

THE NATIONAL FEDERALISM INITIATIVE TOOLBOX

2026





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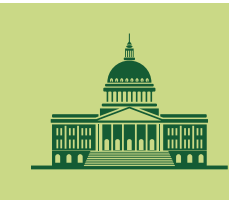
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Structure Over Politics in Practice

A Message From the Utah Federalism Conference Chairs Representative Keven J. Stratton, Representative Ken Ivory

American federalism rests on a simple constitutional truth: power originates with the people, who constituted **two governing partners—state and national**—entrusting each with distinct responsibilities to secure their rights. This is not merely a historical inheritance—**The structure of American government is foundational to liberty** and the most practical answer to the most urgent problems facing our citizens, states, and nation today.

The polarization, fiscal strain, regulatory complexity, and erosion of public trust we all face are not, at their root, primarily partisan problems, they are structural ones. Structural problems require structural solutions. This is why **Structure Over Politics** is not merely a slogan. It is a diagnosis and a prescription.

Federalism works when both governing spheres act as good faith partners, not rivals, or political props. Like accountants and attorneys serving a shared client, state and national governments are **coordinate fiduciaries, each supreme in its own sphere**, each obligated to respect the other's role, each serving the people they hold in common.

Alignment on these foundational principles—and their application addressed below—is fundamental to the oath of office we each took and is the essential first condition of a more functional federalism. When state leaders are aligned on first principles, the constitutional structure works as designed. Shared constitutional principles provide a common framework for resolving jurisdictional issues with consistency, mutual respect, and constitutional fidelity.

But a balanced constitutional partnership doesn't sustain itself. It depends on leaders who know the difference between structure and policy and who defend state jurisdiction even over partisan advantage. When state leaders fail to hold that line, jurisdictional boundaries blur, power centralizes, costs climb, and the innovation and accountability that make state government indispensable to the people are lost. When the structure atrophies, both spheres of government are less capable of doing their jobs, and the people are left frustrated and disengaged.

What's needed, then, is not just alignment on principles but also **allegiance to systematic practices**—a deliberate commitment to defend constitutional jurisdiction regardless of which party controls Washington or our own capitals. Where state leaders have honored that allegiance, governing balance has been preserved. Where they haven't, the people have paid the price.

This summit challenges participants to insist on nothing less than functional federalism. The objective is not to admire the problem or to paper over it with good intentions. Starting from shared first principles, we'll begin building a nonpartisan jurisdictional allegiance among states, grounded in the conviction that *preserving one state's jurisdiction is*

foundational to preserving it for all states so that we can better serve the diverse needs of our people.

This requires more than agreeing on abstractions. It means developing a **shared allegiance to constitutional stewardship through systematic federalism practices**, nurturing state-national governing balance through continuing **Education**, collaborative **Negotiation**, harmonized **Legislation**, and, where required, coordinated **Litigation (ENLL)**—the framework through which we preserve the state-federal governing balance that secures the rights of the people we serve. This is not a menu. It is a sequence—each stage building the groundwork the next requires.

Having achieved **alignment on first principles** of federalism and **mutual allegiance to a framework of federalism practices**, we advance to a convocation with our federal partner, engaging executive and legislative leaders to **educate** regarding the pragmatic benefits of truly governing as partners again; **negotiate** distinctly allocated state-national roles and responsibilities; and memorialize (**legislate**) a renewed clarity for and commitment to our respective roles and responsibilities to effectively, efficiently and responsively represent the citizens we mutually serve.

The ambition of this summit is modest in form but significant in consequence to move from talking about federalism to actually practicing it—and **to move preserving that governing balance** the Framers designed and the people deserve. Participants are invited to not just refine and affirm the principles of Structure Over Politics, but also to commit to putting them into practice together.

To accomplish this, we envision three working groups emerging from the summit:

- **A Fourteenth Amendment Work Group** to proactively preserve civil rights protections while strengthening constitutional federalism;
- **An Alignment Work Group** to build interstate alignment around fundamental federalism principles; and
- **An Allegiance Work Group** to develop mechanisms for systematic interstate allegiance through a collaborative refinement of the ENLL framework.

With your engagement, we envision this summit as the catalyst for a return to functional American federalism—the governing structure designed to secure the rights of all Americans now, and for generations to come. The problems our citizens face are real. The solutions are structural. And the leaders best positioned—and most constitutionally obligated—to deliver those solutions are in this room.



Attendees at the 2025 Federalism Summit of the States

MUTUAL GUARDIANS OF OUR MUTUAL HAPPINESS

“Hearken not to the unnatural voice which tells you that the people of America, knit together as they are by so many cords of affection, can no longer live together as members of the same family; can no longer continue the mutual guardians of their mutual happiness; can no longer be fellow citizens of one great, respectable, and flourishing empire. Hearken not to the voice which petulantly tells you that the form of government recommended for your adoption is a novelty in the political world; that it has never yet had a place in the theories of the wildest projectors; that it rashly attempts what it is impossible to accomplish. No, my countrymen, shut your ears against this unhallowed language. Shut your hearts against the poison which it conveys; the kindred blood which flows in the veins of American citizens, the mingled blood which they have shed in defense of their sacred rights, consecrate their Union, and excite horror at the idea of their becoming aliens, rivals, enemies.”

- James Madison, Federalist No. 14 -

NFI PRINCIPLES (PROPOSED)

The following proposed shared principles are designed to move participants from alignment on what federalism requires to allegiance in putting **#StructureOverPolitics** into practice.

1. First Principles

Power Derives From The People: Federalism begins with popular sovereignty and delegated authority—not administrative convenience.

Two Governing Partners: State and national governments are coordinate institutions with distinct constitutional roles, each supreme in its own sphere.

Governing Balance Is Fundamental: The double security of two governing spheres is the architecture of liberty, not a political preference.

State Leaders’ Continuing Responsibility: State leaders undermine their own legitimacy when they fail to understand and honor their oath to uphold and defend the U.S. Constitutional structure (Art. VI).

Frequent Recurrence To Fundamental Principles: Frequent recurrence to fundamental principles is not merely an academic exercise. The Virginia Declaration of Rights treats it as necessary to the preservation of free government and liberty, while many state constitutions, including Utah's, calls it “essential to the security of individual rights and the perpetuity of free government” (Virginia Dec. of Rights § 15 (1776); Utah Const. Art. I, Sec. 27).

2. Structural Distortions

How Political Pressure Overwhelms Structure: Party conflict, fiscal dependence, constitutional illiteracy, and administrative expansion obscure jurisdictional lines and erode state authority.

When Policy Disputes Mask Jurisdictional Disputes—A practical framework for separating substantive disagreement from structural confusion.

The Cost Of Imbalance—Financial, structural, accountability, and civic consequences of a governing structure operating outside its constitutional design.

3. Interstate Consensus on State-National Jurisdiction

Jurisdiction Of One State Matters To All States: Preserving one state's constitutional role helps preserve the governing balance for every state.

Political Whiplash And Its Costs: Financial, structural, efficiency, accountability, polarization, and social cohesion are among the costs of jurisdictional instability.

Developing Jurisdictional Consensus Among The States—Methods of “jurisdictional sifting” to identify areas of broad agreement and narrow areas of disagreement.

State-To-State Comity And Cooperation—Habits and norms that sort out state vs. federal roles without sacrificing constitutional principle or policy preferences.

4. Process and Tools for a Functional Federalism

Continuing Education And Shared Vocabulary—Structurally focused, nonpartisan federalism curriculum; podcast series; federalism forum; Federalism Index and Policy Tracker; state agency-specific federalism matrices; state leader-focused Federalism AI support; functional federalism toolkit

A Process For Jurisdictional Uncertainty—Respectful consultation, notice-and-response, mediation, and escalation paths when lines are unclear.

ENLL Framework and Tools: *Education*—frequent recurrence to first principles, curriculum, training, state-federal shared reference; *Negotiation*—jurisdictional checklists, agency matrices, roundtable forums, engagement with federal counterparts toward jurisdictional clarity; *Legislation*—build the record, establish and fund functional federalism systems, assert and defend jurisdictional boundaries, mutual coordination; *Litigation*—disciplined, principled constitutional challenges grounded in the ENLL evidentiary record.

5. National Engagement, Consensus, and Process

From Interstate To State-National Consensus—Interstate alignment and allegiance toward collaborative engagement with national counterparts on shared jurisdictional understandings.

Maintaining Balance Regardless Of Party Control—Preserving structure without regard to temporary partisan advantage, reducing the policy whiplash that each national election inflicts on the state-federal balance.

Toward An Ongoing Framework—A standing process or institution for monitoring and maintaining state-national jurisdictional balance with continuity, comity, and respect.

PARTICIPANT DESCRIPTION

This summit is for state leaders who want to move beyond partisanship and rhetoric about federalism and into the practical work of rebalancing a functional state-national governing partnership. It is designed for legislators, legislative staff, executive officials, scholars, and institutional partners willing to engage federalism not as a partisan slogan or political prop, but as an ongoing discipline for mutually respectful and beneficial intergovernmental partnership.

Participants will be asked to do three things—develop a shared understanding of first principles, strengthen constitutional practices needed to assess difficult jurisdictional issues, and begin building lasting mechanisms for the preservation of this state-federal governing balance for generations to come. The point is not merely to discuss federalism but to begin putting #StructureOverPolitics *in Practice* together as dependable partners, oath-bound to make it happen. 🏛️



Model Legislation

Creation of the Utah Federalism Commission (Utah Code 63C-4a-302) (HB 76, 2011)

This bill established the Federalism Subcommittee, which evolved into the current Commission. Its purpose is to evaluate federal law, coordinate state responses to federal overreach, correspond with other states, and report to interim committees. It established standards for evaluating federal laws and authorized funding to hire legal staff to assist the commission.

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FEDERAL LAW EVALUATION AND RESPONSE

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2011 GENERAL SESSION

3

STATE OF UTAH

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Chief Sponsor: Ken Ivory

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Senate Sponsor: Wayne L. Niederhauser

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LONG TITLE

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General Description:

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This bill authorizes the Constitutional Defense Council to evaluate and respond to

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federal law.

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Highlighted Provisions:

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This bill:

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▶ defines terms;

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▶ creates a Federalism Subcommittee within the Constitutional Defense Council to:

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• evaluate federal law;

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• report to an interim committee;

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• mail a copy of legislation and the journal to government officers; and

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• recommend that the governor call a special session of the Legislature to respond

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to federal law;

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▶ authorizes the Federalism Subcommittee chair to:

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• respond to federal law according to an established procedure; and

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• correspond with other states about federal law and coordinate responses to

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federal law;

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▶ establishes standards by which the Federalism Subcommittee shall evaluate federal

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law;

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▶ authorizes the Constitutional Defense Council to discuss challenging certain federal

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court rulings;

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▶ authorizes the Constitutional Defense Council chair to approve certain claims for

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payments;

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▶ requires the Public Lands Policy Coordinating Office to:

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• provide staff assistance to the Constitutional Defense Council and the

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Federalism Subcommittee; and

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• prepare a consitutional defense plan;

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▶ reduces the distribution from the Land Exchange Distribution Account to the

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Permanent Community Impact Board;

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▶ increases the distribution from the Land Exchange Distribution Account to the

52 Constitutional Defense Restricted Account; and

53 ► makes technical changes.

141 Section 2. **Section 63C-4-101** is amended to read:

142 **63C-4-101. Creation of Constitutional Defense Council and Federalism**

143 **Subcommittee -- Membership -- Vacancies -- Meetings -- Staff -- Reports -- Per diem,**

144 **travel expenses, and funding.**

145 (1) There is created the Constitutional Defense Council.

