# states cp—endi 2012

# \*\*\*1NC modules

## 1NC—lopez (generic)

The United States Supreme Court should issue a narrow ruling that federal authority over \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Insert the area of the plan) exceeds the power of the federal government under the 10th Amendment, and devolve this authority to the states. The Fifty States of America and United States territories should \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Insert Mandates Of Aff Plan).

#### Devolution is key to give states more power over transportation infrastructure and craft projects to serve the population better—highway spending proves

Roth, 10—a civil engineer and transportation economist. He is currently a research fellow at the Independent Institute. During his 20 years with the World Bank, he was involved with transportation projects on five continents (Gabriel, http://www.downsizinggovernment.org/transportation/highway-funding)

[Conclusions](http://www.downsizinggovernment.org/transportation/highway-funding#top) Americans are frustrated by rising traffic congestion. In the period 1980 to 2008, the vehicle-miles driven in the nation increased 96 percent, but the lane-miles of public roads increased only 7.5 percent. The problem is that U.S. road systems are run by governments, which do not respond to the wishes of road users but to the preferences of politicians. Transportation markets need to be liberated from government control so that road users can directly finance the needed highway improvements that they are prepared to pay for. We need to recognize "road space" as a scarce resource and allow road owners to increase supply and charge market prices for it. We should allow the revenues to stimulate investment in new capacity and in technologies to reduce congestion. If the market is allowed to work, profits will attract investors willing to spend their own money to expand the road system in response to the wishes of consumers. To make progress toward a market-based highway system, we should first end the federal role in highway financing. In his 1982 State of the Union address, President Reagan proposed that all federal highway and transit programs, except the interstate highway system, be "turned back" to the states and the related federal gasoline taxes ended. Similar efforts to phase out federal financing of state roads were introduced in 1996 by Sen. Connie Mack (R-FL) and Rep. John Kasich (R-OH). Sen. James Inhofe (R-OK) introduced a similar bill in 2002, and Rep. Scott Garrett (R-NJ) and Rep. Jeff Flake (R-AZ) have each proposed bills to allow states to fully or partly opt out of federal highway financing.[47](http://www.downsizinggovernment.org/transportation/highway-funding#_edn47) Such reforms would give states the freedom to innovate with toll roads, electronic road-pricing technologies, and private highway investment. Unfortunately, these reforms have so far received little action in Congress. But there is a growing acceptance of innovative financing and management of highways in many states. With the devolution of highway financing and control to the states, successful innovations in one state would be copied in other states. And without federal subsidies, state governments would have stronger incentives to ensure that funds were spent efficiently. An additional advantage is that highway financing would be more transparent without the complex federal trust fund. Citizens could better understand how their transportation dollars were being spent. The time is ripe for repeal of the current central planning approach to highway financing. Given more autonomy, state governments and the private sector would have the power and flexibility to meet the huge challenges ahead that America faces in highway infrastructure.

#### The Court can make this ruling and devolve power to the states –it won’t be rolled back

Miller, 98— Mark A. Miller, Lawyer @ Baker Botts, 1998, Cleveland State L. Rev., ln

The history of the Tenth Amendment is an appropriate starting point in the development of substantive federalism. For a long period of time, the Tenth Amendment operated as nothing more than a plain statement of the obvious that afforded little protection to the states. 249 In the aftermath of Garcia, state sovereignty was left to the political processes. 250 Tenth Amendment power was reborn in New York v. United States when the Court held that Congress could not commandeer the states' legislative function. 251 This protection is decreed no matter how strong the federal interest in the legislation may be. 252 Protections over state sovereignty were expanded again in the 1996 Term when the Court invalidated certain portions of the Brady Act. 253 According to Printz, Congress cannot force the states' executive branches to enact federal regulatory programs regardless of the federal interest involved. 254 Whenever the structural framework of dual sovereignty is compromised, the Tenth Amendment steps in to prevent a usurpation of federalism. 255 Printz and New York held that Congress was incapable of commanding the states to take a course of action that it could not undertake directly. 256 But what happens if Congress breaches the Tenth Amendment through an Article I power like the Spending Clause? Do the Court's enunciated protections extend to Article I? These are the questions that the theory of substantive federalism answers. The restraint on Article I began, to large extent, in Garcia when Justice O'Connor predicted that the Commerce power would be affirmatively limited [\*191] by state autonomy. 257 The door was further opened in New York when the plenary nature of the Commerce Clause was labeled as "subversive" to the interests of state sovereignty. 258 United States v. Lopez put the first nail in the coffin when it struck down an exercise of the Commerce power as going so far as to approach a "police power of the sort retained by the States." 259 The Commerce Clause, in other words, authorizes control over interstate commerce, but does not authorize regulation of the states. 260 Seminole Tribe, however, lends the greatest support to the substantive federalism theory. The Eleventh Amendment -- a core guardian of state sovereign interests 261 -- withstands any attempt by Congress to pierce the shield of federalism with Article I. 262 Similar to the Tenth Amendment, the Eleventh Amendment once provided little protection to the states when Congress flexed its Article I muscle. 263 Along with the strengthening of the Eleventh Amendment, New York and Printz add to the growth of federalism and the devolution of unrestricted congressional power. The same 5-4 majority 264 has written the opinions in New York, Lopez, Seminole Tribe, and Printz, and it is only a matter of time before the rationale in Seminole Tribe is extended to the Tenth Amendment as a limit on the Spending Clause. 265 Substantive federalism presents the argument that the Tenth Amendment will be used in much the same manner as the Eleventh Amendment was used in Seminole Tribe. If a core principle of state sovereignty will be encroached upon by an Article I power, the Tenth Amendment prohibits the intrusion. 266 On the other side of the coin, Congress must look to the Tenth Amendment and ask whether its proposed legislation will impinge upon principles of federalism. If substantive federalism can operate to block congressional action under the Commerce Clause, then it can also curtail the Spending power. 267

## 1NC—states cp (generic)

Text: The fifty state governments and the territories should [do the plan] and and coordinate to create uniform implementation.

#### States can work together to create uniform transportation infrastructure

Ford, 1—Researcher for AASHTO and TRB, member of Oregon DOT

[Mark L. Ford “Managing Change in State Departments of Transportation” Scan 7 of 8 May 2001]

Regional and Multi-State Organizations- In some cases, the need for in-depth cooperation, coordination and communications among agencies in the planning and deployment of ITS solutions has led to the creation of new regional organizations. In some cases an existing agency may take on the role of a central agency with multiple partners. For example, in the New York-New Jersey-Connecticut area, TRANSCOM (Transportation Operations Coordinating Committee) was originally formed by 15 agencies of the tri-state area to coordinate construction and regional incident management. It later became the coordinating body for the region’s ITS activities, including leading the ITS model deployment initiative. In the case of the seven state E-Zpass Interagency Group, a new organization was created to implement a regional electronic toll collection system requiring a regional management structure. The organization now includes 16 East Coast toll agencies from West Virginia to New York. By allowing any valid transponder to be used for toll payment on any member agency’s facilities, the organization has dramatically improved customer service. The twelve-state I-95 Corridor Coalition is another example of a very effective partnership created to implement ITS solutions that cross state boundaries. Established in 1993, the Coalition has goals for developing trip planning, improving commercial vehicle productivity and safety, and promoting seamless toll collections. It is involved primarily in the identification and coordination of solutions implemented by state, regional and local government and toll authorities. The coalition is now formalized in TEA-21 legislation. While the coalition has a formal hierarchy and its own staff, it is still a voluntary association that depends on the active involvement of members for leadership and results. Accomplishments through this structure include an information sharing system that can coordinate incident response throughout the corridor and a coordinated traveler information system. The coalition is currently working toward a standard toll payment system that will bring more uniformity throughout the corridor. While this coalition did not employ formal partnering processes in its creation, it has a clear purpose, active champions in several states, and other common characteristics of successful partnerships.

## 1NC—HSR

Text: The fifty state governments and the territories should [do the plan] and and coordinate to create uniform implementation.

#### States best to solve for HSR

OPA, 3 (Office of Public Affairs – US Department of Transportation – FACT SHEET , The Passenger Rail Investment Reform Act of 2003 – http://www.dot.gov/affairs/Passenger%20Rail%20Fact%20Sheet.htm)

\* The Administration believes that states, not Amtrak, are best equipped to decide where rail service is important. States should be empowered to choose the rail service provider of their choice, whether it's Amtrak, a private company or a public transit agency. Following a transition, the Administration's proposal would allow states to submit proposals for passenger rail capital investment to the U.S. Department of Transportation, as they have successfully done for highway and transit capital investments. \* Amtrak would transition into three companies: \* A private passenger rail company that would operate trains under contract to states and multi-state compacts - just as the current Amtrak operates trains under contract to commuter rail agencies; \* A private rail infrastructure company that would maintain and operate the infrastructure on the Northeast Corridor under contract to a multi-state Northeast Corridor Compact. Title to Amtrak's current tracks, stations and other infrastructure on the Northeast Corridor will be held by the federal government and leased to the Northeast Corridor Compact; and \* The National Passenger Rail Corporation, which would continue as a government corporation that would retain Amtrak's current right to use the tracks of the freight railroads, and the Amtrak corporate name. Both the track-access rights and the Amtrak brand would be provided under contract to states and multi-state compacts for qualifying passenger rail service they sponsor. \* Separating train operations and infrastructure ownership is not a new concept. Train operations and infrastructure ownership have for decades been split in the United States. Amtrak operates trains over more than 22,000 miles of track in the United States, but owns only 730 miles of track (mostly on the Northeast Corridor between Washington, D.C. and Boston, and in Michigan). All other tracks are owned either by freight railroads or by the states. \* Multi-state compacts are not new. Multi-state coalitions are already operating intercity rail services, and some are planning for future high-speed rail operations. The Administration believes these cooperative partnerships between the states, the federal government and freight railroads, will improve the efficiency of intercity passenger rail service as a viable alternative to air and highway travel in some corridors.

## 1NC—federal action fails

#### 1. Federal action fails—inefficient use of funds

Roth, 10—a civil engineer and transportation economist. He is currently a research fellow at the Independent Institute. During his 20 years with the World Bank, he was involved with transportation projects on five continents (Gabriel, http://www.downsizinggovernment.org/transportation/highway-funding)

Today, gasoline taxes and other revenues flowing into the FHTF total about $36 billion annually. Congress spends the money on highways and many other activities, often inefficiently. The following sections discuss six disadvantages of federal highway financing, and thus indicate the advantages of devolving highway financing to the states and private sector.

1. Funds Used Inefficiently and Diverted to Lower-Priority Projects

Federal aid typically covers between 75 and 90 percent of the costs of federally supported highway projects. Because states spend only a small fraction of their own resources on these projects, state officials have less incentive to use funds efficiently and to fund only high-priority investments. Boston's Central Artery and Tunnel project (the "Big Dig"), for example, suffered from poor management and huge cost overruns.[21](http://www.downsizinggovernment.org/transportation/highway-funding" \l "_edn21" \o ") Federal taxpayers paid for more than half of the project's total costs, which soared from about $3 billion to about $15 billion.[22](http://www.downsizinggovernment.org/transportation/highway-funding" \l "_edn22" \o ") Federal politicians often direct funds to projects in their states that are low priorities for the nation as a whole. The Speaker of the House of Representatives in the 1980s, "Tip" O'Neill, represented a Boston district and led the push for federal funding of the Big Dig. More recently, Representative Don Young of Alaska led the drive to finance that state's infamous "Bridge to Nowhere," discussed below. The inefficient political allocation of federal dollars can be seen in the rise of "earmarking" in transportation bills. This practice involves members of Congress slipping in funding for particular projects requested by special interest groups in their districts. In 1982, the prohibition on earmarks in highway bills in effect since 1914 was broken by the funding of 10 earmarks costing $362 million. In 1987, President Ronald Reagan vetoed a highway bill partly because it contained 121 earmarks, and Congress overrode his veto.[23](http://www.downsizinggovernment.org/transportation/highway-funding" \l "_edn23" \o ") Since then, transportation earmarking has grown by leaps and bounds. The 1991 transportation authorization bill (ISTEA) had 538 highway earmarks, the 1998 bill (TEA-21) had 1,850 highway earmarks, and the 2005 bill (SAFETEA-LU) had 5,634 highway earmarks.[24](http://www.downsizinggovernment.org/transportation/highway-funding" \l "_edn24" \o ") The earmarked projects in the 2005 bill cost $22 billion, thus indicating that earmarks are consuming a substantial portion of federal highway funding. The problem with earmarks was driven home by an Alaska bridge project in 2005. Rep. Don Young of Alaska slipped a $223 million earmark into a spending bill for a bridge from Ketchikan—with a population of 8,900—to the Island of Gravina—with a population of 50. The project was dubbed the "Bridge to Nowhere" and created an uproar because it was clearly a low priority project that made no economic sense.

#### 2. Turns the economy—drives up costs because federal standards are too stringent—highways prove

Roth, 10—a civil engineer and transportation economist. He is currently a research fellow at the Independent Institute. During his 20 years with the World Bank, he was involved with transportation projects on five continents (Gabriel, http://www.downsizinggovernment.org/transportation/highway-funding)

3. Federal Intervention Increases Highway Costs

The flow of federal funding to the states for highways comes part-in-parcel with top-down regulations. The growing mass of federal regulations makes highway building more expensive in numerous ways. First, federal specifications for road construction standards can be more demanding than state standards. But one-size-fits-all federal rules may ignore unique features of the states and not allow state officials to make efficient trade-offs on highway design. A second problem is that federal grants usually come with an array of extraneous federal regulations that increase costs. Highway grants, for example, come with Davis-Bacon rules and Buy America provisions, which raise highway costs substantially. Davis-Bacon rules require that workers on federally funded projects be paid "prevailing wages" in an area, which typically means higher union wages. Davis-Bacon rules increase the costs of federally funded projects by an average of about 10 percent, which wastes billions of dollars per year.[27](http://www.downsizinggovernment.org/transportation/highway-funding" \l "_edn27" \o ") Ralph Stanley, the entrepreneur who created the private Dulles Greenway toll highway in Virginia, estimated that federal regulations increase highway construction costs by about 20 percent.[28](http://www.downsizinggovernment.org/transportation/highway-funding" \l "_edn28" \o ") Robert Farris, who was commissioner of the Tennessee Department of Transportation and also head of the Federal Highway Administration, suggested that federal regulations increase costs by 30 percent.[29](http://www.downsizinggovernment.org/transportation/highway-funding" \l "_edn29" \o ") Finally, federal intervention adds substantial administrative costs to highway building. Planning for federally financed highways requires the detailed involvement of both federal and state governments. By dividing responsibility for projects, this split system encourages waste at both levels of government. Total federal, state, and local expenditures on highway "administration and research" when the highway trust fund was established in 1956 were 6.8 percent of construction costs. By 2002, these costs had risen to 17 percent of expenditures.[30](http://www.downsizinggovernment.org/transportation/highway-funding" \l "_edn30" \o ") The rise in federal intervention appears to have pushed up these expenditures substantially.

# \*\*\*2NC Blocks

## 2NC—states solve

#### Federal government does not hold any responsibility that the state governments couldn’t handle themselves

Brown, 3—Ph.D. in urban planning, University of California at Los Angeles

(Jeffrey Richard Brown “The Numbers Game: The Politics of the Federal Surface Transportation Program” 2003)

We might as well abolish the federal program entirely, as a few advocates for devolution have been demanding (Poole 1996). If all the federal government does is collect money and then return it where it is collected what purpose does a federal transportation program serve? Perhaps it guarantees certain standards of system design, but these could also be handled cooperatively through organizations such as AASHTO. Or, perhaps it guarantees certain minimum standards of personal behavior (blood alcohol levels, minimum drinking ages, speed limits, seat belt laws, etc), but these are not quite the purposes it was originally intended to serve.

#### Interstate compacts occur all the time

Mountjoy 4 (John J., Director of National Center for Interstate Compacts and Associate Director for National Policy Coordination, The Council of State Governments, “Solutions for States: Interstate Compacts as a Tool,” http://www.csg.org/programs/ncic/documents/SolutionsForStates.pdf)

Interstate compacts are contracts between states and carry with them the force and effect of statutory law. While most interstate compacts are rudimentary in function (regulating boundaries and water rights) and have signatories numbering below fifteen, several interstate compacts maintain membership of all 50 states (or close to it) and have administrative/regulatory agencies that oversee the functionality of the compact between states. The Drivers’ License Compact and its American Association of Motor Vehicle Administrators regulate and allow states to recognize drivers’ licenses issued in other states. The Interstate Compact for Education and its Education Commission of the States maintain close cooperation and understanding among executive, legislative, professional, educational leadership on a nationwide basis at the State and local levels.

