other global issues for the Los Angeles Times, Washington Quarterly, Summer)

The most dynamic political trend promoting democracy worldwide in the 1990s is devolution, the transfer of power beyond capitals and traditional elites in ways that are in turn redefining democracy's scope and application. It is now the frontline of democratization in Latin America, Central Europe, Africa, and Asia. The most radical experiment in Latin America is Bolivia's new "popular participation" program, which is devolving power and resources long concentrated in three urban centers to 311 municipalities. The project effectively expedites democracy. Towns and villages no longer have to appeal to regional or national authorities for everything from electricity to school desks. The goal is for communities to provide services and handle problems according to local needs and priorities as a check against the abuse of power at the national level. Before the transition to democracy began in the 1980s, Bolivia witnessed 189 coups in 162 years. For the first time, popular participation has included the country's majority -- the 65 percent indigenous population that has long been excluded by descendants of Spanish colonials. Many of Bolivia's Aymara and Quechua Indians, whose civilizations date back millennia, are getting their first taste of modern power. In Africa, Mali's first democratic government contends decentralization works because it forces engagement. The West African state, which is twice the size of Texas, has shifted control of key administrative and financial functions, including education, health, and development, to more than 500 rural and urban communities. Each locality fixes tax rates and allocates revenues. To allow local direction and limit corruption, each area also negotiates directly with foreign aid groups. Devolution also helps block democracy's undoing by dispersing power beyond the reach of armies or strongmen -- a recent problem among Mali's neighbors. Democratic progress in Niger and Gambia has been reversed by military intervention, while Nigeria's army stepped in to void results of the oil-rich state's first democratic elections. Former dictators have won democratic elections in Benin and Burkino Faso. And irregularities have marred elections in Mauritania, Guinea-Bissau, and Equatorial Guinea. Devolution can also provide a mechanism to ease ethnic or sectarian disparities. Ethiopia boasts one of Africa's most radical experiments in devolution in an attempt to prevent further dismemberment. Differences among its 80 ethnic groups -- which use a dozen major languages and three alphabets -- have spawned a host of conflicts during both monarchial and communist rule. (Eritrea broke away in 1993.) As part of its still-tentative transition to democracy, Ethiopia has introduced a new constitution that divides 55 million people into nine ethnic-based states. It also bestows major powers of self-administration and even the right to secede. The motive for transferring power is not always altruistic. Devolution often also represents an attempt to transfer the onus of solutions beyond central governments no longer able to provide services or answers. In reaction to the strong centralization of communism, democratic Poland is moving in the opposite direction as the state devolves power to gaminas, local communities of various sizes run by councils now locally elected. Warsaw has several gaminas, whereas a rural gamina may include several villages. Among all the units of government, gaminas now have the highest public support. n15 In 1996, the state began to transfer control of education to gaminas, which are now allocated about 10 percent of national revenues. Gaminas also collect local taxes, although income varies widely depending on local resources. But the combination of local and state funds is often insufficient to pay for schools and other services the federal government once provided. As a result, some communities have actually appealed to Warsaw to reassume responsibility for schools. Devolution is also not without basic conceptual problems. In many places, shortcomings include poorly educated or inexperienced new officials, including some who can barely read or who know virtually nothing about budgets and managing a municipality. Initial projects have often been flashy rather than thoughtful infrastructure schemes. Local areas are also not immune to corruption, which in Bolivia led to installation of "vigilance committees" to oversee its mayors. Yet as in many places, the government in La Paz contends devolution is still the best mechanism for both the initial democratization process and subsequent stabilization. Devolution shares problems as well as power. It introduces a wider array of players to shoulder the burdens as well as to have a stake in the outcome. And by embracing men and women in the most remote rural corners of countries, devolution also prevents or defuses the flashpoints behind competition and strife.

#### Democratization solves nuclear war

Muravchik, 2k1 (Joshua, resident scholar The American Enterprise Institute, July 11-14, <http://www.npec-web.org/syllabi/muravchik.htm>)

The greatest impetus for world peace -- and perforce of nuclear peace -- is the spread of democracy. In a famous article, and subsequent book, Francis Fukuyama argued that democracy's extension was leading to "the end of history." By this he meant the conclusion of man's quest for the right social order, but he also meant the "diminution of the likelihood of large-scale conflict between states." (1) Fukuyama's phrase was intentionally provocative, even tongue-in-cheek, but he was pointing to two down-to-earth historical observations: that democracies are more peaceful than other kinds of government and that the world is growing more democratic. Neither point has gone unchallenged. Only a few decades ago, as distinguished an observer of international relations as George Kennan made a claim quite contrary to the first of these assertions. Democracies, he said, were slow to anger, but once aroused "a democracy . . . . fights in anger . . . . to the bitter end." (2) Kennan's view was strongly influenced by the policy of "unconditional surrender" pursued in World War II. But subsequent experience, such as the negotiated settlements America sought in Korea and Vietnam proved him wrong. Democracies are not only slow to anger but also quick to compromise. And to forgive. Notwithstanding the insistence on unconditional surrender, America treated Japan and that part of Germany that it occupied with extraordinary generosity. In recent years a burgeoning literature has discussed the peacefulness of democracies. Indeed the proposition that democracies do not go to war with one another has been described by one political scientist as being "as close as anything we have to an empirical law in international relations." (3) Some of those who find enthusiasm for democracy off-putting have challenged this proposition, but their challenges have only served as empirical tests that have confirmed its robustness. For example, the academic Paul Gottfried and the columnist-turned-politician Patrick J. Buchanan have both instanced democratic England's declaration of war against democratic Finland during World War II. (4) In fact, after much procrastination, England did accede to the pressure of its Soviet ally to declare war against Finland which was allied with Germany. But the declaration was purely formal: no fighting ensued between England and Finland. Surely this is an exception that proves the rule. CONTINUES… That Freedom House could count 120 freely elected governments by early 2001 (out of a total of 192 independent states) bespeaks a vast transformation in human governance within the span of 225 years. In 1775, the number of democracies was zero. In 1776, the birth of the United States of America brought the total up to one. Since then, democracy has spread at an accelerating pace, most of the growth having occurred within the twentieth century, with greatest momentum since 1974. That this momentum has slackened somewhat since its pinnacle in 1989, destined to be remembered as one of the most revolutionary years in all history, was inevitable. So many peoples were swept up in the democratic tide that there was certain to be some backsliding. Most countries' democratic evolution has included some fits and starts rather than a smooth progression. So it must be for the world as a whole. Nonetheless, the overall trend remains powerful and clear. Despite the backsliding, the number and proportion of democracies stands higher today than ever before. This progress offers a source of hope for enduring nuclear peace. The danger of nuclear war was radically reduced almost overnight when Russia abandoned Communism and turned to democracy. For other ominous corners of the world, we may be in a kind of race between the emergence or growth of nuclear arsenals and the advent of democratization. If this is so, the greatest cause for worry may rest with the Moslem Middle East where nuclear arsenals do not yet exist but where the prospects for democracy may be still more remote.

### Democide

#### Devolution prevents democide internationally

Rummel, 97 ( Prof of Political Science at University of Hawaii, “Democracy, Power, and Democide” http://www.hawaii.edu/powerkills/SOD.CHAP17.HTM)

Where the political elite can command all, where they can act arbitrarily, where they can kill as they so whim, they are most likely to commit democide. Where the elite are checked by countervailing power, where they are restrained and held to account for their actions, where they must answer to the very people they might murder, they are least likely to commit democide. That is power kills; absolute power kills absolutely. This is the underlying principle. There is thus a continuum here. At one end is liberal democracy, a type of regime in which through an open and competitive system of electing the major power-holders and otherwise holding accountable other political elite, through the freedom of speech and organization, and through the existence of multiple and overlapping power pyramids (religious institutions, the media, corporations, etc.), power is most restrained. At the other end are totalitarian regimes in which the power-holders exercise absolute power over all social groups and institutions, in which there are no independent power pyramids. The broad alternative to these two types is the authoritarian regime. Power is centralized and perhaps dictatorial, and no competition for political power is allowed, but independent social institutions (such as churches and businesses) exist and provide some restraint on the political elite.

#### That outweighs war

Rummel, 97 ( Prof of Political Science at University of Hawaii, “Democracy, Power, and Democide” http://www.hawaii.edu/powerkills/SOD.CHAP17.HTM)

Our century is noted for its absolute and bloody wars. World War I saw nine-million people killed in battle, an incredi ble record that was far surpassed within a few decades by the 15 million battle deaths of World War II. Even the number killed in twentieth century revolutions and civil wars have set historical records. In total, this century's battle killed in all its international and domestic wars, revolutions, and violent conflicts is so far about 35,654,000. Yet, even more unbelievable than these vast numbers killed in war during the lifetime of some still living, and largely unknown, is this shocking fact. This century's total killed by absolutist governments already far exceeds that for all war**s**, domestic and international. Indeed, this number already approximates the number that might be killed in a nuclear war. [Table 1](http://www.hawaii.edu/powerkills/WSJ.TAB1.GIF) provides the relevant totals and classifies these by type of government (following Freedom House's definitions) and war. By government killed is meant any direct or indirect killing by government officials, or government acquiescence in the killing by others, of more than 1,000 people, except execution for what are conventionally considered criminal acts (murder, rape, spying, treason, and the like). This killing is apart from the pursuit of any ongoing military action or campaign, or as part of any conflict event. For example, the Jews that Hitler slaughtered during World War II would be counted, since their merciless and systematic killing was unrelated to and actually conflicted with Hitler's pursuit of the war. The totals in the Table are based on a nation-by-nation assessment and are absolute minimal figures that may under estimate the true total by ten percent or more. Moreover, these figures do not even include the 1921-1922 and 1958-1961 famines in the Soviet Union and China causing about 4 million and 27 million dead, respectably. The former famine was mainly due to the imposition of a command agricultural economy, forced requisitions of food by the Soviets, and the liquidation campaigns of the Cheka; the latter was wholly caused by Mao's agriculturally destructive Great Leap Forward and collectivization. However, Table 1 does include the Soviet government's planned and administered starvation of the Ukraine begun in 1932 as a way of breaking peasant opposition to collectivization and destroying Ukrainian nationalism. As many as ten million may have been starved to death or succumbed to famine related diseases; I estimate eight million died. Had these people all been shot, the Soviet government's moral responsibility could be no greater. The Table lists 831 thousand people killed by free -- democratic -- governments, which should startle most readers. This figure involves the French massacres in Algeria before and during the Algerian war (36,000 killed, at a minimum), and those killed by the Soviets after being forcibly repatriated to them by the Allied Democracies during and after World War II. It is outrageous that in line with and even often surpassing in zeal the letter of the Yalta Agreement signed by Stalin, Churchill, and Roosevelt, the Allied Democracies, particularly Great Britain and the United States, turned over to Soviet authorities more than 2,250,000 Soviet citizens, prisoners of war, and Russian exiles (who were not Soviet citizens) found in the Allied zones of occupation in Europe. Most of these people were terrified of the consequences of repatriation and refused to cooperate in their repatriation; often whole families preferred suicide. Of those the Allied Democracies repatriation, an estimated 795,000 were executed, or died in slave-labor camps or in transit to them. If a government is to be held responsible for those prisoners who die in freight cars or in their camps from privation, surely those democratic governments that turned helpless people over to totalitarian rulers with foreknowledge of their peril, also should be held responsible. Concerning now the overall mortality statistics shown in the table, it is sad that hundreds of thousands of people can be killed by governments with hardly an international murmur, while a war killing several thousand people can cause an immediate world outcry and global reaction. Simply contrast the international focus on the relatively minor Falkland Islands War of Britain and Argentina with the widescale lack of interest in Burundi's killing or acquiescence in such killing of about 100,000 Hutu in 1972, of Indonesia slaughtering a likely 600,000 "communists" in 1965, and of Pakistan, in an initially well planned massacre, eventually killing from one to three million Bengalis in 1971. A most noteworthy and still sensitive example of this double standard is the Vietnam War. The international community was outraged at the American attempt to militarily prevent North Vietnam from taking over South Vietnam and ultimately Laos and Cambodia. "Stop the killing" was the cry, and eventually, the pressure of foreign and domestic opposition forced an American withdrawal. The overall number killed in the Vietnam War on all sides was about 1,216,000 people. With the United States subsequently refusing them even modest military aid, South Vietnam was militarily defeated by the North and completely swallowed; and Cambodia was taken over by the communist Khmer Rouge, who in trying to recreate a primitive communist agricultural society slaughtered from one to three million Cambodians. If we take a middle two-million as the best estimate, then in four years the government of this small nation of seven million alone killed 64 percent more people than died in the ten-year Vietnam War. Overall, the best estimate of those killed after the Vietnam War by the victorious communists in Vietnam, Laos, and Cambodia is 2,270,000. Now totaling almost twice as many as died in the Vietnam War, this communist killing still continues. To view this double standard from another perspective, both World Wars cost twenty-four million battle deaths. But from 1918 to 1953, the Soviet government executed, slaughtered, starved, beat or tortured to death, or otherwise killed 39,500,000 of its own people (my best estimate among figures ranging from a minimum of twenty million killed by Stalin to a total over the whole communist period of eighty-three million). For China under Mao Tse-tung, the communist government eliminated, as an average figure between estimates, 45,000,000 Chinese. The number killed for just these two nations is about 84,500,000 human beings, or a lethality of 252 percent more than both World Wars together. Yet, have the world community and intellectuals generally shown anything like the same horror, the same outrage, the same out pouring of anti-killing literature, over these Soviet and Chinese megakillings as has been directed at the much less deadly World Wars? As can be seen from Table 1, communist governments are overall almost four times more lethal to their citizens than non-communist ones, and in per capita terms nearly twice as lethal (even considering the huge populations of the USSR and China). However, as large as the per capita killed is for communist governments, it is nearly the same as for other non-free governments. This is due to the massacres and widescale killing in the very small country of East Timor, where since 1975 Indonesia has eliminated (aside from the guerrilla war and associated violence) an estimated 100 thousand Timorese out of a population of 600 thousand. Omitting this country alone would reduce the average killed by noncommunist, nonfree governments to 397 per 10,000, or significantly less than the 477 per 10,000 for communist countries. In any case, we can still see from the table that the more freedom in a nation, the fewer people killed by government. Freedom acts to brake the use of a governing elite's power over life and death to pursue their policies and ensure their rule. This principle appeared to be violated in two aforementioned special cases. One was the French government carrying out mass killing in the colony of Algeria, where compared to Frenchmen the Algerians were second class citizens, without the right to vote in French elections. In the other case the Allied Democracies acted during and just after wartime, under strict secrecy, to turn over foreigners to a communist government. These foreigners, of course, had no rights as citizens that would protect them in the democracies. In no case have I found a democratic government carrying out massacres, genocide, and mass executions of its own citizens; nor have I found a case where such a government's policies have knowingly and directly resulted in the large scale deaths of its people though privation, torture, beatings, and the like. Absolutism is not only many times deadlier than war, but itself is the major factor causing war and other forms of violent conflict. It is a major cause of militarism. Indeed, absolutism, not war, is mankind's deadliest scourge of all.

### Secessionism

#### Federalism prevents unchecked Secessionism globally

Kittrie, 96 (Nicholas, Edwin Moores Scholar at American University Law School, Center for the Study of Democratic Institutions: New Perspectives Quarterly, p. 57)

The unrest is created by the unfilled promises, aspirations and demands - just or unjust, reasonable and otherwise. Countries that fail to deal justly with past deprivations and present expectations will become embroiled in unrest, internal strife and wars of secession. Governments and states that are unsuccessful in accommodating or resolving their people's growing demands for greater autonomy and justice will be swept away. It is the fear of this eventuality that has led such a well-seasoned historian as John Lukacs to warn against the prospects of "new feudalism" and "new barbaric chieftains." Successful countries will inevitably be the ones capable of transforming themselves into more representative and flexible pluralistic composites. Unless they carry out this transformation, China and India, the world's last great multi-ethnic empires (and to a lesser degree also the new Russian Federation), might go the way of the earlier Soviet conglomerate. Principles and processes of governance that recognize the globe's growing pluralistic realities are essential. If states are to avoid divisiveness and turmoil they must base their political order on greater tolerance for diversity and incorporate new types of federalism or consociationalism - a great variety of informal and voluntary forms of association - that enhance local autonomy and communal empowerment. The future requires the replacement of monolithic political and socioeconomic dogmas (and their accompanying centralized systems of governance) with a maximization of locally determined and pluralistic priorities and institutions. Governmental decision-making processes and procedures must maximize people's perceptions of empowerment and participation in authority. ABSOLUTE OR PLURAL? ( It is in this light that we must view and assess the growing worldwide confrontation between the forces of religious-political fundamentalism and the forces of pluralistic democracy. The first camp (in places like the Vatican, Iran, Algeria or Israel's Mea Shearim) admittedly proclaims and adheres to the absolute primacy of some never-changing scriptural or ideological truth, be it Catholic, Islamic or Jewish law. The second camp (however diverse and disparate) places its reliance on a democratically derived and constantly modifiable social compact. The deepening conflict between these two dramatically opposite approaches to the formulation and structuring of political legitimacy is now threatening to replace the earlier Cold War as a major axis of global conflict.