146 (2) (a) The [defense] council shall consist of the following members:

147 (i) the governor or the lieutenant governor, who shall serve as chair of the council;

148 (ii) the president of the Senate or the president of the Senate's designee who shall serve

149 as vice chair of the council;

150 (iii) the speaker of the House or the speaker of the House's designee who shall serve as

151 vice chair of the council;

152 (iv) the minority leader of the Senate or the minority leader of the Senate's designee;

153 (v) the minority leader of the House or the minority leader of the House's designee;

154 (vi) the attorney general or the attorney general's designee, who shall be one of the

155 attorney general's appointees, not a current career service employee;

156 (vii) the director of the School and Institutional Trust Lands Administration;

157 (viii) four elected county commissioners, county council members, or county

158 executives from different counties who are selected by the Utah Association of Counties, at

159 least one of whom shall be from a county of the first or second class;

160 (ix) the executive director of the Department of Natural Resources, who may not vote;

161 (x) the commissioner of the Department of Agriculture and Food, who may not vote;

162 (xi) the director of the Governor's Office of Economic Development, who may not

163 vote; and

164 (xii) two elected county commissioners, county council members, or county executives

165 from different counties appointed by the Utah Association of Counties, who may not vote.

166 (b) The council vice chairs shall conduct a council meeting in the absence of the chair.

167 (c) If both the governor and the lieutenant governor are absent from a meeting of the

168 council, the governor may designate a person to attend the meeting solely for the purpose of

169 casting a vote on any matter on the governor's behalf.

170 (3) When a vacancy occurs in the membership for any reason, the replacement shall be

171 appointed for the unexpired term in the same manner as the original appointment.

172 (4) (a) (i) Except as provided in Subsection (4)(a)(ii), the [defense] council shall meet

173 at least monthly or more frequently as needed.

174 (ii) The [defense] council need not meet monthly if the chair, after polling the

175 members, determines that a majority of the members do not wish to meet.

176 (b) The governor or any six members of the council may call a meeting of the council.

177 (c) Before calling a meeting, the governor or council members shall solicit items for

178 the agenda from other members of the council.

179 (d) (i) The [~~Constitutional Defense Council~~] council shall require that any entity that

180 receives money from the Constitutional Defense Restricted Account provide financial reports

181 and litigation reports to the council.

182 (ii) Nothing in this Subsection (4)(d) prohibits the council from closing a meeting

183 under Title 52, Chapter 4, Open and Public Meetings Act, or prohibits the council from

184 complying with Title 63G, Chapter 2, Government Records Access and Management Act.

185 (e) A majority of the voting membership on the [defense] council is required for a

186 quorum to conduct council business. A majority vote of the quorum is required for any action

187 taken by the [defense] council.

188 (5) (a) The Office of the Attorney General shall advise:

189 (i) the [defense] council[.]; and

190 (ii) the Federalism Subcommittee.

191 **(b) The Public Lands Policy Coordinating Office shall provide staff assistance for**

192 **meetings of the council and Federalism Subcommittee.**

193 (6) A member may not receive compensation or benefits for the member's service, but

194 may receive per diem and travel expenses in accordance with:

195 (a) Section 63A-3-106;

196 (b) Section 63A-3-107; and

197 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and

198 63A-3-107.

199 (7) (a) The council and Federalism Subcommittee shall be funded from the

200 Constitutional Defense Restricted Account created in Section 63C-4-103.

201 (b) Money appropriated for or received by the council may be expended by the

202 governor in consultation with the council.

203 **(8) (a) There is created a Federalism Subcommittee of the council.**

204 **(b) The subcommittee shall consist of members listed in Subsections (2)(a)(i) through**

205 **(vi).**

206 **(c) (i) The governor or the lieutenant governor shall serve as chair of the**

207 **subcommittee.**

208 **(ii) The council vice chair shall conduct a subcommittee meeting in the absence of the**

209 **chair.**

210 Section 3. Section **63C-4-102** is amended to read:

211 **63C-4-102. Duties.**

212 (1) The Constitutional Defense Council is a council to assist the governor and the

213 Legislature on the following types of issues:

214 (a) the constitutionality of [~~unfunded~~] federal mandates;

215 (b) when making recommendations to challenge the federal mandates and regulations

216 described in Subsections (1)(e)(i) through (v), the rationale for and effectiveness of those

217 federal mandates or regulations;

218 (c) legal and policy issues surrounding state and local government rights under R.S.

219 2477;

220 (d) legal issues relating to the rights of the School and Institutional Trust Lands

221 Administration and its beneficiaries; and

222 (e) the advisability, feasibility, estimated cost, and likelihood of success of challenging:

223 (i) federal court rulings that:

224 **(A) hinder the management of the state's prison system and place undue financial**

225 **hardship on the state's taxpayers;**

226 **(B) impact a power or a right reserved to the state or its citizens by the United States**

227 **Constitution, Amendment IX or X; or**

228 **(C) expand or grant a power to the United States government beyond the limited,**

229 enumerated powers granted by the United States Constitution:
230 (ii) federal laws or regulations that reduce or negate water rights or the rights of owners
231 of private property, or the rights and interest of state and local governments, including
232 sovereignty interests and the power to provide for the health, safety, and welfare, and promote
233 the prosperity of their inhabitants;
234 (iii) conflicting federal regulations or policies in land management on federal land;
235 (iv) federal intervention that would damage the state's mining, timber, and ranching
236 industries;
237 (v) the authority of the Environmental Protection Agency and Congress to mandate
238 local air quality standards and penalties; and
239 (vi) other issues that are relevant to this Subsection (1).
240 (2) The council shall:
241 (a) provide advice to the governor, state planning coordinator, and the public lands
242 policy coordinator concerning coordination of:
243 (i) state and local government rights under R.S. 2477; and
244 (ii) other public lands issues;
245 (b) approve a plan for R.S. 2477 rights developed in accordance with Section
246 63C-4-104; and
247 (c) review, at least quarterly:
248 (i) financial statements concerning implementation of the plan for R.S. 2477 rights;
249 and
250 (ii) financial and other reports from the Public Lands Policy Coordinating Office
251 concerning its activities.
252 (3) The council chair may require the attorney general or a designee to provide
253 testimony on potential legal actions that would enhance the state's sovereignty or authority on
254 issues affecting Utah and the well-being of its citizens.
255 (4) The council chair may direct the attorney general to initiate and prosecute any
256 action that the council determines will further its purposes, including an action described in
257 Section 67-5-29.
258 (5) (a) Subject to the provisions of this section, the council may select and employ
259 attorneys to implement the purposes and duties of the council.
260 (b) The council chair may, in consultation with the council, direct any council attorney
261 in any manner considered appropriate by the attorney general to best serve the purposes of the
262 council.
263 (c) The attorney general shall negotiate a contract for services with any attorney
264 selected and approved for employment under this section.
265 (6) The council chair [shall] may, only with the concurrence of the council, review and
266 approve all claims for payments for:
267 (a) legal services that are submitted to the council; ~~[and]~~
268 (b) an action filed in accordance with Section 67-5-29[.]; ~~and~~
269 (c) costs related to a constitutional defense plan approved in accordance with Section
270 63C-4-104 that are submitted by:
271 (i) the Public Lands Policy Coordinating Office;
272 (ii) the School and Institutional Trust Lands Administration; or
273 (iii) the Office of the Attorney General.

274 (7) Within five business days' notice, the council chair may, with the concurrence of
275 the council, order the attorney general or an attorney employed by the council to cease work to
276 be charged to the fund.
277 (8) (a) At least 20 calendar days before the state submits comments on the draft
278 environmental impact statement or environmental assessment for a proposed land management
279 plan of any federal land management agency, the governor shall make those documents
280 available to:
281 (i) members of the council; and
282 (ii) any county executive, county council member, or county commissioner of a county
283 that is covered by the management plan and that has established formal cooperating agency
284 status with the relevant federal land management agency regarding the proposed plan.
285 (b) (i) Council members or local government officials receiving the documents may
286 make recommendations to the governor or the governor's designee concerning changes to the
287 documents before they are submitted to the federal land management agency.
288 (ii) Council members or local government officials shall submit recommendations to
289 the governor or the governor's designee no later than 10 calendar days after receiving the
290 documents under Subsection (8)(a).
291 (c) Documents transmitted or received under this Subsection (8) are drafts and are
292 protected records pursuant to Subsection 63G-2-305(22).
293 (9) The council shall submit a report on December 1 of each year ~~[to the speaker of the~~
294 ~~House of Representatives and the president of the Senate that summarizes the council's~~
295 ~~activities:] by electronic mail that summarizes the council's activities to each legislator.~~
296 Section 4. Section **63C-4-103** is amended to read:

Utah's Sovereignty Act (SB 57, 2024)

Invoking the tenth Amendment, this act grants the Utah Legislature the authority to reject federal actions or directives it deems unconstitutional. It creates a legal framework for the state to refuse compliance with federal regulations unless a court rules them constitutional. Utilizing this framework requires a concurrent resolution passed by two-thirds of the legislature or joint approval from the Senate President and House Speaker.

UTAH CONSTITUTIONAL SOVEREIGNTY ACT

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott D. Sandall

House Sponsor: Ken Ivory

LONG TITLE

General Description:

This bill enacts the Utah Constitutional Sovereignty Act.

Highlighted Provisions:

This bill:

- defines terms;
- establishes a framework for the Legislature, by concurrent resolution, to prohibit the enforcement of a federal directive within the state by government officers if the Legislature determines the federal directive violates the principles of state sovereignty;
- describes the ways in which a federal directive violates the principles of state sovereignty;
- limits the authority for requesting a concurrent resolution under the bill;
- requires the Legislature to consult with the attorney general regarding the potential impact of a concurrent resolution on litigation and to provide notice to representatives of tribal governments;
- specifies the required contents of a concurrent resolution;
- clarifies the effects of a concurrent resolution upon adoption;
- establishes requirements for the termination of a concurrent resolutuion; and
- clarifies the effects of legislative inaction on a federal directive.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

ENACTS:

- 63G-16-201, Utah Code Annotated 1953
- 63G-16-202, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Secion **63G-16-201** is enacted to read:

Part 2. Utah Constitutional Sovereignty Act

63G-16-201. Definitions.

As used in this part:

(1) "Board of education" means:

(a) a local school board described in Title 53G, Chapter 4, School Districts;

(b) the State Board of Education;

(c) the State Charter School Board created under Section 53G-5-201; or

(d) a charter school governing board described in Title 53G, Chapter 5, Charter Schools.

(2) "Federal agency" means a department, agency, authority, commission, council,

board, office, bureau, or other administrative unit of the executive branch of the United States

government.

(3) (a) "Federal directive" means:

(i) a statute passed by the United States Congress;

(ii) an executive order by the president of the United States;

(iii) a rule or regulation adopted by a federal agency; or

(iv) an order or action by:

(A) a federal agency; or

(B) an employee or official appointed by the president of the United States.

(b) "Federal directive" does not include any order by the federal government calling the

Utah National Guard into the service of the United States.

(4) (a) "Government officer" means:

(i) an individual elected to a position in state or local government, when acting in the

capacity of the state or local government position;

(ii) an individual elected to a board of education, when acting in the capacity of a

member of a board of education;

(iii) an individual appointed to fill a vacancy in a position described in Subsection

(4)(a)(i) or (ii), when acting in the capacity of the position; or

(iv) an individual appointed to or employed in a full-time position by state government,

local government, or a board of education, when acting in the capacity of the individual's

appointment or employment.

(b) "Government officer" does not include a member or employee of the legislative

branch of state government.

(5) "Local government" means:

(a) a county, city, town, or metro township;

(b) a special district governed by Title 17B, Limited Purpose Local Government

Entities - Special Districts;

(c) a special service district governed by Title 17D, Chapter 1, Special Service District

Act;

(d) a community reinvestment agency governed by Title 17C, Limited Purpose Local

Government Entities - Community Reinvestment Agency Act;

(e) a conservation district governed by Title 17D, Chapter 3, Conservation District Act;

(f) a redevelopment agency; or

(g) an interlocal entity or a joint cooperative undertaking governed by Title 11, Chapter

13, Interlocal Cooperation Act.