## 2NC—regional solvency

#### States can work together through compacts—HSR solves <card also in HSR solvency>

Puentes, 10 (Robert Puentes is a senior fellow with the Brookings Institution’s Metropolitan Policy Program where he also directs the Program's

Metropolitan Infrastructure Initiative. “Intermetropolitan Passenger Rail: Considerations for State Legislatures” – April 9 th – http://

www.brookings.edu/research/speeches/2010/04/09-rail-transportation-puentes)

The next point is that if a particular corridor extends beyond individual state borders, close coordination—both formal and informal—with your neighbors is essential. More than just backroom deals, these are lengthy relationships that bear real fruit in the form of finalized plans, environmental reviews, and dedicated shared funding agreements. This appeared to have been a significant advantage for those who received ARRA funding and a hindrance for those who did not as, by design, several of the award-winning corridors involved multi-state compacts. For example, the eight-state Midwest Regional Rail Initiative was established as far back as the mid-1990s. In consultation with the federal government, the states worked to develop a rail plan that was released in 1998 and updated in 2004. Last summer, the eight governors, along with the mayor of Chicago, signed a Memorandum of Understanding in anticipation of joint applications for ARRA funding that laid out plans for collective high-speed rail priorities and planning. Partly as a result, the projects in and around the Chicago hub received nearly as much funding ($2.16 billion) as did California ($2.34 billion.) Similarly, the Virginia-North Carolina Interstate High-Speed Rail Commission, created in 2001, agreed to recommend to its respective parent legislatures the enactment of an interstate rail compact. Both state legislatures passed laws establishing the Compact in 2004. The North Carolina—Virginia corridor received a total of $620 million spread among three investments.

#### States can work together

Chi 90 (Keon S., Expert on Federalism and State Government, Council of State Governments National Center for State Governance Director, Former Government/Polisci Professor at Georgetown, “Resurgence of Multistate Regionalism,” Council of State Governments, July 1990 http://www.csg.org/programs/ncic/documents/ResurgenceofMultistateRegionalism-KeonChi-Spectrum-July1990.pdf)

States gain several advantages when taking a regional approach as compared to working alone. First, a regional approach allows state officials to pool their expertise and experience. Second, a regional approach raises policy issues more effectively and, as a result, has a greater impact. Third, such an approach helps states better deal with crisis situations by sharing resources and facilities. Fourth, a regional approach can exert more influence and enhance state visibility in Washington and overseas. And, fifth, it is cost effective.

#### Multistate partnerships solve

Miller 9 (John Miller is an American journalist and a former government official. He is the former Associate Deputy Director of National Intelligence for Analytic Transformation and Technology, <http://www.virginiadot.org/projects/vtransNew/resources/VTrans2035_Decisionmaking_FINAL.pdf>)

The idea of multi-state partnerships is not new and in fact has been suggested as an essential instrument for achieving a particular transportation goal. Roth and Aggarwala (2002) described the National Passenger Railroad Corporation’s rail service (Amtrak) from Boston to Washington, D.C., as a “regional” asset managed at the national level. Since the authors believed that national funding was unlikely to be sufficient, they advocated the formation of a multi-state partnership to support Amtrak. Such multi-state areas have also been described as a “megaregion,” which Amekudzi et al. (2007) define as “a contiguous area that comprises multiple major cities or megacities.” Figure 1 shows ten megaregions that have been identified in the U.S. Virginia is included within one such megaregion—the Northeast megaregion, which captures between 28% and 65% of Virginia’s population depending on whether the southern terminus is Northern Virginia, Richmond, or Hampton Roads.

## 2NC—transportation generic

#### States will be more accountable to their citizens

Miller, 9 (John Miller is an American journalist and a former government official. He is the former Associate Deputy Director of National Intelligence for Analytic Transformation and Technology, <http://www.virginiadot.org/projects/vtransNew/resources/VTrans2035_Decisionmaking_FINAL.pdf>)

Several articles have noted that greater local involvement can lead to local governments being more directly accountable to citizens. Examples include the use of “quick-take” condemnation authority which may be exercised by local governments (Seefeldt, 1987), the ability to protect local neighborhoods from the threat of through truck traffic (JLARC, 1992), and an ability for local staff to respond immediately to citizen complaints regarding a specific project (Whitley, 2006). A similar advantage has been noted when decentralizing decision authority within an organization. For example, a review of the Texas Department of Transportation noted that that providing substantial authority to district offices (rather than centralizing decisions at the headquarters level) enabled a sharp customer focus and allowed for “timely and least expensive access, contact with the public, and knowledge of local conditions.” (Rylander, 2001).

#### ISTEA proves transport costs can be reduced via devolution

Lewis & Williams 97 (David Lewis PH.D, President, Hicking Brond Economics, Fred Laurence Williams, United States Department of Transportation, http://scholar.googleusercontent.com/scholar?q= cache:45d8kDXOPVUJ:scholar.google.com/&hl=en&as\_sdt=0,11)

A model of devolution, ISTEA lowered barriers to allow local authorities to use transit funds for highways and vice versa, depending on local needs analysis. ISTEA gave Metropolitan planning agencies new authority to influence State transportation plans. ISTEA opened the metropolitan planning process to “new partners” in transportation, including grass-roots associations. Since enactment of Federal transit legislation in 1964, transit has been viewed narrowly as a failing industry overtaken by economic and demographic forces. In the prevailing mood, reinforced after 1981 with no net growth in financial support, transit was considered to have little influence on traffic congestion in its immediate environs. With explosive growth in suburban residence and jobs, transit was considered a follower of land use trends, and hardly a force capable of exerting influence on land use patterns. The mobility transit afforded disadvantaged groups was considered an “inferior good” that would be abandoned as soon as people could afford a car. The only goal that seemed to have merit was to control transit operating costs.4

#### States work together on project development and delivery

Ford, 1— Researcher for AASHTO and TRB, member of Oregon DOT

[Mark L. Ford “Managing Change in State Departments of Transportation” Scan 7 of 8 May 2001]

A wide variety of partnerships between state departments of transportation (DOTs) and other state, local and federal agencies and stakeholders are helping to transform the way DOTs do business. Partnering approaches are being used to improve project and program delivery in a variety of areas from environmental streamlining to road maintenance, ITS deployment and planning. DOTs are finding that partnering can solve problems, increase efficiency and implement programs that cross agency or jurisdictional lines. The range of public sector partnering relationships is shown in Table 1. Public-public partnerships formed by DOTs tend to fall into four categories: (1) project development, (2) program delivery, (3) planning and activities arising out of the planning process, and (4) other long-term relationship building

## 2NC—spurs fed action

#### State action spurs federal adoption

Halberstam and Hills, 1- \*assistant professor law at the University of Michigan Law School specializing in U.S. constitutional law and \*\*professor of law at the University of Michigan Law School, specializing in U.S. constitutional law, local government law, the law of federalism and intergovernmental relations

(Daniel Halberstam and Roderick M. Hills, Jr., The American Academy of Political and Social Science, “State Autonomy in Germany and the United States,” 03-2001, Leixs-Nexis Academic)

The states may exploit this power to initiate programs as a practical means to counteract Congress's constitutional authority to federalize policy areas. For example, before Congress generates enough political will to legislate in any given area, states may step into the field with their own policy proposals. One result is that state policy initiatives may be quite influential in the federal lawmaking process by providing the initial impetus and sometimes even blueprint for federal action (Elliot, Ackerman, and Millian 1985). To bypass or overrule the states, not only must Congress often demonstrate that its proposed regulatory scheme is politically desirable, but it must do so by arguing specifically against the continued existence of active state regulation.

#### States can pressure the federal government to adopt the plan later

Gabrielidis, 6 - Assistant Public Defender, Las Cruces, New Mexico; LL.M., Center for Civil and Human Rights, Notre Dame Law School 2006 (Anna Maria Gabrielidis, Buffalo Human Rights Law Review “HUMAN RIGHTS BEGIN AT HOME: A POLICY ANALYSIS OF LITIGATING INTERNATIONAL HUMAN RIGHTS IN U.S. STATE COURT” Lexis.) Note: IHRL = International Human Rights Law

Although the appellate court's decision did not mention IHRL, New Mexicans for Free Enterprise provided perfect fodder for arguments for state courts to accept the relevance of IHRL provisions such as ICESCR Article 7 recognizing the right to fair wages and a decedent living. Proponents of a living wage hope that raising minimum wages in cities and states will pressure the federal government to take action. This strategy is not new. Harvard Professor Richard Freeman explains that "a lot of the New Deal legislation, good or bad, came about because there was a lot of state legislation,"n315 and that the "things that work the best might be adopted nationally." n316 Under this rubric, state courts upholding IHRL might pressure the federal government to ratify and implement international human rights treaties.

#### State governments have to be responsive to their constituencies—spurring better actior—federal government will follow

Peterson, 96— Henry Shattuck Professor of Government and Director, Center for American Political Studies, Department of Government, Harvard University (Paul E. Peterson, Yale Journal on Regulation, “Devolution’s Price,” Lexis-Nexis Academic)

II. ECONOMIC DEVELOPMENT

State and local governments are efficient mechanisms for supplying most of the physical and social infrastructure needed for economic development. In providing roads, schools, sanitation systems, and public safety to their residents, state and local governments must be sensitive to local businesses and residents. If they ignore their constituencies, people will vote with their feet and move to another town. Since seventeen percent of the population changes residence each year, the effects of locational choices on property values can be quickly felt. Moreover, if a state or community makes a poor policy choice, its failure will soon become apparent and other communities will learn from the mistake. If it chooses wisely, its policy will be copied--and thus be disseminated throughout the federal system.

## 2NC—spurs private investment

#### States solve transportation—government agencies have the capabilities to outsource to private companies to ensure completion

Freemark, 12 (Yonah, founder and writer of The Transport Politic, currently completing Joint Master in City Planning and Master of Science in Transportation at MIT, “Clearing it Up on Federal Transportation Expenditures”,http://yonahfreemark.tumblr.com/post/12590739684/education-massachusetts-institute-of-techology)

An alternative is to devolve the provision of infrastructure to entities specifically created for the task. The options available – agencies; fully or partially state-owned companies; private, not-for-profit entities; privatisation – involve varying degrees of independence from the political process in decision-making. Unlike PPPs, devolution models do not involve the sharing of risks or contractual arrangements. The primary benefit of such models – in comparison with direct provision by government ministries – is that they create entities that specialise in the provision of infrastructure. This means that decision-making is not influenced by unrelated priorities and issues, and there is less room for political interference in day-to-day operational decisions. These organisations can employ private sector management structures, and are often highly dependent on user fees and on public borrowing. In cases where entities are not exposed to competition or pressure from shareholders, their overall drive for efficiency is likely to be limited Such devolution is widely applied for surface transport infrastructure. Many countries have placed their roads under agencies, or motorway networks under state-owned companies. Rail infrastructure in OECD countries is typically managed by independent bodies, including state companies and outright privatisation. Often, these entities outsource a high degree of their activities to private contractors. Some agencies and state-owned companies also represent the public partner in PPP arrangements.

#### federal action utterly fails to take into account local transportation complexities—privatization is key

Stanley, 8 (Samuel R Stanley, The Future Federal Role or Surface Transportation, [http://reason.org/files/samuel\_staley\_surface\_transportation\_testimony.pdf)](http://reason.org/files/samuel_staley_surface_transportation_testimony.pdf)

The Changing Federal Role in Transportation Policy. The funding challenges and changes to our urban economies have profound implications for the federal role in transportation policy. I believe four issues rank paramount as we move forward. 1. A national, coordinated plan for transportation is not feasible or workable. Unlike the immediate post-World War II period, a clear national vision for a national network of highways and interstates is no longer possible. The Interstate Highway System had a clear vision—link the nation’s major urban centers. Our economy is far too complex for such a simple vision to work any longer. Traffic congestion is largely a local and regional phenomenon, and local policy strategies will have to be tailored to local needs and concerns. The federal government is simply not suited to determining where a new regional beltway should be located, or which intersections should be upgraded, or even what mass transit technologies will best meet the needs of local travelers. 2. Road pricing will play a crucial role in managing and financing urban transportation networks efficiently. Simply widening roads and laying more asphalt will not solve congestion problems or improve traffic circulation effectively. The right capacity will have to be put in the right place at the right time using the right technology. This will require harnessing the information generated by market-based mechanisms such as road pricing. Road pricing provides two essential functions for maintaining a well functioning and efficient transportation system: a. It creates a sustainable funding source by linking customers and their willingness to pay to the physical provision of facilities. The Indiana Tollroad lease agreement, for example, requires that the provider maintain specific levels of service to ensure free flow conditions and high levels of road maintenance. b. Pricing provides key information to road managers and drivers about the cost of using roads and other transportation facilities at particular times of the day according to the level of use. In short, road pricing allows us to manage our road networks and facilities more efficiently to optimize their use. Notably, the SR 91 Express Lanes in Orange County, California guarantee free flow (65 mph) speeds for all users and carry more than 40% of the corridor’s traffic despite providing just 33% of the physical road Staley/Federal Role in Transportation/p. 2 capacity. One lane on the express lanes carries nearly double the traffic of a regular lane, during the busiest rush hours. Pricing allows the toll road authority to achieve these performance levels. 3. Private capital will play an essential role in addressing our transportation network capacity problems in the future. The federal government should facilitate the use of private capital as a way to augment the resources of state and local governments looking for ways to upgrade their infrastructure. The Indiana Toll Road lease is again instructive. The State of Indiana faced a funding shortfall of nearly half of its 10 year transportation plan. The $3.8 billion in upfront revenue generated by the lease allowed it to fully fund its plan and ensure the highest priority projects would be finished on schedule. Pennsylvania has the same opportunity with a potential $12.8 billion upfront payment from the private sector for the lease of the Pennsylvania Turnpike. Of course, other nations, particularly Australia and France, have used public private partnerships to fully fund the construction, maintenance and operation of major infrastructure projects, particularly tunnels. Public private partnerships will be a critical ingredient of any state’s (or urban area’s) ability to meet its transportation needs in the 21st century. Private companies are successfully managing major road facilities worldwide. The longer the US delays the entry of experienced engineering and road management firms into domestic transportation markets, the more our competitive economic edge will soften and erode.

## ext. private sector solves transportation

#### Devolution is the first step to allowing the private sector to take on issues of transportation

MacKinnon, Shaw, and Docherty, 9 (Danny MacKinnon Department of Geographical and Earth Sciences, University of Glasgow, Department of Management, University of Glasgow, Glasgow G12 8QQ, Scotland, Centre for Sustainable Transport and School of Geography, University of Plymouth)

ii. Management improvements may accompany devolution There are various reasons to suppose that infrastructure management may be more effective under independent entities. SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS – 29 TRANSPORT INFRASTRUCTURE INVESTMENT: OPTIONS FOR EFFICIENCY – ISBN 978-92-821-0155-1 - © OECD/ITF, 2008 To begin with, greater independence is usually accompanied by increased de-politicisation of operational decision-making processes. Although elected officials should have a decisive influence over how much public money is spent in different sectors of the economy, their input into the planning process should first and foremost be in terms of high-level priority setting. Project planning should, in turn, be based on expert advice regarding the relative efficiencies of the different options to deliver the objectives established at the political level. More operational decisions – such as how works are executed, and by whom – should be taken at an entirely non-political level. Secondly, if an independent entity does not have to rely on the government’s annual budgeting process, it is in a position to take a longer-term, strategic approach to the management of assets. This independence may come in several forms and various degrees. With the exception of the government agency, all of the models of devolution can borrow from private sources, which can impose additional discipline based on the need to retain a high credit rating, at least as long as the government does not underwrite their debt. Where independent entities are financed by tolls or earmarked charges and taxes, and not totally dependent on public-sector financing, they can take a longer-term perspective on investment than would be possible under government budgeting rules. Independent entities should also be free from some of the more bureaucratic aspects of public sector decision-making and management.

## ext. private sector solves hydrogen

#### Private companies can do the aff—california proves

Yvkoff, 12 (Liane Yvkoff, 3/14/12, Cnet, "hydrogen fueling stations - they're coming," <http://reviews.cnet.com/8301-13746_7-57398216-48/hydrogen-fueling-stations-theyre-coming/>)

Two key players in the hydrogen manufacturing arena will be working together to make hydrogen fueling stations a reality for the fuel cell vehicles that should be coming to market in the second half of this decade. Air Products and Fuel Cell Energy have signed a Memorandum of Understanding to market stationary Direct Fuel Cell (DFC) power plants. These systems, manufactured by Fuel Cell Energy, are designed to take natural gas or renewable biogas and produce hydrogen, electricity, and heat. The three energy byproducts can be used to power and heat the production facility or nearby homes or businesses while creating hydrogen fuel for industrial fleet or consumer vehicle use. The companies are already working together to operate a pilot facility near Los Angeles, Calif. Using captured methane generated by sewage waiting for processing at the an Orange County Sanitation District wastewater treatment facility, the DFC power plant produces hydrogen for a nearby fueling station operated by Air Products. The agreement formalizes their effort to develop a market for this clean energy solution with a low carbon footprint.