#### Secessionism causes global wars

Gottlieb, 93 (Gidon, Director of the Middle East Peace Project and Visiting Fellow at Council on Foreign Relations, Nation Against State, 127-7)

Self-determination unleashed and unchecked by balancing principles constitutes a menace to the society of states. There is simply no way in which all the hundreds of peoples who aspire to sovereign independence can be granted a state of their own without loosening fearful anarchy and disorder on a planetary scale. The proliferation of territorial entities poses exponentially greater problems for the control of weapons of mass destruction and multiplies situations in which external intervention could threaten the peace**.** It increases problems for the management of all global issues, including terrorism, AIDS, the environment and population growth. It creates conditions in which domestic strife in remote territories can drag powerful neighbors into local hostilities, creating ever widening circles of conflict. Events in the aftermath of the breakup of the Soviet Union drove this point home. Like Russian dolls, ever smaller ethnic groups dwelling in larger units emerged to secede and to demand independence. Goergia, for example, has to contend with the claims of South Ossetians and Abkhazians for independence, just as the Russian federation is confronted with the separatism of Tartaristan. An international system made up of several hundred independent terriatorial states cannot be the basis for global security and prosperity.

### Russia

#### Russian federalism is key to stability

Hahn ’03 (Gordon M., Visiting Research Scholor – Stanford U, Demokratizatsiya, Vol. 11, Issue 3, Summer)

Where did Russia's federal state come from, where has it been, where is it going, and why does it matter beyond a small circle of Russia specialists? Taking the last question first, the success or failure of Russia's transformation into a stable market democracy will determine the degree of stability throughout Eurasia. For such a large multinational state, successful political and economic development depends on building an efficient democratic federal system. Indeed, one of the main institutional factors leading to the demise of the Soviet partocratic regime and state was the considerably noninstitutionalized status of the RSFSR (Russian Republic) in the Soviet Union's pseudofederal, national-territorial administrative structure. Only a democratic federal system can hold together and effectively manage Russia's vast territory, the awkward administrative structure inherited from the failed USSR, and hundreds of divergent ethnic, linguistic, and religious interests. Dissolution or evenany further weakening of Russia's federal state could have dire consequences for Russian national and international security by weakening control over its means of mass destruction.

#### The impact is nuclear war

David ’99 (Steven R., Prof PoliSci – Johns Hopkins U., Foreign Affairs, Jan/Feb, Lexis)

If conditions get worse, even the stoic Russian people will soon run out of patience. A future conflict would quickly draw in Russia's military. In the Soviet days civilian rule kept the powerful armed forces in check. But with the Communist Party out of office, what little civilian control remains relies on an exceedingly fragile foundation -- personal friendships between government leaders and military commanders. Meanwhile, the morale of Russian soldiers has fallen to a dangerous low. Drastic cuts in spending mean inadequate pay, housing, and medical care. A new emphasis on domestic missions has created an ideological split between the old and new guard in the military leadership, increasing the risk that disgruntled generals may enter the political fray and feeding the resentment of soldiers who dislike being used as a national police force. Newly enhanced ties between military units and local authorities pose another danger. Soldiers grow ever more dependent on local governments for housing, food, and wages. Draftees serve closer to home, and new laws have increased local control over the armed forces. Were a conflict to emerge between a regional power and Moscow, it is not at all clear which side the military would support. Divining the military's allegiance is crucial, however, since the structure of the Russian Federation makes it virtually certain that regional conflicts will continue to erupt. Russia's 89 republics, *krais,* and *oblasts* grow ever more independent in a system that does little to keep them together. As the central government finds itself unable to force its will beyond Moscow (if even that far), power devolves to the periphery. With the economy collapsing, republics feel less and less incentive to pay taxes to Moscow when they receive so little in return. Three-quarters of them already have their own constitutions, nearly all of which make some claim to sovereignty. Strong ethnic bonds promoted by shortsighted Soviet policies may motivate non-Russians to secede from the Federation. Chechnya's successful revolt against Russian control inspired similar movements for autonomy and independence throughout the country. If these rebellions spread and Moscow responds with force, civil war is likely. Should Russia succumb to internal war, the consequences for the United States and Europe will be severe. A major power like Russia -- even though in decline -- does not suffer civil war quietly or alone. An embattled Russian Federation might provoke opportunistic attacks from enemies such as China. Massive flows of refugees would pour into central and western Europe. Armed struggles in Russia could easily spill into its neighbors. Damage from the fighting, particularly attacks on nuclear plants, would poison the environment of much of Europe and Asia. Within Russia, the consequences would be even worse. Just as the sheer brutality of the last Russian civil war laid the basis for the privations of Soviet communism, a second civil war might produce another horrific regime. Most alarming is the real possibility that the violent disintegration of Russia could lead to loss of control over its nuclear arsenal. No nuclear state has ever fallen victim to civil war, but even without a clear precedent the grim consequences can be foreseen. Russia retains some 20,000 nuclear weapons and the raw material for tens of thousands more, in scores of sites scattered throughout the country. So far, the government has managed to prevent the loss of any weapons or much material. If war erupts, however, Moscow's already weak grip on nuclear sites will slacken, making weapons and supplies available to a wide range of anti-American groups and states. Such dispersal of nuclear weapons represents the greatest physical threat America now faces. And it is hard to think of anything that would increase this threat more than the chaos that would follow a Russian civil war.

### Liberty

#### Federalism is key to individual freedoms

Walker, 99 (Geoffrey, Beirne School of Law, “Rediscovering the Advantages of Federalism,” Australian Law Journal, 1999 p. 1-25 accessed 7/10/08 from <http://202.14.81.34/Senate/pubs/pops/pop35/c02.pdf>]

The fifth advantage I want to put before you is that federalism is a protection of liberty. I mentioned earlier that a federal structure protects citizens from oppression or exploitation on the part of state governments, through the right of exit. But federalism is also a shield against arbitrary central government. Thomas Jefferson was very emphatic about that, so was Lord Bryce, who said that ‘federalism prevents the rise of a despotic central government, absorbing other powers, and menacing the private liberties of the citizen.’27 The late Geoffrey Sawer of the Australian National University in Canberra was a very distinguished constitutional lawyer. Although he was definitely no friend of federalism, he did have to admit that federalism was, in itself, a protection of individual liberty. Even in its rather battered condition, Australian federalism has proved its worth in this respect. For example, it was the premiers and other state political leaders who led the struggle against the 1991 political broadcasts ban. In fact, the New South Wales government was a plaintiff in the successful High Court challenge to that legislation, and that decision, I would suggest, was the perhaps the greatest advance in Australian political liberty since federation.

#### De Rule

Petro, 74 (Sylvester, professor of law, Wake Forest University, TOLEDO LAW REVIEW, Spring, p. 480)

However, one may still insist, echoing Ernest Hemingway – “I believe in only one thing: liberty.” And it is always well to bear in mind David Hume’s observation: “It is seldom that liberty of any kind is lost all at once.” Thus, it is unacceptable to say that the invasion of one aspect of freedom is of no import because there have been invasions of so many other aspects. That road leads to chaos, tyranny, despotism, and the end of all human aspiration. Ask Solzhenitsyn. Ask Milovan Djilas. In sum, if one believes in freedom as a supreme value, and the proper ordering principle for any society aiming to maximize spiritual and material welfare, then every invasion of freedom must be emphatically identified and resisted with undying spirit.

## Aff Answers

### Non-Unique

#### Supreme Court ruling on Arizona immigration law single biggest blow to American federalism in history –

Chicago Tribune, June 28 [2012, Federalism Destroyed; http://articles.chicagotribune.com/2012-06-28/news/chi-120628shinn\_briefs\_1\_federalism-arizona-immigration-law-individual-mandate]

So the Supreme Court has upheld the individual mandate after striking down most of the Arizona immigration law. This has truly been an historical week. Never before has more power been taken from the states and the people and transferred to Washington in a single week.

On Monday the court said that states cannot legislate in areas where the federal government legislates, and given how the federal government legislates on just about every issue, this means the states can legislate in very few areas indeed.



On Thursday the court ruled that the federal government can compel individuals to engage in commerce, whether they want to or not, and penalize them if they do not purchase whatever the government says they must. In a single week, federalism, the 10th Amendment and any ability of an individual to control his or her own money were destroyed.

"Conservative" court? Ha!

#### Supreme court ruling on health care effectively destroyed federalism –

Turley, June 30 [2012, Jonathan Turley, the Shapiro Professor of Public Interest Law at George Washington University, is a member of USA TODAY's Board of Contributors. http://www.guampdn.com/article/20120630/OPINION02/206300321/Federalism-biggest-loser-decision?odyssey=nav|head]

The Supreme Court's blockbuster health care ruling caused a spasm of celebration and recrimination around the country Thursday as the Affordable Care Act was upheld on a 5-4 vote. In reality, the case was never really about health care but federalism -- the relative authority of the federal government vs. the state. I support national health care, but I oppose the individual mandate as the wrong means to a worthy end. Indeed, for federalism advocates, the ruling reads like a scene out of Julius Caesar-- a principal killed by the unseen hand of a long-trusted friend. Brutus, in this legal tragedy, was played by Chief Justice John Roberts. The opinion starts out well. Roberts defends federalism by ruling that the administration exceeded its authority under the commerce clause. Just as many readers were exalting in the affirmation of federalism, however, Roberts struck a deadly blow by upholding the individual mandate provision as an exercise of tax authority. Federalism rose and fell so fast it didn't have time to utter, "Et tu, Roberts?" Roberts joined the four liberal justices in upholding the law. He clearly believed that the law was constitutional, and he refused to yield to the overwhelming public pressure. Indeed, he must have known that people would view this as a betrayal of states' rights, but he stuck with his honest view of the Constitution. None of that will diminish the sense of betrayal. After all, Brutus acted for the best reasons, too. The health care case was viewed as the final stand for federalism. If the top court could make a federal issue out of a young person in Chicago not buying health insurance, it was hard to imagine any act or omission that would not trigger federal authority. Roberts agreed that this was beyond the pale of federalism: "Allowing Congress to justify federal regulation by pointing to the effect of inaction on commerce would bring countless decisions an individual could potentially make within the scope of federal regulation, and -- under the government's theory -- empower Congress to make those decisions for him." But no sooner had Roberts proclaimed his love for federalism than he effectively killed it. Roberts held that the individual mandate still fell squarely within the taxing authority of Congress. If so, all those "broccoli" questions asked by Roberts and other justices simply move over to the tax side. If Congress can "tax" people for not having health insurance, how about taxes on people who don't have cellphones (as Roberts asked)? Just as there was no clear limiting principle in the commerce clause debate, there is a lack of such a principle in the tax debate. Instead, Roberts simply says the individual mandate is supported by a "functional approach" that has long allowed federal taxes to "seek to influence conduct" by citizens. Roberts did rule that states could not be threatened with the loss of Medicaid funds if they didn't want to be part of the program. That was an unexpected protection for the states facing threats from Congress. But this still leaves citizens of every state subject to the penalties of the federal government for failing to get insurance. Moreover, in mandating the right to opt out, Roberts rewrote the law, precisely what most justices didn't want to do. Before the law was enacted, Congress refused to add an opt-out provision. After the justices complained in oral arguments that they did not understand the massive law, this judicial amendment could increase health care costs and undermine the uniform national character of the program. Given such problems, President Obama might have been better off losing before the court than accepting this victory from the hands of Roberts. In the end, the court's decision could be viewed as a success only to the extent that a crash landing is still considered a landing. It is hard to see who will be the ultimate winner from this decision. But the biggest loser is federalism. Roberts lifted it up only to make it an exquisite corpse. In that sense, the decision reads like the funeral speech of another character in Julius Caesar. To paraphrase Mark Anthony, Roberts came to bury federalism, not to praise it.

### Fism is Flexible/No Link

#### American Federalism is flexible—it is no longer a constitutional doctrine

Morgan 6, (Denise C., Professor at New York Law School , New York Law School Law Review, "A Tale of (At Least) Two Federalisms,")

The first four pieces in this volume, which were presented at the Federal Courts section panel at the 2005 AALS convention, ask some version of the Federal Courts scholar's distressed query. My colleague, Professor Edward A. Purcell, Jr., opens the volume by putting that question into a broader historical and theoretical context. His articleasks: Whether, and to what extent, it is possible for "federalism" to serve as a meaningful and independent norm in the nation's constitutional enterprise. In other words, are the provisions of the Constitution that establish the federal structure, sufficiently clear, specific, and complete to direct those who construe them to "correct" decisions or, at least, to eliminate wide ranges of discretion in such decision making?n29 Can an examination of history set us on the proper path prescribed by the Constitution, or, when it comes to American federalism, are we condemned to muddle through, always wondering, "What on earth is going on?"Professor Purcell's interrogation provides some lessons and yields some insights into the "true" nature of American federalism, but more fundamentally, it "reveals disagreement, uncertainty, conflict, and change."n30 Indeed, he contends that federalism has been, remains, and always will be a contested issue, in part because "some of our most basic conceptions and assumptions about the federal system have changed substantially over the years."n31 In sharp contrast to the work of Federal Courts scholars who propound[\*624]clear cut prescriptive theories of federalism,n32 Professor Purcell concludes that "the idea of 'constitutional federalism' - that is, federalism as a directive constitutional norm - [is] deeply problematic."n33 Each of the sections of Professor Purcell's article examines one of the moving parts of American federalism: our ideas about the proper role of the Supreme Court in the federal system; our ideas about the values of federalism; our understanding of the nature of federalism as a structure of government; and our ideas about the nature and meaning of the Constitution itself. He finds that even the founding generations had at least five conflicting ideas about the appropriate role of the Supreme Court and judicial review. Moreover, "although the five views were distinct, they were also frequently intermixed in the minds of the founders."n34 Professor Purcell traces those different understandings of the Court's proper function from the ante-bellum period to the modern era and attributes our failure to settle on one dominant conception to the fact that "neither the Constitution nor any other authoritative source unequivocally defined such a system or such a role."n35 Professor Purcell contends that discussions of the values of federalism - "usually described as including protecting liberty, encouraging diversity and innovation, ensuring political accountability, promoting democratic participation, and protecting local values and interests" - are similarly unhelpful in identifying clear lines between state and federal authority.n36 Indeed, he asserts [\*625] that those conversations, which began to proliferate in the late twentieth century, were driven by an anxious sense that many"traditional" lines ostensibly separating national and state power were no longer sound, easily detectable, or even operationally plausible. Some kind of functional analysis seemed necessary to justify the existence of the states as independent governing units, to assure Americans that those state governments actually produced public benefits, and to identify useful and intelligible lines that could be drawn between federal and state authority.

#### Federalism is resilient and flexible

Greston 7 (Larry, San Jose St-Politics, American Federalism: A concise introduction, p. 13-4)

To be sure, over the past two hundred twenty years, the powers of some institutions have been clarified, while the resources of others have evolved considerably. Even more remarkable, some power relationships have shifted over time, revealing a profound flexibility within the American government framework. More times than not, such shifts in power have not occurred with unanimity. In fact, great debates over the appropriate assignments of government functions continue to this day. Nevertheless, the basic elements of American federalism remain in place, even if the applications are different. And other than the Civil War nearly one hundred and fifty years ago, the political “operating system” of the nation has functioned without serious bloodshed. Along with resilient adaptability, American federalism has demonstrated a great sense of continuity.