Section 2. Section **63G-16-202** is enacted to read:

63G-16-202. Resolution of the Legislature invoking state sovereignty --

85 **Requirements -- Effect upon adoption -- Termination -- Relation to other law.**
86 (1) The Legislature may, by concurrent resolution, prohibit a government officer from
87 enforcing or assisting in the enforcement of a federal directive within the state if the
88 Legislature determines the federal directive violates the principles of state sovereignty in
89 accordance with Subsection (2).
90 (2) A federal directive violates the principles of state sovereignty if the federal
91 directive restricts or infringes upon:
92 (a) a power or a right reserved to the state by the Tenth Amendment to the United
93 States Constitution; or
94 (b) the state's rights or interests to provide for the health, safety, and welfare and
95 promote the prosperity of the state's inhabitants.
96 (3) A request for a concurrent resolution under Subsection (1) may not be filed unless:
97 (a) the request is approved by the speaker of the House of Representatives and the
98 president of the Senate; or
99 (b) while the Legislature is convened and conducting business on the floor, identical
100 motions to approve the request are made in each chamber of the Legislature and both motions
101 are approved by a two-thirds majority of the members present in each chamber.
102 (4) The Legislature shall consult with and consider any recommendations provided by
103 the attorney general concerning the potential impact that a concurrent resolution may have on
104 current or anticipated litigation.
105 (5) Upon the filing of a request for a concurrent resolution under Subsection (1), the
106 Legislature shall provide notice of the concurrent resolution, including the short title and
107 proposed objectives, to the representatives of tribal governments listed in Subsection
108 9-9-104.5(2)(b).
109 (6) A concurrent resolution under Subsection (1) shall:
110 (a) identify the federal directive the Legislature has determined violates the principles
111 of state sovereignty under Subsection (2);
112 (b) include the information or findings upon which the Legislature has made the
113 determination in Subsection (5)(a);
114 (c) specify the government officers to which the concurrent resolution applies;
115 (d) explain the effect that the concurrent resolution will have on the applicability of the
116 federal directive within the state, including a description of any activities or forms of assistance
117 that a government officer specified in Subsection (5)(c) is prohibited from conducting in
118 connection with the enforcement of the federal directive; and
119 (e) describe any other requirements for a government officer specified in Subsection
120 (5)(c) to comply with the concurrent resolution.
121 (7) A concurrent resolution under Subsection (1):
122 (a) takes effect upon adoption and has the force of law; and
123 (b) after taking effect, may only be terminated by concurrent resolution.
124 (8) The requirements for filing a request for a concurrent resolution in Subsection (3)
125 apply to a concurrent resolution described in Subsection (6)(b).
126 (9) The inaction of the Legislature in determining that a federal directive violates the
127 principles of state sovereignty by concurrent resolution under this section:
128 (a) does not imply or create a presumption that the federal directive is lawful under the
129 United States Constitution; and

130 (b) has no effect on the attorney general's authority to pursue any appropriate legal
131 action to challenge the federal directive on the basis of state sovereignty.
132 (10) This section supersedes any conflicting provisions of Utah law.
133 Section 3. **Effective date.**
134 If approved by two-thirds of all the members elected to each house, this bill takes effect
135 upon approval by the governor, or the day following the constitutional time limit of Utah
136 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
137 the date of veto override.

Guidance Letters (SB 198, 2025)

This legislation mandates that state agencies publish any nonbinding federal guidance letters they receive on their public websites and the Utah Open Data Portal within fifteen days of receipt. Agencies must also transmit copies to the Legislative Management Committee and the Federalism Commission chairs to increase transparency around federal administrative directives.

Federal Guidance Letter Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Keven J. Stratton

House Sponsor: Casey Snider

LONG TITLE

General Description:

This bill establishes publication and reporting requirements for federal guidance letters received by state agencies.

Highlighted Provisions:

- This bill:
- defines terms;
 - requires a state agency to publish certain federal guidance letter information received by the state agency on public websites and transmit copies to the Legislature; and
 - establishes standards for federal guidance letter information published on a state agency's website.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

63G-16-301, Utah Code Annotated 1953

63G-16-301, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **63G-16-301** is enacted to read:

Part 3. Federal Guidance Letters

63G-16-301 . Definitions.

As used in this part:

- (1) "Applicable federal agency" means the federal agency that issued a federal guidance letter.
- (2) "Federal agency" means a department, agency, authority, commission, council, board, office, bureau, or other administrative unit of the executive branch of the United States government.
- (3)(a) "Federal guidance letter" means a written statement by a federal agency, regardless of format, that:
- (i) clarifies or provides instruction on:
 - (A) the federal agency's interpretation of a federal law; or

(B) the federal agency's policies for administering a federal law; and

(ii) is nonbinding and of general applicability

(b) "Federal guidance letter" does not include:

- (i) a written communication between a federal agency and a state agency regarding a specific entity;
- (ii) a peer-to-peer communication; or
- (iii) a written communication between a federal agency and the State Tax Commission containing guidance related to the protection, storage, or safeguarding of confidential information.

(4) "Federal law" means:

- (a) a statute passed by the United States Congress; or
- (b) a rule or regulation adopted by a federal agency.

(5) "State agency" means a department, division, board, council, committee, institution, office, bureau, or other similar administrative unit of the executive branch of state government.

Section 2. Section **63G-16-302** is enacted to read:

63G-16-302 . Federal guidance letters received by state agencies -- Publication and reporting requirements -- Standards for information published on state agency website.

(1) A state agency shall publish and report federal guidance letters received by the state agency in accordance with this section.

(2)(a) Beginning July 1, 2025, a state agency that receives a federal guidance letter shall:

(i) publish the federal guidance letter on:

- (A) the state agency's public website; and
 - (B) the Utah Open Data Portal Website created in Section 63A-16-107; and
- (ii) transmit a copy of the federal guidance letter to:
- (A) the Legislative Management Committee; and
 - (B) the chairs of the Legislature's Federalism Commission.

(b) A state agency shall comply with the requirements of Subsection (2)(a) within 15 days from the date on which the state agency receives the federal guidance letter.

(3)(a) This Subsection (3) applies to a state agency that:

- (i) publishes and reports a federal guidance letter in accordance with Subsection (2); and
- (ii) receives a written communication from the applicable federal agency indicating that the federal guidance letter has been rescinded.

(b) A state agency described in Subsection (3)(a) shall:

- (i) publish the following documents on the websites described in Subsection (2)(a)(i):
- (A) the written communication indicating the federal guidance letter's rescission;
- and
- (B) a disclaimer, linked to the federal guidance letter, notifying the public of the federal guidance letter's rescission; and
- (ii) transmit to the entities described in Subsection (2)(a)(ii) a copy of the written communication indicating the federal guidance letter's rescission.

(c) A state agency shall comply with the requirements of Subsection (3)(b) within 15 days from the date on which the state agency receives the written communication

82 indicating the federal guidance letter's rescission
83 (4) A state agency shall ensure that any information published on the state agency's public
84 website under this section is available:
85 (a) on a permanent basis;
86 (b) in a user-friendly manner; and
87 (c) via a link from the main page of the website.
88 Section 3. **Effective Date.**
89 This bill takes effect on May 7, 2025.

Guidance Letters Federal Revisions (SB 100, 2026)

Building on SB 198, this bill extends the federal guidance letter reporting and publication requirements to education entities. It requires state agencies to submit reports to the Federalism Commission regarding the scope and impact of these letters.

1	Federal Revisions 2026 GENERAL SESSION STATE OF UTAH Chief Sponsor: Keven J. Stratton House Sponsor: Ken Ivory
2	
3	LONG TITLE
4	General Description:
5	This bill establishes publication and reporting requirements for federal guidance letters
6	Highlighted Provisions:
7	This bill:
8	▸ defines terms;
9	▸ provides for the registration and use of certain federalism related trademarks;
10	▸ extends requirements for publishing and reporting federal guidance letters to certain
11	education entities;
12	▸ changes the statewide website on which state agencies are required to publish federal
13	guidance letters;.
14	▸ requires a state agency that receives a federal guidance letter to submit an electronic
15	report to the Federalism Commission containing information and recommendations
16	regarding the impacts and scope of the federal guidance letter;
17	▸ authorizes a state agency to publish federal guidance letters received prior to the date on
18	which the requirements for publishing and reporting federal guidance letters first took
19	effect;
20	▸ requires the Federalism Commission to report annually to the Legislative Management
21	Committee regarding federal guidance letters reported by state agencies; and
22	▸ makes technical and conforming changes.
23	Money Appropriated in this Bill:
24	None
25	Other Special Clauses:
26	None
27	Utah Code Sections Affected:
28	AMENDS:
29	63C-4a-303 (Effective 05/06/26) (Repealed 07/01/28), as last amended by Laws of Utah
30	2025, First Special Session, Chapter 9
31	63G-16-301 (Effective 05/06/26), as enacted by Laws of Utah 2025, Chapter 335
32	63G-16-302 (Effective 05/06/26), as enacted by Laws of Utah 2025, Chapter 335
33	
34	Be it enacted by the Legislature of the state of Utah:
35	Section 1. Section 63C-4a-303 is amended to read:
36	63C-4a-303 (Effective 05/06/26) (Repealed 07/01/28). Federalism Commission to
37	evaluate federal law -- Curriculum on federalism -- Environment discussions --

38 **Coordination with other entities in relation to federalism.**
39 (1)(a) In accordance with Section 63C-4a-304, the commission may evaluate a federal
40 law:
41 (i) as agreed by a majority of the commission;
42 (ii) submitted to the commission by a council member; or
43 (iii) reported to the commission in accordance with Subsection (1)(b)
44 (b)(i) To assist the commission in the evaluation of federal law as required in this
45 section and Section 63C-4a-304, the commission may contract with a third party
46 that is a Utah institution of higher education to monitor federal law for possible
47 implications on the principles of federalism.
48 (ii) A third party contracted to monitor federal law as described in Subsection (1)(b)(i)
49 shall:
50 (A) monitor federal law for possible implications on the principles of federalism
51 and state sovereignty; and
52 (B) report to the commission any law or action by the federal government that
53 may implicate the principles of federalism or state sovereignty.
54 (c)(i) As used in this Subsection (1)(c), "interim committee" means the same as that
55 term is defined in Section 36-12-1..
56 (ii) The commission shall provide an annual report to each interim committee
57 concerning any law or action by the federal government that implicates the
58 principles of federalism or state sovereignty.
59 (iii) The commission may notify the appropriate interim committee of any law or
60 action by the federal government that implicates the principles of federalism or
61 state sovereignty.
62 (2) The commission may request information regarding a federal law under evaluation from
63 a United States senator or representative elected from the state.
64 (3) If the commission finds that a federal law is not authorized by the United States
65 Constitution or violates the principle of federalism as described in Subsection
66 63C-4a-304(2), a commission cochair or the commission may:
67 (a) request from a United States senator or representative elected from the state:
68 (i) information about the federal law; or
69 (ii) assistance in communicating with a federal governmental entity regarding the
70 federal law;
71 (b)(i) give written notice of an evaluation made under Subsection (1) to the federal
72 governmental entity responsible for adopting or administering the federal law; and
73 (ii) request a response by a specific date to the evaluation from the federal
74 governmental entity;
75 (c) request a meeting, conducted in person or by electronic means, with the federal
76 governmental entity, a representative from another state, or a United States ~~Senator~~
77 senator or ~~Representative~~ representative elected from the state to discuss the
78 evaluation of federal law and any possible remedy; or
79 (d) give written notice of an evaluation and the conclusions of the commission to any
80 other relevant entity.
81 (4) The commission may recommend to the governor that the governor call a special
82 session of the Legislature to give the Legislature an opportunity to respond to the