## ext. spurs private action

#### States can look toward the private sector when finances are tight

Dannin, 11—Fannie Weiss Distinguished Faculty Scholar and Professor of Law, Penn State Dickinson School of Law (Ellen, “Crumbling Infrastructure, Crumbling Democracy: Infrastructure Privatization Contracts and Their Effects on State and Local Governance,” Northwestern Journal of Law and Social Policy, Winter 2011, 6 Nw. J. L. & Soc. Pol'y 47, Lexis)

III. THE PUBLIC INTEREST

A. Who Pays, How, and Why?

For many state and local governments that feel pinched financially, privatization seems to be the only way to provide basic services and infrastructure while not raising taxes. At the September 25, 2010 American Road and Transportation Builders Association conference, aides from both political parties "acknowledged that, by necessity, such public-private deals will play a part in future funding, especially in light of the congressional reluctance to increase the gas tax that is the main source of federal transportation revenue." n116 Kathy Dedrick, senior director for Barbara Boxer (D-Cal.), Chairman of the Senate Environment and Public Works Committee "said both partnerships and tolling will be one part of many in the Senate bill." n117

One government official explained the Commonwealth of Virginia's decision to enter into a highway privatization agreement this way:

"Is this the ideal way to build public infrastructure? No," said Gerald E. Connolly (D), chairman of the Fairfax County Board of Supervisors. But he said that voters have turned down tax increases and that the General Assembly has failed to come up with additional money.

"At some point, we have to find a way to fund public infrastructure," Connolly said. n118

The consensus seems to be that there are few alternatives to privatization. "For state and municipal governments strapped for cash to complete much-needed infrastructure construction and maintenance, public-private partnerships (P3s)--where [\*74] authorities lease infrastructure assets to private parties, which then operate and design them--are becoming more attractive." n119

## privatization solvency

#### Subsidies prevent privatization

Roth, 10—a civil engineer and transportation economist. He is currently a research fellow at the Independent Institute. During his 20 years with the World Bank, he was involved with transportation projects on five continents (Gabriel, http://www.downsizinggovernment.org/transportation/highway-funding)

5. Private Solutions Are Discouraged

By subsidizing the states to provide seemingly "free" highways, federal financing discourages the construction and operation of privately financed highways. A key problem is that users of private highways are forced to pay both the tolls for those private facilities and the fuel taxes that support the government highways. Another problem is that private highway companies have to pay taxes, including property taxes and income taxes, while government agencies do not. Furthermore, private highways face higher borrowing costs because they must issue taxable bonds, whereas public agencies can issue tax-exempt bonds. The Dulles Greenway is a privately financed and operated highway in Northern Virginia, which cost investors about $350 million to build.[37](http://www.downsizinggovernment.org/transportation/highway-funding" \l "_edn37" \o ") The Greenway must compete against nearby "free" state highways. It has been tough going, but the Greenway has survived for 15 years. Typical users of the Greenway pay 36 cents in federal and state gasoline taxes per gallon to support the government highways, plus they pay Greenway tolls, which range from $2.25 to $4.15 per trip for automobiles using electronic tolling.[38](http://www.downsizinggovernment.org/transportation/highway-funding" \l "_edn38" \o ") If the Greenway and other private highways were credited the amounts paid into state and federal highway funds, their tolls could be lowered and more traffic would be attracted to them. That would make better use of private capacity as it could develop in coming years and relieve congestion on other roads. Unfortunately, the proposed version of new highway legislation by the chairman of the House Committee on Transportation and Infrastructure would add new federal regulatory barriers to toll roads in the states.[39](http://www.downsizinggovernment.org/transportation/highway-funding" \l "_edn39" \o ") Section 1204 of the bill would create a federal "Office of Public Benefit" to ensure "protection of the public interest in relation to highway toll projects and public-private partnership agreements on federal-aid highways." This new office would be tasked with reviewing and approving or disapproving proposed toll rate increases on these projects, among other interventionist activities. This would completely flip around the idea of road tolling as a decentralized market-based mechanism and turn it into a central planning mechanism.

## solves intl agreements

#### states can mobilize federal action to adopt international agreements

Robinson, 7 - Yale Law School, J.D. 2006. Currently Fox Fellow at Jawaharlal Nehru University, New Delhi (Nick Robinson 2007 Akron Law Review “Citizens Not Subjects: U.S. Foreign Relations Law and the Decentralization of Foreign Policy” Lexis)

States have also urged the United States to sign and ratify international agreements. For example, several state governments have passed resolutions in support of the Convention on the Elimination of Discrimination Against Women (CEDAW). n324

Often state and local action arises out of dissatisfaction with the perceived inadequacy or incorrectness of a federal policy towards a foreign policy issue. Catherine Powell calls the impact of state and local [\*710] laws on national foreign policy "dialogic federalism." n325 She argues that enough local ordinances can create a norm cascade that affects federal policy. n326 The U.S. federal sanctions against South Africa passed by Congress over President Reagan's veto in 1986 were arguably in part a result of just such a norm cascade created by anti-apartheid resolutions and laws at the state and local level. n327

In many ways, it is the mobilization of citizens around, more than the passage of a resolution or act on a foreign policy issue that leads to a norm cascade which changes federal policy. The effort required to convince legislators and their fellow citizens to support a locality's official action gives citizens a tangible and reachable local goal to focus their efforts on. This helps organize constituencies locally that can develop into a national coalition. For example, someone who has worked continuously to garner support for a local divestment initiative on Sudan is also more likely to call their Congressperson to urge them to pass the Darfur Accountability Act.

Norm cascades created by localities' actions do not only impact the policy they are directed at, but have a wider impact as well. For instance, the South Africa or Sudan divestment campaigns can be seen as national human rights moments. These are moments in which a segment of the American public becomes unusually organized to promote a human rights-based foreign policy goal. Most voters remain generally unaware of how U.S. foreign policy implicates human rights in other countries. Further, most voters do not base their vote on foreign policy human rights issues. The signal given by these human rights moments, however, creates an environment in which sympathetic legislators and policymakers can prioritize human rights concerns in other areas of foreign policy, knowing there is a constituency that generally supports this type of action.

## solves highways

#### states key to highways

Roth, 10—a civil engineer and transportation economist. He is currently a research fellow at the Independent Institute. During his 20 years with the World Bank, he was involved with transportation projects on five continents (Gabriel, http://www.downsizinggovernment.org/transportation/highway-funding)

[Conclusions](http://www.downsizinggovernment.org/transportation/highway-funding#top) Americans are frustrated by rising traffic congestion. In the period 1980 to 2008, the vehicle-miles driven in the nation increased 96 percent, but the lane-miles of public roads increased only 7.5 percent. The problem is that U.S. road systems are run by governments, which do not respond to the wishes of road users but to the preferences of politicians. Transportation markets need to be liberated from government control so that road users can directly finance the needed highway improvements that they are prepared to pay for. We need to recognize "road space" as a scarce resource and allow road owners to increase supply and charge market prices for it. We should allow the revenues to stimulate investment in new capacity and in technologies to reduce congestion. If the market is allowed to work, profits will attract investors willing to spend their own money to expand the road system in response to the wishes of consumers. To make progress toward a market-based highway system, we should first end the federal role in highway financing. In his 1982 State of the Union address, President Reagan proposed that all federal highway and transit programs, except the interstate highway system, be "turned back" to the states and the related federal gasoline taxes ended. Similar efforts to phase out federal financing of state roads were introduced in 1996 by Sen. Connie Mack (R-FL) and Rep. John Kasich (R-OH). Sen. James Inhofe (R-OK) introduced a similar bill in 2002, and Rep. Scott Garrett (R-NJ) and Rep. Jeff Flake (R-AZ) have each proposed bills to allow states to fully or partly opt out of federal highway financing.[47](http://www.downsizinggovernment.org/transportation/highway-funding#_edn47) Such reforms would give states the freedom to innovate with toll roads, electronic road-pricing technologies, and private highway investment. Unfortunately, these reforms have so far received little action in Congress. But there is a growing acceptance of innovative financing and management of highways in many states. With the devolution of highway financing and control to the states, successful innovations in one state would be copied in other states. And without federal subsidies, state governments would have stronger incentives to ensure that funds were spent efficiently. An additional advantage is that highway financing would be more transparent without the complex federal trust fund. Citizens could better understand how their transportation dollars were being spent. The time is ripe for repeal of the current central planning approach to highway financing. Given more autonomy, state governments and the private sector would have the power and flexibility to meet the huge challenges ahead that America faces in highway infrastructure.

#### Federal government fails at providing funds for helping highways—states key

Kilcarr, 12—Senior editor at Fleet Owner citing Marc Scriber: land-use and transportation policy analyst with the Competitive Enterprise Institute (CEI) (Sean Kilcarr “Marking the ‘devolution’ of highway funding” May 16 2012 http://fleetowner.com/regulations/marking-devolution-highway-funding)

Scriber said the members of the policy panel – Adrian Moore, Ph.D.,vp-policy with the Reason Foundation; Gabriel Roth, research fellow at the Independent Institute; and Randall O’Toole, senior fellow with the Cato Institute – largely agreed that the federal government should remove itself from the highway funding process and let states take over. “It’s inherently more efficient for the states to handle this rather than add in the extra step of the federal government collecting and then redistributing fuel taxes,” Scriber pointed out. “Also note that Congress has not increased federal fuel excise tax rates since 1993. Since then, inflation has eroded the buying power of those tax dollars by more than one-third. This has pushed the HTF to the brink of insolvency, yet none of the proposals pending before Congress address this imminent threat to our nation’s surface transportation infrastructure.” He stressed, too, that as fuel taxes are not providing the necessary funds, new methods must be examined – especially in terms of mileage-use fees. Implementing some sort of mileage-use and time-of-travel fee structure will help address traffic congestion as well, which has significant ramifications for the freight industry, Scriber said.

## solves hsr

#### Interstate compacts solve

Utah Foundation 10—The Utah Foundation is a private, non-profit public service agency established to study state and local government –“High-Speed Rail Around

the World: A Survey and Comparison of Existing Systems” – Report Number 694, August 2010 – http://utahfoundation.org/img/pdfs/rr694.pdf

Ad hoc arrangements of states working together to build, fund and govern inter-state HSR are a possibility, assuming the states have the collective capital necessary to secure financing and the collective will to create inter-state compacts that regulate HSR and create governance structures that serve the interests of all those involved. If state transit authorities were able to get the funding necessary, they could effectively act as the national railway companies do in the cases of Eurostar and Thalys, with stakes in the ownership and governance of the system. Arrangements like this would also not preclude the ability to receive any federal funds that are directed towards HSR. In deed, among those HSR projects that have secured funding in the U.S., a few are such inter-state arrangements. In this way, coalitions of states could overcome some of the limitations of having a less-centralized national government compared to other HSR countries.

#### States solve best—the Midwest is already working together and funds have been allocated

E.N.S. 9 (Environmental News Service, “Midwest Governors Coordinate to Seek High Speed Rail Funding,” July 27, http://www.ens-newswire.com/ens/ jul2009/2009-07-27-095.html)

At the Midwest High Speed Rail Summit today in Chicago, an agreement was struck between eight states to work cooperatively to achieve Recovery Act funding to develop the Chicago Hub High Speed Rail Corridor - also called the Midwest corridor. Midwest governors and rail executives were hosted by Illinois Governor Pat Quinn, U.S. Senator Dick Durbin of Illinois and Chicago Mayor Richard Daley. "We are stronger working as a region than we are individually, and I want to thank the other Midwest governors for their cooperation and commitment," said Governor Quinn. "We are determined to take full advantage of federal recovery funds and bring high speed rail to Illinois and the Midwest. Today's agreement will help make our vision a reality." The governors envision a nationwide network including a Chicago hub that would connect trains traveling up to 110 miles per hour serving cities across the region, along with connections to adjoining regional corridors. This plan reflects the proposals advanced earlier this year by President Barack Obama and U.S. Transportation Secretary Ray LaHood. Under the Recovery Act, President Obama has made $8 billion available nationwide for high speed passenger rail, the largest investment that the federal government has made in over a decade. Five governors attended the summit - Iowa Governor Chet Culver; Wisconsin Governor Jim Doyle; Michigan Governor Jennifer Granholm and Ohio Governor Ted Strickland, as well as Illinois Governor Quinn. Eight Midwest states signed the Memorandum of Understanding including Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin. The agreement signed today establishes a Midwest steering group to provide a single voice in support of the region's collective high speed rail priorities. The steering group will coordinate each state's individual applications and advocacy to the Federal Railroad Administration for Recovery Act funding.

#### Funds have already been allocated for regional HSR

Puentes, 10 (Robert Puentes is a senior fellow with the Brookings Institution’s Metropolitan Policy Program where he also directs the Program's

Metropolitan Infrastructure Initiative. “Intermetropolitan Passenger Rail: Considerations for State Legislatures” – April 9 th – http://

www.brookings.edu/research/speeches/2010/04/09-rail-transportation-puentes)

The next point is that if a particular corridor extends beyond individual state borders, close coordination—both formal and informal—with your neighbors is essential. More than just backroom deals, these are lengthy relationships that bear real fruit in the form of finalized plans, environmental reviews, and dedicated shared funding agreements. This appeared to have been a significant advantage for those who received ARRA funding and a hindrance for those who did not as, by design, several of the award-winning corridors involved multi-state compacts. For example, the eight-state Midwest Regional Rail Initiative was established as far back as the mid-1990s. In consultation with the federal government, the states worked to develop a rail plan that was released in 1998 and updated in 2004. Last summer, the eight governors, along with the mayor of Chicago, signed a Memorandum of Understanding in anticipation of joint applications for ARRA funding that laid out plans for collective high-speed rail priorities and planning. Partly as a result, the projects in and around the Chicago hub received nearly as much funding ($2.16 billion) as did California ($2.34 billion.) Similarly, the Virginia-North Carolina Interstate High-Speed Rail Commission, created in 2001, agreed to recommend to its respective parent legislatures the enactment of an interstate rail compact. Both state legislatures passed laws establishing the Compact in 2004. The North Carolina—Virginia corridor received a total of $620 million spread among three investments.

#### States solve best—devolution is key to overcome bad federal restrictions to complete a HSR

Edwards and DeHaven, 10—a budget analyst on federal and state budget issues for the Cato Institute (Chris and Tad, <http://www.cato.org/publications/commentary/privatize-transportation-spending>)

After the 2008 election, President Obama promised to "go through our federal budget — page by page, line by line — eliminating those programs we don't need." We haven't seen much of that from the president so far, but at the Cato Institute we are going page by page and finding whole agencies to abolish. If the president ever gets serious about eliminating programs, the $91 billion Department of Transportation would be a good place to start. The DOT should be radically chopped. America's mobile citizens would be better off for it. 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. [Chris Edwards](http://www.cato.org/people/chris-edwards) and [Tad DeHaven](http://www.cato.org/people/tad-dehaven) are budget experts at the Cato Institute. [More by Chris Edwards](http://www.cato.org/people/chris-edwards)[More by Tad DeHaven](http://www.cato.org/people/tad-dehaven) 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.

## solves atc

<insert states spurs privatization>

#### Devolution key to solve federal regulations on ATC

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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.