### A2 Modeling

#### U.S. federalism isn’t modeled

Kymlicka, 2k (Will, Professor of Philosophy at University of Toronto, July, Canadian Journal of Law and Jurisprudence)

Can the Model be Exported? Given this success in the West, one might expect that there would be great interest in multination federalism in other countries around the world, from Eastern Europe to Asia andAfrica, most of which contain territorially-concentrated national minorities. The phenomenon of minority nationalism, including the demand for [\*217] territorial autonomy, is a truly universal one. The countries affected by it are to be found in Africa (for example, Ethiopia), Asia (Sri Lanka), Eastern Europe (Romania), Western Europe (France), North America (Guatemala), South America (Guyana), and Oceania (New Zealand). The list includes countries that are old (United Kingdom) as well as new (Bangladesh), large (Indonesia) as well as small (Fiji), rich (Canada) as well as poor (Pakistan), authoritarian (Sudan) as well as democratic (Belgium), Marxist-Leninist (China) as well as militantly anti-Marxist (Turkey). The list also includes countries which are Buddhist (Burma), Christian (Spain), Moslem (Iran), Hindu (India), and Judaic (Israel)." n12 Indeed, some commentators describe the conflict between states and national minorities as an ever-growing "third world war", encompassing an ever-increasing number ofgroups and states. n13. We need to think creatively about how to respond to these conflicts, which will continue to plague efforts at democratization, and to cause violence, around the world. I believe that federal or quasi-federal forms of territorial autonomy (hereafter TA) are often the only or best solution to these conflicts. To be sure, TA is not a universal formula for managing ethnic conflict. For one thing, TA is neither feasible nor desirable for many smaller and more dispersed national minorities. For such groups, more creative alternatives are needed. So it would be a mistake to suppose that TA can work for all national minorities, no matter how small or dispersed. But I believe it would equally be a mistake to suppose that non-territorial forms of cultural autonomy can work for all national minorities, no matter how large or territorially concentrated. What works best for small and dispersed minorities does not work best for large, concentrated minorities, and vice versa. n14 Where national minorities form clear majorities in their historic homeland, and particularly where they have some prior history of self-government, it is not clear that there is any realistic alternative to TA or multination federalism. Yet TA is strongly resisted in most of Eastern Europe, Africa and Asia. And it is resisted for the same reasons it was resisted historically in the West: fears about disloyalty, secession and state security. n15 In many countries, majority- minority [\*218] relations are "securitized"--e.g., viewed as existential threats to the very existence of the state, which therefore require and justify repressive measures. n16 Where ethnic relations become securitized in this way, states are guided by a series ofinter-related assumptions: (a) that minorities are disloyal, not just in the sense that they lack loyalty to the state, but also in the sense that they are likely to collaborate with current or potential enemies; (b) that minorities are likely to use whatever power they are accorded to exit or undermine the state; (c) that a strong and stable state requires weak and disempowered minorities. Put another way, ethnic relations are seen as a zero-sum game: anything that benefits the minority is seen as a threat to the majority; and (d) that the treatment of minorities is above all a question of national security. Where one or more of these premises is accepted, there is virtually no room for an open debate about the merits of federalism. The perceived connection between federalism and destabilizing the state is too powerful to allow such a debate. Indeed, in many countries, for a minority to demand federalism is itself taken as proof of its disloyalty. It is not only advocates of secession who are put under police surveillance: anyone who advocates federalism is also seen as subversive, since it is assumed that this is just a covert first step to secession. Under these conditions, the whole question of what justice requires between majority and minority is submerged, since national security takes precedence over justice, and since disloyal minorities have no legitimate claims anyway. This resistance is so strong that TA is typically only granted as a last-ditch effort to avoid civil war, or indeed as the outcome of civil war. n17 On this issue, therefore, there is a wide and perhaps growing gulf between most Western countries and most countries in the rest of the world. In the West, it is considered legitimate that national minorities demand TA, and indeed these demands are increasingly accepted. Most national minorities in the West have greater autonomy than before, and none have been stripped oftheir autonomy. The idea ofTA is accepted in principle, and adopted in practice. The old self-image ofstates as unified nation-states is being replaced with the new self-image of states as multination federations and/or as partnerships between two or more peoples. By contrast, in many countries in Eastern Europe or the Third World, many national minorities have less autonomy than they had 30 or 50 years ago, and it is considered illegitimate for minorities to even mention autonomy, or to make any other proposal which would involve redefining the state as a multination state. These countries [\*219] cling to the old model ofunitary nation-states, in which minorities ideally are politically weak, deprived of intellectual leadership, and subject to long-term assimilation.

#### No Modeling

 Stepan, 99 (Alfred, Wallace Sayre Professor of Government at Columbia University, Journal of Democracy Volume 10, “Federalism and Democracy: Beyond the U.S. Model,” http://muse.jhu.edu/journals/journal\_of\_democracy/v010/10.4stepan.html)

The U.S. model of federalism, in terms of the analytical categories developed in this article, is "coming- together" in its origin, "constitutionally symmetrical" in its structure, and "demos-constraining" in its political consequences. Despite the prestige of this U.S. model of federalism, it would seem to hold greater historical interest than contemporary attraction for other democracies. Since the emergence of nation-states on the world stage in the after-math of the French Revolution, no sovereign democratic nation-states have ever "come together" in an enduring federation. Three largely unitary states, however (Belgium, Spain, and India) have constructed "holding-together" federations. In contrast to the United States, these federations are constitutionally asymmetrical and more "demos-enabling" than [End Page 32] "demos-constraining." Should the United Kingdom ever become a federation, it would also be "holding-together" in origin. Since it is extremely unlikely that Wales, Scotland, or Northern Ireland would have the same number of seats as England in the upper chamber of the new federation, or that the new upper chamber of the federation would be nearly equal in power to the lower chamber, the new federation would not be "demos-constraining" as I have defined that term. Finally, it would obviously defeat the purpose of such a new federation if it were constitutionally symmetrical. A U.K. federation, then, would not follow the U.S. model. The fact that since the French Revolution no fully independent nation-states have come together to pool their sovereignty in a new and more powerful polity constructed in the form of a federation would seem to have implications for the future evolution of the European Union. The European Union is composed of independent states, most of which are nation-states. These states are indeed increasingly becoming "functionally federal." Were there to be a prolonged recession (or a depression), however, and were some EU member states to experience very high unemployment rates in comparison to others, member states could vote to dismantle some of the economic federal structures of the federation that were perceived as being "politically dysfunctional." Unlike most classic federations, such as the United States, the European Union will most likely continue to be marked by the presumption of freedom of exit. Finally , many of the new federations that could emerge from the currently nondemocratic parts of the world would probably be territorially based, multilingual, and multinational. For the reasons spelled out in this article, very few, if any, such polities would attempt to consolidate democracy using the U.S. model of "coming-together," "demos-constraining," symmetrical federalism.

#### U.S. federalism isn’t modeled abroad – countries look to Europe or South Africa instead.

Newsweek ‘06

[1/31, <http://www.msnbc.msn.com/id/6857387/site/newsweek/>]

**AMERICAN DEMOCRACY:** Once upon a time, the U.S. Constitution was a revolutionary document, full of epochal innovations—free elections, judicial review, checks and balances, federalism and, perhaps most important, a Bill of Rights. In the 19th and 20th centuries, countries around the world copied the document, not least in Latin America. So did Germany and Japan after World War II. Today? When nations write a new constitution, as dozens have in the past two decades, they seldom look to the American model. When the soviets withdrew from Central Europe, U.S. constitutional experts rushed in. They got a polite hearing, and were sent home. Jiri Pehe, adviser to former president Vaclav Havel, recalls the Czechs' firm decision to adopt a European-style parliamentary system with strict limits on campaigning. "For Europeans, money talks too much in American democracy. It's very prone to certain kinds of corruption, or at least influence from powerful lobbies," he says. "Europeans would not want to follow that route." They also sought to limit the dominance of television, unlike in American campaigns where, Pehe says, "TV debates and photogenic looks govern election victories." So it is elsewhere. After American planes and bombs freed the country, Kosovo opted for a European constitution. Drafting a post-apartheid constitution, South Africa rejected American-style federalism in favor of a German model, which leaders deemed appropriate for the social-welfare state they hoped to construct. Now fledgling African democracies look to South Africa as their inspiration, says John Stremlau, a former U.S. State Department official who currently heads the international relations department at the University of Witwatersrand in Johannesburg: "We can't rely on the Americans." The new democracies are looking for a constitution written in modern times and reflecting their progressive concerns about racial and social equality, he explains. "To borrow Lincoln's phrase, South Africa is now Africa's 'last great hope'."

### A2: Russian Fism

#### Non-unique—Russia is devolving now

Domrin 6 [Alexander N. Domrin is a former Chief Specialist of the Foreign Relations Committee of the Russian Supreme Soviet, Moscow representative of the U.S. Congressional Research Service, and Consultant for the Russian Foundation for Legal Reform Comparative Constitutional Law at Iowa: “From Fragmentation to Balance: The Shifting Model of Federalism in Post-Soviet Russia” Spring 2006 15 Transnat'l L. & Contemp. Probs. 515 l/n]

The Russian Federation is currently undergoing major legal reforms. Overall, it is clear that despite the constitutional provisions and all official statements to the contrary, Russia has unsettled relations with federalism. Federalism in Russia is hardly a "destiny," it is more a "marriage of convenience." Adoption of the 1993 Federal Constitution was not a culmination of Russian history or of Russia's constitutional development. Rather, it was just the beginning of Russia's experiment with "federalism." The ultimate outcome of this experiment cannot yet be predicted. Even though complete abandonment of federalism in Russia is very unlikely in the foreseeable future, one may argue that the current expansion of Russia's federal government activity in virtually all spheres of life can be considered a sign of a shift in the model of federalism Russian follows. Specifically, it signifies Russia's transition from "fragmented" federalism based on treaties between the federal center and subjects of the Federation, implying a relationship more reminiscent of political equals, to "balanced" federalism that is based on the Federal Constitution and strict compliance with it by the federal units. In essence, it is a transition from the current "asymmetric" federation to a more structured union, with presumably one type of subject of the Federation rather than six different types.

Russia won’t model

Trenin 2006 (Dmitri Foreign Affairs July/August “Russia Leaves the West” Lexis)

As President Vladimir Putin prepares to host the summit of the G-8 (the group of eight highly industrialized nations) in St. Petersburg in July, it is hardly a secret that relations between Russia and the West have begun to fray. After more than a decade of talk about Russia's "integration" into the West and a "strategic partnership" between Moscow and Washington, U.S. and European officials are now publicly voicing their concern over Russia's domestic political situation and its relations with the former Soviet republics. In a May 4 speech in Lithuania, for example, U.S. Vice President Dick Cheney accused the Kremlin of "unfairly restricting citizens' rights" and using its energy resources as "tools of intimidation and blackmail." Even as these critics express their dismay, they continue to assume that if they speak loudly and insistently, Russia will heed them and change its ways. Unfortunately, they are looking for change in the wrong place. It is true, as they charge, that Putin has recently clamped down on dissent throughout Russia and cracked down on separatists in Chechnya, but more important changes have come in Russia's foreign policy. Until recently, Russia saw itself as Pluto in the Western solar system, very far from the center but still fundamentally a part of it. Now it has left that orbit entirely: Russia's leaders have given up on becoming part of the West and have started creating their own Moscow-centered system.

### A2: Secessionism

#### Turn--Federalism causes secessionism

McGarry, 2k4 (John Canada Research Chair in Nationalism and Democracy at Queen’s University, Vol 4 No. 1 March <http://www.forumfed.org/publications/pdfs/V4N1.pdf>)

Can federalism help to **manage** ethnic and national **diversity? The answer** to the question in the title, **throughout** much of **the world, is a resounding “No”. Most states in Africa, Eastern Europe, and Asia are fiercely resistant to the idea of** accommodating national and ethnic communities through **federal institutions**. Federalism is their “f” word. In Western Europe, the French are also hostile to federalism. Even Americans, those who live in the world’s first and longest enduring federation, tend to be against using federalism to give self-government to distinct peoples. They consciously drew the internal boundaries of their own federation to avoid this. Today, when American experts recommend federalism for other countries, such as Iraq, it is the American model they usually have in mind: a federation in which internal boundaries intersect with rather than coincide with ethnic and national boundaries. Post-communist break-ups The widespread opposition to multinational (or multi-ethnic) federalism is connected to the belief that it does not work. It is thought that **giving self-government to distinct peoples unleashes centrifugal forces that result in the break-up or breakdown of the state.** This view is so popular because **there is** seemingly **compelling evidence to support it**. Critics of multinational federalism like to point, in particular, to the experience of post-communist Eastern Europe. **While all of communist Eastern Europe’s unitary states stayed together** after 1989, **all three of its multinational federations** (the Soviet Union, Yugoslavia, and Czechoslovakia) **fell apart**. The **federations also experienced more violent transitions** than the unitary states. Before this, **multinational federations** that were formed in the wake of decolonization had a similarly abysmal track record. They **fell apart in the Caribbean** (the Federation of the West Indies); in east **Africa** (the East African Federation and Ethiopia); southern Africa (Northern and Southern Rhodesia and Nyasaland); **and** in **Asia** (Pakistan; the Union of Malaya). The Nigerian federation managed to stay together, but only after a brutal civil war and decades of military dictatorship**. It would be difficult to argue**, in the light of this evidence, **that federalism is a panacea for ethnically and nationally diverse states**. It also seems clear that **giving national groups their own federal units provides them with resources that they can use to launch secessionist movements**, should they choose to.

#### Federalism does not work to solve conflicts

McGarry and O’Leary, 94 (John Warren and O'Leary. The political regulation of national and ethnic conflict. Parliamentary Affairs v47.n1 (Jan 1994): pp94(22).)

Unfortunately, federalism has a poor track record as a conflict-regulating device in multi-national and polyethnic states, even where it allows a degree of minority self-government. Democratic federations have broken…Federal failures have occurred because minorities continue to be outnumbered at the federal level of government. The resulting frustrations, combined with an already defined boundary and the significant institutional resources flowing from control of their own province or state, provide considerable incentives to attempt secession, which in turn can invite harsh responses from the rest of the federation…genuine democratic federalism is clearly an attractive way to regulate national conflict, with obvious moral advantages over pure control. The argument that it should be condemned because it leads to secession and civil war can be sustained only in three circumstances: first, if without federalism there would be no secessionist bid and, second, if it can be shown that national or ethnic conflict can be justly and consensually managed by alternative democratic means; and third, if the secessionist unit is likely to exercise hegemonic control (or worse) of its indigenous minorities.

### A2: Zero Sum

#### Federalism is not zero-sum

Kasprzyk 10 (Karissa, Sr. Thesis-Stetson U., http://www2.stetson.edu/library/seniorprojects\_2010-004.pdf)

Since 1965, the U.S. Congress has taken a more active role in using the “elastic clause” to legislate in areas traditionally regulated by the states (Zimmerman 1992). This Congressional preemption of state power has expanded the role of the national government in many policy areas and resulted in the expectation that Congress will legislate in any areas of national significance with at least minimum standards and rules. This trend would seemingly take away many of the powers given to the states as they defer to national rules, but scholars have noted that, due to the cooperative nature of U.S. federalism, the power relations are not “zero-sum” (Zimmerman 2005). Most Congressional preemption of power occurs when rules and regulations are established for the states to carry out in their own manner, because excessive command and control to establish uniform state actions has historically been ineffective. This cooperative federalism creates overlapping structures and regulations that may seem inefficient, but actually ensure that there are no policy gaps (Buzbee 2006). Therefore, in the past few decades, states have taken a larger role in many of these policy areas, such as environmental or banking regulations, which has resulted in more capable and active state governments even while acting.

### Economic Decline Kills Fism

#### Economic decline harms federalism

#### Tubbesing, 2k2 (Carl, NCSL's deputy executive director, State Legislatures, February 1, lexis)

When the economy slows, he argues, the federal government has to step in to get it back on track. The federal government has many tools to do this. It can lower interest rates; it can cut taxes; and it can spend money. The states are more constrained in what they can do to help. In fact, the requirements that states have balanced budgets often forces them into policy decisions that actually exacerbate the economic downturn. They may have to raise taxes when cutting them could help the economy. They may have to cut funding just when more spending might create jobs and encourage economic activity. Congressional and administration proposals to stimulate the economy surfaced immediately after the terrorist attacks. Debate, posturing and negotiations over the proposals dragged well into December and eventually broke down. The conflict over economic stimulus revealed classic, philosophical fissures between Republicans and Democrats. But the debate, less conspicuously perhaps, also demonstrated tensions in the federal system. "State legislators understood that some of the recovery proposals were better for the states than others," notes Saland. "Some, in fact, would actually be harmful. Good intentions at the national level do not necessarily translate into benefits for the states." One major proposal that would have been included in a final package would have done considerable harm to the states. Negotiators rejected several proposals that state officials had advanced. The economic stimulus proposal most damaging for states was an accelerated depreciation schedule for business investments. Supported by both Republicans and Democrats in Congress and the administration, this proposal would actually have caused revenue losses for state governments as high as $ 15 billion over the next three years-at a time when their budgets are already reeling from the recession. The reason? Most states tie their business depreciation to the federal schedule. A change in the federal structure means a change in state schedules. Most of the proposals that would have been sensitive to state concerns were not included in 11th hour negotiations. State officials liked those that freed them of financial obligations, made tax changes without affecting states or sent new federal money in their direction. NCSL, for example, supported a plan offered by New Mexico Senator Pete Domenici that would have created a month-long federal payroll tax holiday. For a month, employees and employers would stop making their FICA (Social Security) contributions. Employers-including state governments-would save money and employees would have bigger paychecks. Both outcomes would generate economic activity. Negotiators flirted with the Domenici proposal, but eventually dropped it. The National Governors Association made changes in Medicaid matching rates its biggest economic stimulus priority. The governors' organization likened reductions in state Medicaid spending to revenue sharing. The Bush administration and congressional negotiators rejected this plan as cumbersome, expensive and politically unfeasible. NCSL leaders argued for tax rebates for individuals instead of permanent changes to the income tax code. Negotiators, instead, opted for a reduction in one of the middle income tax brackets-a change that would substantially reduce revenues in states that link their income tax system to the federal one. Panelist No.2, our FDR look-alike, claims he has won the argument-that is that the center of federalism gravity moves toward the national government when the economy is weak. "What would the states have gotten out of that stimulus package?" he wonders. "Not much. If anything, their budgets would have been in worse shape because of the changes in the federal tax code." He's willing, though, to give Ben Franklin a chance.