83 commission's [-]evaluation of a federal law.
84 (5) A commission cochair may coordinate the evaluation of and response to federal law
85 with another state as provided in Section 63C-4a-305.
86 (6) The commission shall keep a current list on the Legislature's website of:
87 (a) a federal law that the commission evaluates under Subsection (1);
88 (b) an action taken by a cochair of the commission or the commission under Subsection
89 (3);
90 (c) any coordination undertaken with another state under Section 63C-4a-305; and
91 (d) any response received from a federal government entity that was requested under
92 Subsection (3).
93 (7)(a) The commission shall develop curriculum for a seminar on the principles of
94 federalism.
95 (b) The curriculum under Subsection (7)(a) shall be available to the general public and
96 include:
97 (i) fundamental principles of federalism;
98 (ii) the sovereignty, supremacy, and jurisdiction of the individual states, including
99 their police powers;
100 (iii) the history and practical implementation of the Tenth Amendment to the United
101 States Constitution;
102 (iv) the authority and limits on the authority of the federal government as found in the
103 United States Constitution;
104 (v) the relationship between the state and federal governments;
105 (vi) methods of evaluating a federal law in the context of the principles of federalism;
106 (vii) how and when challenges should be made to a federal law or regulation on the
107 basis of federalism;
108 (viii) the separate and independent powers of the state that serve as a check on the
109 federal government;
110 (ix) first amendment rights and freedoms contained therein; and
111 (x) any other issues relating to federalism the commission considers necessary.
112 (8) The commission may apply for and receive grants, and receive private donations to
113 assist in funding the creation, enhancement, and dissemination of the curriculum.
114 (9) The commission shall submit a report on or before November 30 of each year to the
115 Government Operations Interim Committee and the Natural Resources, Agriculture, and
116 Environment Interim Committee that:
117 (a) describes any action taken by the commission under Section 63C-4a-303; and
118 (b) includes any proposed legislation the commission recommends.
119 (10) The commission shall comply with Section 19-1-110 in discussions with the
120 Department of Environmental Quality on issues related to the environment or the
121 functioning of the Department of Environmental Quality.
122 (11) The commission shall:
123 (a) coordinate with and make recommendations to the center concerning the center's
124 federalism-related duties under Section 53H-4-703, including:
125 (i) the development of the federalism education and training program under
126 Subsection 53H-4-703(1); and
127 (ii) the scope and objectives of:

128 (A) the annual federalism conference organized under Subsection 53H-4-703(2);
129 (B) the study conducted under Subsection 53H-4-703(3); and
130 (C) the center's coordination efforts under Subsection 53H-4-703(4);
131 (b) coordinate with and make recommendations to the institute regarding the institute's
132 federalism-related duties under Section 53H-4-704; and
133 (c) report annually to the Legislative Management Committee regarding:
134 (i) the center's progress in fulfilling the requirements of Section 53H-4-703;[and]
135 (ii) the institute's progress in fulfilling the requirements of Section 53H-4-704[.]; and
136 (iii) federal guidance letters received by state agencies and reported to the
137 commission in accordance with Section 63G-16-302.
138 (12) Each executive branch agency shall, at the request of the commission, designate a
139 contact person to coordinate with the commission regarding the federalism education
140 and training program developed under Section 53H-4-703 for the purposes of:
141 (a) determining the extent of federal jurisdiction in the agency's resource sphere;
142 (b) determining whether federal action exceeds the federal government's jurisdictional
143 authority;
144 (c) assessing what actions the agency may take [in the event that] if federal action
145 exceeds the federal government's jurisdictional authority; and
146 (d) assessing how actions described in Subsection (12)(c) may better enable the agency
147 to use the agency's best judgment in serving the people of Utah.
148 (13)(a) The attorney general, on behalf of the state, shall provide for the registration and
149 protection of trademarks that include:
150 (i) the National Federalism Commission; and
151 (ii) the National Federalism Initiative.
152 (b) The commission may authorize the use and license of a trademark under Subsection
153 (13)(a), or transfer ownership of a trademark under Subsection (13)(a), to:
154 (i) the center;
155 (ii) the institute;
156 (iii) Utah Valley University; or
157 (iv) an organization described in Subsection 53H-4-703(3).
158 Section 2. Section **63G-16-301** is amended to read:
159 **63G-16-301 (Effective 05/06/26). Definitions.**
160 As used in this part:
161 (1) "Applicable federal agency" means the federal agency that issued a federal guidance
162 letter.
163 (2) "Commission" means the Federalism Commission created in Section 63C-4a-302.
164 (3) "Education entity" means:
165 (a) the State Board of Education;
166 (b) the Utah Board of Higher Education;
167 (c) the State Charter School Board created in Section 53G-5-201;
168 (d) a local school board described in Title 53G, Chapter 4, School Districts; or
169 (e) a charter school governing board described in Title 53G, Chapter 5, Charter Schools.
170 [(2)] (4) "Federal agency" means a department, agency, authority, commission, council,
171 board, office, bureau, or other administrative unit of the executive branch of the United

172 States government.
173 ~~[(3)]~~ (5)(a) "Federal guidance letter" means a written statement by a federal agency,
174 regardless of format, that:
175 (i) clarifies or provides instruction on:
176 (A) the federal agency's interpretation of a federal law; or
177 (B) the federal agency's policies for administering a federal law; and
178 (ii) is nonbinding and of general applicability.
179 (b) "Federal guidance letter" does not include:
180 (i) a written communication between a federal agency and a state agency regarding a
181 specific entity;
182 (ii) a peer-to-peer communication; or
183 (iii) a written communication between a federal agency and the State Tax
184 Commission containing guidance related to the protection, storage, or
185 safeguarding of confidential information.
186 ~~[(4)]~~ (6) "Federal law" means:
187 (a) a statute passed by the United States Congress; or
188 (b) a rule or regulation adopted by a federal agency.
189 ~~[(5)]~~ (7) "State agency" means:
190 (a) a department, division, board, council, committee, institution, office, bureau, or other
191 similar administrative unit of the executive branch of state government[.]; ~~or~~
192 (b) an education entity.
193 Section 3. Section **63G-16-302** is amended to read:
194 **63G-16-302 (Effective 05/06/26). Federal guidance letters received by state**
195 **agencies -- Publication and reporting requirements -- Standards for information**
196 **published on state agency website -- Authority to publish previously received letters.**
197 (1) A state agency shall publish and report federal guidance letters received by the state
198 agency in accordance with this section.
199 (2)(a) ~~[Beginning July 1, 2025] Except as provided in Subsection (2)(b),~~ a state agency
200 that receives a federal guidance letter on or after July 1, 2025, shall:
201 (i) publish the federal guidance letter on:
202 (A) the state agency's public website; and
203 (B) the Utah ~~[Open Data Portal]~~ Public Notice Website created in Section [
204 ~~63A-16-107]~~ 63A-16-601; and
205 (ii) ~~[transmit a copy of the federal guidance letter to:]~~ submit an electronic report to
206 the commission containing the information specified in Subsection (2)(c).
207 ~~[(A) the Legislative Management Committee; and]~~
208 ~~[(B) the chairs of the Legislature's Federalism Commission.]~~
209 (b) For a state agency that is an education entity, the requirements of Subsection (2)(a)
210 apply to federal guidance letters received on or after May 6, 2026.
211 (c) The report described in Subsection (2)(a)(ii) shall include:
212 (i) a copy of or an electronic link to the federal guidance letter received by the state
213 agency;
214 (ii) a brief description of:
215 (A) the purpose of the federal guidance letter;
216 (B) any fiscal or administrative impacts on the state agency resulting from the

217 federal guidance letter, whether actualized or potential; and
218 (C) any recommendations as to whether the federal guidance letter may violate the
219 principle of federalism as set forth in Subsection 63C-4a-304(2); and
220 (iii) any other information required by the commission.
221 [(b)] (d) A state agency shall comply with the requirements of Subsection (2)(a) within
222 15 days from the date on which the state agency receives the federal guidance letter.
223 (3)(a) This Subsection (3) applies to a state agency that:
224 (i) publishes and reports a federal guidance letter in accordance with Subsection (2);
225 and
226 (ii) receives a written communication from the applicable federal agency indicating
227 that the federal guidance letter has been rescinded.
228 (b) A state agency described in Subsection (3)(a) shall:
229 (i) publish the following documents on the websites described in Subsection (2)(a)(i):
230 (A) the written communication indicating the federal guidance letter's rescission;
231 and
232 (B) a disclaimer, linked to the federal guidance letter, notifying the public of the
233 federal guidance letter's rescission; and
234 (ii) transmit to the [entities described in Subsection (2)(a)(ii)] commission a copy of
235 the written communication indicating the federal guidance letter's rescission.
236 (c) A state agency shall comply with the requirements of Subsection (3)(b) within 15
237 days from the date on which the state agency receives the written communication
238 indicating the federal guidance letter's rescission.
239 (4) A state agency shall ensure that any information published on the state agency's public
240 website under this section is available:
241 (a) on a permanent basis;
242 (b) in a user-friendly manner; and
243 (c) via a link from the main page of the website.
244 (5) A state agency may publish, on a website described in Subsection (2)(a)(i), any federal
245 guidance letters received prior to:
246 (a) July 1, 2025, for a state agency that is not an education entity; or
247 (b) May 6, 2026, for a state agency that is an education entity.
248 Section 4. **Effective Date.**
249 This bill takes effect on May 6, 2026.

Presumption of State Jurisdiction (SB 100, 2026)

This bill establishes a formal presumption that jurisdiction over any subject matters not specifically enumerated to the federal government in the U.S. Constitution resides with the state. In the event of a jurisdictional conflict, it places the burden of proof entirely on the federal government and requires the Federalism Commission to coordinate with state entities and federal agencies to facilitate a resolution.

1 **Presumption of State Jurisdiction Amendments**
2025 GENERAL SESSION
STATE OF UTAH
Chief Sponsor: Ken Ivory
Senate Sponsor: Keven J. Stratton

2
3 **LONG TITLE**
4 **General Description:**
5 This bill addresses state sovereignty and establishes a presumption of state jurisdiction.
6 **Highlighted Provisions:**
7 This bill:
8 ► defines terms;
9 ► establishes the principles of state sovereignty, including the presumption that jurisdiction
10 over subject matters not enumerated to the federal government in the United States
11 Constitution remains with the state;
12 ► provides that any presumption against state jurisdiction may be overcome only by federal
13 demonstration of specific constitutional authorization;
14 ► places the burden on the federal government in jurisdictional conflicts between the state
15 and federal government; and
16 ► makes technical changes
17 **Money Appropriated in this Bill:**
18 None
19 **Other Special Clauses:**
20 None
21 **Utah Code Sections Affected:**
22 AMENDS:
23 **63G-16-101**, as enacted by Laws of Utah 2012, Chapter 38

25 *Be it enacted by the Legislature of the state of Utah:*
26 Section 1. Section **63G-16-101** is amended to read:
27 **63G-16-101 . Principles of state sovereignty -- Presumption of state subject**
28 **matter jurisdiction -- Resolution of jurisdictional conflicts.**
29 (1) As used in this section:
30 (a) "Commission" means the Federalism Commission created in Section 63C-4a-302.
31 (b) "State entity" means:
32 (i) any department, agency, board, commission, or other instrumentality of the state;
33 or
34 (ii) a political subdivision of the state.
35 [(b)] (2) Pursuant to the Ninth and Tenth Amendments of the [Constitution of the United

36 ~~States of America, the state of Utah does solemnly affirm its state]~~ United States
37 Constitution, Utah solemnly affirms the state's sovereignty and fully and unconditionally
38 reserves and asserts all rights and powers, directly and indirectly related to those rights
39 and powers.
40 [(2)] (3) [This] The affirmation, reservation, and assertion of state sovereignty under
41 Subsection (2) includes rights and claims of set-off by the state [of Utah] for any
42 amounts [it] the state claims to have been inequitably or unlawfully caused or imposed
43 by the federal government.
44 ~~(4) The federal government is a government of limited jurisdiction and power.~~
45 ~~(5)(a) The state has general governing authority under the state's inherent police power~~
46 jurisdiction over all governing matters within the state affecting public welfare,
47 safety, health, and morality, as recognized under the Tenth Amendment to the United
48 States Constitution.
49 ~~(b) The subject areas within the state's police powers jurisdiction under Subsection (5)(a)~~
50 include, without limitation:
51 (i) natural resources;
52 (ii) water resources and water rights;
53 (iii) agriculture;
54 (iv) education; and
55 (v) energy resources.
56 ~~(6) The federalism canon, as prescribed by the United States Supreme Court, requires~~
57 courts to presume that federal law does not preempt state law because of the sovereignty
58 the states enjoy under the United States Constitution, as amended.
59 ~~(7) The balance of governing jurisdiction and power protects the diversity of the states and~~
60 ensures the self-governing voice of the people
61 ~~(8)(a) Jurisdiction over all governing subject matters arising within the state is presumed~~
62 to reside with the state except as otherwise enumerated in the United States
63 Constitution, as amended.
64 ~~(b) The presumption of state jurisdiction under this Subsection (8) may only be~~
65 overcome if the federal government demonstrates that jurisdiction over the subject
66 matter in question is specifically enumerated to the federal government under the
67 United States Constitution, as amended.
68 ~~(c) If a conflict arises whereby the federal government asserts jurisdiction over subject~~
69 matters not enumerated under the United States Constitution, as amended, the federal
70 government bears the burden of establishing federal jurisdiction over the subject
71 matter through coordination with the state.
72 Section 2. **Effective Date.**
73 This bill takes effect on May 7, 2025.