#### Privatization of atc is key

Poole and Bond, 1—1. Director of transportation policy and Searle Freedom Trust Transportation Fellow at Reason Foundation, advised the Ronald Reagan, the George H.W. Bush, the Clinton, and the George W. Bush administrations. 2. Administrator of the U.S. Federal Aviation Administration from 1977 to 1981

[Robert Poole, Langhorne Bond “The Crisis Behind Air Traffic Control” September 10, 2001]

The FAA's shortcomings have been well known for at least a decade. It is a government bureaucracy unable to respond nimbly to changing circumstances. It has little direct accountability, no hiring flexibility, and no ability to make costly, innovative and absolutely essential technological investments. In addition, it suffers from the political appointment mentality: The FAA administrator is appointed for an unbreakable five-year term and kept in the job regardless of performance -- a practice no other high-tech service business would tolerate. The solution is to create an independent, self-funded federal corporation, much as has been done in Canada, Great Britain, Germany, Switzerland, and Thailand. First, a caveat. The FAA is currently in two entirely separate businesses: air safety and air traffic control. The safety function -- regulating equipment, administering flying hours, investigating accidents -- is properly a government function and should remain so. It is complex, politically sensitive, and highly public. Like the safety regulation of food, drugs, automobiles, and cars, there is a strong moral case for government control of air safety. In spite of occasional bashing by the media, the FAA does a good job of regulating safety. It is the air traffic function that should be spun off into a separate, highly ­accountable nonprofit corporation. The FAA, like any government body, is by its nature poorly suited to run a high-tech service business - which is what ATC must become. This is not a radical idea. Not only have other countries already implemented it, it has also been recommended by blue-ribbon American commissions. At the start of his administration, President Clinton appointed a national commission, headed by former Virginia Gov. Gerald Baliles, to assess the situation. The Baliles Commission identified a fundamental mismatch between the need for a high-tech, 24-hour-a-day air traffic service business and the constraints of a tax-funded, civil-service bureaucracy. Accordingly, it called for shifting ATC from the FAA to an independent corporation. The corporation would be funded by user fees and controlled by a board that included representatives of the airlines, the airports, the controllers, private pilots, and the military. But, eight years after these recommendations were made, nothing has been done.

## solves streets

#### States can gain access to streets and land quicker than the federal government

Miller, 9 (John Miller is an American journalist and a former government official. He is the former Associate Deputy Director of National Intelligence for Analytic Transformation and Technology, <http://www.virginiadot.org/projects/vtransNew/resources/VTrans2035_Decisionmaking_FINAL.pdf>)

A second motivation for devolution appears to be the placement of operational decisions and transportation planning responsibilities within the same entity. For example, consider a locale that assumes construction, maintenance, and operational responsibilities for its secondary street system. This locale now has the authority to accept subdivision streets into its secondary system as well as grant access permits for those facilities. Because the same entity is now responsible for managing the costs of those facilities, the locale has an incentive to ensure that these local streets are built to high standards, are interconnected in such a way to minimize the impact on other secondary facilities, and have well managed access.

## solves hydrogen fuel stations

#### states can do the aff—california and Hawaii prove

Levine, 12 (Steve LeVine, 5/17/12, Slate, "giving hydrogen fuel-cell cars another chance," <http://www.slate.com/articles/technology/future_tense/2012/05/hydrogen_fuel_cell_vehicles_and_the_obama_administration_.single.html>)

Fuel-cell vehicles will start out not with mass deployment, but in targeted regions—especially islands. The first places in the United States will be Los Angeles and Hawaii, Freese thinks—Los Angeles because there are high population concentrations that can be served by just 50 or 55 refueling stations; Hawaii because driving patterns are predictable: along set coastal routes and around self-contained islands, so drivers can’t go too far afield and find themselves stranded without fuel. GM and the U.S. Army launched a test fleet of 16 hydrogen fuel-cell cars in Hawaii earlier this year. In California, the state government is already behind the allocation of funds for building hydrogen fueling stations. Twenty-six are either in place or funded. An industry-government collaboration called the California Fuel Cell Partnership has established equipment standards and permitting processes, and organized the training of emergency personnel in the case of an accident. In Hawaii, GM is teamed up with 13 companies, government agencies and university bodies in order to organize the rollout of infrastructure there.

#### California Fuel Cell Company already planning on building stations

CaFCP, 9 (California Fuel Cell Partnership, Partnership between car manufacturers and fueling station manufacturers in California, “Hydrogen Fuel Cell Vehicle and Station Deployment Plan: A Strategy for Meeting the Challenge Ahead

Action Plan”, February 2009, p3, <http://www.cafcp.org/sites/files/Action%20Plan%20FINAL.pdf> , AD)

Fuel cell vehicles and hydrogen stations are at the cusp of transition into the early commercial market. In 2000, the automakers and energy companies began small demonstration programs in California, New York, Michigan, Germany, Japan and Korea to prove out the vehicle and station technology. The demonstration programs have also revealed the technical and regulatory advances that must take place to transition to early market customers. The automakers are confident that they can build FCVs that meet customer demands for driving range, performance, durability and comfort and meet the nation’s need for a domestic fuel that is better for the environment. They believe that California is the best place to begin the transition to a commercial market. California must support this transition to meet the state’s target of reducing greenhouse gas emissions by 80% below 1990 levels. Hydrogen fuel cell vehicles are electric drive vehicles that produce zero tailpipe emissions and greenhouse gases. From well to wheels, a fuel cell vehicle using hydrogen produced from natural gas reduces GHGs by about half compared to a conventional vehicle. When the hydrogen is produced from renewable sources, the well-to-wheel GHGs are virtually zero. Major automakers plan to place fuel cell vehicles in early market areas in Southern and Northern California beginning in 2009. By 2017, nearly 50,000 California customers could be driving fuel cell vehicles. In a recent survey, automakers reported plans to deploy FCVs as illustrated in Table A. TABLE A: Fuel Cell Vehicle Deployment in California To date, 250 demonstration vehicles—passenger and transit buses—have been placed on California’s roads. They fuel at 26 hydrogen stations in the state. Most of these are small stations built to fuel a specific fleet of cars for a limited period. Only six of California’s current stations are useable by all the automaker’s FCVs. California will need 50-100 hydrogen stations in just eight years. To meet that demand, we must start now. The early commercial fuel cell vehicles and hydrogen stations must be placed together in a manner that makes efficient use of limited government and industry resources to support a nascent industry, but also places stations slightly ahead of vehicle rollouts. Communities must be prepared so that permitting becomes routine, and fuel providers must see a path to a viable business plan for investing in infrastructure and realizing a profit from selling hydrogen as a retail fuel. The California Fuel Cell Partnership’s strategy for a coordinated deployment specifies: 1. Developing early “hydrogen communities” for passenger vehicles with clusters of retail hydrogen stations in four Southern California communities: Santa Monica, Irvine, Torrance and Newport Beach, with additional stations to support the next identified communities and a network of connector stations 2. Expanding the transit program in the San Francisco Bay Area with new mixed-use stations that provide fuel for passenger vehicles and transit buses, as well as dedicated retail hydrogen stations for passenger vehicles.

# \*\*\*AT: aff answers

## at: permutation—do both

#### Federal and state governments cannot work together—leads to incredible inefficiencies—katrina proves

Nivola, 5—Senior Fellow, Governance Studies, The Brookings Institution (Pietro, “Why Federalism Matters,” BROOKINGS POLICY BRIEF SERIES | # 146, http://www3.brookings.edu/papers/2005/10governance\_nivola.aspx

Why the paternalists in Washington cannot resist dabbling in the quotidian tasks that need to be performed by state and local officials would require a lengthy treatise on bureaucratic behavior, congressional politics, and judicial activism. Suffice it to say that the propensity, whatever its source, poses at least two fundamental problems.

The first is that some state and local governments may become sloppier about fulfilling their basic obligations. The Hurricane Katrina debacle revealed how ill-prepared the city of New Orleans and the state of Louisiana were for a potent tropical storm that could inundate the region. There were multiple explanations for this error, but one may well have been habitual dependence of state and local officials on direction, and deliverance, by Uncle Sam. In Louisiana, a state that was receiving more federal aid than any other for Army Corps of Engineers projects, the expectation seemed to be that shoring up the local defenses against floods was chiefly the responsibility of Congress and the Corps, and that if the defenses failed, bureaucrats in the Federal Emergency Management Agency would instantly ride to the rescue. That assumption proved fatal. Relentlessly pressured to spend money on other local projects, and unable to plan centrally for every possible calamity that might occur somewhere in this huge country, the federal government botched its role in the Katrina crisis every step of the way—the flood prevention, the response, and the recovery. The local authorities in this tragedy should have known better, and taken greater precautions.

#### The federal governmental cannot handle planning state projects in light of other responsibilities

Nivola, 7—Vice president and Director of Governance Studies at the Brookings Institution (Pietro, “Rediscovering Federalism”, April, http://www3.brookings.edu/~/media/Files/rc/papers/2007/07governance\_nivola/07governance\_nivola.pdf

Whatever else it is supposed to do, a federal system of government should offer policy-makers a division of labor.1 Perhaps the first to fully appreciate that benefit was Alexis de Tocqueville. He admired the federated regime of the United States because, among other virtues, it enabled its central government to focus on primary public obligations (“a small number of objects,” he stressed, “sufficiently prominent to attract its attention”), leaving what he called society’s countless “secondary affairs” to lower levels of administration.2 Such a system, in other words, could help officials in Washington keep their priorities straight.

It is this potential advantage, above all others, that warrants renewed emphasis today. America’s national government has its hands full coping with its continental, indeed global, security responsibilities, and cannot keep expanding a domestic policy agenda that injudiciously dabbles in too many duties best consigned to local authorities. Indeed, in the habit of attempting to do a little of everything, rather than a few important things well, our overstretched government suffers a kind of attention deficit disorder. Although this state of overload and distraction obviously is not a cause of catastrophes such as the successful surprise attacks of September 11, 2001, the ferocity of the insurgency in Iraq, or the submersion of a historic American city inundated by a hurricane in 2005, it may render such tragedies harder to prevent or mitigate.

#### And, that’s key to prevent war

Lieber, 5—Prof. Gov and Int’l. Affairs @ Georgetown U. (Robert, “The American Era: Power and Strategy for the 21st Century”, p. 53-54)

Withdrawal from foreign commitments might seem to be a means of evading hostility toward the United States, but the consequences would almost certainly be harmful both to regional stability and to U.S. national interests. Although Europe would almost certainly not see the return to competitive balancing among regional powers (i.e., competition and even military rivalry between France and Germany) of the kind that some realist scholars of international relations have predicted," elsewhere the dangers could increase. In Asia, Japan, South Korea, and Taiwan would have strong motivation to acquire nuclear weapons – which they have the technological capacity to do quite quickly. Instability and regional competition could also escalate, not only between India and Pakistan, but also in Southeast Asia involving Vietnam, Thailand, Indonesia, and possibly the Philippines. Risks in the Middle East would be likely to increase, with regional competition among the major countries of the Gulf region (Iran, Saudi Arabia, and Iraq) as well as Egypt, Syria, and Israel. Major regional wars, eventually involving the use of weapons of mass destruction plus human suffering on a vast scale, floods of refugees, economic disruption, and risks to oil supplies are all readily conceivable. Based on past experience, the United States would almost certainly be drawn back into these areas, whether to defend friendly states, to cope with a humanitarian catastrophe, or to prevent a hostile power from dominating an entire region. Steven Peter Rosen has thus fit-tingly observed, "If the logic of American empire is unappealing, it is not at all clear that the alternatives are that much more attractive."2z Similarly, Niall Ferguson has added that those who dislike American predominance ought to bear in mind that the alternative may not be a world of competing great powers, but one with no hegemon at all. Ferguson's warning may be hyperbolic, but it hints at the perils that the absence of a dominant power, "apolarity," could bring "an anarchic new Dark Age of waning empires and religious fanaticism; of endemic plunder and pillage in the world's forgotten regions; of economic stagnation and civilization's retreat into a few fortified enclaves.

## ext. perm=distraction

#### Causes distractions

Nivola, 5 - Senior Fellow, Governance Studies, The Brookings Institution (Pietro, “Why Federalism Matters,” BROOKINGS POLICY BRIEF SERIES | # 146, http://www3.brookings.edu/papers/2005/10governance\_nivola.aspx

Apart from creating confusion and complacency in local communities, a second sort of disorder begot by a national government too immersed in their day-to-day minutia is that it may become less mindful of its own paramount priorities.

Consider an obvious one: the security threat presented by Islamic extremism. This should have been the U.S. government's first concern, starting from at least the early 1990s. The prelude to September 11, 2001 was eventful and ominous. Fanatics with ties to Osama bin Laden had bombed the World Trade Center in 1993. Muslim militants had tried to hijack an airliner and crash it into the Eiffel Tower in 1994. U.S. military barracks in Dhahran, Saudi Arabia, were blown up, killing nearly a score of American servicemen in 1996. Courtesy of Al Qaeda, truck bombings at the American embassies in Tanzania and Kenya in 1998 caused thousands of casualties. Al Qaeda operatives attacked the USS Cole in 2000.

And so it went, year after year. What is remarkable was not that the jihadists successfully struck the Twin Towers again in the fall of 2001 but that the United States and its allies threw no forceful counterpunches during the preceding decade, and that practically nothing was done to prepare the American people for the epic struggle they would have to wage. Instead, the Clinton administration and both parties in Congress mostly remained engrossed in domestic issues, no matter how picayune or petty. Neither of the presidential candidates in the 2000 election seemed attentive to the fact that the country and the world were menaced by terrorism. On the day of reckoning, when word reached President George W. Bush that United Airlines flight 175 had slammed into a New York skyscraper, he was busy visiting a second-grade classroom at an elementary school in Sarasota, Florida.

The government's missteps leading up to September 11th, in short, had to do with more than bureaucratic lapses of the kind identified in the 9/11 Commission's detailed litany. The failure was also rooted in a kind of systemic attention deficit disorder. Diverting too much time and energy to what de Tocqueville had termed "secondary affairs," the nation's public servants from top to bottom grew distracted and overextended.

To be sure, the past four years have brought some notable changes. Fortifying the nation's security and foreign policy, for instance, remains a problematic work in progress, but is at least no longer an item relegated to the hind sections of newspapers and presidential speeches. Nonetheless, distraction and overextension are old habits that the government in Washington hasn't kicked. Controversies of the most local, indeed sub-local, sort—like the case of Terri Schiavo—still make their way to the top, transfixing Congress and even the White House.

The sensible way to disencumber the federal government and sharpen its focus is to take federalism seriously—which is to say, desist from fussing with the management of local public schools, municipal staffing practices, sanitation standards, routine criminal justice, family end-of-life disputes, and countless other chores customarily in the ambit of state and local governance. Engineering such a disengagement on a full scale, however, implies reopening a large and unsettled debate: What are the proper spheres of national and local authority?

## at: links to politics

1. No link – Obama doesn’t have to take the blame or lobby for the plan to pass through congress.

2. **Comparative evidence – the counterplan avoids controversy– this also proves our counterplan is legitimate and has an advocate**

Etizen and Sage, 09- \*Professor Emeritus of Sociology at Colorado State University and \*\*Professor Emeritus of Sociology and Kinesiology at the University of Northern Colorado (D. Stanley Etizen and George H. Sage, Solutions to social problems: lessons from state and local governments, p.2-4)

These social problems have solutions, but the federal government rarely acts decisively to ameliorate them. Often there is gridlock in Washington, DC, as ideologues from the right and left refuse to work out compromise legislation ("partisanship-on-crack") (Grunwald, 2007). The role of government is at the heart of this ideological divide. Conservatives are hostile to the New Deal legacy of what they call "big government." They value individualism, freedom, and the market economy, believing fundamentally that government action interferes with each.

Conservatives see social problems as the consequence of bad people making bad decisions. Most significantly, conservatives seek to reduce taxes, which consequently reduces government. Progressives counter these ideas by arguing that a laissez-faire approach guarantees exaggerated inequality. Moreover, they aver that it is not bad people but social structural impediments that doom some to fail. Thus, progressive government policies such as a reliable safety net, reducing extreme income/wealth disparities, education for preschool and school children from high-risk situations, and stiffer laws and penalties for reducing the use of hydrocarbons are needed to attack social problems (Eitzen & Sage, 2007, pp. 219223). But these government programs are expensive, possibly requiring higher taxes to implement and sustain them.

Added to the ideological gridlock is the power of interest groups and their extraordinary lobbying efforts to influence legislation. The United States, for example, does not have universal health insurance because of the power of the pharmaceutical and health insurance industries to prevent legislation that would undermine their enormous advantages under the current system.

A final source of federal inaction against social problems is caution by many members of Congress and presidents to attempt new and bold plans. If bold initiatives fail, the public knows who to blame, and their wrath will be felt in the next election. Thus, inaction is often preferred over action and the status quo is preserved.