# States CP

### 1nc

#### Text:

#### Now is key—recent trends prove the states are in a unique position to manage transportation infrastructure investment

Horowitz, 2k12 (Daniel, “Devolve Transportation Spending to the States”, Redstate 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.

#### The counterplan would result in private investment in state run programs—key to private financing

FreeEnterprise 12 (Free Enterprise, Active Group Invested in helping policymakers develop public policy that enhances the US market, States Pursue Public-Private Partnerships to Fix America’s Transportation Infrastructure, April 12th, 2012, <http://www.freeenterprise.com/infrastructure/states-pursue-public-private-partnerships-fix-americas-transportation-infrastructure>)

In the face of adversity, America innovates, and that has been evident with infrastructure investment. On the state level, businesses and governments are forging new partnerships to jointly bring America’s infrastructure up to speed. These public-private partnerships (PPPs) give governments and the private sector a way to fund infrastructure investment. While PPPs can take different shapes, with structured agreements tailored to a specific project, partnerships generally have private sector partners supplying much of the initial capital needed to cover commercial functions, like construction and operation.  They also assume much of the risk inherent in building, maintaining and operating infrastructure projects. Construction delays, access to workers, and other factors can impact building costs, but the advantages are that private partners  enjoy long-term, largely stable investments. On the public side, governments can avoid many of the risks involved in major investments while still playing a role in updating and expanding America’s infrastructure. This model is one way America can fund the massive investment needed to bring U.S. infrastructure back from the brink. “Every type of infrastructure offers limitless opportunities for properly structured agreements,” [says Senator Mark Kirk](http://www.freeenterprise.com/2011/11/rebuilding-infrastructure-with-public-private-partnerships) (R-IL), who spoke at the U.S. Chamber’s Infrastructure Investment Forum in November. “The only thing that holds us back is our own creativity. In my time as a public servant, one critical fact is quite clear – if you don’t innovate, you get left behind. Chicago, Illinois, and the nation can lead the way on public-private partnerships, or we can lose the competition to China, Europe, and others. It’s our choice.” [According to a Brookings report](http://www.brookings.edu/~/media/Files/rc/papers/2011/1208_transportation_istrate_puentes/1208_transportation_istrate_puentes.pdf), between 1989 and 2011, 24 states engaged in at least one transportation PPP project. Florida, California, and Texas led the states in total number of projects, and Colorado and Virginia accounted for 56 percent of the total amount of all U.S. transportation PPP projects. In Chicago, [infrastructure needs and a tight budget led city leaders to pursue PPPs](http://www.chicagotribune.com/news/sns-rt-us-chicago-infrastructurebre82t00i-20120329%2C0%2C5862651.story) to finance the $7.2 billion in projects for the city's subways, schools and other infrastructure. Not only is this important for the city’s infrastructure; it helps Chicago’s job seekers as well. The projects funded will create 30,000 jobs over the next three years. Whereas the state and local budgets preclude Chicago from footing the bill directly, under PPPs, the city can fund needed updates and enjoy the direct benefits of growth and jobs. Virginia is also reaping benefits from PPPs. The [I-495/Capital Beltway HOV/HOT lanes project](http://virginiahotlanes.com/), for example, is a joint effort between the Virginia Department of Transportation and private companies. The state contributed $409 million to the project, while private partners provided $1.5 billion. This and other projects have proven so successful that Virginia created an office within the Virginia DoT to identify other infrastructure projects where PPPs could be useful. “By partnering with the private sector,” [says Virginia Secretary of Transportation Sean Connaughton](http://www.freeenterprise.com/article/experts-call-for-public-private-partnerships-in-transportation), “Virginia is moving forward on this project much more quickly than would be possible using traditional funding and construction methods – capitalizing on the best technology, financing methods, engineering and innovation.” Supporting Private Investment Though Legislation While some states are finding benefits in using PPPs, overall, the United States still lags behind the rest of the world in terms of using these innovative approaches to financing infrastructure improvement. From 1985 to 2011, there were [only 377 PPP infrastructure projects in the United States](http://www.brookings.edu/~/media/Files/rc/papers/2011/1208_transportation_istrate_puentes/1208_transportation_istrate_puentes.pdf), representing just 9% of costs for infrastructure PPPs around the world, according to Brookings. This is due in part to a lack of legislation in many states that enables the state and local governments to pursue PPPs for transportation infrastructure. [California passed legislation in 2009](http://www.dot.ca.gov/hq/innovfinance/Public-Private%20Partnerships/PPP_main.html) giving regional transportation agencies the ability to enter into an unlimited number of PPPs; it also removed restrictions on the types of projects that can be pursued under a partnership. And [Colorado has passed legislation](http://www.ncsl.org/documents/transportation/NFarber0709.pdf) creating a Statewide Bridge Enterprise that can enter into PPPs for bridge repairs and a High-Performance Transportation Enterprise (HPTE) to look for other PPP opportunities. The benefits of PPPs extend beyond the ability to finance much-needed transportation infrastructure updates. Governments are concerned with providing a public service, but businesses are profit driven. As such, under PPPs, it is in the best interest of the private partners to be efficient and reliable; their profit and success depends on it. The [proposal for the Denver Regional Transportation District’s Eagle PPP Project](http://www.pwc.com/us/en/view/issue-13/the-rise-of-the-public-private-partnership.jhtml), for example, was about $300 million cheaper and 11 months faster to completion than the district’s estimate. While the importance of a federal multiyear highway and transit funding bill cannot be discounted, the private sector is taking proactive steps with state and local governments to improve America’s transportation infrastructure. “Traditional funding mechanisms are inadequate for meeting the growing needs of our economy, businesses and citizens,” [Donohue writes in a recent op-ed](http://www.oregonlive.com/opinion/index.ssf/2012/03/pro.html). “It is imperative that we remove regulatory impediments, state and local laws, and outdated attitudes that are taking an estimated $250 billion in global private capital out of play.”

## Solvency

### Generic

#### Federal control over the transportation industry should be devolved to the states – multiple reasons

CATO Institute, 10 [June 17, Privatize Transportation Spending, http://www.cato.org/publications/commentary/privatize-transportation-spending]

Rising federal control over transportation has resulted in the political misallocation of funds, bureaucratic mismanagement and costly one-size-fits-all regulations of the states. The solution is to devolve most of DOT's activities back to state governments and the private sector. We should follow the lead of other nations that have turned to the private sector to fund their highways, airports, air traffic control and other infrastructure. The first reform is to abolish federal highway aid to the states and related gasoline taxes. Highway aid is tilted toward states with powerful politicians, not necessarily to the states that are most in need. It also often goes to boondoggle projects like Alaska's "Bridge to Nowhere." Furthermore, federal highway aid comes with costly regulations like the Davis-Bacon labor rules, which raise state highway costs.For their part, the states should seek out private funding for their highways. Virginia is adding toll lanes on the Capitol Beltway that are partly privately financed, and Virginia is also home to the Dulles Greenway, a 14-mile private highway in operation since 1995. Ending federal subsidies would accelerate the trend toward such innovative projects.Another DOT reform is to end subsidies to urban transit systems. Federal aid favors light rail and subways, which are much more expensive than city buses. Rail systems are sexy, but they eat up funds that could be used for more flexible and efficient bus services. Ending federal aid would prompt local governments to make more cost-effective transit decisions. There is no reason why, for example, that cities couldn't reintroduce private-sector transit, which was the norm in U.S. cities before the 1960s. To government planners, intercity high-speed rail is even sexier than urban rail systems. The DOT is currently dishing out $8 billion for high-speed rail projects across the country, as authorized in the 2009 stimulus bill. Most people think that the French and Japanese fast trains are cool, but they don't realize that the price tag is enormous. For us to build a nationwide system of bullet-style trains would cost up to $1 trillion.The truth about high-speed trains is that even in densely-populated Japan and Europe, they are money losers, while carrying few passengers compared to cars, airlines and buses. The fantasy of high-speed rail in America should be killed before it becomes a huge financial drain on our already broke government. Through its ownership of Amtrak, the federal government also subsidizes slow trains. The government has dumped almost $40 billion into the company since it was created in 1971. Amtrak has a poor on-time record, its infrastructure is in bad shape, and it carries only a tiny fraction of intercity passengers. Politicians prevent Amtrak from making cost-effective decisions regarding its routes, workforce polices, capital investment and other aspects of business. Amtrak should be privatized to save taxpayer money and give the firm the flexibility it needs to operate efficiently. A final area in DOT to make budget savings is aviation. Federal aid to airports should be ended and local governments encouraged to privatize their airports and operate without subsidies. In recent decades, dozens of airports have been privatized in major cities such as Amsterdam, Auckland, Frankfurt, London, Melbourne, Sydney and Vienna. Air traffic control (ATC) can also be privatized. The DOT's Federal Aviation Administration has a terrible record in implementing new technologies in a timely and cost-effective manner. Many nations have moved toward a commercialized ATC structure, and the results have been very positive. Canada privatized its ATC system in 1996 in the form of a nonprofit corporation. The company, NavCanada, has a very good record on both safety and innovation. Moving to a Canadian-style ATC system would help solve the FAA's chronic management and funding problems, and allow our aviation infrastructure to meet rising aviation demand. There are few advantages in funding transportation infrastructure from Washington, but many disadvantages. America should study the market-based transportation reforms of other countries and use the best ideas to revitalize our infrastructure while ending taxpayer subsidies.

####  State governments are comparatively better at infrastructure development and than the federal government – investors support local public services.

Peterson and Nadler, 2011 [Paul E., and Daniel. June 17, Freedom to Fail: The Keystone of American Federalism; professors at Harvard Program on Education Policy and Governance]

As compared to the federal government, state and local governments are better equipped to design and administer such programs because their decisions are disciplined by market forces. Unless local public services are provided in ways that meet the needs of local business and residents, residents will consider moving to another locality better attuned to their needs. Since 17 percent of the population changes its residence each year,51 the effects of policy choices on property values can be quickly felt. Business and residential choices are influenced by factors other than the quality of local public services, of course. Businesses want to be close to both their sources of supply and the markets for their products. Residential choices are affected by family ties, job opportunities, and the quality of the natural environment. But even though these and other factors affect the decisions of many firms and many residents, the quality of publicly provided infrastructure also affects, on the margins, the choices businesses and households make. Since small changes in supply or demand can have a significant effect on price, residents of a community, eager to maintain their property values, can be expected to pressure government officials to meet local expectations and employ public resources efficiently to facilitate economic development. Most of the time, the continuing need to attract newcomers to a town shapes policies so that adjustments are made long before any seriously adverse economic developments take place. Inefficient and inappropriate policies can have fairly rapid effects on a town's property values and government revenue flows. As a result, most local governments can be expected to be relatively competent at designing and executing developmental policies. Admittedly, there is a certain "narrowness of mind and the spirit of parsimony," among local officials in a system of competitive federalism, as Lord Bryce was the first to admit, but if it were otherwise, "there would be less of that shrewdness which the practice of local government forms.”52 Providing basic services through local governments also facilitates the gathering of information about the best way of organizing public services.53 Each city or town is a laboratory where experiments are tried. If successful, the experiment is copied by other town governments. If it fails, the experiment is soon abandoned. Also, localities pay close attention to the wages and salaries paid employees in adjacent communities. If town salaries are comparatively high or low, pressures to bring the town into line with its neighbors can be expected to develop. So valuable is the role played by state and local governments within the federal system, the lower tiers have become the predominant public-sector employer. No less than 87 percent of all non-military public sector employees work for either the state or local government (Figure 4.)

#### Federal control over development policies fails – states are constrained by competitive markets which gives them a comparative advantage

Peterson and Nadler, 2011 [Paul E., and Daniel. June 17, Freedom to Fail: The Keystone of American Federalism; professors at Harvard Program on Education Policy and Governance]

Federal industrial policies are likely to falter for both economic and political reasons. Guessing the economic future is a risky enterprise. Heads of government agencies are unlikely to be able to make more sophisticated guesses with the taxpayers' money than are a multiplicity of businesses and financiers, whose own fiscal resources are at stake. And even if government experts ascertain the correct options, they are unlikely to be able to act on their impulses. Instead of placing bets on future winners, they will be expected to bail out current losers, who characteristically blame their losses on unfair competition rather than their own misjudgments. Government is more likely to bet on a sagging automobile industry than invest in a new, untested technology, even though the latter may have more promise.56 Yet industrial policy is a regular part of governmental action at the state and local level in a competitive federal system. Junior colleges retrain workers; counties build roads; sanitation districts dig tunnels for sewage lines; states yield tax concessions to attract manufacturing plants; and governors promote state products overseas.57 Although some states and some localities may fail to capitalize on attractive opportunities and others may concede too much to specific firms, lower tiers of government have one great advantage over the federal government: Together, they constitute a multiplicity of decision makers, each constrained by a competitive market consisting of other state and local governments.

#### State power key to implement development of transportation infrastructure

California Department of Transportation, 2002

Business, Transportation, and Housing Agency of the California Department of Transportation, Statewide Transit-Oriented Development Study: Factors for Success in California, May, 2002, Web 27 June, 2012, <http://transitorienteddevelopment.dot.ca.gov/PDFs/TOD%20Study%20Exectutive%20Summary.pdf>

**The state can encourage local agencies to more closely link land use practices that promote a transit-friendly urban form by providing information, funding for planning, and by fostering cooperation. Transit oriented development proponents often face significant delays and difficulties when trying to secure local land use approvals for projects, even in areas where regional and local policies are supportive of this type of development. In addition, the state can provide direct assistance for transit oriented development implementation by reducing existing barriers to leasing or purchasing state-owned “excess” and/or underutilized land located near major transit stations. There is also an important role for the state in developing and disseminating data and information about the effects and benefits of transit oriented development regarding travel, economic, and social benefits and impacts. This information is necessary in order to improve the accuracy of analysis prepared for proposed transit oriented development projects and also could help expedite local land use approval processes.**

### Hydrogen Fuel

#### The transition to hydrogen must happen on a state by state basis. Various preconditions must exist that the federal government cannot address within a realistic budget—New York proves.

NEW YORK STATE 05 HYDROGEN ENERGY ROADMAP Final Report Prepared for THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY Albany, NY John F. Love Project Manager and NEW YORK POWER AUTHORITY and LONG ISLAND POWER AUTHORITY Prepared by ENERGETICS INCORPORATED Columbia, MD Joseph S. Badin and ALBANY NANOTECH Albany, NY Pradeep Haldar and THE NATIONAL HYDROGEN ASSOCIATION Washington, DC Patrick Serfass Project No. 8422

New York State has the potential to assume a leadership role in the national and global transition to a hydrogen energy economy. Significant benefits would result from achieving this role: a cleaner environment and an increase in high-tech businesses and high-paying jobs. The goal is for hydrogen to serve as a fuel in the transportation and stationary power markets in New York. By serving as an energy carrier from clean sources of energy, hydrogen will displace polluting, imported energy sources. The hydrogen energy infrastructure will be well integrated into regional systems and will complement various energy sources and other energy carriers. To achieve this, there will need to be a well-coordinated, integrated statewide effort that includes the establishment of a business and regulatory climate that attracts public and private investment in hydrogen energy. Fortunately, New York is already in a position of strength to effect this transition. Advantages include: political interest and funding; access to global financial markets; relatively favorable utility policies toward distributed energy; strong educational institutions, research facilities, and industrial base; large markets for energy; and a strategic location with respect to regional energy infrastructure, including the New England states, the Mid-Atlantic states, and the Canadian provinces of Ontario and Quebec. This roadmap lays out a strategy for New York to transition from a fossil fuel-based economy to a hydrogen energy economy. A multi-phase approach is presented for increasing infrastructure and hydrogen production volumes. This approach will reduce costs and create market opportunities, eventually reducing the need for government support.