Continuing Education Section (HB 488, 2025)

This specific section directs the Center for Constitutional Studies at Utah Valley University to develop a nonpartisan continuing education and training program for state and local government employees. The curriculum covers the principles of federalism, state police powers, the tenth Amendment, the fourteenth amendment, and the state's duty to maintain constitutionally balanced governing roles.

1	Federalism Amendments
	2025 GENERAL SESSION
	STATE OF UTAH
	Chief Sponsor: Ken Ivory
	Senate Sponsor: Keven J. Stratton
2	
3	LONG TITLE
4	General Description:
5	This bill modifies provisions related to federalism.
6	Highlighted Provisions:
7	This bill:
8	► defines terms;
9	► expands the membership of the Federalism Commission (commission) and modifies the
10	manner in which members are appointed;
11	► increases the number of committee bill files the commission is permitted to open each
12	year;
13	► requires the Center for Constitutional Studies (center) at Utah Valley University, in
14	consultation with the commission, to:
15	• develop a continuing education and training program for state and local government
16	employees regarding federalism issues;
17	• organize an annual federalism conference and study the creation of a state-led national
18	federalism organization;
19	• coordinate with private sector actors to conduct out-of-state outreach; and
20	• establish informal working groups as necessary and report to the commission;
21	► requires the Herbert Institute (institute) at Utah Valley University, in consultation with
22	the commission, to:
23	• serve as a liaison between the commission, the center, and government entities on
24	federalism issues; and
25	• conduct outreach and coordination to support the commission's federalism efforts; and
26	• coordinate with private organizations on local and national outreach efforts and report
27	to the commission;
28	► requires the commission to:
29	• make recommendations to the center and to the institute regarding the entities'
30	federalism-related duties; and
31	• report annually to the Legislative Management Committee regarding the entities'
32	progress;
33	► requires executive branch agencies to designate a contact person to coordinate with the
34	commission regarding education and training; and
35	► makes technical corrections.

the supervision of the fiscal analyst are:

(a)(i) to estimate general revenue collections, including comparisons of:

(A) current estimates for each major tax type to long-term trends for that tax type;

(B) current estimates for federal fund receipts to long-term federal fund trends; and

(C) current estimates for tax collections and federal fund receipts to long-term trends deflated for the inflationary effects of debt monetization; and

(ii) to report the analysis required under Subsection (2)(a)(i) to the Legislature's Executive Appropriations Committee before each annual general session of the Legislature;

(b) to analyze in detail the state budget before the convening of each legislative session and make recommendations to the Legislature on each item or program appearing in the budget, including:

(i) funding for and performance of programs, acquisitions, and services currently undertaken by state government to determine whether each department, agency, institution, or program should:

(A) continue at its current level of expenditure;

(B) continue at a different level of expenditure; or

(C) be terminated; and

(ii) increases or decreases to spending authority and other resource allocations for the current and future fiscal years;

(c) to prepare on all proposed bills fiscal estimates that reflect:

(i) potential state government revenue impacts;

(ii) anticipated state government expenditure changes;

(iii) anticipated expenditure changes for county, municipal, special district, or special service district governments;

(iv) anticipated direct expenditure by Utah residents and businesses, including the unit cost, number of units, and total cost to all impacted residents and businesses; and

(v) if the proposed bill changes retirement benefits under a system or plan governed by Title 49, Utah State Retirement and Insurance Benefit Act, the anticipated effect on:

(A) each affected system's or plan's unfunded actuarial accrued liability and actuarial funded ratio, based on current employer contributions;

(B) employer contributions and member contributions;

(C) a retiree's retirement allowance;

(D) the total cost to active members and retirees; and

(E) the total cost to employers for all active members and retirees;

(d) to indicate whether each proposed bill will impact the regulatory burden for Utah residents or businesses, and if so

(i) whether the impact increases or decreases the regulatory burden; and

(ii) whether the change in burden is high, medium, or low;

(e) beginning in 2017 and repeating every three years after 2017, to prepare the following cycle of analyses of long-term fiscal sustainability:

(i) in year one, the joint revenue volatility report required under Section 63J-1-205;

(ii) in year two, a long-term budget for programs appropriated from major funds and

tax types; and

(iii) in year three, a budget stress test that, in consultation with the Governor's Office of Planning and Budget:

(A) compares estimated future revenue to and expenditure from major funds and tax types under various potential economic conditions;

(B) analyzes the economic and policy risks associated with funding for the Medicaid program and expansions of the Medicaid program;

(C) measures value at risk; and

(D) recommends budgetary actions to manage risk;

(f) to report instances in which the administration may be failing to carry out the expressed intent of the Legislature;

(g) to propose and analyze statutory changes for more effective operational economies or more effective administration;

(h) to prepare, before each annual general session of the Legislature, a summary showing the current status of the following as compared to the past nine fiscal years:

(i) debt;

(ii) long-term liabilities;

(iii) contingent liabilities;

(iv) General Fund borrowing;

(v) reserves;

(vi) fund and nonlapsing balances; and

(vii) cash funded capital investments;

(i) to make recommendations for addressing the items described in Subsection (2)(h) in the upcoming annual general session of the Legislature;

(j) to prepare, after each session of the Legislature, a summary showing the effect of the final legislative program on the financial condition of the state;

(k) to conduct organizational and management improvement studies in accordance with Title 63J, Chapter 1, Part 9, Government Performance Reporting and Efficiency Process, and legislative rule;

(l) to prepare and deliver upon request of any interim committee or the Legislative Management Committee, reports on the finances of the state and on anticipated or proposed requests for appropriations;

(m) to recommend areas for research studies by the executive department or the interim committees;

(n) to appoint and develop a professional staff within budget limitations;

(o) to prepare and submit the annual budget request for the office;

(p) to develop a taxpayer receipt:

(i) available to taxpayers through a website; and

(ii) that allows a taxpayer to view on the website an estimate of how the taxpayer's tax dollars are expended for government purposes; and

(q) to publish or provide other information on taxation and government expenditures that may be accessed by the public.

(3)(a) Except as provided in Subsection (3)(b), the legislative fiscal analyst shall submit to the Executive Appropriations Committee the results of the budget stress test described in Subsection (2)(e)(iii).

127 (b) The legislative fiscal analyst shall submit to the Federalism Commission the portions
128 of the results of the budget stress test that relate to federal funds.
129 [(3)] (4) The legislative fiscal analyst shall have a master's degree in public administration,
130 political science, economics, accounting, or the equivalent in academic or practical
131 experience.
132 [(4)] (5) In carrying out the duties provided for in this section, the legislative fiscal analyst
133 may obtain access to all records, documents, and reports necessary to the scope of the
134 legislative fiscal analyst's duties according to the procedures contained in Title 36,
135 Chapter 14, Legislative Subpoena Powers.
136 [(5)] (6) The Office of the Legislative Fiscal Analyst shall provide any information the State
137 Board of Education reports in accordance with Subsection 53E-3-507(7) to:
138 (a) the chief sponsor of the proposed bill; and
139 (b) upon request, any legislator.
140 Section 2. Section **53H-4-317** is enacted to read:
141 **53H-4-317 (Effective 05/06/26). Federal funds contingency planning dashboard.**
142 (1) As used in this section:
143 (a) "Center" means the Analytics Solutions Center at the Utah State University Jon M.
144 Huntsman School of Business.
145 (b) "Federalism Commission" means the Federalism Commission created in Section
146 63C-4a-302.
147 (2) In consultation with the Federalism Commission and subject to legislative
148 appropriation, the center shall:
149 (a) create and maintain a digital dashboard that visualizes the risk of federal funds
150 reductions and the state's dependency on federal funds;
151 (b) ensure that the dashboard is publicly available, user-friendly, and dynamic;
152 (c) identify, curate, clean, and securely warehouse funding data relevant to creating and
153 maintaining the dashboard;
154 (d) continuously monitor and update the dashboard's data and functionality to ensure
155 accuracy and compliance with this section;
156 (e) model economic scenarios to help the state plan for potential reductions in federal
157 funds; and
158 (f) upon request, report to the Federalism Commission regarding the duties described in
159 this section.
160 Section 3. Section **63C-4a-303** is amended to read:
161 **63C-4a-303 (Effective 05/06/26) (Repealed 07/01/28). Federalism Commission**
162 **duties -- Evaluation of federal law -- Curriculum on federalism -- Environment**
163 **discussions -- Oversight of Center for Constitutional Studies in relation to center's**
164 **federalism duties -- Review of federal funds portion of budget stress test.**
165 (1)(a) In accordance with Section 63C-4a-304, the commission may evaluate a federal
166 law:
167 (i) as agreed by a majority of the commission;
168 (ii) submitted to the commission by a council member; or
169 (iii) reported to the commission in accordance with Subsection (1)(b).
170 (b)(i) To assist the commission in the evaluation of federal law as required in this
171 section and Section 63C-4a-304, the commission may contract with a third party

172 that is a Utah institution of higher education to monitor federal law for possible
173 implications on the principles of federalism.
174 (ii) A third party contracted to monitor federal law as described in Subsection (1)(b)(i)
175 shall:
176 (A) monitor federal law for possible implications on the principles of federalism
177 and state sovereignty; and
178 (B) report to the commission any law or action by the federal government that
179 may implicate the principles of federalism or state sovereignty.
180 (c)(i) As used in this Subsection (1)(c), "interim committee" means the same as that
181 term is defined in Section 36-12-1.
182 (ii) The commission shall provide an annual report to each interim committee
183 concerning any law or action by the federal government that implicates the
184 principles of federalism or state sovereignty.
185 (iii) The commission may notify the appropriate interim committee of any law or
186 action by the federal government that implicates the principles of federalism or
187 state sovereignty.
188 (2) The commission may request information regarding a federal law under evaluation from
189 a United States senator or representative elected from the state
190 (3) If the commission finds that a federal law is not authorized by the United States
191 Constitution or violates the principle of federalism as described in Subsection
192 63C-4a-304(2), a commission cochair or the commission may:
193 (a) request from a United States senator or representative elected from the state:
194 (i) information about the federal law; or
195 (ii) assistance in communicating with a federal governmental entity regarding the
196 federal law;
197 (b)(i) give written notice of an evaluation made under Subsection (1) to the federal
198 governmental entity responsible for adopting or administering the federal law; and
199 (ii) request a response by a specific date to the evaluation from the federal
200 governmental entity;
201 (c) request a meeting, conducted in person or by electronic means, with the federal
202 governmental entity, a representative from another state, or a United States Senator
203 or Representative elected from the state to discuss the evaluation of federal law and
204 any possible remedy; or
205 (d) give written notice of an evaluation and the conclusions of the commission to any
206 other relevant entity.
207 (4) The commission may recommend to the governor that the governor call a special
208 session of the Legislature to give the Legislature an opportunity to respond to the
209 commission's evaluation of a federal law.
210 (5) A commission cochair may coordinate the evaluation of and response to federal law
211 with another state as provided in Section 63C-4a-305.
212 (6) The commission shall keep a current list on the Legislature's website of
213 (a) a federal law that the commission evaluates under Subsection (1);
214 (b) an action taken by a cochair of the commission or the commission under Subsection
215 (3);
216 (c) any coordination undertaken with another state under Section 63C-4a-305; and

(d) any response received from a federal government entity that was requested under Subsection (3).