With Washington often immobilized, some states and local governments are filling the social policy vacuum with bold initiatives. As Forbes, the conservative business magazine, editorialized:

*Raise the minimum wage. Attack global warming. Negotiate lower prescription drug prices. Extend health coverage to the uninsured. Protect consumers from identity theft. A to-do list for Democrats taking over Congress? Nope, a sample of what states are up to. (Forbes, 2006, p.54)*

These state actions are in contrast to federal inaction caused by the reasons noted, as well as other developments. First, the George W. Bush two-term presidency, three-fourths of which was with a Republican-dominated Congress, opted consistently for a conservative agenda-lower taxes, less government regulation of business, and the like. This agenda enhanced social problems. Second, the huge federal debt increased mightily with the Iraq War, and major tax cuts made policymakers shy about adding new and expensive programs. Third, the conservative agenda largely in force since the 1980s trumpeted a renewed federalism, handing off some federal powers to the states, giving away power over everything from welfare to Medicaid. According to political analyst Ezra Klein: "States can't deficit spend, so handing them once-federal responsibilities under the rubric of restored federalism promised to shrink the expansiveness, generosity, and responsiveness of government services" (2007, p. 24). However, governors, whether Republican or Democrat, find that it is not easy being a service-slashing ideologue on the state level, where they are closer than politicians in Washington to the people. Klein continued: "Governors can see the consequences of federal cutbacks and unfunded federal mandates. They see the consequences of letting cities deteriorate. They have to pay for the Medicaid patients. They have to pay for the consequences of housing cuts" (p. 24).

Those states hit especially hard have even more incentive to take action to solve social problems. For example, states dependent on manufacturing, such as Michigan and Ohio, have been crushed by the dramatic loss of manufacturing jobs. Ohio, for instance, lost one-fifth of its manufacturing jobs from 2000 to 2006, resulting in a declining economy, many downwardly mobile families, and droves of young people leaving the state. Faced with this disaster the Ohio governor and legislature targeted investment in new industries (e.g., investing $250 million a year in the renewable energy industry) and funded an adult education system to retrain workers (Klein, 2007).

What appears to be happening in some states and cities (certainly not all) is that Republicans and Democrats, unlike at the federal level, sometimes join in common cause to legislate for the common good. With Washington in gridlock, mayors and governors and their policymaking bodies are shedding rigid partisanship and taking on such social problems as undemocratic practices, inadequate health care, poverty, lack of affordable housing, inadequate schools, carbon emissions, global warming, excessive prescription drug costs, decaying infrastructure, and the lack of a living wage. This book explores local and state initiatives that demonstrate possible solutions to social problems, with the hope that the successful ones will "bubble up" to the federal level.

## at: states wont do anything

#### states are asking for more power

Boldin, 9 – senior editor and contributing writer for Populist America (Michael Boldin, “Tennessee Governor Signs Sovereignty Resolution”, Tenth Amendment Center, 6/27/09, http://www.tenthamendmentcenter.com/2009/06/27/tennessee-governor-signs-sovereignty-resolution/#more-2275)

Tennesse Governor Phil Bredesen signed House Joint Resolution 108 (HJR0108), authored by State Rep. Susan Lynn. The resolution “Urges Congress to recognize Tennessee’s sovereignty under the tenth amendment to the Constitution.”

The House passed the resolution on 05/26 by a vote of 85-2 and the Senate passed it on 06/12 by a vote of 31-0.

Six other states have had both houses of their legislature pass similar resolutions - Alaska, Idaho, North Dakota, South Dakota, Oklahoma and Louisiana - but Tennessee is the first to have such a resolution signed by the Governor.

A GROWING MOVEMENT

Passage of this resolution appears to be part of what is now a growing state-level resistance to the federal government on various levels. Similar 10th Amendment resolutions have been introduced in 36 states around the country, and various states are considering single-issue legislation in direct contravention to federal laws.

Most recently, the Arizona Legislature passed a measure for public approval on the 2010 state ballot that would give Arizona voters the opportunity to nullify, or opt out, of any potential national health care legislation.

Since 2007, more than two dozen states have passed legislation refusing to implement the Real ID act of 2005. In response, the federal government has recently announced that they want to “repeal and replace” the law due to a rebellion by states.

## at: takes too long

#### States can leverage private entities to reduce costs and increase efficiency faster than the federal government

Miller 9 (John Miller is an American journalist and a former government official. He is the former Associate Deputy Director of National Intelligence for Analytic Transformation and Technology, <http://www.virginiadot.org/projects/vtransNew/resources/VTrans2035_Decisionmaking_FINAL.pdf>)

One reason is an increase in efficiency that results from local administration of a project. Whitley (2006), for example, notes that the Urban Construction Initiative is beneficial due to a reduction in overhead costs; this reduction comes from both reduced staff time and an ability to customize local solutions. As another example, Seefeldt et. al. (1987) noted that greater local involvement with project delivery could enable the use of certain processes by locales, such as the use of condemnation authority, to accelerate project delivery. Perhaps a quote from Whitley (2006) best captures the spirit of expecting greater efficiencies from devolving project delivery to local governments: VDOT, because they are operating on a statewide basis, has a uniform set of guidelines, standards and rules that may not be applicable on every project, and localities feel that several of these processes can be shortened or eliminated in order to expedite the design and construction of the project.

## at: doesn’t solve signal

#### states are viewed as international actors

Robinson 7 - Yale Law School, J.D. 2006. Currently Fox Fellow at Jawaharlal Nehru University, New Delhi (Nick Robinson 2007 Akron Law Review “Citizens Not Subjects: U.S. Foreign Relations Law and the Decentralization of Foreign Policy” Lexis)

And yet, state and local governments today have become deeply enmeshed in international affairs as globalization has decentralized foreign relations. On the one hand, localities have become more autonomous international actors than they ever were or could have been before. In pursuing interests with international implications, they tread in a sphere traditionally monopolized by the federal government. On the other hand, the internationalization of many formerly domestic issues means that an increasing number of traditional state and local government actions now have foreign policy implications.

The emergence of localities as actors in American foreign policy creates new possibilities for creating more participatory and democratic international relations. It also merely reflects a world where increased interconnectivity across borders and the global regulation of markets and values has collapsed local and international concerns. This article will argue that U.S. foreign relations law has failed to address this new reality. The Supreme Court has largely clung either explicitly or implicitly to a jurisprudence that holds that the country should speak [\*649] with "one voice" in foreign relations. Such a position is not only naive, but it also weakens American democracy. With globalization's commingling of the local and the international, a strong judicial bias towards federalizing issues with a bearing on foreign relations will lead to a hollowing out of the decision-making power of localities. States and municipalities will risk becoming largely units of administrative governance.

#### Governors can get involved with other governments on an international level

Fry, 9 (Earl, February 15th, 2009, "The Evolving Role of US State Governments in the International Economy" Paper presented at the annual meeting of the ISA's 50th ANNUAL CONVENTION "EXPLORING THE PAST, ANTICIPATING THE FUTURE", http://www.allacademic.com/meta/p310932\_index.html

Globalization involves the growing intersection of the local with the global and helps explain why state and even local governments are involved in what John Kincaid calls “constituent diplomacy,” even when they are simply fulfilling their traditional role of protecting and enhancing the interests of the people whom they represent.24 During the 2001-2002 legislative years, 886 bills and resolutions linked to some aspect of foreign relations were introduced in state legislatures, and 306 were adopted. This type of activity is up dramatically from the beginning of the 1990s.25 Governors may also be actively engaged abroad, not only meeting with their counterparts in other countries, but even occasionally with leaders of national governments.26 In May 2006, President Vicente Fox came to the United States for formal visits with governors in California, Washington, and Utah. His visit with Governor Jon Huntsman, Jr. in sparsely populated Utah was prompted by Huntsman’s meeting with Fox in Mexico City a year earlier, and Huntsman’s willingness to sponsor a resolution passed by the Western Governors’ Association which supports a guest-worker program with Mexico. Utah’s government is also one of several states which allow undocumented residents to attend public colleges and universities at in-state tuition rates and have issued special permits authorizing them to drive motor vehicles. Governor Arnold Schwarzenegger of California expressed reservations about Washington’s proposal to beef up U.S. security along the southern border by deploying National Guard troops, echoing Fox’s own line of thinking. Mexico’s national government also recognizes that some state governments are potential allies in convincing Washington to endorse more pro-Mexico policies, especially in the area of immigration and guest workers. This rationale helps explain why Mexico operates 47 consulates which are spread around the United States, far more than any other nation. These consular officials serve not only the needs of the more than 10 million Mexican citizens who live in the United States and send over $20 billion in remittances back to their home country annually, but also lobby U.S. state and local government officials in behalf of the Mexican national government. In a similar vein, other foreign governments have almost 1,500 consular offices or honorary consuls to represent their interests outside of Washington, D.C., and their duties include maintaining close contacts with state and local governments.27

#### State governments are representative of the USFG

Robinson 7 - Yale Law School, J.D. 2006. Currently Fox Fellow at Jawaharlal Nehru University, New Delhi (Nick Robinson 2007 Akron Law Review “Citizens Not Subjects: U.S. Foreign Relations Law and the Decentralization of Foreign Policy” Lexis)

State and local governments are arguably seen as representing the U.S. government abroad in a more official capacity than U.S. non-state actors. The governments of these localities are democratically elected and so it is more likely that they will be seen as acting on behalf of the American people. Additionally, the federal government generally has a greater ability to control the actions of these localities than non-state actors. Therefore, there is a greater chance that nonintervention by the federal government to stop offensive activity will be seen as federal endorsement of such activity.

Such logic though should caution against court intervention in these cases rather than encourage it. If localities' actions damage U.S. foreign policy interests, the federal government can easily preempt the state or local policies in question. Further, with the world's increased interconnectedness, it is more likely that if a foreign government takes offense to a locality's policy it can discriminate between the policy of the locality and the policy of the federal government. n155

## at: you cant fiat private action

no link—we don’t fiat private action. 1nc ev indicates states would utilize private actors to potentially fund the plan. Just read cards they wouldn’t. not abusive.

## at: commerce clause

#### Wont get struck down

**Cobb, 09** (Katie Cobb, “State Lawmakers Considering Move to Opt Out of Federal Health Care”, FOXNews.com, 6/25/09, http://www.foxnews.com/politics/2009/06/25/state-lawmakers-considering-opt-federal-healthcare/)

The Tenth Amendment ensures that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." It's the same constitutional roadblock Franklin D. Roosevelt ran into during the Great Depression when he tried to ram through the first round of recovery programs under the New Deal. In a series of rulings, the U.S. Supreme Court found the National Recovery Act, the Agricultural Adjustment Act and several other recovery programs unconstitutional.

But constitutional scholars say it's unlikely history will repeat itself with health care reform efforts. "It's hard to imagine Congress passing anything that would be plausibly challengeable under the Tenth Amendment, but it's certainly theoretically possible," said Paul Bender, professor of constitutional law at Arizona State University. He said Congress has broad powers to regulate interstate commerce, which would include something as big as health care.

But Bender also said he sees a striking similarity between the current makeup of the Supreme Court and the "Nine Old Men" who stymied FDR's sweeping reform efforts in the 1930s. "Both sets of jurists seem to share a belief that the balance of power has shifted too far in favor of Congress at the expense of the states," Bender said.

#### Uniformity means it wont get struck down

**Learner 8** – Executive Director, Environmental Law and Policy Center, law prof at Northwestern (Howard, 100 Nw. U.L. Rev. 1 649, http://www.law.northwestern.edu/lawreview/v102/n2/649/LR102n2Learner.pdf, AG)

When there is an emerging consensus of states acting, for example, to limit mercury pollution from coal plants or to require utilities to buy and supply an increasing percentage of electricity generated by renewable energy resources, should that consensus affect the preemption analysis? In a word, yes. There are strong analogs from the Supreme Court’s consideration of emerging consensuses of state actions and views in evaluating constitutional rights. For example, in Fourth Amendment jurisprudence involving search and seizure actions, the Court has looked to the emerging consensus of state decisions. In the landmark Mapp v. Ohio decision, the Court overturned its previous ruling in Wolf v. Colorado57 and enforced the exclusionary rule against the states through the Fourteenth Amendment.58 The Court’s ruling was based, in part, on the fact that, while nearly two-thirds of states opposed the use of the exclusionary rule at the time that Wolf was decided, more than half of those states had since wholly or partially adopted the exclusionary rule by legislative or judicial decision.59 The Court exhaustively cited the statutory provisions of the twenty-three states that had passed legislation attempting to control invasions of the right to privacy in the search and seizure context.60 Substantive due process provides another example of constitutional standards that reflect an emerging consensus of state actions. For example, in Bowers v. Hardwick, the Court upheld Georgia’s antisodomy law.61 Seventeen years later, in Lawrence v. Texas, the Court overruled Bowers in striking down Texas’s similar law.62 Part of the Court’s reasoning in Lawrence turned on the clear direction in which states were heading on this issue: “The 25 States with laws prohibiting relevant conduct referenced in the Bowers decision are reduced now to 13, of which 4 enforce their laws only against homosexual conduct.”63 The Court noted an “emerging awareness that liberty gives substantial protection to adult persons in deciding how to conduct their private lives in matters pertaining to sex.”64 The Court relied on state law—as well as the degree to which state law is or is not enforced in reality—as the yardstick of this emerging awareness of privacy rights.65 Likewise, in Eighth Amendment jurisprudence, the Court has recognized the shifting tide of public consensus through state laws as a key factor in steering its constitutional course. In Roper v. Simmons, the Court set forth an “evolving standards of decency” test to determine whether a punishment is “cruel and unusual” in violation of the Eighth Amendment.66 The Court turned to evidence of a “national consensus” in applying its evolving standards of decency test to declare that executing juveniles is cruel and unusual punishment.67 To derive its objective view of whether there is such a “national consensus” in Eighth Amendment jurisprudence, the Court looked to both the number of states that prohibit the death penalty in particular circumstances and the rate at which states adopted prohibitions against the execution of particular classes of individuals. The Court stated that “‘[i]t is not so much the number of these States that is significant, but the consistency of the direction of change.’”68 To be sure, the Court pointed out that thirty states prohibited application of the death penalty to juveniles.69 Therefore, how the states’ views are emerging and trending, combined with the growing number of states acting, leads to the determinative “national consensus,” which controls along with the Court’s own “independent judgment.” Emerging trends matter in the preemption context as well. When it comes to the Supremacy Clause and preemption analysis, Congress, subject to Commerce Clause and Tenth and Eleventh Amendment limitations, can always explicitly choose to enact exclusive federal standards no matter how many states have acted. However, the number of states that have moved to act in a given area and the direction of that movement are relevant to a court’s determination of whether there is an implied conflict between federal and state laws. When there is an emerging consensus of states acting in an area of environmental policy, it is much more difficult to contend that the federal government has occupied the field in that area. What should happen, then, if Congress enacts legislation that comprehensively addresses global climate change problems or requires reductions in carbon dioxide pollution from cars after a dozen states or more have already taken legislative or administrative regulatory actions moving in the same direction? The rationale for a clear statement preemption rule should apply with greater force in circumstances involving a backdrop of clearly trending state actions. Congress would be “on notice” of the potential federal- state conflicts and could resolve any uncertainty regarding the preemptive effect of the federal law by clearly stating its intent. Thus, in the absence of explicit federal preemption, and where there is an emerging consensus of state action, there is much less justification for courts to rule that there is an “implied” conflict between federal and state laws. Moreover, in both the Roper and Lawrence cases, the Supreme Court was asked to strike down a state law that was contrary to the emerging consensus of states interpreting the constitutional principle at issue.70 By contrast, the approach suggested here—defeating claims of implied preemption of state environmental laws that are part of an emerging consensus, upholding the state law, and allowing baseline federal and stronger state laws to coexist—does less violence to both laws and is consistent with the presumption against preemption. Implied preemption is a fuzzy concept, involving a court’s best guess of Congress’s intent. That is a more tenuous basis for overturning a state law, which reflects the will of the citizens not only of one particular state, but also of a growing number of other states. The clear statement rule allows for creativity in state environmental policies while maintaining a national environmental protection floor.

## at: federal preemption

#### Cooperative state action succeeds and avoids federal preemption

Razook 2k (Nim, Professor of Legal Studies, University of Oklahoma Price College of Business, “Uniform private laws, National Conference of Commissioners for Uniform State Laws, Signaling and Federal Preemption.” American Business Law Journal, 9/22/00 http://www.accessmylibrary.com/coms2/summary\_0286-28751607\_ITM)

The means advanced by our polity to achieve regulatory uniformity are instructive for three reasons. First, examples of interstate cooperation via interstate compacts, agreements or uniform state laws appear to be the foil for national intervention. That states have somehow managed to overcome the collective action problems associated with efforts to cooperate and to reach some cooperative solution suggests that the costs of interstate cooperation are apparently not insurmountable obstacles. Second, efforts by the states to forge their own solutions can illuminate the underlying reasons for such cooperation in a system in which the forces of maximization discourage such efforts**.**42 This section suggests that they do so often to retain their autonomy and to avoid federal preemption. Finally, comparing the efforts of the Conference in promulgating and advocating uniform state laws with the decisions by Congress to preempt historically state-governed areas of law leads to a discussion of whether the Conference’s efforts might influence Congressional preemption decisions.