#### State monitoring of the transition to hydrogen is sufficient. Federal involvement disrupts the process by changing regulations and hurting business.

HYDROGEN MOTORS, INC. 2010 UNITED STATES SECURITIES AND EXCHANGE COMMISSION Washington, D.C. 20549 http://www.faqs.org/sec-filings/100105/Hydrogen-Motors-Inc\_S-1.A/#b

CHANGES IN GOVERNMENT POLICIES AND REGULATIONS COULD IMPAIR DEMAND FOR OUR PRODUCTS. Government regulation of our systems at the federal, state or local level could increase our costs and, therefore, harm our business, prospects and financial condition. Our products and their installation are subject to state and local ordinances relating to building codes, safety, utility connections, environmental protection and related matters. At this time, we cannot anticipate which jurisdictions, if any, will impose regulations directed at our products or their use. We also do not know the extent to which any existing or new regulations may impact our ability to distribute, install and service our products. Onboard power systems cannot be operated without permits in many, if not all, of the markets in which we will be marketing and selling our products. The inability of our potential customers to obtain a permit, or the inconvenience often associated with the permit process, could harm demand for our products. As we distribute our products to our early target markets, federal, state or local government entities or competitors may seek to impose regulations impacting us directly or indirectly. Further, our principal target markets for our hydrogen fuel processors for fuel cell systems are the stationary and transportation markets and our business will suffer if environmental policies change and no longer encourage the development and growth of these markets.

### Private Investment

#### State action reinsures private interest

Rosser, 2k8 (Jay, Mesa Power Company, “Mesa Power Places World's Largest Single-Site Wind Turbine Purchase Order,” PR Newswire, 5-15lexis)

"We have had a great response to this project," Pickens said. "We are making Pampa the wind capital of the world. It's clear that landowners and local officials understand the economic benefits that this renewable energy can bring not only to landowners who are involved with the project, but also in revitalizing an area that has struggled in recent years." Pickens envisions that large scale renewable energy projects like his Pampa Wind Project will permit the United States to become less dependent on foreign oil. Large scale renewable energy projects such as this are difficult to execute because they rely upon the Federal Production Tax Credit, which provides incentives for development of renewable energy. However, large scale renewable energy projects require commitments years in advance, while Congress has only extended the Production Tax Credit one or two years at a time.

### Federal Government Models the States

#### State action gets modeled federally

 Golden ’99 (Dylan, JD Candidate – UCLA Law, UCLA Journal of Environmental Law & Policy, Lexis)

Individual states vary widely in their fossil fuel consumption and in the amount of carbon dioxide they release into the atmosphere. California emits as much carbon dioxide as all of Scandinavia combined. 46 Texas is the seventh largest carbon dioxide producer. 47 Some states emit a globally negligible amount of carbon dioxide. Some conservative interests may therefore oppose the CCTI on the grounds that it involves a further expansion of federal power into an area which is properly under the jurisdiction of states. Those who believe firmly in strong state governments are similar to the "Greens" (discussed below) in that the "rent", in this case the penalty, at stake in the CCTI is non-economic. [\*188] This group does have some justification for their position. Attempted state action involving manipulating markets, generally through the tax system, in the name of the environment tells us a great deal about how various stakeholders - such as business entities, environmental interest groups, and political groups - might respond to federal or international action. 48 State legislatures also provide a forum to raise issues and change perceptions. 49 State environmental policy frequently influences Congress. 50 State action increases the feasibility of federal action because: familiarity aids the political process, legislators understand the politics in terms of income, consumption and their regional interests, administrative agencies know how to [\*189] administrate and may estimate impacts, interest groups know where they stand, and practical experience can guide legislative drafting. 51 Such grassroots action may also stimulate support among the populous by encouraging people to take personal responsibility for the environment. 52 Action at the state level may also spur more informed federal action, which in turn could spur international action. State-federal agreements are possible on the carbon tax issue and the commerce clause does not prohibit joint or unilateral action. 53 Energy taxes have already been implemented jointly in the case of gasoline taxes. 54

### Climate/Environment

#### State action is key to social transformation

Koehn, 2k8 (Peter H., Professor of Political Science at the University of Montana, Global Environmental Politics Volume 8, Number 1, Underneath Kyoto: Emerging Subnational Government Initiative and Incipient Issue-Bundling Opportunities in China and the United States, <http://muse.jhu.edu/journals/global_environmental_politics/v008/8.1koehn.html>, February)

For the most part, China's cities and provinces have not yet adopted policy strategies that address GHG emissions directly.147 Nevertheless, the subnational government initiatives that are starting to affect GHG emissions in China and in every region of the United States carry widespread public appeal because the co-benefits of mitigation are highly valued at the grass-roots level. In an impressive group of US states and cities, and increasingly at the local level in China, public concerns about air pollution, consumption and waste management, traffic congestion, health threats, the ability to attract tourists, and/or diminishing resources are legitimizing policy developments that carry the co-benefit of controlling GHG emissions. Collectively, expanding and emerging subnational government efforts to promote renewable energy, reduce urban air pollution, [End Page 71] and embrace emission-reduction targets "constitute a diverse set of policy innovations rich with lessons" for climatic stabilization. In an environment of multilayered politics, the strengths of decentralized governmental systems include enhanced competition, innovation, experimentation, and adaptation to local conditions.149 Thus, it is not surprising that local policy framing enables subnational levels of government to become "more capable and innovative than their central-level counterparts"150 in the climatic-change arena. Eventually, local emission-mitigation initiatives will need to be enhanced by increasingly proactive national governments. Although climate protection cannot be addressed entirely at the subnational level, in China and the United States today the principal issue-bundling impetus for emissions-mitigation-policy and consumptive-behavior change is bubbling and spreading from the bottom up. Maximizing the capacity of subnational governments to deal with the daunting climatic-change challenges raised by population and consumption trajectories in both countries requires that additional US states and cities, and Mainland provinces, municipalities and townships adopt politically palatable framing strategies. In order to take full advantage of arising opportunities to influence individual and collective behavior, local authorities must be trusted and transparent and their framings must be "credible and persuasive."151 A co-benefits framing strategy that links individual and specific community concerns for morbidity, mortality, stress reduction, and healthy human development for all with GHG-emission limitation/reduction and renewable-energy development is especially likely to resonate powerfully and non- competitively at the subnational level throughout China and the United States.

### Highways

#### States solve the issues of highways better than the Federal government

Samuel Staley 2010 (Samuel R. Staley is director of urban and land-use policy at the Reason Foundation. The Reason Foundation is an organization in which they rate and explore US infrastructure.)

Transportation is increasingly a state function and not a national one. A second stimulus is likely to serve as political cover for a further centralization of transportation finance and policy when the data are showing more clearly than ever that we need to decentralize policy and authority to the governments that have the most knowledge and understanding of their particular transportation challenges: the states.

## Funding Mechanisms

### SIBs

#### Counterplan results in a system of state infrastructure banks—national bank fails

Plautz 11 (Jason Plautz, writer for Greenwire, Published in The New York Times, In I-Bank Debate States Provide Successful Model, <http://www.nytimes.com/gwire/2011/09/08/08greenwire-in-i-bank-debate-states-provide-successful-mod-49268.html?pagewanted=all>, published September 2011)

With successful test cases like those in Oregon and Kansas, it is obvious why the White House would want to create a bank on the national level. The loans can be used to draw in private partners for large projects, putting more people to work. But some policymakers are wary of the added bureaucracy and political complications the federal government's involvement would carry with it. Under a transportation reauthorization proposal from House Transportation and Infrastructure Chairman John Mica (R-Fla.), a national proposal would be replaced with expanded authority for state infrastructure banks, which Mica said would free up more money faster. Even some of the recipients of state money agree. "I don't see any advantage to a national bank," Gilmour said. "I'm concerned that there's been a disconnect at the federal level between those benefiting from transportation investments and those paying for them. ... I can't make my debt payment to ODOT with more debt." Gilmour, who worked for the Oregon DOT for 26 years, added that he tried to do very little with the federal government because federal red tape can add up to 30 percent of time and cost to a project. Former transportation official Orski, who now publishes a transportation newsletter, said the national bank has an advantage in that it can help large, multi-state projects. But, he added, those types of projects are rare and might be better handled through existing structures. "There is a widespread sentiment both in the House and Senate, rather than creating a new federal fiscal bureaucracy, we ought to strengthen and expand existing financial instruments, primarily TIFIA," he said, referring to the popular Transportation Infrastructure Finance and Innovation Act loan program. Work on the federal level would also eliminate the easy "set-off" of using gas tax funding to back up a loan

State infrastructure banks would succeed without federal funding -

Ryu, 7 [Jay Eungha, Ph.D. from the School of Public and International Affairs at the University of Georgia, Associate Professor of Public Policy and Administration, Federal Highway Assistance Funds in the State Infrastructure Bank Programs: Mechanisms, Merits, and Modiﬁcations; Nov 9]

Many states faced with ﬁscal stringency have adopted SIB programs to stretch scarce resource for various statewide projects. The current study showed how the mechanism in the SIB programs expands federal highway grant funding deposited into the SIB equity pool. The biggest concern suggested in previous studies was that another round of federal assistance funding needs to be mustered to at least maintain, if not augment, the leveraging impact as well as solicit more participation of states into the SIB programs.71 As shown in Figures 1–4, however, additional funds are not the most crucial factor for the success of the SIB programs. If loans from the SIB programs revolve smoothly as expected, then one can anticipate that various statewide highway projects would be funded for later years of project periods even without a second round of federal assistance funds.

### PPPs solve

#### Public-Private partnerships maximizes public capital- key to competitiveness

Goldsmith 11

<http://www.cfr.org/united-states/infrastructure-investment-us-competitiveness/p24585>, New York City Deputy Mayor for Operations, April 5, 2011h, “Infrastructure Investment US Competitiveness”

Investment in America's physical infrastructure is directly tied to economic development. Businesses and the workforces they attract consider infrastructure when deciding where to locate. Too often, however, pressed by day-to-day concerns, state and local governments fail to adequately plan and invest in infrastructure. Tight budgets make it easy for officials to rationalize the deferral of investment until a time when surpluses return. Unfortunately, this pattern has been repeated for decades, and the accumulation of deferred maintenance and deferred investment in future infrastructure has led to an unsatisfactory status quo. And To ensure America's future competitiveness in the global marketplace, we must rethink our approach to the construction and financing of infrastructure. And in this policy area, many of the most promising ideas for unlocking public value involve public-private partnerships. The key question in a debate about infrastructure should be: "How can we produce the most public value for the money?" Answering this question should lead us to pursue both operational and financing innovations. The private sector has an important role to play in both. Public officials can produce more value for the dollar by better structuring the design, construction, operation, and financing of infrastructure projects that produce more lifecycle benefits and fewer handoffs among various private parties. A private partner can often achieve savings for government by identifying operational efficiencies and assuming risk formerly held by the public sector. Unlike the traditional model for bridge construction in which one firm designs, one firm builds, one company finances, and the public maintains, an arrangement which gives the private firm an ongoing responsibility for maintenance or durability will encourage design optimization and likely increase the length of the asset's lifecycle. Public-private partnerships can produce access to capital that will accelerate the building of critical infrastructure in sectors ranging from transportation to wastewater treatment. However, maximizing their potential to solve America's infrastructure challenges also requires governments to create a regulatory climate conducive to them. Government agencies should be given maximum flexibility to enter into partnerships with the private sector; and private companies should not have to navigate unreasonable tax laws that limit their ability to partner with government entities to produce better public value. At a time when every dollar counts, extracting maximum public value out of infrastructure investment is crucial. The private sector can be a strong partner to government. By prioritizing long-term value creation over short-term politics, America can bridge the infrastructure divide and ensure our continued prosperity.

#### PPP’s at state level are fast becoming favored model for transportation infrastructure -

Siemiatycki, 10 [Matti, Delivering Transportation Infrastructure Through Public-Private Partnerships, Journal of the American Planning Association, Winter 2010, Vol. 76, No. 1, PhD Urban Planning, British Columbia]

In the United States, PPPs have also gained growing attention. Twenty- three states in the United States have enacted special legislation to enable PPPs on state transportation projects (Federal Highway Administration, 2009), while the National Surface Transportation Policy and Revenue Study Commission reported in 2007 that “public-private partnerships should play an important role in ﬁnancing and managing our surface transportation system” (p. 29). Indeed, the rise of PPPs has been among the most important trends shaping public service delivery (Sagalyn, 2007) at a time when governments around the world are increasingly turning to high quality urban infrastructure as a strategy to stimulate economic growth and create jobs, ameliorate environmental problems, and promote social equity. Proponents suggest that using PPPs to introduce private ﬁnancing, competition, and market forces into the procurement of public infrastructure can lead to projects being built sooner than they would be if entirely paid for by governments, reduce project lifecycle costs through greater innovation, introduce more accountable decision making, and reduce the potential for construction cost escalations that have consistently plagued infrastructure mega-projects (Deloitte Research, 2006; Government Accountability Ofﬁce, 2008; Levy, 1996). Most recently, the bundling of facility design, building, ﬁnancing, and operation into a single long-term concession (known by the acronym DBFO) has become a favored partnership model for delivering large projects in the transportation sector (Federal Highway Administration, 2009).

### A2 Permutation

#### Overlapping federal and state laws send mixed federalist signals

**Hayford 02,** Prof. of Business Law, “Arbitation Federalism: A State Role in Commercial Arbitration, Florida Law Review, April 2002, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=298720, FM

The Supreme Court's stated understanding of the FAA has sent mixed signals about a state law-making role in commercial arbitration. On the one hand, the Court has interpreted the FAA to preempt state laws that negate or undermine the enforceability of commercial arbitration [\*177] clauses-leaving no latitude for state regulation. On the other hand, the Court has understood the FAA to treat the question of contract revocation, on generally applicable grounds such as fraud, duress, and uncon-scionability, as one of state   law-leaving no federal role. Additionally, on a variety of other matters affecting arbitration, the Court seems to recognize that the FAA speaks either ambiguously or not at all, such as post-award judicial review, arbitrators' standards of conduct and arbitral procedures-leaving potential gaps in the Act's pro-arbitration policy.

#### Federal action destroys any incentive for states to act

Adler 07, Jonathan H. Adler, Professor of Law and Co-Director, Center for Business Law and Regulation, Case Western Reserve University School of Law, Harvard, “WHEN IS TWO A CROWD? THE IMPACT OF FEDERAL ACTION ON STATE ENVIRONMENTAL REGULATION”, 2007, FM

Some of the factors that influence state regulatory decisions are readily apparent, such as wealth, knowledge and interest-group pressure. The influences of federal regulation on state regulatory choices, particularly insofar as such influences are felt indirectly, may be less obvious. Nonetheless, it should be evident that federal policy decisions should have some effect on state policy choices concerning the existence, scope and contours of state regulatory programs. These effects can occur whether intended or not. In some instances, federal action may even preclude or discourage welfare-enhancing initiatives at the state and local level. This Article suggests a framework for categorizing and analyzing how federal policy decisions can influence state regulatory choices. The federal influence can be either "positive"--resulting in greater levels of state regulation--or "negative." Federal influence can also be direct or indirect. Direct influences include federal preemption and the creation of various incentives and penalties for state action or inaction, including conditional preemption and conditional funding. Indirect influences may be less obvious, but are no less important. Federal action--or perhaps even federal inaction--can encourage greater state regulation by reducing the costs of initiating regulatory action or by altering state policy agendas. At the same time, federal regulation may discourage states from adopting or maintaining more protective environmental rules or even "crowd out" state-level regulatory action by reducing the net benefits of state-level initiatives. Building on prior research and analysis of federalism in environmental law and policy, [n10](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.511255.98477628967&target=results_DocumentContent&reloadEntirePage=true&rand=1214593074266&returnToKey=20_T4054175409&parent=docview#n10) this Article further seeks to reexamine some of  [\*70]  the conventional assumptions that underpin many discussions of the proper federal-state balance in environmental policy. Among other things, this Article suggests that insufficient attention to the effects of federal action on state policy choices can reduce the scope and effectiveness of environmental protection efforts. For example, if federal regulatory action has the potential to discourage or crowd out state regulatory efforts, the adoption of a federal regulatory floor may actually lower instead of raise the aggregate level of environmental protection in a given jurisdiction. [n11](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.511255.98477628967&target=results_DocumentContent&reloadEntirePage=true&rand=1214593074266&returnToKey=20_T4054175409&parent=docview#n11)

#### The states and federal government acting together undermines state individualism

**Garibaldi 98**, Justice for the Supreme Court of New Jersey, Tulsa Law Journal, Fall1998, http://heinonline.org/HOL/Page?handle=hein.journals/tlj34&div=3&g\_sent=1&collection=journals, FM

It is clear today that the assertion that a state constitution provides greater protection than the Federal Constitution is no longer novel. In my Court, when we base our decision on the New Jersey Constitution, we state clearly the "adequate and independent" state grounds that form the basis for that opinion. Nonetheless, there will continue to be cases where state courts will be faced with having to determine whether its constitution provides greater protection of individual rights than afforded under the Federal Constitution. In making that determination, state courts will still be presented with the vexing problem of how to prevent state constitutions from becoming "a mere row of shadows" of the Federal Constitution and from gleaning such little guidance from federal law as to make state law "incoherent."