(7)(a) The commission shall develop curriculum for a seminar on the principles of federalism.

(b) The curriculum under Subsection (7)(a) shall be available to the general public and include:

- (i) fundamental principles of federalism;
- (ii) the sovereignty, supremacy, and jurisdiction of the individual states, including their police powers;
- (iii) the history and practical implementation of the Tenth Amendment to the United States Constitution;
- (iv) the authority and limits on the authority of the federal government as found in the United States Constitution;
- (v) the relationship between the state and federal governments;
- (vi) methods of evaluating a federal law in the context of the principles of federalism;
- (vii) how and when challenges should be made to a federal law or regulation on the basis of federalism;
- (viii) the separate and independent powers of the state that serve as a check on the federal government;
- (ix) first amendment rights and freedoms contained therein; and
- (x) any other issues relating to federalism the commission considers necessary.

(8) The commission may apply for and receive grants, and receive private donations to assist in funding the creation, enhancement, and dissemination of the curriculum.

(9) The commission shall submit a report on or before November 30 of each year to the Government Operations Interim Committee and the Natural Resources, Agriculture, and Environment Interim Committee that:

- (a) describes any action taken by the commission under Section ~~[63C-4a-303]~~ 63C-4a-304; and
- (b) includes any proposed legislation the commission recommends.

(10) The commission shall comply with Section 19-1-110 in discussions with the Department of Environmental Quality on issues related to the environment or the functioning of the Department of Environmental Quality

(11) The commission shall:

- (a) coordinate with and make recommendations to the center concerning the center's federalism-related duties under Section 53H-4-703, including:
 - (i) the development of the federalism education and training program under Subsection 53H-4-703(1); and
 - (ii) the scope and objectives of:
 - (A) the annual federalism conference organized under Subsection 53H-4-703(2);
 - (B) the study conducted under Subsection 53H-4-703(3); and
 - (C) the center's coordination efforts under Subsection 53H-4-703(4);
- (b) coordinate with and make recommendations to the institute regarding the institute's federalism-related duties under Section 53H-4-704; and
- (c) report annually to the Legislative Management Committee regarding:
 - (i) the center's progress in fulfilling the requirements of Section 53H-4-703; and

(ii) the institute's progress in fulfilling the requirements of Section 53H-4-704.

(12) Each executive branch agency shall, at the request of the commission, designate a contact person to coordinate with the commission regarding the federalism education and training program developed under Section 53H-4-703 for purposes of:

- (a) determining the extent of federal jurisdiction in the agency's resource sphere;
- (b) determining whether federal action exceeds the federal government's jurisdictional authority;
- (c) assessing what actions the agency may take in the event that federal action exceeds the federal government's jurisdictional authority; and
- (d) assessing how actions described in Subsection (12)(c) may better enable the agency to use the agency's best judgment in serving the people of Utah.

(13) Upon receipt of the budget stress test results described in Subsection 36-12-13(3)(b), the commission shall review the results and make any related legislative recommendations to the Executive Appropriations Committee.

Section 4. **FY 2027 Appropriations.**

The following sums of money are appropriated for the fiscal year beginning July 1, 2026, and ending June 30, 2027. These are additions to amounts previously appropriated for fiscal year 2027.

Sounding the Alarm: A Model Resolution for Constitutional Vigilance

Christian Fritz, Professor Emeritus, University of New Mexico School of Law
Author of *Monitoring American Federalism*

Concerning the responsibilities of the _____ legislature, on behalf of the state as a co-equal sovereign in the American federal system, to monitor the actions of the federal government and to alert the people of _____ and sister state legislature when the structure of the Constitution appears to be undermined.

Preamble and Constitutional Framework

Whereas, the American system of government is founded on the principle of shared sovereignty between the national government and the states, and on the separation of powers among the three branches of the federal government, a structure designed by the Framers to protect the liberties of the people; and

Whereas, both Alexander Hamilton and James Madison in *The Federalist* identified state legislatures as crucial monitors of the operation of the national government that would sound the alarm should the federal government overreach its constitutional authority or undermine the equilibrium of the Constitution; and

Whereas, this tradition of formal protest by state legislatures neither nullifies nor defies lawful federal authority, but rather provides a constitutionally grounded, historically bipartisan mechanism for maintaining the proper balance of our federal system; and

Whereas, even though Article I, Section 8 of the Constitution vests in Congress both the power of the purse and the power to declare war, both political parties when in control of Congress have occassionally abdicated these constitutional responsibilities; and

Whereas, Article III of the Constitution establishes an independent federal judiciary as a co-equal branch of government, and the Supreme Court has identified the ability of federal courts to enforce their judgments as essential to the constitutional order; and

Whereas, some officials have wrongly, irresponsibly, and unconstitutionally, challenged lawful judicial rulings when they disagree with those rulings; and

Whereas, America's Declaration of Independence 250 years ago established that American governments—at both the state and federal level—rest solely on the people as America's sovereign and which provides the only legitimate source of government;

Now, therefore, be it resolved by the legislature of the state of _____, exercising its constitutional role as a gaurdian of the rights and welfare of the people of _____, that:

The _____ legislature calls upon the state's congressional delegation—Republicans and Democrats alike—to fulfill their Article I responsibilities and rightfully exercise Congress's power of the purse and power to declare war.

Be it further Resolved that the _____ legislature calls upon the federal courts to continue their vital role in upholding the Constitution and affirms its support for judicial independence as an essential safeguard of our constitutional order.

Be it further Resolved that Federal government officials, in whatever capacity they serve as representatives of the people, never forget that the true sovereigns in America are the people and always remember the words in the Declaration of Independence that American governments rest on "the consent of the governed."

Be it further Resolved that the _____ legislature transmits copies of this resolution to the presiding officers and majority and minority leaders of the legislatures of all fifty states, in the tradition of state-to-state communication described in *The Federalist*, inviting sister legislatures to join _____ in sounding the alarm and in calling upon Congress to restore the constitutional balance of powers.

Be it further Resolved that the Secretary of State of the State of _____ is directed to transmit copies of this resolution to the President of the United States, the President of the United State Senate, the Speaker of the United States House of Representatives, and each member of the _____ congressional delegation.

State Executive Agency Studies

Agency Matrix

These questions were posed to officials from state agencies, and their answers were gathered to provide feedback to the National Federalism Initiative Team.

AGENCY INFORMATION

1. Name of agency?

2. Head of agency/designated contact?

3. What is your agency’s policy focus?

4. What is your agency’s mission? Yours?

5. What judgment/authority do you currently have under Utah law to fulfill your mission?

6. Where do agency officials obtain their expertise/learning?

7. What (if any) power does the Constitution delegate to the federal government in your area?
11. What are the applicable grants-in-aid?

a. What conditions are attached?

b. How do they alter how the agency would act if conditions (strings) were removed?

12. Is there any harm to Utah citizens from federal intrusion? (See Utah State Sovereignty Act, 2024)

13. Does federal intervention interfere with the use of your best judgment to serve Utahns as defined by state law?

14. When your agency receives federal “guidance,”

a. How do you assess its legality?

b. How do you track it?

c. How do you present recommendations to agency leadership for response or action?

15. How are you using any autonomy granted to your agency from state or federal law or rules to improve constituent service?

FEDERAL CONTROL

- 8 a. What (if any) federal law asserts control in your area of law?

b. Does federal law come from Congress or an executive agency?

c. If federal law comes from an executive agency, is the agency’s action dependent on its own interpretation?

d. Is there a Chevron/Loper Bright issue in your agency? (Explain: Has Congress deferred to a federal administrative agency the authority to write rules and regulations that govern your agency?)

CONFLICTS WITH STATE LAW

- 9 a. Does federal law conflict with state law?

b. On what basis does federal law claim control over Utah law?

c. Explicit or implied preemption?

d. Conflict / preempt the field? Case law?

CURRENT PRACTICES

10. What are the applicable federal mandates?

a. What conditions are attached?

b. How do they alter how the agency would act if conditions (strings) were removed?

FUTURE DIRECTION

16. How might your agency better apply its own judgment/initiative in serving Utahns if federal regulation was limited?

17. If you could obtain additional autonomy from federal or state law or rules, from which requirements would you most want to seek autonomy?

18. When the agency encounters federal directives that may extend beyond constitutional authority and limit your judgment, what prevents your agency from challenging those directives?

a. Perception that the federal government should exercise authority for important problems?

b. Desire to obtain all available funding to serve your constituents, despite conditions attached?

c. Perception of inability to resist federal inertia?

Other factors?

19. How can the agency address the possibility of decreased federal funding?

20. What previous attempts have been made to address possible federal overreach? What was the result?

Adapted for use in Utah from a comparative matrix developed in Johanne Poirier, Cheryl Saunders, and John Kincaid, eds., *Intergovernmental Relations in Federal Systems: Comparative Structures and Dynamics* (Oxford University Press, 2015).



Utah Agency Input on Intergovernmental Relations

Jim Moss, EdD, JD
Professional in Residence, Herbert Institute for Public Policy, Utah Valley University

THE UVU CONSTITUTIONAL FEDERALISM INITIATIVE

Federalism—the Constitutional division of power between the broad, general responsibilities of the states and the federal government’s limited enumerated powers—is one of the unique developments of the American founding. Federalism combined with the separation of powers provides what James Madison called a “double security” for the rights of the people (Federalist No. 51). But over the last century, federal power has expanded through funding and mandates in ways that often constrain the states’ ability to use their best judgment to serve their citizens.

In 2025, the Utah Legislature passed House Bill 488 to reemphasize the appropriate constitutional balance between state and national government. Utah Valley University’s Center for Constitutional Studies (CCS) and the Herbert Institute for Public Policy were charged with carrying out important elements of this work, including a continuing education program for Utah’s legislative and agency leaders on the principles, history, and legal framework of federalism.

CONSTITUTIONAL AUTHORITY, MISSION AND FOCUS OF STATE AGENCIES

Madison and other architects of the federal system envisioned state officials as the primary protectors of rights and providers of government services, explaining that the powers “reserved to the several States” under the Tenth Amendment would “extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State” (Federalist No. 45). Drawing from a century of local liberty and self-government, advocates of federalism recognized that government is most accountable when it is closest to the people, with an organic understanding of local circumstances and value tradeoffs, and that states retained significant power to resist centralization. The practical reasons for state initiative and control that originally shaped our constitutional division should also inform it now.

Working as non-political entities at the direction of elected officials and focused primarily on providing valuable services to their constituents, state agencies have not always had the inclination or means to reassert original state jurisdiction and initiative. This may be influenced by (1) philosophical *agreement* with the goals of the federal government, (2) the desire to apply all available *funding* to their objectives despite conditions that limit local decision-making, or (3) the *inertia* of federal power or frustration with the failure of prior attempts at rebalancing. The Federalism Initiative seeks to support these leaders in a multi-state, bipartisan approach.