#### Fast, uniform enactment of the counterplan avoids preemption

Razook 2000 (Nim, Professor of Legal Studies, University of Oklahoma Price College of Business, “Uniform private laws, National Conference of Commissioners for Uniform State Laws, Signaling and Federal Preemption.” American Business Law Journal, 9/22/00 http://www.accessmylibrary.com/coms2/summary\_0286-28751607\_ITM)

In short, the uniform designation for UCITA sends important signals to both the states and Congress. Wholesale adoption by the states will likely exclude Congressional consideration and adoption of a preemptive commercial law in the area, although Congressional interest in the area might suggest that federal preemption may also depend upon how quickly the states embrace UCITA. Congress may interpret delays or negative receptions by the states as requiring federal intervention to fill the regulatory void**.** That the UCITA **is** also controversial might further complicate the federal-state dynamic as it applies to regulating this important area.

## at: interstate compacts unconstitutional

#### Interstate compacts solve

Shapiro, 11 (Ilya, “Interstate Compacts and Do-It-Yourself Federalism,” June 29th, 2011, <http://www.cato-at-liberty.org/interstate-compacts-and-do-it-yourself-federalism/>)

With the federal government’s growing assertion of power over the states — Obamacare is just the highest-profile example – state legislators regularly contact me for advice on how to push back while remaining constitutionally faithful. What can they do in areas like health care, immigration, drug decriminalization, and firearm regulation?

One innovative solution is interstate compacts: states can actually create binding federal law by joining together in a sort of multi-state contract. Typically they need Congress’s (but not the president’s) consent, but the Supreme Court has held that when the compacts don’t implicate challenges to federal power, they don’t even need that.

For example, Texas is now considering joining a Medicaid/Medicare compact established by Georgia and Oklahoma. Many states are considering a Health Care Freedom Act compact, which use preexisting congressional consent for criminal-justice-cooperation compacts to mutually enforce state laws prohibiting the forced purchase of health insurance.

I discussed these innovative policy solutions — on which the law is untested — in a recent podcast. More broadly, however, there are plenty of things states (and of course their citizens!) ought to be considering if they want to reestablish the dual – actually tripartite, adding individuals — sovereignty at the heart of Constitution’s structural protections of liberty. (For more on that point, see part IV of Cato’s most recent Obamacare brief and part III of Justice Kennedy’s opinion in Bond v. United States.)

## at: 50 state fiat bad

write it yourself.

# \*\*\*Funding

## 1NC—cigarette tax plank

#### Cigarette taxes will bring in a ton of revenue

Lindblom, 7 Campaign for Tobacco-Free Kids, February 15, 2007/Eric Lindblom

“TOBACCO TAX INCREASES ARE A RELIABLE SOURCE OF SUBSTANTIAL NEW STATE REVENUE” http://www.smokefreewi.org/pdf/Tax\_Reliable\_Revenue\_Source.pdf

The big cigarette companies and their allies often oppose state tobacco tax increases by making the curious claim that tobacco taxes are somehow not reliable sources of state revenue. In fact, state tobacco tax revenues are among the most predictable, steady, and reliable revenues that states receive. Moreover, any of the gradual reductions to state tobacco tax revenues from ongoing smoking declines are dwarfed by the massive reductions in public and private sector smoking-caused costs those smoking declines produce. Once the dust has settled after a major cigarette tax increase, state tobacco tax revenues typically decline by only about two percent per year, on average, because of smoking declines. States with aggressive ongoing tobacco prevention efforts will likely see larger declines, but they would be offset by even larger related reductions in smoking-caused costs. In addition, there are a variety of actions states can take to protect and maintain, or even increase, their tobacco tax revenues over time. Significant tobacco tax increases always produce substantial net new revenues that last. In every single instance where a state has passed a significant cigarette tax increase, the state has enjoyed a substantial, sustained increase to its state cigarette tax revenues. This occurs, despite significant declines in smoking rates and taxed pack sales, because the increased tax per pack brings in much more new revenue than is lost by the declines in the number of packs sold and taxed. In every case documented, states have seen both sharp reductions in total packs sold and large increases in total net new revenues in the full fiscal year after the rate increase, compared to the first full fiscal year before it. 1 The higher level of new state tobacco tax revenues after a rate increase will subsequently decline slowly as state smoking levels continue to shrink, but these declines will be gradual and predictable, making related state budgeting quite easy. The following graph, presenting data from Massachusetts, shows how state cigarette tax revenues do not decline sharply in the years following a significant cigarette tax increase.

## ext. provides funds

#### The tax brings in revenue

Lindblom and Boonn, 9 Campaign for Tobacco-Free Kids, May 21, 2009/Eric Lindblom & Ann Boonn http://tobaccofreekids.org/research/factsheets/pdf/0098.pdf

Every single state that has raised its cigarette tax rate has subsequently received more tax revenue than they would have received without a rate increase, despite the fact that cigarette tax increases reduce state smoking levels and despite any related increases in cigarette smuggling or tax evasion. Put simply, the increased tax per pack brings in more new state revenue than is lost from the related reductions in the number of packs sold and taxed in the state. Moreover, the substantially higher revenue levels enjoyed by those states that significantly increase their cigarette tax rates persist over time (while the cost savings from the related smoking declines grow rapidly).1

The table below shows all of the state cigarette tax increases in 2007 except for Hawaii (data are not yet available for that state), with each state enjoying large revenue increases in the following 12 months (compared to the prior 12 months) despite related consumption and pack-sale declines. Data from earlier state cigarette tax increases show the same kinds of positive results (as documented in previous versions of this factsheet), and subsequent state tax increases will show the same, as well, once the data is available. In sharp contrast, those states that fail to increase their cigarette taxes typically experience gradual cigarette tax revenue declines from year to year caused by ongoing reductions in state smoking levels.\*

#### Better than any other tax

Lindblom, 7 Campaign for Tobacco-Free Kids, February 15, 2007/Eric Lindblom

“TOBACCO TAX INCREASES ARE A RELIABLE SOURCE OF SUBSTANTIAL NEW STATE REVENUE” http://www.smokefreewi.org/pdf/Tax\_Reliable\_Revenue\_Source.pdf

Tobacco tax revenues are much more predictable and stable than many other state revenues. Year to year, state tobacco tax revenues are more predictable and less volatile than many other state revenue sources, such as state income tax or corporate tax revenues, which can vary considerably each year because of nationwide recessions or state economic slowdowns. In sharp contrast, large drops in tobacco tax revenue from one year to the next are quite rare because of the addictive power of cigarettes. Comprehensive tobacco prevention efforts, for example, are likely to reduce state smoking rates by roughly one or two percentage point each year, but those smoking declines reduce total state pack sales and revenues by much smaller amounts, proportionately, since the heaviest smokers who consume the most cigarettes (and pay the most taxes) are the most addicted and most resistant to quitting. It is also worth noting that smokers who quit or cutback typically use their savings from reduced cigarette purchases to buy various other goods and services in the state, thereby increasing other state tax revenues and helping to strengthen the state economy.

## 1NC—gasoline tax

#### States should take on their own infrastructure projects and fund it through their own gasoline tax

Horowitz, 12 (Daniel – Deputy Political Director at The Madison Project and Contributing Editor, Legislative Writer at Red State – Red state – Jan 19 th – 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.

## at: cant pay for it

#### states will borrow in the time of a recession—no fiscal restraints

Johnson, 8—Director of the State Fiscal Project, which works to develop strategies for long-term structural reform of state budget and tax systems, encourage low-income tax relief, and improve the way states prioritize funding. (Nicholas, “States Face Two Immediate Financial Issues: Short-Term Borrowing And Big Budget Deficits” 10/10

Many states and localities routinely use short-term borrowing to manage their short-term cash flow. State income tax and other kinds of revenue come in more strongly in the second half of most states’ fiscal years than in the first. Thus, they borrow to meet their spending obligations when revenues are temporarily insufficient. Indeed, they issue what are called “tax anticipation notes” or “revenue anticipation notes” for just this purpose. Thus, such short-term borrowing is a routine part of state fiscal practices and not normally a problem, even during recessions or other state fiscal crises. States are reliable borrowers, and they repay their loans when tax revenues come in. Currently, however, states are facing the same problem faced by millions of businesses across the country – tightening credit markets. Lenders are reducing lending, so states are concerned they may not be able to borrow when they need to. That’s why California and other states and localities may seek to borrow their needed funds from the federal government. The Treasury or Federal Reserve may have to serve as the lender of last resort for them.

# \*\*\*Lopez Counterplan

## 1NC—devolution solves transportation specific

#### Devolution solves better than private and federal governments because they reap the benefits of both entities specifically for infrastructure

Freemark, 12 (Yonah, founder and writer of The Transport Politic, currently completing Joint Master in City Planning and Master of Science in Transportation at MIT, “Clearing it Up on Federal Transportation Expenditures”,http://yonahfreemark.tumblr.com/post/12590739684/education-massachusetts-institute-of-techology)

Government options are not reduced to the choice between infrastructure provision within ministries versus PPPs. The devolution of control over the provision of infrastructure to independent or quasi-independent entities – such as agencies; state-owned companies; private, not-for-profit organisations; and outright privatisation – may also result in efficiency gains. i. Specialisation is a key factor Ministries are typically responsible for a wide range of responsibilities and tasks. In contrast, an entity focusing strictly on a single task – such as providing roads – does not have to juggle unrelated priorities, and is thus better able to concentrate decision-making on the specific issues surrounding infrastructure provision. This includes the planning process regarding where and how projects should be built, as well as the procurement of work related to new investment, maintenance and operation. Devolution of control can, therefore, enhance the likelihood of producing the correct services, in the right amounts, at appropriate quality, and at the lowest possible costs in order to meet society’s needs. An organisation that focuses specifically on a given task can, in other words, be better placed to maximise allocative efficiency in the choice of which initiatives to undertake, and productive efficiency in carrying them out.

#### States already solve highways—devolution key

Kilcarr, 12—Senior editor at Fleet Owner citing Marc Scriber: land-use and transportation policy analyst with the Competitive Enterprise Institute (CEI) (Sean Kilcarr “Marking the ‘devolution’ of highway funding” May 16 2012 http://fleetowner.com/regulations/marking-devolution-highway-funding)

As Congress continues to debate a variety of surface transportation funding bills – most notably the two-year Senate sponsored Moving Ahead for Progress in the 21st Century Act (MAP-21) – several groups believe such federal-directed efforts are almost becoming moot as highway funding issues are increasingly “devolving” to the states. At a briefing on Capitol Hill this week, a panel of experts led by Marc Scriber, land-use and transportation policy analyst with the Competitive Enterprise Institute (CEI), argued that near-default status of the Highway Trust Fund (HTF) due to inadequate fuel tax revenues and policy gridlock at the federal level is increasingly pushing states and localities to figure out ways to generate the funds required to build and maintain U.S. bridges and roads. “We’ve argued in the past that responsibility for generating highway funds should ‘devolve’ to the states, but now that’s a largely ‘defacto reality’ as declining HTF revenues are forcing the states to look for new ways to generate the monies they need,” Scriber told Fleet Owner.

#### Devolution key to efficiency and responsiveness

Miller, 11—Research Scientist at the Virginia Transportation Research Council

(John S. Miller “Characteristics of Effective Collaboration in Response to Diversified Transportation Planning Authority”4 July 2011 http://www.hindawi.com/journals/ads/2011/725080/)

The literature cites advantages of devolving decisions to the most local form of government as follows. (i) Greater Efficiency Resulting from Local Project Administration Whitley 40 noted that Virginia’s Urban Construction Initiative is beneficial because of a reduction in overhead costs; this reduction comes from reduced staff time and an ability to customize local solutions. Seefeldt et al. 41 noted that greater local involvement with project delivery could enable the use of certain processes by locales, such as the use of condemnation authority, to accelerate project delivery. 8 Advances in Decision Sciences (ii) Greater Ability to Link Planning with Operations or Land Use Nevada’s FAST linking traffic management and transportation planning has enabled the MPO to be more responsive to citizen suggestions such as signal retiming and to locally elected officials 35. Minnesota’s Metropolitan Council the MPO for Minneapolis/St. Paul has responsibility for operating bus service and light rail transit service as well as transportation planning 42. Further, the MPO involves localities who directly control land development decisions 18. (iii) Greater Responsiveness The assumption is that local governments are more accountable to citizens than more centralized levels of government. Examples are “quick-take” condemnation authority that may be exercised by local governments 41, an ability to protect local neighborhoods from the threat of through truck traffic 43, and an ability for local staff to respond immediately to citizen complaints regarding a specific project 40. A similar advantage was noted when decentralizing decision authority in an organization; a review of the Texas DOT noted that providing substantial authority to district offices rather than centralizing decisions at the headquarters level enabled a sharp customer focus and allowed for “timely and least expensive access, contact with the public, and knowledge of local conditions”

#### Devolution solves—increases efficiency through decreasing budget battles

Freemark, 12 (Yonah, founder and writer of The Transport Politic, currently completing Joint Master in City Planning and Master of Science in Transportation at MIT, “Clearing it Up on Federal Transportation Expenditures”,http://yonahfreemark.tumblr.com/post/12590739684/education-massachusetts-institute-of-techology)

A further advantage is that ministries benefit from public sector borrowing rates, which typically are lower than those offered to the private sector. However, the bureaucratic nature of decision-making in ministries may not lend itself to the operation of dynamic transport undertakings. Furthermore, it may be difficult to disentangle short-term political priorities from the day-to-day implementation of policies. The lack of commercial orientation of a government ministry is perhaps not best suited for the pursuit of maximum efficiency. Furthermore, the typical government budget cycle, with decisions taken on an annual basis, makes it difficult to provide for long-term planning over the life cycle of infrastructure. Ministries must also compete for funds with other public priorities. Since ministries are typically responsible for a wide range of activities, infrastructure funding may have to fight for resources in competition with other priorities within the organisation as well. In short, by their very nature, ministries may be challenged in their ability to take decisions that maximise allocative and productive efficiency. Outsourcing and devolution offer ways of overcoming these limitations. Indeed, the provision of all aspects of transport infrastructure by a ministry using in-house resources is rare in OECD countries.

#### Devolution solves—scotland and England prove states policy lead to convergence and coordination

MacKinnon, Shaw, and Docherty 9, (Danny MacKinnon Department of Geographical and Earth Sciences, University of Glasgow, Department of Management, University of Glasgow, Glasgow G12 8QQ, Scotland, Centre for Sustainable Transport and School of Geography, University of Plymouth, http://envplan.com/epc/fulltext/c27/c0899r.pdf

Devolution, defined as the ``transfer of power downwards to political authorities at immediate or local levels'' (Agranoff, 2004, page 26), is one of the most widespread forms of restructuring, helping to convey an understanding of the state ``as a [political] process in motion'' (Peck, 2001, page 449). Indeed, it has been described as a key `global trend' of recent decades, having been introduced in a large number of states across the world since the 1970s (Rodr|¨guez-Pose and Gill, 2003; Rodr|¨guez-Pose and Sandall, 2008). In practice, the `global trend' of devolution has produced an assortment of institutional arrangements, according to the specific nature of the decentralisation process in question and its interaction with preexisting state structures, administrative practices, and political relations (Jeffery, 2002; Rodr|¨guez-Pose and Gill, 2003). Divergence or convergence? Devolution and transport policy in the United Kingdom Jon Shaw Centre for Sustainable Transport and School of Geography, University of Plymouth, Drake Circus, Plymouth PL4 8AA, England; e-mail: jon.shaw@plymouth.ac.uk Danny MacKinnon Department of Geographical and Earth Sciences, University of Glasgow, Glasgow G12 8QQ, Scotland; e-mail: dmackinnon@ges.gla.ac.uk Iain Docherty Department of Management, University of Glasgow, Glasgow G12 8QQ, Scotland; e-mail: i.docherty@lbss.gla.ac.uk Received 19 August 2008; in revised form 12 February 2009 Environment and Planning C: Government and Policy 2009, volume 27, pages 546 ^ 567 Abstract. We examine the impact of devolution in the United Kingdom on transport policies in the first two terms of devolved government, from 1999/2000 to 2007/08. In particular, we discuss the nature and extent of policy convergence and divergence between the devolved territories (Scotland, Wales, Northern Ireland, and London) and England (wherein responsibility for policy formulation remains with the UK government at Westminster), and between the devolved territories themselves. Our analysis builds on existing work on devolution and public policy not only through its focus on transport policy, but also by distinguishing between `horizontal' and `vertical' dimensions of policy divergence and convergence, referring to relations between territories and to links to previous policies adopted within the same territory, respectively. Findings point to a convergence of overarching transport strategies and a complex picture of both convergence and divergence in terms of specific policy measures. The latter provides evidence of a devolution effect on transport policy. doi:10.1068/c0899rLong regarded as a highly stable and centralised political unit (Jones, 2001), the United Kingdom state resisted the devolutionary trend until the late 1990s when devolution was enacted by the `new' Labour government (Hazell, 2000). The government's approach was effectively to offer `devolution on demand' in the form of locally tailored forms of self-government, resulting in a highly asymmetric form of devolution where different territories have been granted different powers and institutional arrangements (see Hazell, 2000; Jeffery, 2007; Keating, 2001). Scotland has an elected parliament that has primary legislative competence over most `domestic' policy issues; Northern Ireland has an elected, power-sharing assembly that also has wide-ranging legislative competence; and Wales has an elected assembly without primary legislative responsibilities (these are currently reserved to Westminster) although additional powers were granted in 2006 and a referendum on full legislative powers will be held by 2011. London, stripped of city-wide government by the abolition of the Greater London Council (GLC) in the 1980s, now has an elected mayor and assembly, although powers are restricted to certain key areas and (like in Wales) do not include primary legislative authority. In the rest of England, where demand for change was generally lower, there was only limited administrative reform manifested through the creation of regional development agencies (RDAs) and unelected regional assembles (these are now being abolished). Devolution has important repercussions for public policy, as a number of comparative studies attest (Greer, 2004; Jeffery, 2002; Keating, 2002; McEwen, 2005; Wincott, 2006). It grants the devolved administrations the capacity to develop policies that are better tailored to the economic and social conditions of their areas, encouraging policy divergence through the introduction of `local solutions to local problems' (Jeffery, 2002). Indeed, devolved institutions can be viewed as `laboratories of democracy' with the establishment of new structures encouraging policy experimentation and innovation through the development of distinctive approaches to economic and social problems (Greer, 2004). Moreover, devolution tends to create a logic of interterritorial comparison and competition, potentially resulting in policy learning and transfer as the different administrations monitor developments elsewhere, adopting successful or popular policies from other jurisdictions (McEwen, 2005). At the same time the scope for policy innovation and transfer is often limited by pressures to ensure that measures adopted by devolved administrations do not contradict those of the central state (Smyth, 2003), encouraging policy convergence. Mechanisms of policy coordination and convergence in devolved states include fiscal transfers between the centre and the provinces or regions, joint committees bringing together ministers and officials from the different levels of government, and a sharing of powers which allows the central legislature to set certain common standards in areas in which the devolved assemblies have responsibility (Jeffery, 2007).