#### Past successes of cooperative federalism have placed the federal government in a commanding position over the states – even if the perm solves now, it sparks a loss of freedom long term

Kincaid 90 John Kincaid, Professor of Law, Annals off the American Academy of Political and Social Science, “American Federalism: The Third Century,” http://www.jstor.org/stable/1046444, May 1990, FM

Against the righteousness of market fairness, racial justice, social equity, individual rights, and environmental protection, the states could hardly stand on anything but cooperative federalism, especially when the federal government provided incentives for cooperation. Furthermore, many reform objectives were substantially achieved, virtually transforming American society. Yet success sowed seeds of destruction for cooperative federalism because it placed the senior partner in the federal system in a position to become the commanding partner, and it vindicated reform arguments that policy should take priority over structure and that issues of federalism should be decided by the national political process rather than by judicial readings of the federal Constitution. Robert C. Weaver had put the matter well in 1968 when he quarreled with Woodrow Wilson’s notion that “the relation of the States to the Federal Government is the cardinal question of our constitutional system.” “In truth,” wrote Weaver, “the most profound question about any system of government is not its legal form, but whether it meets the legitimate aspirations and needs of its citizens and creates for them a climate of freedom and democracy.

#### Coopting federalism fails-SMRCA and OSM prove

**Reisinger et al 10**, Will Reisinger, Staff Attorney for the Ohio Environmental Council and Member of its Ohio Environmental Law Center. J.D., Ohio Northern University; B.A., Emory & Henry College; Trent A. Dougherty, Director of Legal Affairs for the Ohio Environmental Council and Director of the Ohio Environmental Law Center. J.D., Capital University Law School; B.A., Ohio State University; Nolan Moser, Director of Clean Air & Energy Programs, the Ohio Environmental Council. J.D., Case Western Reserve University; B.A., Austin College; Duke Law, “ENVIRONMENTAL ENFORCEMENT AND THE LIMITS OF COOPERATIVE FEDERALISM: WILL COURTS ALLOW CITIZEN SUITS TO PICK UP THE SLACK?” Winter 2010, FM

Ohio’s surface mining program, again, provides a real-life example of cooperative federalism’s flaws and highlights the inadequacy of backup federal enforcement. The SMCRA states that the OSM must “assure that appropriate procedures are provided for . . . [state] enforcement.” 125 The statute provides that OSM must withdraw approval of a state program if “the State program is not in compliance” with the requirements of SMCRA. 126 Further, OSM is required to “federalize” the state’s surface mining program in the event that a state does not enforce its own program or if a state program fails to comply with federal standards. 127 In 1982, the Secretary of the Interior approved Ohio’s regulatory and abandoned mine lands programs, pursuant to section 405 of SMCRA. 128 Ohio’s program created a Division of Mineral Resources Management, within the state’s Department of Natural Resources, which has had the primary enforcement responsibility for carrying out SMCRA since 1982. 129 Unfortunately, however, Ohio’s surface mining regulations have never been in full compliance with SMCRA, and thus state agencies have never been fully enforcing the federal statute. Ohio’s implementation of SMCRA’s reclamation bonding requirements is one example of the state’s non-compliance. SMCRA requires all coal mining companies, as a prerequisite to mining, to develop plans to “reclaim” mine sites once operations have ceased. 130 Reclamation—or rehabilitation—operations are necessary to prevent acid mine drainage, erosion, and subsidence and to rehabilitate the aesthetic characteristics of Ohio’s hill county. 131 Further, as part of the reclamation requirements, SMCRA mandates that mining operators must post a performance bond covering the land on which mining will be conducted. 132 This performance bond must be “sufficient to assure the completion of the reclamation plan” in the case the reclamation had to be completed by the state or federal government. 133 Ohio’s laws do not comply with SMCRA’s bonding requirements in several respects. Ohio’s surface mining regulations, for example, make the state’s adjustment of reclamation bond amounts discretionary instead of mandatory as required by SMCRA. 134 Ohio’s regulations also fail to require post-mining discharges to be included in the reclamation plan, as required by federal regulations under SMCRA. 135 Finally, Ohio omits the requirement that performance bond releases be conditioned upon “faithful performance” of the terms of the bond. 136 Although these inconsistencies may seem minor, the terms of Ohio’s bonding laws are critically important. SMCRA’s reclamation bonding program is the heart of the statute’s purpose—to ensure proper rehabilitation of mine lands—and Ohio’s lax bonding requirements inhibit the objectives of the federal statute.

### A2: Congressional Rollback

#### Empirically denide—controversial issues proves

Goldsmith ’97 (Jack, Associate Prof – U Chicago, Virginia Law Review, November, Lexis)

The rise in subnational foreign relations activity tells us little, of course, about the activity's normative desirability. But we should also avoid the automatic assumption that this development is normatively undesirable. This is especially true because the federal political branches have made clear that, in contrast to traditional foreign relations activities which largely have been federalized through statute and treaty, they do not always, or even usually, prefer federal regulation of these new foreign relations issues. The recent increase in state and local involvement in such issues "has occasioned little reaction from Congress or the Executive." 232 And when the political branches do react, they often choose to protect state interests over foreign relations interests when the two appear to clash. A good example is the United States' recent ratification of a variety of international human rights treaties. 233 These treaties create numerous potential [\*1675] conflicts with state law. 234 In the face of international pressure, the President and Senate have consistently attached reservations, understandings, and declarations to these treaties to ensure that they do not preempt or affect inconsistent state law. 235 Similarly, California's worldwide unitary tax on multinational corporations has provoked enormous diplomatic controversy with our closest trading partners since the 1980s. 236 The President negotiated a treaty that would have preempted this law, but the Senate withheld its consent. 237 And in the face of substantial pressure from foreign governments, Congress consistently failed to enact legislation preempting the unitary tax. 238

### A2: Congressional Authorization

#### Interstate compacts are legal and don’t require congressional approval.

Morrow 2004(William S. Morrow Jr. Vice Chair Washington State Administrative Law Committee, The Case for an Interstate Compact APA, November 2004 http://www.americanbar.org/content/dam/aba/migrated/adminlaw/interstate/ICAPAPaper\_Morrow.authcheckdam.pdf)

The Compact Clause is not all-encompassing, however. Compacts are in essence treaties between sovereign States, and their use predates the Constitution. West Virginia ex rel. Dyer v. ∗ General Counsel, Washington Metropolitan Area Transit Commission; Vice Chair, State Administrative Law Committee.Sims, 341 U.S. 22, 31 (1951) (citing Hinderlider v. La Plata River & Cherry Creek Ditch Co., 304 U.S. 92, 104 (1938)). Because the attributes of State sovereignty not surrendered through the ratification of the U.S. Constitution survive to this day, Federal Maritime Commission v. South Carolina State Ports Authority, \_\_\_ U.S. \_\_\_, 122 S. Ct. 1864 (2002), not every interstate agreement requires congressional consent, but those that are properly approved by Congress become federal law. Where an agreement is not “directed to the formation of any combination tending to the increase of political power in the States, which may encroach upon or interfere with the just supremacy of the United States,” it does not fall within the scope of the Clause and will not be invalidated for lack of congressional consent. But where Congress has authorized the States to enter into a cooperative agreement, and where the subject matter of that agreement is an appropriate subject for congressional legislation, the consent of Congress transforms the States’ agreement into federal law under the Compact Clause. Cuyler v. Adams, 449 U.S. 433, 101 S. Ct. 703, 707-08 (1981) (citations and footnote omitted). Whether approved by Congress or not, interstate compacts are not merely legislative acts, they are in very important respects contracts binding on the signatories. As the Supreme Court has noted: “It requires no elaborate argument to reject the suggestion that an agreement solemnly entered into between States by those who alone have political authority to speak for a State can be unilaterally nullified, or given final meaning by an organ of one of the contracting States.” Dyer v. Sims, 341 U.S. at 28.

### CP Avoids Ptix

#### CP shields the president.

Danielson, 95 (Michael, Prof of PoliSci @ Princeton, Regulating Regional Power Systems, p. 57)

Expansion of the national government also is a product of the natural inclination of federal officials to advance their interests by using the instrument at hand, the national government. Despite their state and local constituency base, members of Congress usually seek to use the resources of the government they can best influence, the national government to respond to problems. The president’s perspective is national, and the presidency’s prime means is the national government, regardless of fervent campaign speeches about the virtues of government close to the people. Federal agencies, like all organizations, seek more rather than less to do, bigger rather than smaller budgets, and expanding rather than contracting staffs. These natural tendencies have been amplified in the case of Congress by the growing importance in congressional elections of nationally based campaign funds raised by political action committees interested in having the federal government advance their interests.

#### State action avoids the link

Celli, 1 ( Anthony, Chief of the Civil Rights Bureau, New York State Attorney General’s Office, Albany Law Review)

I also saw that state enforcement officers, like me and like Peter Lehner, with our small and agile offices operating below the national political radar, that we can use these federal laws in creative and aggressive ways and perhaps in a way that is insulated from the kinds of political pressure that , say, the Civil Rights Division of the Justice Department faces. For instance, we have a continuing case involving predatory lending where we use a very old, very unused law called the Equal Credit Opportunities Act. When we described to our adversary our theory under E>C>I>A> as to why they were liable for targeting African-American and Latino borrower for the worst kind of loans, the guy said to us, “you guys are out on the frontier.” Which we took as a great compliment—especially when, two months later, his client signed an enormous consent decree based on our lawsuit in federal court, based on our frontier theory. So, I think that state officers can act in ways that are beyond or below, maybe, political pressure to do the kind of things that the national interests wants us to do, as expressed in the federal civil rights laws.

#### CP is popular with conservatives

Mitchell 11 (Dan Mitchell, Author CATO institute, top expert on fiscal policy issues such as tax reform, the economic impact of government spending, and supply-side tax policy, <http://danieljmitchell.wordpress.com/2011/01/06/time-to-shut-down-the-department-of-transportation-and-take-a-small-step-to-restoring-federalism/>)

Republicans have been spouting lots of good rhetoric, but what really matters is shrinking the burden of government. One very attractive option is federalism. There are things that perhaps should be done by government, but there is absolutely no reason why they require a remote, expensive, one-size-fits-all, redistributionist, unconstitutional bureaucracy in Washington. Writing for Real Clear Markets, Diana Furchtgott-Roth of the Hudson Institute uses highway funding as an example of how we can get much better results if Washington butts out and lets states make their own decisions. She doesn’t take this argument to its logical conclusion and urge the dismantling of the Department of Transportation, but I’ll unabashedly take that extra step. Don’t just shut it down. Bury it in a lead-lined coffin, cover it with six feet of concrete, and then add a foot of salt to make sure it doesn’t somehow spring back to life.

## Aff Answers

### Perm

#### Perm solves—combination of regulatory oversite produces the best policies

Engel, 07 (Kristin, University of Arizona James E. Rogers College of Law, “Harnessing the Benefits of Dynamic Federalism in Environmental Law,” Arizona Legal Studies Discussion Paper No. 06-37, January 2007 accessed 7/7/08 from ssrn.com)

The states’ failure to restrict their regulatory authority to issues impacting only their own jurisdictions, and the federal government’s failure to regulate only when the states’ ability to address an issue effectively is hobbled by collective action problems, are inconsistent with the policy implications of the scholarly debate over environmental federalism, in which scholars have supported a particular allocation of at least primary regulatory authority between the states and the federal government.9 The purpose of this Article is not to reengage in the long-running debate over whether, and when, the federal or the state governments are the more appropriate environmental regulators.10 Rather, the purpose is to question the fundamental assumption underlying the debate: that regulatory authority to address environmental ills should be allocated to one or the other level of government with minimal overlap. This Article argues first that a static allocation of authority between the state and federal government is inconsistent with the process of policymaking in our federal system, in which multiple levels of government interact in the regulatory process. Absent constitutional changes that would lock in a specific allocation of authority, broad, overlapping authority between levels of government may be essential to prompting regulatory activity at the preferred level of government. This Article further argues that a static allocation of authority deprives citizens of the benefits of overlapping jurisdiction, such as a built-in check upon interest group capture, greater opportunities for regulatory innovation and refinement, and relief for the courts from the often futile and confusing task of jurisdictional line-drawing. Part I.A of this Article critiques the scholarly adherence to a generally rigid separation between state and federal jurisdiction, which I argue is rooted in the dominance of economic models in the environmental federalism debates. In Part I.B, I contrast the scholarly preoccupation with the separation of federal and state power with environmental federalism in practice, which is marked by a large degree of jurisdictional overlap and interaction between the states and the federal government. Part II of this Article sets forth an alternative vision of environmental federalism, drawing upon recent scholarship that conceives the states and the federal government as alternative—not mutually exclusive— sources of regulatory authority. Such a conception views the interaction between the two levels of government as a means of improving the quality and responsiveness of regulation.

#### More ev.

Engel, 07 (Kristin, University of Arizona James E. Rogers College of Law, “Harnessing the Benefits of Dynamic Federalism in Environmental Law,” Arizona Legal Studies Discussion Paper No. 06-37, January 2007 accessed 7/7/08 from ssrn.com)

As will be discussed in Part II, the scholarly preoccupation with a rigid allocation of state and federal environmental regulatory authority is misguided for a number of reasons. Most importantly, it ignores the manner in which policy leadership shifts between levels of government in a federal system, and hence how policy may start at one level of government before shifting to the level that might be considered optimal. In addition, the environmental federalism debate ignores the benefits of overlapping jurisdiction for the quality of policy development.

#### Without the Federal government the States would have little to no benefits or innovation

**Bruce Katz 12** (Vice President and Director of Metropolitan Policy Program February 16, 2012 http://www.brookings.edu/research/papers/2012/02/16-federalism-katz)

Race to the Top is a clear example of how the carrot of federal spending can reinvent how states carry out a critical role of government. Tennessee, New York, Florida and Ohio won competitive grants in the range of $400 million to $700 million, awards that are a mere fraction of these state’s annual education budgets, which range from $5.2 billion to $19.4 billion. This provides a new twist on the conventional notion of state innovation.