Jim Moss with other attendees at the 2025 Federalism Summit of the States

CCS / HERBERT’S AGENCY REVIEW

UVU’s Federalism Initiative team have met with almost all Utah state agencies and used the matrix in this toolbox to examine the authority given to the federal and state government in each agency’s policy area to review current intergovernmental relations and to explore opportunities to address conflict or overreach by the federal government.

The input from these agency leaders will be used in the continuing education program developed by CCS, and in follow-up discussions with the agencies on potential action within the framework of Educate/ Negotiate/Legislate/Litigate, with guidance from the Utah Attorney General’s Office. Below is some of the feedback we’ve gathered during this process, highlighting a diversity of concerns while revealing several common themes. A more comprehensive report will be forthcoming on the CCS website.

UTAH NATIONAL GUARD

Title 10 of the federal statute governing the National Guard allows the President to nationalize a state’s Guard members for limited purposes related to federal law. Other states have raised concerns that the President has used or threatened to use the Guard for domestic law enforcement activity, unrelated to federal matters such as immigration or invasion. Title 32 may be used for domestic purposes, but requires consent of the state’s governor, and Guard participation is voluntary. When Title 32 is invoked for a controversial mission, Guard members can be stigmatized for volunteering and might therefore decline, which could result in a failure to secure enough volunteers, creating the potential for expanding the use of Title 10. We are monitoring “Defend the Guard” bills in various state legislatures, which prevent a state’s governor from agreeing to deploy the

Guard without legislative approval. These bills assert state authority consistent with federal law, and also raise separation-of-powers questions between the state governor and legislature which might impede future effectiveness. Some Guard members’ daily tasks must be categorized in minute detail to determine whether state or federal funding applies; operational efficiency could be improved if funding was provided with less restrictive conditions.

UTAH DEPARTMENT OF TRANSPORTATION (UDOT)

While the federal government is generally a good partner on transportation issues, there is room for improvement. One area for improvement is project delivery. State transportation projects are slowed down by environmental reviews, duplicative approvals, and a lack of interagency coordination. The federal government should streamline project delivery and give states more authority for environmental reviews, and greater flexibility in areas such as emergency relief, right-of-way acquisition, maintenance activities, Buy America implementation, and the adoption of innovative technologies. These reforms would reduce unnecessary delays and administrative burdens while preserving environmental protections, improving project certainty, and strengthening the federal-state partnership. With regards to funding, the federal government should strengthen the long-term viability of the Highway Trust Fund and prioritize formula-based funding that provides states with the maximum flexibility to program the right project at the right time.

UTAH DEPARTMENT OF COMMERCE

In the area of real estate regulation, the federal government oversees the mortgage industry, which has interstate connections, but its oversight of real estate licensing may not have a direct basis in interstate commerce. The Utah Division of Real Estate also notes that, while mortgage fraud exists, there is less evidence of appraisal fraud or misconduct to justify this extension of federal oversight. Additionally, the federal review process can be onerous, while the federal agency requires states to complete appraisal complaint cases within one year, which can be unreasonable in particular cases.

In the consumer protection area, Section 230 of the Communications Decency Act of 1996 has been interpreted to restrain states from regulating internet content. Utah also has concerns regarding artificial intelligence that it seeks to address, including the attempted but aborted prohibition on state AI regulation in the “Big Beautiful Bill.”

In the utilities area, the National Environmental Policy Act (NEPA) restrictions make the building of new facilities very difficult. When the state seeks to authorize new facilities, the federal review process can take up to fifteen years. The Utah Department of Commerce would like the federal government to allow states to conduct their own reviews of proposed power projects. Additionally, the federal agency regulates intrastate as well as interstate pipeline safety. The state receives federal money to perform inspections of natural gas facilities, but they also receive pressure to follow federal guidelines in the form of threats of heavy penalties; the federal agency takes an expansive view of a “substantial relation” to interstate commerce even for intrastate matters.

In the area of securities compliance, the state experienced a significant shift on enforcement with the 2025 change in federal administration. The administration in office often imposes requirements tied to regulations but fails to provide adequate funding. In some cases, the federal government



Jim Moss speaking at the 2025 Federalism Summit of the States

has pulled resources from required investigations in Utah, such as cryptocurrency.

In the area of Medicaid services, the reimbursement rules from the federal government can have a restrictive effect on licensing regulation, even when it is not directly regulated by the federal government. The Center for Medicare and Medicaid Services requires minimum hours of experience to reimburse certain medical appointments and procedures. For example, CMS requires 3000 hours of experience for any mental professional seeking reimbursement, which effectively requires the state to mandate more training hours than needed to meet public safety needs so that practitioners can bill Medicare and Medicaid. Nurse anesthetists under Utah law do not always require physician oversight, but it is required by Medicaid reimbursement, which drives up costs. Recently the federal government implemented a new exemption requirement. Utah submitted an application for the exemption, which was approved by the Biden administration, but the department was told there was no record of the exemption and it was never put into effect.

Utah’s Office of Regulatory Relief has identified other licensing requirements which may not be based in safety needs. Some entities may seek to artificially elevate standards to protect market share. At the federal level, they may have more ability to influence Center for Medicare/Medicaid Services standards on accreditation, which imposes education and training standards beyond what the Utah agency considers necessary for consumer protection. A recent example was a Ukrainian physician who met the department’s education and experience standards but had to work as a taxi driver for failure to meet federal standards; another is a cardiac surgeon limited to performing ultrasounds. The Utah agency might suggest revising federal requirements such that an applicant for reimbursement need only be in good standing with the state agency, and that accreditation operate in the least restrictive way. Utah has a shortage of occupational therapists, but federal reimbursement guidelines are pressing toward requiring a doctorate degree which would significantly limit the number of

licensed occupational therapists. Finally, the department would prefer that Medicaid focus more on Medicaid fraud rather than using reimbursement to indirectly leverage control over all state providers.

UTAH LABOR COMMISSION

The Utah Labor commission interacts with the United States Labor Department (DOL). On workplace safety matters, the DOL has entered a “state plan” authorizing Utah to enforce federal and state standards (Utah is one of twenty-nine states with such a plan). The DOL monitors the Utah agency through yearly audits of approximately fifty cases to ensure that the commission’s plan is “as effective as” states which are directly overseen by the DOL. The DOL has frequently used the severity of penalties assigned by the commission as evidence of effectiveness; the federal penalty guidelines changed dramatically in 2026 for the first time since the 1990s. The commission believes lack of injury or incidents would be better evidence of effectiveness, and that Utah should have discretion to address local safety concerns. The commission also notes that the willingness of the federal DOL to defer to the commission has varied with changes between presidential administrations, creating uncertainty and inefficiency.

UTAH STATE BOARD OF EDUCATION (USBE)

Education policy is heavily regulated by the federal Department of Education. Areas of concentration include special education, career and technical education, and the “Title” programs—civil rights programs covering low-income and minority schools, female opportunity and spending, and school turnaround. The Trump administration has reduced department staffing significantly but has not reduced the statutory and regulatory mandates; nor has the department significantly reduced the restrictions that come with federal spending. USBE staff recently identified federal “turnaround” programs for failing schools as overlapping with state programs, potentially diverting from USBE’s best judgment on how to improve underperforming schools, but the Board of Education has not taken a formal position. The Board may be interested in block grants, which send money for statutory programs to the states while reducing the specificity of requirements for fulfilling the purpose of the statutes.

In 2024, USBE voted to ask the Utah Legislature to consider applying Utah’s State Sovereignty Act (2023) to the Biden administration’s Title IX regulations, which required schools to admit students to the teams and changing rooms aligned with their gender identity rather than balancing accommodation for all students. After finding that the regulations were an overreach of federal power, that they conflicted with existing Utah law on sports and privacy, and that they infringed on the state’s ability to protect its citizens (a criterion for applying the Utah State Sovereignty Act), the Legislature directed state government and education employees to follow Utah law instead of the federal Title IX directives where they conflicted, until the issue could be adjudicated by the relevant court.

DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ)

The DEQ interacts with the federal Environmental Protection Agency and the Nuclear Regulatory Commission (NRC). The Utah Water Quality Act defines state responsibility to include both groundwater and surface water. Federal programs such as the Clean Water Act; Resource Conservation and Recovery Act; and Comprehensive Environmental Response, Compensation, and Liability Act, work together as complementary frameworks that include protection and clean-up requirements associated with both surface water and groundwater. There may be some overlap in groundwater

protections between state and federal regulations, depending on the site’s specific characteristics. Continued changes to the definition of Waters of the US leaves Utah’s water vulnerable by decreasing protections of what Utah considers Waters of the State. By contrast, when the NRC, acting under the Atomic Energy Act, determines that a state program meets statutory requirements, it withdraws federal regulation and monitors indirectly, only reentering direct oversight if there is a threat to human health. This suggests a possible model for revision of the statutes under which the EPA operates.

SUMMARY

Emerging themes from our visits include (1) federal agencies sometimes work cooperatively with their state counterparts, but generally are not responsive to requests for less intrusion or more flexibility; (2) a tendency among federal agencies to treat in-state matters, such as licensing, in the same manner as interstate matters, continuing to blur the distinction that existed prior to cases expanding the commerce clause; and (3) regulation by federal agencies other than the state agency’s federal counterpart, most frequently in the area of environmental regulation. More detailed reports on each agency will be available at the following website: <https://www.uvu.edu/ccs/constitutional-federalism/>. The Federalism Initiative looks forward to supporting these agencies’ efforts toward constitutional rebalancing. 🏡



Let States Lead—A Bipartisan Call to Restore America’s Balance

Rep. Ken Ivory, Rep. Jennifer Dailey-Provost, Sen. Keven Stratton, Sen. Karen Kwan
Utah House of Representatives and the Utah Senate



Keven Stratton speaking at the 2025 Federalism Summit of the States

Each election now feels like a fight for survival. That’s not just about politics; it’s the result of too much governing power shifting from the states to Washington. When one administration can tilt the entire system, elections inevitably feel existential.

The Constitution created what James Madison called a compound republic: two governments, each with distinct responsibilities. The federal government was designed for national concerns like defense, diplomacy and civil rights. The states were meant to govern close to the people, tailoring solutions to their own communities. When that balance is respected, government is accountable and resilient. When it isn’t, the result is polarization, unsustainable debt and a one-size-fails-all approach that flattens the diversity of our fifty laboratories of democracy.

With its pioneering spirit, Utah is taking steps to restore balance. The catalyst for the National Federalism Initiative (NFI) was the passage of **HB 488 Federalism Amendments**, a bipartisan, state-led effort to rebuild the governing partnership our Founders envisioned. It is founded upon the following three main pillars for returning governing focus to structure over politics:

The NFI’s Three Pillars

Educate—Provide continuing education for state leaders and citizens on the proper roles of state and federal government.

Engage—Build a broad, bipartisan coalition of state leaders to restore and maintain balance.

Elevate—Host the first NFI Summit this fall in Utah’s mountains, bringing together policymakers, scholars and civic leaders to chart a sustainable course for the next 250 years.

WHY BOTH PARTIES SHOULD CARE

Federalism is not about weakening government; it is about making it work. Utah’s leadership shows federalism can be championed even when partisan incentives suggest otherwise. With a coalition of states, the NFI amplifies smaller states’ voices with the federal government.

For Democrats, federalism gives progressive states room to innovate without waiting on federal waivers. It allows Democrats in red states to partner with allies elsewhere to call out federal overreach—even under a Republican administration and same is true for Republicans in blue states. For Republicans, federalism reinforces limited government and restores accountability to leaders closest to their constituents—even when Democrats control D.C.

Both parties gain from placing responsibility where accountability lives—in state capitols, close to the people. That lowers the temperature in Washington and elevates governing solutions tailored to diverse state priorities.