## 1NC—federalism nb

#### Lopez key to solve federalism –solves global war and promotes economic growth

Calabresi, 95—Steven G, Associate Professor, Northwestern University School of Law. “A Government of Limited and Enumerated Powers,” Michigan Law Review December, 1995

The prevailing wisdom is that the Supreme Court should abstain from enforcing constitutional limits on federal power for reasons of judicial competence and because the Court should spend essentially all its political capital enforcing the Fourteenth Amendment against the states instead. This view is wrong. First, the rules of constitutional federalism should be enforced because federalism is a good thing, and it is the best and most important structural feature of the U.S. Constitution. Second, the political branches cannot be relied upon to enforce constitutional federalism, notwithstanding the contrary writings of Professor Jesse Choper. Third, the Supreme Court is institutionally competent to enforce constitutional federalism. Fourth, the Court is at least as qualified to act in this area as it is in the Fourteenth Amendment area. And, fifth, the doctrine of stare [\*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 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 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.

## ext. Court Can Devolve

#### Supreme Court can devolve authority to the states

Sprick, 99—David M. Sprick, Doctoral Candidate & Lecturer in the Department of Political Science @ UMKC, 1999, 27 Cap. U.L. Rev. 529, ln

Federalism is “a constitutional principle involving a distinctive territorial division of powers, usually a special approach to representation within the national government, and mechanisms both legal and political [\*530] to settle interlevel disputes.” 3 Others have described federalism as that which “as a matter of law centers on the division of authority between the federal and the state governments,” 4 or as the “dispersion of political power,” 5 or “a system of authority constitutionally apportioned between central and regional governments.” 6 The Constitution sets forth the boundaries of federalism with the enumeration of Congress’ powers in Article I, Section 8; the undefined powers implied by the Necessary and Proper Clause; 7 the General Welfare Clause; 8 the Supremacy Clause; 9 and the Tenth Amendment’s reservation of powers to the states “or to the people.” 10 By defining to whom powers not delegated are reserved, the Tenth Amendment provides “an express federalism marker” and interrelates the amendment with constitutional and political federalism. 11 The Tenth Amendment states, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” 12 This amendment has been the rallying cry for devolutionists in the political branches concerned with excessive federal power. Moreover, the Tenth Amendment’s reemergence in constitutional decisions has not gone unnoticed by Supreme Court watchers. The Court seems to be reestablishing itself as the “umpire of federalism,” 13 a role it all but abdicated in Garcia v. San Antonio Metropolitan Transit Authority 14 when it told the states they could find better constitutional protection from the “procedural safeguards inherent in the structure of the federal system.” 15 [\*531] In a series of recent cases-U.S. Term Limits, Inc. v. Thornton, 16 United States v. Lopez, 17 and Printz v. United States 18 -the Court reversed its thinking in Garcia and is umpiring the federal system once again. More importantly, the Court appears to be divided over both the meaning of the Tenth Amendment and the first principles of American federalism. “The Justices’ opposing. asymmetrical positions [on federal power] can be discerned by juxtaposing Term Limits with United States v. Lopez.” 19 It is possible to add the recent Printz decision to such an analysis because the same factions within the Court, with respect to federalism, formed to limit federal power once again.

## ext. lopez key to solve federalism

#### The Lopez precedent is critical to reinvigorate federalism

Calabresi, 95—Steven G, Associate Professor, Northwestern University School of Law. “A Government of Limited and Enumerated Powers,” Michigan Law Review December, 1995

The Supreme Court's recent decision in United States v. Lopez 2 marks a revolutionary and long overdue revival of the doctrine that the federal government is one of limited and enumerated powers. After being "asleep at the constitutional switch" for more than fifty years, 3 the Court's decision to invalidate an Act of Congress on the ground that it exceeded the commerce power must be recognized as an extraordinary event. Even if Lopez produces no progeny and is soon overruled, the opinion has shattered forever the notion that, after fifty years of Commerce Clause precedent, we can never go back to the days of limited national power. The Lopez Court has shown us that we can go back, if we want to, so long as: 1) we can figure out a workable theory of the limits on the federal commerce power; 2) we can agree on the propriety of vigorous judicial review in federalism cases; and 3) we can take proper account of the important reliance interests that have accrued around certain key precedents decided in the past half century.

#### Extending the Lopez precedent restores federalism

Calabresi, 95—Steven G, Associate Professor, Northwestern University School of Law. “A Government of Limited and Enumerated Powers,” Michigan Law Review December, 1995

The very real danger is that the Supreme Court will end up conferring legitimacy on congressional and presidential usurpations of state power that might be resisted more vigorously in the absence of federal judicial review. The advantages of constitutional federalism will not be obtainable if the Court hands down decisions like Lopez only once every ten years. National judicial umpiring of federalism boundaries will be useful only if the courts invalidate usurpations with some frequency, thus justifying the public confidence that the judiciary really is doing its duty in this category of cases.

#### The counterplan is a symbolic victory for federalism

Young, 4—Law Professor, University of Texas, Ernest, TEXAS LAW REVIEW, November 2004, pp. 135-6

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

## at: congressional rollback

Fiat ensures no rollback from any branch. Its justified –

A) Reciprocal – legislation can be over turned by Congress, the Court, or not signed by the President – our fiat is no different and is key to fair ground.

B) Ground – durable fiat ensures the Aff doesn’t lose solvency on backlash and ensures negative disad ground.

C) Education – it’s the only way to debate about what could happen instead of what happens now

This jacks the Aff – if the plan is inherent, it’d get rolled back too and you should vote negative on presumption.

#### Congress won’t rollback state action

Goldsmith, 97—Jack, Prof @ Chicago, November 1997, Virg. L. Rev., ln

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

## at: permutation – do both

Links to politics because it includes proactive federal action

Severs the guaranteed nature of the plan because the counterplan rules the plan illegal. Severance is a voting issue because it destroys all negative ground.

--this counterplan is a uniquely fair test of the affirmative, it essentially bans the plan at the federal level, they shouldn’t be able to permute it

Intrinsic --- the perm results in inter-branch cooperation which is in neither the plan nor the counterplan. This is a voting issue because it allows the Aff to add anything to the plan to get out of our best arguments.

#### Links to the federalism disad – exclusivity of state power is key

**Gardbaum ’97** (Stephen, Associate Prof – Northwestern U., Texas Law Review, March, Lexis)

 [\*796]  Despite their diametrically opposed conclusions, however, a fundamental premise is shared by both sides in this long-standing debate -- a premise that characterizes almost all analyses of American federalism. This shared premise is that the existence of areas of **exclusive** state power is a necessary condition of constitutional federalism: in order for federalism to operate as a principle of constitutional law, there **must** **in practice (and not merely in rhetoric** or national myth) be areas of regulatory authority reserved exclusively to the states **-- areas in which Congress cannot regulate**. Given this shared premise, the debate has focused on whether or not such areas currently exist constitutionally speaking, and its content consists largely of arguments for and against various proposed textual bases for them. Leading candidates over the years have included the Commerce Clause, 6 the Tenth Amendment, 7 and the Guarantee Clause

--it doesn’t solve, it sends a mixed signal about federalism, it has the Court remove federal jurisdiction over an area simultaneously while the federal government acts within that area – this guarantees confusion

## at: links to ptx

#### Courts don’t link to politics

**Intoccia 1** (Gregory, 11 USAFA J. Leg. Stud. 127, AG)

Consistent with Jonathan Casper's finding that the judiciary [\*130] announces "policies that other state and federal institutions are unwilling or unable to promulgate," 18 the most plausible explanation for increased judicial involvement in social policies is that mainstream politicians encourage judicial policy-making as a means of removing from partisan debate issues that cut across existing party lines. Elected politicians appear to "pass the buck" to the judiciary when an issue divides the electorate in a manner that is not in keeping with conventional party divisions. As the judiciary is a non-partisan institution that has traditionally resolved specific controversies, the courts offer politicians the opportunity to deflect issues potentially disruptive to partisan debate. For example, judicial policy on abortion suggests that this principle is valid. For at least a decade prior to the Supreme Court's abortion decision in Roe v. Wade, 19 many mainstream politicians generally sought to avoid the abortion issue. In the mid-1960s, the two major parties remained divided over New Deal economic issues, but voters were increasingly interested in other issues such as law and order, race, gender equity and social lifestyles. At that time, the majority Democratic Party was divided between liberals who were attracted to new views of social lifestyles and traditionalists who condemned them. The Republican Party was also divided internally over these issues, but to a lesser degree. While the two parties primarily debated economic issues, many mainstream politicians sought to avoid debate on a number of non-economic social issues. As the debate over such issues as abortion intensified, elected officials increasingly deferred to the judiciary for resolution. 20 In the months prior to the Roe v. Wade decision, many politicians sought to remove themselves from the potential fall-out of a legislative solution to the abortion question, preferring instead that the judiciary decide whether to eliminate abortion restrictions.

Court action avoids the link

**CSM ’97** (Christian Science Monitor, 6-25, Lexis)

Today this holds true even more. In one sense, the reason is obvious: With divided government and partisan sniping in Washington, when politicians must create a TV image and constantly raise funds, the scholarly-looking justices seem a refreshing alternative. They come out in black robes from behind red silk curtains, and everyone stands. They ask incisive questions. They disappear. It looks like competence personified. And there's some truth to it. The members of the court don't need to campaign for office every few years. They were selected for life. They don't need speech writers or have to check the polls. The current justices, unlike earlier courts, generally write their own opinions. They are free to dissent, and their rulings are not tied to interest-group pressure. Moreover, as an institution, the court is uniquely constituted. It is not one targetable political persona, as is a single chief executive. Yet it is smaller than a Congress of 535 people. Congress is covered by TV four times as much as the court is. The White House is covered eight times as much, says Lee Epstein of Washington University in St. Louis. The court stands out now because it is not part of Washington's political swamp. The carefully cultivated aloofness of the Supreme Court is, in the Washington scene, almost countercultural in nature. The court's warts don't show. "People don't see the court infighting; it seems more harmonious and less political," says one court-watcher. "With Congress and the White House, we see the blood-letting on the street." Importantly, say scholars, current justices benefit from courageous stands the court took in cases like Brown school desegregation, and the Roe abortion-rights case - when the majority was fragile and the justices felt under great pressure. Those decisions are a main reason the court image is so buffed today. Justices Don't Have to Wade in Washington Swamp

## at: lopez fiat unfair

1. 1NC Miller evidence proves speaks of the exact process of the counterplan, proving its both a necessary test of the Aff and predictable

2. Reciprocal ---  
A) The Aff uses the federal government, which has thousands of actors

B) They fiat state and local enforcement --- and if not, the plan would be rolled back

3. Err Neg --- the Aff has structural advantages like 1st and last speech and the ability to choose their plan

4. Increases Aff ground --- they can impact turn the Supreme Court or state action

#### 5. Crucial to force genuine “Federal key” warrants --- States counterplans alone allow the Aff to manipulate current jurisdiction to avoid this --- and, that’s important for education

Columbia Encyclopedia ’01 (<http://www.encyclopedia.com/html/f/federalg.asp>)

FEDERAL GOVERNMENT [federal government] or federation, government of a union of states in which sovereignty is divided between a central authority and component state authorities. A federation differs from a confederation in that the central power acts directly upon individuals as well as upon states, thus creating the problem of dual allegiance. Substantial power over matters affecting the people as a whole, such as external affairs, commerce, coinage, and the maintenance of military forces, are usually granted to the central government. Nevertheless, retention of jurisdiction over local affairs by states is compatible with the federal system and makes allowance for local feelings. The chief political problem of a federal system of government is likely to be the allocation of sovereignty, because the need for unity among the federating states may conflict with their desire for autonomy.

6. Checks topic explosion --- the Lopez counterplan forces “Federal Key warrants” to exist before many Affs become popular, acting as a topicality-like limit on research

7. Critical thinking --- the most advanced strategies involve using different agents and carving logical net-benefits

8. Best policy option justifies ---- it’s the most real world standard, which is educational

9. Reject the argument not the team

# \*\*\*Aff Answers

## federal oversight key

#### Links to politics or doesn’t solve—federal government key to oversight interstate transportation infrastructure

Stanley, 8 (Samuel R Stanley, The Future Federal Role or Surface Transportation, [http://reason.org/files/samuel\_staley\_surface\_transportation\_testimony.pdf)](http://reason.org/files/samuel_staley_surface_transportation_testimony.pdf)

4. The federal role should be restricted to those activities with a clear interstate and/or international function. Rather than focusing on an overarching vision for transportation on the local and regional levels, federal transportation policy should focus on those elements of the transportation network that are truly national (or international) in nature. The US freight system is fundamentally interstate (and multimodal) and international in orientation. In commerce, we talk about global supply chains, notlocal ones, even in retail and local service industries. Focusing federal efforts on coordinating and upgrading key freight corridors will be essential for focusing federal funding and decisionmaking productively. Another key role the federal government can play is in facilitating interstate cooperation on key infrastructure projects, particularly bridges and tunnels that link key cities and parts of urban areas. A third critical federal focus should be on our nation’s ports and airports to ensure we have the facilities to remain globally competitive and goods move efficiently to (and from) markets throughout the US.

#### Conflicting regulations gut solvency

Poole, 96—Director of transportation policy and Searle Freedom Trust Transportation Fellow at Reason Foundation

[Robert Poole “Defederalizing Transportation Funding” October 1, 1996 http://reason.org/studies/show/defederalizing-transportation]

Probably the most difficult problem for devolution advocates is the issue of (non-safety) standards and regulations. On one hand, one of the legitimate driving forces in favor of devolution is to gain relief from overly costly and intrusive federal regulations. On the other hand, legitimate concerns arise in our major transportation industries over potential state or local restrictions on the functioning of national network operations. For example, local governments might impose a new set of curfews on airport operations, wreaking havoc with the ability of overnight express carriers (e.g., Federal Express) to do business. States which already impose a patchwork quilt of different requirements on truck weights, lengths, and configurations might adopt even more conflicting requirements. It is argued that without the carrot-and-stick approach of being able to grant or withhold federal funding, the federal government will be unable to restrain states or cities from engaging in such costly regulations.