### Perm Key to Warming/Environment

#### **Cooperative federalism solves global warming-extinction**

Canale 11, John Canale, Staff Writer, Boston College Environmental Affairs Law Review , “Putting the Pieces Together: How Using Cooperative Federalism Can Help Solve the Climate Change Puzzle,” 10/2/11, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1937255, FM

Climate change threatens human health and the environment on which we depend.1 Either by incremental environmental changes that affect our daily lives or by catastrophic weather events, humans are engineering their own demise.2 All nations contribute to the green-house gas emissions which cause climate change, but the United States contributes an exorbitant percentage of worldwide emissions in relation to its population.3 Automobile travel in the United States is a major contributor to climate change.4 While a concerted effort by the international community is needed to address climate change,5 the United States government needs to act decisively and swiftly to abate future effects of climate change. Currently the Federal government is taking small steps to whittle away at the problem.6 Recently the Envi-ronmental Protection Agency (EPA) has acted to limit new vehicle emissions to combat climate change.7 Comprehensive land-use development planning on the state or national level is necessary to curb greenhouse gas emissions.8 Land-use plans would decrease pollution and greenhouse gas emissions from automobile usage by decreasing the distance that people travel in their cars.9 A comprehensive federal approach to smarter development should be adopted to avoid the catastrophic consequences of climate change.10 The Federal government should use the frame-works laid out in California and Atlanta, Georgia to incentivize smarter regional growth.11 In Part I of this Note, I will provide a background on climate change as well as the current status of greenhouse gas regulation through the Clean Air Act.12 In Part II, I will discuss land-use plan-ning, zoning, sprawl and the negative effects of sprawl on greenhouse gas emissions and climate change.13 In Part III, I will discuss smart growth, California’s Senate Bill 375 (SB 375), Atlanta’s Regional Transportation Act, and how these state regulations require smarter growth.14 Finally, in Part IV, I will argue that, in order to lower green-house gas emissions and slow climate change, the Federal government should implement a cooperative federalism framework for smarter growth.15

#### Cooperative federalism provides a framework for Smart Growth plans, the most effective way to expand transportation infrastructure and solve global warming

Canale 11, John Canale, Staff Writer, Boston College Environmental Affairs Law Review , “Putting the Pieces Together: How Using Cooperative Federalism Can Help Solve the Climate Change Puzzle,” 10/2/11, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1937255, FM

Some scholars think that the need exists for more comprehensive federal land-use legislation.252 This need becomes clearer considering that the few regional programs that do address GHG emissions and air pollution are not comprehensive.253 To do this, federal policymakers need to understand “the interdependence of all local and state land use decisions.”254 Policymakers must see that suburban areas that increase sprawl have the negative effects of burdening urban areas with increased traffic congestion and air pollution, which are byproducts of increased automobile usage.255 The land-use policies of one local authority might adversely affect the surrounding localities be-cause air pollution and externalized costs do not stop at locality lines.256 Furthermore, the ability to have interconnected mass transit systems relies on either cooperation between local governments or a higher authority that can bridge the gap between local govern-ments.257 One of the most important concerns with federal land-use policy is intrusion on state powers.258 Because land use has historically been a state power, intrusions from the Federal government can cause resistance.259 However, the CAA and the CZMA do provide a framework to think about federal land use.260 In accordance with Title I of the CAA, the EPA sets NAAQS and then delegates to the states or regions the authority to determine how to meet these standards.261 Though the current structure of the CAA does not control land-use to a large extent, or provide for effective enough GHG emission limitations, it does at least provide an example of effective cooperative federalism.262 The federal government should approach the problem through instituting state plans like SB 375 and GRTA.263 The federal government could incentivize California-like “transit oriented plans” and dis-incentivize sprawling highway expansion.264 A cooperative federalism approach is best because there will be some resistance to any federal land-use planning—even to control GHG emissions—but this resistance can be softened by letting state and local governments design and implement individualized plans to meet local needs.265 Smart growth is a promising approach to significantly curbing GHG emissions.266 Incentivizing developers to align with smart growth objectives through a federally imposed land-use plan, or some form of a regional plan, would reduce VMTs and lessen the effect of GHGs.267 This type of regulation is what the United States needs to avoid the catastrophic consequences of climate change.268

### Federal Investment key to Private Interest

#### Initial Government investment draws Private capital

Bernstein, 09/08/11

 [7:32pm http://transportationnation.org/2011/09/08/president-proposes-10-billion-infrastructure-bank/](file:///C%3A%5CUsers%5CTom%5CDesktop%5C7%3A32pm%20http%3A%5Ctransportationnation.org%5C2011%5C09%5C08%5Cpresident-proposes-10-billion-infrastructure-bank%5C)

With one foot on the terra firma of national pride and another in his old familiar haunt of progressivism, President Barack Obama Thursday proposed a $10 billion infrastructure bank with $50 billion in expedited infrastructure spending to help stimulate the economy. “Everyone here knows that we have badly decaying roads and bridges all over this country. Our highways are clogged with traffic. Our skies are the most congested in the world,” said the President while a sour-faced Speaker John Boehner sat to his right. “This is inexcusable. Building a world-class transportation system is part of what made us an economic superpower. And now we’re going to sit back and watch China build newer airports and faster railroads? At a time when millions of unemployed construction workers could build them right here in America?” In a speech that sounded at times feisty and at times impatient, the President repeatedly urged congress to pass a bill the administration put at $450 billion, which he said would be paid for by other cuts. But still the speech sounded more like old-style Obama than the man who last month, back to the wall, agreed to $2.4 trillion in spending cuts, with no tax increases. Thursday the President once again called on the rich to pay “their fair share,” an idea that the public has embraced but that Congress has rejected. “There are private construction companies all across America just waiting to get to work. There’s a bridge that needs repair between Ohio and Kentucky that’s on one of the busiest trucking routes in North America. A public transit project in Houston that will help clear up one of the worst areas of traffic in the country,” the President said, pointedly picking a Texas city to highlight. Texas is home to the Republican Presidential front-runner, Governor Rick Perry. The President made his strongest pitch yet in favor of an infrastructure bank, a federally-backed bank that would leverage government funds to draw private capital for large projects like roads, transit, bridges, and dams. The President said it would issue loans “based on two criteria: how badly a construction project is needed and how much good it would do for the economy.” “This idea came from a bill written by a Texas Republican and a Massachusetts Democrat. The idea for a big boost in construction is supported by America’s largest business organization and America’s largest labor organization. It’s the kind of proposal that’s been supported in the past by Democrats and Republicans alike. You should pass it right away.” In a fact sheet released by the White House, the administration said the National Infrastructure Bank would be capitalized with $10 billion “in order to leverage private and public capital and to invest in a broad range of infrastructure projects of national and regional significance, without earmarks or traditional political influence. The bank would be based on the model Senators Kerry and Hutchison have championed while building on legislation by Senators Rockefeller and Lautenberg and the work of long-time infrastructure bank champions like Rosa DeLauro and the input of the President’s Jobs Council.”

#### Public investment of 20 billion dollars returns Private investment of 600 billion

US Chamber of Commerce 11

http://www.uschamber.com/press/releases/2011/march/us-chamber-afl-cio-urge-infrastructure-bank

At a press conference today, Senators John Kerry (D-Mass.), Chairman of the Foreign Relations Committee, Kay Bailey Hutchison (R-Texas), Ranking Member of the Commerce, Science, and Transportation Committee, and Mark R. Warner (D-Va.), Member of the Banking, Housing and Urban Affairs Committee, announced legislation to create an infrastructure bank that would help close America’s widening infrastructure funding gap, create millions of American jobs in the next decade, and make the United States more competitive in the 21st century. U.S. Chamber of Commerce President and CEO Thomas J. Donohue and AFL-CIO President Richard Trumka, who also attended the event, underscored the unique coalition of business and labor uniting around this initiative. » Read the remarks by Thomas J. Donohue, President and CEO, U.S. Chamber of Commerce “This is a bi-partisan moment to make a once bi-partisan issue bi-partisan once again,” said Sen. Kerry. “Democrats and Republicans, business and labor, are now united to create an American infrastructure bank to leverage private investment, make America the world’s builders once again, and close the deficit in our infrastructure investments. The BUILD Act will create good jobs, strengthen our competitiveness, and do more with less. Most of all, this bill breaks a partisan stalemate to get America back in the game. When you’ve got a Massachusetts Democrat, a Texas Republican, the Chamber of Commerce and the AFL-CIO preaching from the same hymnal, you’ll find a sweet spot that can translate into a major legislative step forward.” “I have been working to overhaul our nation’s aging infrastructure for nearly 20 years. This national infrastructure bank is an innovative way to leverage private-public partnerships and maximize private funding to address our water, transportation, and energy infrastructure needs. It is essential to think outside the box as we work to solve national challenges, particularly in this fiscal crisis. We must be creative to meet the needs of our country and to spur economic development and job growth while protecting taxpayers from new federal spending as much as possible,” said Sen. Hutchison, who served on the Commission to Promote Investment in America’s Infrastructure in 1993 as State Treasurer of Texas and is the Ranking Member on the Senate Commerce, Science, and Transportation Committee. “The United States is spending less than two-percent of its GDP on infrastructure, while India spends five-percent and China spends nine-percent,” said Sen. Warner. “As a matter of global competitiveness, we need to find additional ways to upgrade our nation’s infrastructure, and this bank will help us strike the right balance between near-term discipline and investment in future growth.” “A national infrastructure bank is a great place to start securing the funding we need to increase our mobility, create jobs, and enhance our global competitiveness,” said Donohue. “With a modest initial investment of $10 billion, a national infrastructure bank could leverage up to $600 billion in private investments to repair, modernize, and expand our ailing infrastructure system. While private capital is badly needed, we must also recognize our public financing mechanism is broken. Receipts to the Highway Trust Fund have fallen dramatically, funds are being diverted to non-infrastructure projects, and the gas tax has not been increased in 17 years. We need a multiyear highway bill to meet immediate needs, but we have to figure out a way to ensure we have adequate public investments for years to come.” The Building and Upgrading Infrastructure for Long-Term Development (BUILD) Act would establish an American Infrastructure Financing Authority (AIFA) – a kind of infrastructure bank – to complement our existing infrastructure funding. This institution, which would provide loans and loan guarantees, would be both fiscally responsible and robust enough to address America’s needs. AIFA is independent of the political process. It would fund the most important and most economically viable projects across the country, our states, and our communities. AIFA is also fiscally responsible. While AIFA will receive initial funding from the government, after that it must become self-sustaining. Finally, AIFA relies on the private sector. It can never provide more than 50 percent of a project’s costs, and in many cases would provide much less, just enough to bring in private investment. KEY PROVISIONS OF THE BUILD ACT Independent, non-partisan operations While AIFA would be a government-owned entity, it would not be controlled by any federal agency and instead would operate independently. It would be led by a Board of Directors with seven voting members and a chief executive officer. No more than four voting members of the board could be from the same political party. Board members would have to be U.S. citizens with significant expertise either in the management of a relevant financial institution or in the financing, development, or operation of infrastructure projects. Strong oversight by Congress and the Federal government The Board and CEO would be appointed by the President, with one board member designated as chairperson. All candidates would have to be confirmed with the advice and consent of the Senate. The Majority Leader of the Senate, the Minority Leader of the Senate, the Speaker of the House of Representatives, and the Minority Leader of the House of Representatives would each recommend candidates. An Inspector General would oversee AIFA’s operations, an independent auditor would review AIFA’s books, and AIFA would submit an assessment of the risks of its portfolio, prepared by an independent source. The General Accounting Office would also conduct an evaluation of AIFA and submit a report to Congress no later than five years after the date of enactment. Broad eligibility for infrastructure Eligible projects would include transportation infrastructure; water infrastructure; and energy infrastructure. In general, projects would have to be at least $100 million in size and be of national or regional significance. Projects would have a clear public benefit, meet rigorous economic, technical and environmental standards, and be backed by a dedicated revenue stream. Geographic, sector, and size considerations would also be weighed. Unbiased project selection The CEO would be responsible, in consultation with professional staff, for reviewing and preparing the eligible project applications. The Board would be responsible for the ultimate approval or disapproval of the eligible projects that are submitted to the Board by the Chief Executive Officer and staff. Strong rural protections Rural projects would only need to be $25 million in size. Five percent of the initial funding of AIFA would be dedicated to helping rural projects. AIFA would include an Office of Rural Assistance to provide technical assistance regarding the developing and financing of rural projects. Projects would still have to have a clear public benefit, meet rigorous economic, technical and environmental standards, and be backed by a dedicated revenue stream. Addressing market gaps for infrastructure financing AIFA would issue loan and loan guarantees to eligible projects. Loans issued by AIFA would use approximately the same interest rate as similar-length United States Treasury securities and would have a maturity of no longer than 35 years. Loans and loan guarantees could be subject to additional fees or interest rate premiums based largely on the costs of the loan to the Federal government, as determined by AIFA in consultation with the Office of Management and Budget. AIFA would finance no more than 50 percent of the total costs of the project, in order to avoid crowding out private capital. Self-sufficiency of AIFA AIFA is set up to be self-sufficient after the first few years. To achieve self-sufficiency, the CEO of AIFA would establish fees for loans and loan guarantees. These fees could be in the form of application fees or transaction fees, and could include an interest rate premium associated with the loan or loan guarantee. However, AIFA would receive an initial funding of $10 billion, which would earn interest. This initial funding would be used both to offset the cost of the loans to the Federal government and to cover administrative costs. Funding under the Act would be subject to the Federal Credit Reform Act, except that it would be exempted from the requirement that appropriations are needed for subsequent loans and loan guarantees. Additional BUILD Act provisions The BUILD Act also addresses private activity bonds. These bonds are frequently used to finance infrastructure projects. Under current law, interest on tax-exempt private activity bonds is generally subject to the Alternative Minimum Tax (AMT). This, in turn, limits the marketability of these bonds and causes states to issue bonds at higher interest rates. This Act would extend the current exemption to bonds that are issued in 2011 or 2012.

### A2: SIB

#### The national infrastructure bank is key-- encourages investment that would normally be too expensive for states

Mallett, Maguire, and Kosar 2011

Mallett, William J.( Specialist in Transportation Policy), Steven Maguire(Specialist in Public Finance), and Kevin R. Kosar(Analyst in American National Government). "National Infrastructure Bank: Overview and Current Legislation." Fas.org. Congressional Research Service, 14 Dec. 2011. Web. 27 June 2012. <http://www.fas.org/sgp/crs/misc/R42115.pdf>.

One of the main arguments for creating a national infrastructure bank is to encourage investment that would otherwise not take place. This investment is especially thought to be lacking for large, expensive projects whose costs are borne locally but whose benefits are regional or national in scope. A national infrastructure bank might help facilitate such projects by providing large amounts of financing on advantageous terms. For instance, an infrastructure bank could provide. loans with very long maturities and allow repayment to be deferred until a facility is up and running.

### A2: PPPs

#### Private investment empirically magnifies public-sector debt, not the other way around.

Siemiatycki, 10 [Matti, Delivering Transportation Infrastructure Through Public-Private Partnerships, Journal of the American Planning Association, Winter 2010, Vol. 76, No. 1, PhD Urban Planning, British Columbia]

In many jurisdictions, a lack of available funds, exacerbated by a political aversion to taking on debt or raising taxes, have been key impediments to delivering necessary new infrastructure projects (Vining & Boardman, 2008). Thus, the PPP model would provide a noteworthy beneﬁt if it gave heavily indebted or ﬁscally conservative governments opportunities for private sector ﬁnancing that would allow them to construct new infrastructure projects earlier than if they funded them entirely through traditional government sources (Allen, 2001; Government Accountability Ofﬁce, 2008). However, research has found that raising funds privately to pay for infrastructure does not contribute to a reduction in public debt (Hodge & Greve, 2007; World Bank, 2007). As Quiggin (2004) reports, “The superficial appeal of such projects as a way of reducing public-sector debt has been shown to be an illusion generated at high social cost.”

#### Most popular assessments favoring PPP’s public costs fail to account for a number of costs – prefer our statistics

Siemiatycki, 10 [Matti, Delivering Transportation Infrastructure Through Public-Private Partnerships, Journal of the American Planning Association, Winter 2010, Vol. 76, No. 1, PhD Urban Planning, British Columbia]

In Britain, Australia, and Canada, systematic value for money assessments have become a common part of the ex ante evaluation of PPP projects. In such approaches, the complete lifecycle costs of a proposed PPP are weighed against a public sector comparator, or detailed plan for a comparable project that would be ﬁnanced and delivered through a conventional public sector procurement model. Value for money is said to be achieved if the PPP has lower lifecycle costs than the comparator when differential costs of construction, operation, public sector oversight, ﬁnancing and risk are considered (Grimsey & Lewis, 2005; Quiggin, 2004). But such analyses cannot address the most trenchant criticisms of DBFO PPPs. Studies around the world have shown that DBFO public partners pay high transaction costs associated with structuring and monitoring partnership arrangements (Garvin & Bosso, 2008; Vining & Boardman, 2008), signiﬁcant cost premiums to ensure projects are delivered on time and on budget (Stapleton et al., 2004), large cost escalations during project planning (Siemiatycki, 2007), borrowing costs that signiﬁcantly exceed those available to governments (Quiggin, 2004), and excessively high rates of return to the private investors (Shaoul et al., 2006).

### States are Broke

#### State legislatures are desperate for money and infrastructure is taking the hit

Hood 2011

HOOD, JOHN. John Hood is president of the John Locke Foundation, a state-policy think tank based in North Carolina, and the author of, among other books, Investor Politics. "The States in Crisis Publications National Affairs." The States in Crisis. N.p., Winter 2011. Web. 27 June 2012. <http://www.nationalaffairs.com/publications/detail/the-states-in-crisis>.