#### Multistate cooperation fails- lack of leadership and funding problems doom potential projects

FHA ’12 Federal Highway Administration

[Federal Highway Administration “Megaregions: Literature Review of the Implications for U.S. Infrastructure Investment and Transportation Planning” February 24, 2012 <http://www.fhwa.dot.gov/planning/publications/megaregions_report/megaregions01.cfm> CM]

Historically, multi-state transportation and infrastructure planning has been difficult to accomplish in the American political context, partly due to the lack of multistate leadership, overlapping roles between multistate organizations and metropolitan planning organizations (MPOs), and funding problems (Cambridge Systematics, 2005)

#### Federal control key—local projects get caught in endless debates over implementation

Mohl and Rose ’11 1. Distinguished professor University of Alabama at Birmingham 2. Professor

at Ohio State University

[Raymond A. Mohl and Mark H. Rose “The Post-Interstate Era: Planning, Politics, and Policy since the 1970s” Journal of Planning History 2011 <http://jph.sagepub.com/content/early/2011/11/02/1538513211425786.full.pdf> CM]

International comparisons highlight the trajectory of American transportation development to the present day. We look at China and other large nations, and observe the construction of high speed rail and complex freeways. The difference between China and the United States, however, is not one of ascendance versus decline, or of savers versus spenders, youth versus age, or energy versus lassitude. Rather, the difference between China and the United States is that of the state’s structuring presence. China’s transportation officials located in Beijing plan for the nation as a whole. Yet, American political leaders as far back as the Herbert Hoover and Franklin D. Roosevelt administrations never created and funded a national infrastructure bank. Since the 1970s, moreover, American political leaders have emphasized local control of infrastructure, including freeway development. Leaders in any one jurisdiction such as Broward County, Florida, endlessly debate whether to make runway improvements or rail transit investments. No one accepts responsibility for how a favored transportation project such as airports and seaports connect to nearby cities or to the nation as a whole. In this devolved political economy, one might more usefully express surprise when new transportation systems, including freeways, actually get constructed.

## at: taxes

#### Tax increases don’t increase revenue enough

Baker, 9 (Charlie, “The Thoughts that Animate our State Government’, Critical Mass, Blog, 4/7,

<http://criticalmassachusetts.blogspot.com/2009/04/thoughts-that-animate-our-state.html>)

5) Liberal tax policy is self-sustaining. This one loops back to point #1, above. At the outset of the hearing, Governor Patrick's chief economic aide, Administration and Finance Secretary Leslie Kirwan, noted that increased cigarrette taxes have had the happy effect of decreasing the number of smokers (and, therefore, the number of people buying butts) in the Commonwealth. Apparently, smoking has decreased at such a rate that the promised windfall from the tobacco tax hike has been consumed by the concurrent fall-off in consumers. This led to the following remarkable question from [House Committee Chair Jay Kaufman](http://criticalmassachusetts.blogspot.com/2009/03/unleash-class-warriors.html) (D-Lexington): "Do you know how much we are short on the cigarrette tax and how much we need to make up elsewhere as a result of that?" According to this worldview, tax increases must necessarily build upon one another. A tax is raised in order to make up for a "revenue shortfall" (to plug a gap in the budget). As a result of that tax hike, economic activity (purchasing, investment, whatever) decreases, resulting in another shortfall that the legislature has to "make up elsewhere." This leads to another tax hike, and the cycle repeats.

#### Overall tax collection is down – can’t make up revenue

Marchand, 10 (Mark, “States Saw Third Consecutive Double-Digit Drop in Tax Collections During Third Quarter of 2009, New Rockefeller Institute Report Shows,” 1/7,

<http://rockinst.org/newsroom/news_releases/2010/01-07-3Q_revenue_report.aspx>)

Albany, N.Y. — Tax collections nationwide declined by 10.9 percent during the third quarter of 2009, the third consecutive quarter during which tax revenues fell by double-digit percentages, according to the latest report from the Rockefeller Institute of Government.

Combining current data with comparable historical figures from the U.S. Census Bureau, the Institute reported that the first three quarters of 2009 marked the largest decline in state tax collections at least since 1963.

Western states saw especially sharp declines in tax collections during the third quarter, while revenues fell by more modest levels in the Southeast, New England, Mid-Atlantic, and Plains regions.

For the fourth quarter of 2009, early data showed continuing declines, although the negative trend of the past year appeared to be moderating. For 38 early-reporting states, personal income taxes fell by 6.5 percent during October and November while sales tax collections declined by 5.5 percent.

“While the recession may be over for the national economy, it is far from over for the finances of state governments, and many states are still uncertain as to when expect a return to positive revenue growth,” said report authors Lucy Dadayan, a senior policy analyst at the Rockefeller Institute, and Donald J. Boyd, a senior fellow at the Institute. “Such improved news may begin in the early part of calendar year 2010. However, even if tax collections in the coming year move up from 2009 levels, the depth of the decline over the past two years will almost certainly leave state revenues significantly lower than those of any of the past several years.”

During the third quarter of 2009, personal income tax revenues for the states declined by 11.8 percent, when compared with the same period a year earlier. Personal income taxes represent one of the three major sources of revenue for the states. The other two, sales taxes and corporate income taxes, fell by 8.9 percent and 22.6 percent, respectively.

Overall, 48 states saw tax collections fall during the third quarter of 2009, with 22 states experiencing a double-digit percentage decline. During the previous quarter, 36 states saw a double-digit decline, suggesting some moderation during the most recent quarter.

## at: federalism

#### No link- Lopez does not uphold or set a precedent for federalism

Litman & Greenberg, 97—Deputy Assistants of the Attorney General DOJ, 1997 (Harry and Mark D., 47 Case W. Res. 921, lexis)

The flaw in characterizing Lopez as a federalism decision in the narrow sense is that the decision rested exclusively on Com- merce Clause grounds, and the Commerce Clause is plainly not a limitation on federal power or a source of state power at all. For one thing, that a congressional enactment is not within the com- merce power does not establish that it is not within some congres- sional power. So the determination whether something is not within the commerce power is different from the determination whether something is outside the reach of federal power; the fact that the commerce power is limited should not be confused with the idea that the Commerce Clause limits Congress's power. More fundamentally, the Commerce Clause test on which the decision in Lopez turned--whether the regulated activity has a substantial effect on interstate commerce--does not appeal to feder- alism values. The issue is not, for example, whether the activity is integral to state and local government function or whether local experimentation in the area would be effective. This is plain from the Court's decisions sanctioning the expansion of the scope of the commerce power, as the national economy has expanded, into areas that were previously within exclusively local control. These deci- sions have approved the swelling commerce power, without regard to the benefits of state and local control, on the basis that previ- ously local activities have become more integrated in the national economy. Indeed, nothing in the Court's Commerce Clause prece- dents or the clause itself prevents Congress's power from extending to any activities that interstate commerce comes to encompass. [\*959] Of course, the Commerce Clause's grant of power to Congress may have to be reconciled with any constitutional provision, most significantly the Tenth Amendment, that is interpreted to limit fed- eral power by providing an exclusive grant of power to the states. But that possibility, which is true of any federal legislative power, is far from the proposition that the Commerce Clause itself establishes or incorporates an exclusive grant of power to the states. A decision that the Commerce Clause states a limitation on federal power--that is, places an area beyond the reach of the federal government, even under, for example, the Spending Clause--would be a startling and unprecedented reading of a clause that is plainly an affirmative grant of power. n8

#### Lopez precedent flawed—vagueness of the grounds for the decision would prevent Congress from outlawing possession of biological weapons and leave the country open to biological attacks

Amar, 2003 [Vikram David, professor of law at the University of California Hastings College of the Law in San Francisco, “Regarding Child Pornography Extends the Supreme Court's Federalism Cases,” 05/16, http://writ.news.findlaw.com/amar/20030516.html]

On this point, however, I disagree. If possession of a gun near a school is not commercial (as the Court said in Lopez), why is possession of a picture of a child in a sexual pose commercial? There are markets for both guns, and, tragically, for such pictures; if the gun market does not, in the Court's eyes, make the gun possession "commercial," why should the result be different for such pictures?

Granted, there is no distinct market for guns that will be used near schools, and there is a distinct market for child pornography. But a "distinct market" requirement would have strange consequences. It would mean that Congress would have the power to regulate possession of guns everywhere (because clearly there is a market for guns generally), but not the power to regulate the possession of guns in any specific place. And giving Congress the power to regulate all gun possession would hardly seem to be in keeping with the spirit of the New Federalism.

What about the connection to the camera market? After all, the McCoy statute does require interstate commerce in the materials used to make the photos. This distinction, too, is unpersuasive under the Court's precedents. If Congress could get around Lopez and Morrison by simply requiring the government to prove in each case that some aspect of the case involves something interstate, Lopez and Morrison would be pretty meaningless. Gun parts often travel interstate, too. Indeed, in today's interstate and international manufacturing world, almost all products derive from more than one state.

The War on Terrorism and the Federalism Cases

In the end, still-unresolved questions like these, about what the Supreme Court means when it talks of "commercial activity," are central to understanding the scope and limits of the New Federalism. This may be especially true as the war on terror is reflected in domestic federal legislation.

For example, suppose Congress passed a law making it a crime to possess anthrax near a city of more than 10.000 people. Would the Court say that mere possession is not commercial activity, the way it did in Lopez?

#### Lopez precedent practically has no bite and is too limited in scope—it’s not enforced.

Adler, 2005. [Jonathan, National Review Online contributing editor, “Federalism, Up in smoke?” http://www.nationalreview.com/adler/adler200506070921.asp]

After Lopez and Morrison, it seemed that further expansion of federal regulatory authority into local matters might be at an end. Even if the Court were not ready to overturn decades of decisions upholding extensive federal power, there was hope it would not allow Congress to go any farther under the pretense of regulating “commerce among the several states.” If nothing else, these decisions made clear that federal power had judicially enforceable limits. Raich now casts this conclusion in doubt.

Noting the Court’s interpretation of the Commerce Clause “has evolved over time,” Justice Stevens’ majority opinion in Raich held Congress’s effort to control drug abuse and illegal trafficking could be used to regulate conduct that has little relation to either. As in Wickard, the Court asserted that Congress may regulate “purely intrastate activity that is not itself ‘commercial’” if necessary for the regulation of interstate commodity markets. As in Wickard, the federal government can regulate the activity of one individual if, when aggregated together with all similarly situated people, that person’s activity will have a “substantial effect” on interstate commerce.

“That the regulation ensnares some purely intrastate activity” — such as the personal possession of marijuana for medical use — “is of no moment,” Stevens explained. Congress enacted a “lengthy and detailed statute creating a comprehensive framework for regulating the production, distribution, and possession” of controlled substances, and reasonably determined that any possession or consumption of a controlled substance could undermine the entire scheme. Even personal consumption has the potential to displace demand for marijuana in the open, albeit illegal, interstate market. So, Angel Raich is no less subject to federal power than farmer Filburn. Yet if any privately produced item that can substitute for a commercially produced good is subject to federal control, then Congressional power knows few limits. Federal regulation of commercial day care services could justify regulating child care in the home; regulation of restaurants could justify regulating domestic food preparation; and so on.

In prior cases, the Court had only ever applied such reasoning to activities one could consider “economic.” Justice Stevens’ majority opinion accepted this rule, but adopted what Justice O’Connor termed a “breathtaking” definition of the term. The CSA regulates “quintessentially economic” activities, Stevens wrote, specifically “the production, distribution, and consumption of commodities.” This is the definition of “economics” Stevens found in the 1966 Webster’s Third New International Dictionary. Most other dictionaries, however, do not offer nearly so expansive a definition, Justice Thomas observed in dissent. But a more constrained — and common-sensical — definition of “economic” would have constrained the scope of federal power.

That Justices Stevens, Souter, Ginsburg, and Breyer — the Court’s four liberals — would be so deferential to congressional power is not surprising. All four have made clear they have little interest in constraining legislative power on federalism grounds. More disturbing is Justice Kennedy’s decision to go along for the ride without explanation. Perhaps, some surmise, this is due to his visceral hostility to drugs. Yet whatever the reason, he was not the only right-leaning justice to give a green light to the continued extension of federal power.

Concurring in the result Justice Scalia offered a “more nuanced” if only marginally less expansive, opinion. In Scalia’s view, the federal regulation of medical marijuana was justified under the “necessary and proper clause,” as such regulation is not itself the regulation of commerce. Rather, Scalia explained, Congress has the power to regulate “intrastate activities that do not themselves substantially effect interstate commerce,” if “necessary to make a regulation of interstate commerce effective.” Because marijuana is a “fungible commodity,” Congress power to control interstate drug trafficking provides sufficient basis to criminalize smoking home-grown weed pursuant to a doctor’s prescription. Indeed, Scalia concurred with the majority’s troubling conclusion that any noneconomic intrastate activity is fair game, so long as such activities are regulated “in connection with a more comprehensive scheme of regulation.”

Under Raich, it is easier for Congress completely to displace state power with a comprehensive and intrusive regulatory regime than with narrow legislation focused on a discrete and limited issue of particular federal concern. As Justice O’Connor noted in her dissent, the Court “suggests that the federal regulation of local activity is immune to commerce clause challenge because Congress chose to act with an ambitious, all-encompassing statute, rather than piecemeal.” So long as Congress could rationally conclude that the control of a noncommercial, intrastate activity is “essential” to a broader regulatory scheme, a majority of the Court appears ready to go along. This not only gives Congress the incentive to adopt more ambitious legislation, it also severely constrains any meaningful judicial check on federal power under the commerce clause.

After Lopez and Morrison, lower federal courts were exceedingly reluctant to invalidate federal statutes or regulations on commerce-clause grounds. The decisions had little bite below, as court after court upheld even the most expansive federal laws and their most intrusive applications. Courts stretched to ensure laws covering petty arsons and other local crimes would pass muster. So even if Raich does not auger more relaxed scrutiny of federal enactments, it will discourage lower courts from questioning federal actions on commerce clause or other textual grounds. The Founders sought to create a government of limited and enumerated powers. After Raich, there is reason to fear that we can’t rely on courts to enforce these constitutional limits.

#### Lopez was not a federalism decision- the inability to apply its precedent as such proves

Rosenberg, Golden Gate University, 1998 (Steven, 28 Golden Gate U.L. Rev. 51, lexis)

This system of review is fatally flawed because it can always be manipulated by subsequent courts, or by Congress if it uses the "magic words" in its legislation. n250 The Ninth Circuit's [\*85] ability to distinguish Lopez in Michael R. presents additional proof of this flawed approach. In his dissent, Justice Souter described Lopez as either a "misstep" or an "epochal case." n251 In fact, it is neither. n252 As Michael R. demonstrates, Lopez changed nothing fundamental in Commerce Clause review; rather it was directly in line with the same formalistic method the Supreme Court has previously employed. n253 Truly significant change in this area will come only if the Supreme Court admits that federalism is a policy, not a rule. The Court must then acknowledge that it is making policy decisions when it examines the Commerce Clause under its current system of review. Alternatively, the Court must remove itself from the decision making process altogether and allow Congress to define the policy of federalism, subject only to the limits of the political process itself.

#### U.S. federalism isn’t modeled abroad

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'."

## at: lopez

#### State action lacks uniformity

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

Nonetheless, these concerns need not affect the legitimacy of the federal common law of foreign relations. Although federal courts might be generally unsuited to make federal foreign relations law on both legitimacy and competence grounds, the adverse consequences of state-by-state regulation in the face of federal political branch silence might be worse. States suffer from many of the same disabilities as federal courts in this context. Moreover, federal courts, in contrast to the states, have independence from local political processes and, as a branch of the national government, are likely to be more sensitive to national foreign relations interests. Even in the absence of strategic behavior by the states, one might think that, all things being equal, suboptimal but uniform federal judge-made regulation of foreign relations is preferable to the nonuniformity inherent in state-by-state regulation of a foreign relations issue. 213 Finally, the federal common law of foreign relations is designed to protect political branch prerogatives in foreign relations that the political branches themselves are structurally unsuited to protect. Any remaining concerns about the legitimacy or competence of the federal common law of foreign relations are thus mitigated by the political branches' ability to override judicial errors in the development of such law.

#### That tanks solvency

Donahue ’97 (John D., JFK School of Government, Disunited States, p. 42)

Even when states vary, of course, there are arguments for uniformity. Institutions and individuals who live or do business in several states face the expense, bother, and confusion of coping with different (and sometimes conflicting) rules. Inconsistencies among state laws and regulations can lead to disputes of great complexity and to resolutions of limited appeal. After taking its case all the way to the Supreme Court, for example, a cruise ship operator won the right to be sued only in Florida by aggrieved passengers who had been on a trip between Washington State and Mexico.