Over the past three years, the news out of state capitals has been dire. From Albany to Sacramento, economic shocks have reduced states' tax revenues, even as the downturn has required states to spend more on welfare for the struggling and newly jobless. The Great Recession has thus torn gaping holes in state budgets — holes that governors and state legislatures are now desperately trying to close. That effort has been painful for state officials. When Arizona cut state funding for kindergartens, educators and parents cried foul. When New York raised tuition at its state universities, students protested. When California, North Carolina, Oregon, and Connecticut raised their income taxes, angry taxpayers flocked to Tea Party protests and expressed their displeasure through buzzing phone lines and clogged inboxes. With every attempt to fix state budgets, an acceptable solution has seemed ever more out of reach. But alarming as these recent developments have been, the states' fiscal calamity is not simply a function of the recession. Their shaky financial foundations were in fact set long ago — through unsustainable obligations like retirement benefits for public employees, excessive borrowing, and deferred maintenance of public buildings and infrastructure. The result has been a long-building budget imbalance now estimated in the trillions of dollars. The nightmare that governors and state legislators are living through will therefore not end when the effects of the recession do. Even as state officials address large short-term operating deficits, they must confront the more troublesome structural gaps between current state revenue projections and massive future liabilities. And the tools that these state officials have at their disposal to deal with the crisis are limited. Many state constitutions require the repayment of bonds to take priority over almost all other state spending. Others require state-employee pensions to be paid out at the promised terms no matter what, making it almost impossible to negotiate those liabilities down. States, unlike municipalities, do not have the legal option of declaring bankruptcy. At some point, if some states approach default, just meeting these debt obligations will consume all of their revenues — leaving no money for basic functions like maintaining a state police force, operating roads and other transit infrastructure, or educating children.

#### State government hasn’t had enough money to maintain, repair, or expand transportation infrastructure

Hood 2011

HOOD, JOHN. John Hood is president of the John Locke Foundation, a state-policy think tank based in North Carolina, and the author of, among other books, Investor Politics. "The States in Crisis Publications National Affairs." The States in Crisis. N.p., Winter 2011. Web. 27 June 2012. <http://www.nationalaffairs.com/publications/detail/the-states-in-crisis>.

Other familiar state and local services, such as transportation and law enforcement, have actually experienced little real growth in spending over the past two decades. For example, despite increases in the federal and state taxes on motor fuels — revenues that fund much of the nation's spending on roads and bridges — increases in the average fuel efficiency of the cars traversing America's highways have pushed actual revenue collections per mile traveled down. The result? Less money to maintain, repair, and expand our primary system of surface transportation — which means more roads that are crumbling and congested. This funding shortage for America's roads may seem surprising, given the astronomical amounts of government money spent on transportation. The reason is that a large — and egregiously wasteful — chunk of state and local transportation budgets is devoted to obsolete transit and rail programs, which seek to apply the leading technologies of 1900 to the mobility needs of 2011. Because much of the money for these projects ultimately comes from the federal government — in the form of highway bills and other pork-laden legislation — the funding dynamic that governs transportation is similar to the one that obtains with Medicaid. The fact that only a fraction of the money comes from locally raised taxes gives state and local politicians significant incentive to pursue transportation projects that would make no sense in the absence of federal largesse. But in order to get the federal money for transit projects, state and local authorities must invest some of their own revenues — often in significant amounts. So the lure of federal money for rail programs often ratchets up state and local transit spending.

#### Projections for state revenue predict years until even pre-recession levels

Hood 2011

HOOD, JOHN. John Hood is president of the John Locke Foundation, a state-policy think tank based in North Carolina, and the author of, among other books, Investor Politics. "The States in Crisis Publications National Affairs." The States in Crisis. N.p., Winter 2011. Web. 27 June 2012. <http://www.nationalaffairs.com/publications/detail/the-states-in-crisis>.

When all of this wasteful spending is combined with the recent budget shortfalls caused by the recession, the states face a total projected deficit of $130 billion in the coming fiscal year. But unfortunately, this is only the beginning: Most observers do not expect to see state revenue collections return to pre-recession levels until 2014, at the earliest. And even when the recession does pass, the massive long-term budget imbalances will still be there — poised to bring in a new, and far more difficult, set of fiscal challenges. The bill for decades of reckless promising and spending is about to come due.

### No solvency—Private Interest

#### State budget crises scare wall-street out of investment in state projects –

Peterson and Nadler, 2011 [Paul E., and Daniel. June 17, Freedom to Fail: The Keystone of American Federalism; professors at Harvard Program on Education Policy and Governance]

The lower tiers of the U. S. government are facing a contemporary fiscal crisis unprecedented since the days of the Great Depression. Almost all states are facing considerable and unexpected budget deficits in the wake of the recent financial crisis, but the situation in the State of Illinois in 2011 became particularly perilous. The state’s comptroller has admitted that “there are tens of thousands if not hundreds of thousands of people waiting to be paid by the state."20 Legislators have been evicted from their offices because the state did not pay their rent, and gas stations have refused to take state credit cards offered by state troopers.21 In the words of the comptroller: “The state of Illinois is known as a deadbeat state.” 22 Though extreme, Illinois’s situation is not isolated. While some small, resource-rich states—Alaska, Montana and North Dakota, for example--continue to run balanced budgets, in early 2011 New York’s deficit for the fiscal year 2012 was estimated at 18 percent of the previous year’s budget, California’s was 29 percent, Texas’s was 32 percent and New Jersey’s no less than 38 percent (table 1). The size of these deficits may attenuate as state economies and revenues recover, but they would be considerably larger if they were to include the revenues necessary to fund state pension and health care obligations. Just how much larger is a topic for much speculation, but even without taking those liabilities into account, the overall fiscal gap in state budgets was estimated at $121 billion, or 19 percent of the budget in the 46 states running deficits. 23 The possibility of default did not capture news headlines immediately after the financial crisis struck, as states and localities were primary beneficiaries of the federal stimulus package enacted into law in 2009. But the bond market took note immediately, as investor demanded a premium for state and local bonds over safer U. S. Treasury securities, despite the exemption from federal taxation of interest received on most state and local bonds. Although all states were impacted by the crisis, the impact varied considerably among the states. Between September and December of 2008, the premium that investors demanded to hold California debt over U.S treasuries jumped from 24 basis points to 271 basis points, a ten-fold increase (100 basis points equals one percent). Before the crisis, the differences in the premium paid in California and Texas was only 15 basis points. But by 2011 the gap between the two states had increased to 84 basis points. Similar jumps in the cost of borrowing occurred in other states as well (Figure 2). The perception that some states could be at risk of defaulting on their obligations has generated concern on Wall Street and induced calls for federal bail-outs not unlike those provided to the automobile industry in 2008 and 2009. Warren Buffett, a prominent investor with a large stake in the state and municipal bond market, expressed the concerned that “The bond holders . . . have extraordinary liabilities,” though he doubted the “federal government [would] turn away a state that is having extreme financial difficulties when in effect it honored General Motors and various other entities.”24 Later, in testimony before a congressional committee, he qualified that assessment, saying “I don’t know how I would rate[state bond default risks] myself,” Buffett testified. “It’s a bet on how the federal government will act over time.”25

### No Solvency—Patchwork

#### The counterplan cant assure the pan will be done—federal action is key to uniform transportation regulation

Dilger, 2k11 (Roert Jay, Senior Specialist in American National Government, “Federalism Issues in Surface Transportation Policy: Past and Present”, Congressional Research Service, <http://www.fas.org/sgp/crs/misc/R40431.pdf>, January 5, 2011)

The proposed Surface Transportation and Transit Empowerment Act did not generate the level of congressional attention provided to the state donor-donee debate. Nonetheless, the arguments presented both for and against its adoption are relevant today given that the devolution issue may be considered during SAFETEA’s reauthorization. However, current fiscal conditions are much different today than in 1997 and 1998. It could be argued that the current economic fiscal crisis may limit the states’ fiscal capacity to assume responsibility for federal surface transportation projects if they were asked, as they were in 1997 and 1998, to increase state fuel taxes to fund those projects. At a House subcommittee hearing on ISTEA’s reauthorization in 1997, Senator Mack defended his devolution proposal, arguing that “the simple fact is that states now have the technical capability to build their own roads and, frankly, they know better than Washington what their transportation needs are. A continued role for the federal government is appropriate in certain areas, such as the maintenance of the interstate highway system or limited coordination functions.”96 He added: current policy has been unable to keep up with our Nation’s growing infrastructure needs. One reason for this is that we have not been getting as much out of our transportation dollars as we used to. For instance, since 1956 Federal Highway Administration costs have grown from 7 percent to 21 percent today. Moreover, studies suggest the elimination of Federal mandates and restrictions would increase States’ real purchasing power for transportation projects by 20 percent.97 Representative Kasich stated at the hearing that Ohio was one of 32 states at that time that received less from ISTEA than its highway users paid into the Highway Trust Fund. He added that the governors of Michigan, Ohio, California, South Carolina and Florida, all states that received less ISTEA funding at that time than their highway users paid into the Highway Trust Fund, had endorsed his bill. He argued that “if you let us keep our money and get rid of all the Federal bureaucracy and all the Federal rules, we’ll be able to actually have more highway construction.”98 On April 1, 1998, Representative Kasich offered his bill as an amendment in the nature of a substitute to BESTEA (Building Efficient Surface Transportation and Equity Act of 1998), the House ISTEA reauthorization bill. During floor debate, Representative E. G. “Bud” Shuster, Chair of the House Committee on Transportation and Infrastructure, rose in opposition to the amendment, arguing: while this would simply turn things back to the States, ironically there is a greater need for us to have a coordinated, tied-together national transportation system than ever. Why? Because more people and more goods are moving interstate than ever before.99 He also argued that “Indeed, there is a greater need to have this tied together than ever before. Our bill not only does that, but it also gives flexibilities to the States and the cities by saying that 50 percent of the funding in each category can be flexibly moved about to other categories.”100 He added that “It is very important, also, to recognize that, of the money that comes to Washington now, only 1 percent stays here down at the Department of Transportation for administrative purposes, 88 percent goes back to the States to be spent, 5 percent goes to the Secretary of Transportation to be sent back to the States for high cost discretionary projects, 5 percent goes back to the States through the congressional projects, and only 1 percent stays in Washington.”101 He concluded by arguing: Further, State regulations, which in many cases are as onerous, if not more onerous, than Federal regulations, would obviously stay in place. Indeed, we have no assurance whatsoever that, if we turn this back to the States, that the States would pass and increase their gas taxes. Indeed, I am told that, on the average, each State would have to pass the State gas tax increasing it by 15 cents per gallon. So what assurance do we have? No, this is simply destroying what must be a national program which is to tie our country together from a transportation point of view. For those reasons, I say we should defeat this amendment.102 Representative James Oberstar also opposed the amendment, arguing that it would: ... take us back to a time that none of us here could possibly imagine, a time when some States started roads, others did not, they built it up to a certain point and then it stopped. Bridges were started and then stopped. If we followed the gentleman’s logic all the way through, we would have bridges go halfway across a river because one State would want to build it and the other State would not or would run out of money, or we would have roads that go up to a State’s border and the other State would say “Well, we don’t think that we want to build a road there.” ... [the amendment] would have us in chaos. ... This is a vote for the past, not a vote for the future. ... If we are going to be a Nation, and if my colleagues believe in the Constitution that said a responsibility of the Congress shall be to build post roads, that it shall have authority over interstate and foreign commerce, then it is our duty to promote interstate and foreign commerce, and the way to do it is through transportation.103 The amendment was defeated, 98-318.104

#### Counterplan results in a patchwork of state policies that empirically are inefficient

Chamber of Commerce 09 September 2, 2009 R. Bruce Josten Executive Vice President http://www.uschamber.com/sites/default/files/lra/docs/090902federalaviationadministrationauthorizationact.pdf

The U.S. Chamber of Commerce, the world’s largest business federation representing more than three million businesses and organizations of every size, sector, and region, urges you to reject any effort to modify longstanding federal trucking rules codified in the Federal Aviation Administration Authorization Act (FAAAA) that preempt state and local regulation of interstate trucking. The Chamber understands that the Port of Los Angeles, the Port of Oakland, the International Brotherhood of Teamsters and others are currently pressing Congress to consider granting local governments the ability to regulate the harbor drayage industry to address environmental and port security matters, and thereby eliminate the federal pre-emption of state and local regulation of foreign and interstate commerce. While the Chamber strongly supports efforts to improve air quality and port security in and around America’s ports, it is entirely unnecessary to undermine federal preemption of state regulation of interstate commerce in the process. Such a veiled attempt to overturn losses in the federal courts restricting local regulation of truck drayage services would do nothing to improve air quality or port security and only encourage the fragmentation of the regulatory structure for foreign and interstate commerce. This call for diminishing federal preemption is born from an effort by the Port of Los Angeles to regulate interstate trucking services as a part of their plans to improve air quality and port security. In 2007, the Port of Los Angeles established its Clean Truck Program to reduce emissions from the harbor trucks serving southern California marine terminals. In addition to banning the oldest trucks serving the marine terminals and imposing a fee on beneficial cargo owners for every truck move using equipment that fails to meet 2007 U.S. EPA emissions standards, the Port of Los Angeles Clean Truck Program included a controversial truck concession program that banned any harbor trucking company from using independent owneroperator drivers in favor of employee drivers. In 2008, the American Trucking Association responded by filing suit against the Port of Los Angeles and the Port of Long Beach claiming that the truck concession portion of the Clean Truck Program is preempted by federal law regulating rates, routes, and service under the FAAAA. The ATA requested a preliminary injunction which was sustained in part by both the U.S. District Court for the Central District of California and the U.S. Court of Appeals for the 9th Circuit. Those courts determined that the ports’ concession plans regulate interstate trucking “prices, routes, and services” and thus are unconstitutional because they are preempted by the FAAAA. The Ninth Circuit further found that the ban on independent drivers, among other concession rules, did not fall within an exception to preemption based on “motor vehicle safety.” The Clean Truck Program is by all accounts a success—without the concession rules— having already resulted in the removal of roughly 5,000 dirty trucks. However, the Ports are now seeking to undermine that success by opening up a loophole in the federal regulatory system. Improving air quality at America’s ports is an important objective that should be supported at all levels of government. Eliminating the federal pre-emption of state and local regulation of foreign and interstate commerce, however, has little to do with these objectives and would in turn create a fragmented, local patchwork regulatory structure for foreign and interstate commerce which runs contrary to the intent of the interstate commerce clause in the U.S. Constitution. The business community depends on an efficient, interconnected transportation network that moves commerce fluidly from U.S. marine ports to the network of surface transportation systems of roads and rails. As the Court of Appeals recognized, federal preemption of interstate trucking services was designed to prevent such a patchwork of burdensome state and local trucking rules as would be created by the Port of Los Angeles concession plan. The Chamber urges you to reject such efforts which would undermine the current efficient, competitive, and safe freight transportation system.

### CP Links to Politics

#### Private interests oppose devolution of transportation

Dilger, 2k11 (Roert Jay, Senior Specialist in American National Government, “Federalism Issues in Surface Transportation Policy: Past and Present”, Congressional Research Service, <http://www.fas.org/sgp/crs/misc/R40431.pdf>, January 5, 2011)

Presidents, perhaps reflecting their role in representing the national interest as a whole and, perhaps, at least in part, because several Presidents had formerly served as governors, have tended to be more supportive of program consolidation and devolution of programmatic authority in surface transportation policy than Congress. This has been especially the case when the President’s ideology favored smaller government. Typically, presidential efforts to consolidate surface transportation programs have faced strong opposition from private sector interest groups worried that program consolidation will result in less funding for the consolidated programs over time, and from Members worried that consolidation could lead to less funding for specific programs that are important to them.

#### The counterplan links to politics—politicians get blame for devolution

Dilger, 2k11 (Roert Jay, Senior Specialist in American National Government, “Federalism Issues in Surface Transportation Policy: Past and Present”, Congressional Research Service, <http://www.fas.org/sgp/crs/misc/R40431.pdf>, January 5, 2011)

Perhaps the most difficult factor to account for in the development of federalism relationships in surface transportation policy over time has been the changing nature of American society and expectations concerning personal mobility. Once a rural society with relatively limited expectations concerning personal mobility, America is now a primarily urban/suburban society where automobile ownership and the personal mobility that automobile ownership brings is not only a powerful social status symbol but also a necessity. Obtaining a drivers’ license is now a major life-altering event, signifying for millions of American teenagers each year the transition from childhood to adulthood. Because the American bond with the automobile is strong, moving away from a primary focus on building and constructing highways towards a “more balanced” intermodal transportation approach has been made more difficult for policymakers at all levels of government. Moreover, given the public’s relatively high expectations concerning personal mobility, Congress has been reluctant to consolidate or devolve surface transportation programs to states, at least in part, because some Members worry that if states are provided additional authority and fail to meet public expectations, that they might be held accountable for that failure on election day. In their view, a more prudent, risk-adverse approach is to provide states additional programmatic flexibility, but retain a federal presence through both program oversight and the imposition of federal guidelines to ensure that states do not stray too far from national objectives.