Federalism was the Framers’ insight that freedom is protected not by one government, but by two. Let us rise above partisanship and recommit to the unique structure of American government that safeguards liberty and empowers the people. We invite leaders from Massachusetts to Montana, Arizona to Alaska, to join us—so that the voices of all fifty states can rise together, and freedom can ring across the nation for generations to come. 🏰



Jennifer Dailey-Provost at the 2025 Federalism Summit of the States



Problems of Centralization

Alasdair Roberts, PhD
Professor of Public Policy, University of Massachusetts Amherst

Abstract

The American system of government is more centralized than it was a century ago. Power has shifted from state capitals to Washington, while inside Washington, it has shifted toward the presidency. Reformers in both parties thought centralization would make government work better, resulting in a country that was more secure, prosperous, and just. But centralization has led to unexpected problems—overload, gridlock, polarization, and bureaucratic sclerosis. The current design of the American system does not meet the needs of a vast and complex society. A better-performing system would be one in which authority is redistributed to revitalized state governments.'

The American system of government has evolved substantially over the last century. Overall, it is much bigger—by expenditures, employment, and extent of lawmaking—than it once was. It is also more centralized. First, power has shifted upward, from state and local governments to the federal government. This is *vertical* centralization. Second, power has shifted within the federal government from Congress to the presidency. This is *horizontal* centralization.

There are persuasive arguments for centralization. Reformers over the last century thought that it would make government work better, resulting in a country that was more secure, prosperous, and just. In some ways, centralization performed as expected. But centralization also had costs. Reformers did not anticipate how centralization would lead to problems like overload, gridlock, polarization, and bureaucratic sclerosis.

THE CENTRALIZING CENTURY

The American governmental system a century ago had two characteristics. First, Washington had a limited role in daily life. Second, the president was an important player within the federal government, but hardly the dominant one. This state of affairs would change dramatically over the following century.

Vertical centralization. Federal responsibilities increased after the launch of Franklin Roosevelt’s New Deal in 1933, and again during World War II and the Cold War. In the 1950s and 1960s, Washington added programs like Medicare and Medicaid, became more active in protecting civil rights, and expanded its role in transportation, education, housing and urban development, and environmental protection.

Between 1950 and 2000, there were a few efforts to reverse centralization, but these had little impact. The federal government “is bigger today than it was two generations ago,” Frank Baumgartner and Bryan Jones reported in 2015. “It has become involved in a much wider range of activities than



it was previously . . . [and] is involved more intensely in the areas it was traditionally involved in.”²

Horizontal centralization. Within Washington, power was increasingly concentrated in the White House over the last century. Again, the New Deal was the turning point. Franklin Roosevelt persuaded Congress to create the Executive Office of the President, although it rebuffed some of his other ideas, such as presidential control of independent agencies. After 1945, Congress made the president responsible for the economy and national security. In 1960, John Kennedy declared the presidency to be “the vital center of action in our whole scheme of government.”

In the 1970s, critics complained about an “imperial presidency”—an office that was “out of control.”³ Attempts to limit presidential power in that decade had limited effect. The Reagan administration revived the office, promoting a philosophy known as unitary executive theory.

¹ Alasdair Roberts is a professor of public policy at University of Massachusetts Amherst. He is a fellow of the US National Academy of Public Administration. This note summarizes a longer article: “The Crisis of Design in American Government,” *Asia Pacific Journal of Public Administration* (June 2025): 1-23.

² Frank R. Baumgartner and Bryan D. Jones, *The Politics of Information: Problem Definition and the Course of Public Policy in America* (Chicago: University of Chicago Press, 2015), 114-17.

The presidency was diminished by scandal in the 1990s, but reinvigorated after 9/11, stirring fresh complaints about an imperial presidency. Presidential authority was bolstered during later crises and also by gridlock within Congress. “The American presidency,” the Project 2025 report said recently, “is the beating heart of our nation’s power and prestige.”⁴



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REASONS FOR CENTRALIZATION

Advocates of centralization made three main arguments. The first was that it would spur economic growth by developing an integrated national market. One way that Washington did this was by encouraging the development of railroads and highways. An integrated market encouraged the growth of large national enterprises which led in turn to expanded federal regulation. In the 1930s, economists began to define “the economy” as a system coterminous with national rather than regional or state borders. Washington acquired the main responsibility for managing and developing the American economy.

National security concerns motivated centralization as well. In 1917–18, President Woodrow Wilson said he would mobilize “all the material resources of the country” to fight World War I. World War II saw another effort at total mobilization, while the Cold War produced a vast, centrally run military-industrial complex. The growth of federal taxation in the 1940s and 1950s, initially justified on security grounds, enabled the expansion of welfare-state policies in the 1960s as well.

Centralization has also been justified as a way of advancing liberty. Franklin Roosevelt justified New Deal policies on the grounds that “individual freedom cannot exist without economic security,” while Lyndon Johnson defended Great Society policies in similar terms. The federal government asserted a leading role in protecting African Americans against political exclusion and discrimination in the years following World War II.

³ Arthur M. Schlesinger, *The Imperial Presidency* (Boston: Houghton Mifflin, 1973), xxviii.

⁴ Paul Dans and Steven Groves, eds., *Mandate for Leadership* (Washington, DC: The Hentage Foundation, 2024), 23

Centralizers made two important assumptions. They had an optimistic view about the capacity of presidents, supported by a talented cadre of advisors, to wield power intelligently. At the same time, reformers were skeptical about the capacity of state governments to govern effectively. Many state governments were considered incompetent and oppressive.

PROBLEMS OF CENTRALIZATION

Twentieth-century reformers argued for centralization because it seemed likely to make government work better. With hindsight, we can see that advocates of centralization failed to anticipate four problems.

1. Overload

Reformers overestimated the capacity of presidents to manage a vastly increased workload. Presidents and their advisors now operate under conditions of extraordinary stress which increases the risk of unsound decisions. One response to this predicament has been to expand the Executive Office of the President so that there are more people to manage information and provide advice. But this expanded executive bureaucracy does not always work efficiently.

Congress is also affected by problems of overload, manifested in declining legislative productivity and a breakdown in oversight activities. The number of people represented by each member of the House of Representatives has tripled over the last century, while lobbying efforts focused on Congress have intensified dramatically. The body of federal law that Congress is expected to oversee has also increased in size and complexity. According to one study, the United States Code grew by fifty percent between 1994 and 2018.

2. Gridlock

Vertical centralization, which has made Washington the focal point of American politics, has increased the risk and costs of gridlock in Congress. Bipartisan dealmaking is easier when the stakes are not perceived to be high. Today, however, conflicts in Congress are perceived to have immense importance. In a decentralized system, lower levels of government can act when the center seizes up; in a more centralized system, they cannot.

Gridlock also encourages further horizontal centralization within Washington. Recent presidents have adopted broad readings of their right to act unilaterally under existing law, on the argument that Congress appears incapable of taking timely action on urgent problems.



3. Societal Polarization

Many reformers of the mid-twentieth century who advocated for centralization thought that regional and ideological differences within the country were fading away. They were mistaken. Today, the country is more divided ideologically and culturally. Competition for control of an increasingly powerful federal government may intensify these divisions. The two-party system reinforces divisions as well.

Polarization is also aggravated by horizontal centralization. The presidency is a winner-take-all institution that provides little protection for the interests of voters on the losing side of a presidential election. Not surprisingly then, voters are increasingly likely to regard presidential elections as hugely consequential.

4. Bureaucratic Sclerosis

Federal programs are often massive in scale and complex in structure. They rely on a long chain of agents—federal bureaucrats, state and local agencies, for-profit and nonprofit contractors—to accomplish their purposes. Professor Donald Kettl has observed that the scale and complexity of federal programs make them “more prone to the risks of fraud, waste, abuse, and mismanagement; harder to manage; and harder to hold accountable.”⁵

Not only are these programs hard to manage but they are hard to restructure too. Scale and complexity result in a large number of stakeholders with an interest in preserving the status quo, and more difficulties in predicting what might happen if program design is changed. The American healthcare system illustrates the challenges of reforming complex, nationwide policy systems.

⁵ Donald Kettl, *Escaping Jurassic Government* (Washington, DC: Brookings Institution, 2016), 54.

⁶ Alice M. Rivlin, *Reviving the American Dream: The Economy, the States and the Federal Government* (Washington, DC: Brookings Institution, 1992).

REDESIGNING FOR RESILIENCE

The fundamental challenge of the American governmental system today is maladapted design. Political institutions are not well-matched to the needs of one of the largest and most complicated societies in human history. The system lacks nimbleness in responding to new challenges. It aggravates tensions between parts of the country rather than tempering them.

What might a better performing system look like? We can imagine three lines of reform.

• Devolution of Responsibilities

As Alice Rivlin suggested in 1992, some of the work now done by Washington could be redistributed so that more of the load is carried by states or multistate compacts.⁶

• Building Capacity in States

At the same time, state governments could consider how to bolster their own policy and administrative capacity—that is, their ability to handle work relocated from Washington.

• Redesigned Core Institutions

Institutions in Washington could also be reconfigured so that they are better at representing different parts of the country and managing conflicts more effectively. This could include changes to the presidency, Congress, and the Supreme Court, as well as the two-party system.

Reforms along these lines would not eliminate the problems described earlier. State governments also grapple with overload, gridlock, and sclerosis, but these problems might be more manageable at a smaller scale. Moreover, the consequences of governmental failure would not be distributed so broadly. For example, gridlock in California would not prevent progress in New York. We should also acknowledge the political challenges of executing large-scale reforms. For this reason, some reformers have chosen to focus on smaller changes that seem more politically viable. However, tinkering will not fix the basic problems of the current system. 🏗️



Our Challenge: Sustaining American Unity & Self-Government in the Twenty-First Century

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Abstract

Federalism's objective is unity and self-government. It achieves these by protecting local and individual liberty, checking authoritarianism, promoting innovation, and encouraging synergy between governments to address common problems. America's federal system has a few hard constraints but is largely dynamic and adaptable. The current federal system, however, is unsustainable. The national-state relationship needs to be reworked to address twenty-first century problems. If we do nothing crisis, and conflict will be the likely result.¹

From their colonial origins to the Constitution and beyond, Americans have found ways to unite. The nature of our union is, however, unique. It is not a totalizing or consummate union, like the sovereign European monarchies of the seventeenth to twentieth centuries that ruled the people as subjects. Rather, American unity formed around agreements, approved by the people, that granted governments limited powers and responsibilities, and preserved valuable local independence and autonomy. For almost 170 years, from the Mayflower Compact in 1620 to the Constitution in 1787, Americans experimented with this form of unity. The Constitution is the culmination of this idea with its “compound republic,” or federal system of government.

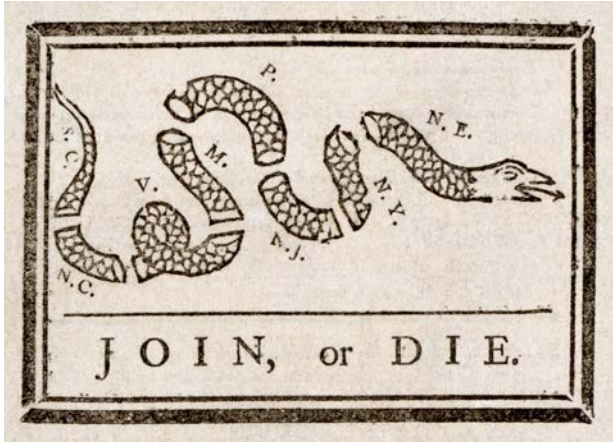


Fig. 1: “JOIN, or Die” is America’s original political meme. Created by Benjamin Franklin in 1754 and repeatedly resurrected through various crises, it conveys the challenge of joining diverse states who hold discordant ideas. At each crisis, the differences have been sufficiently overcome to unite a diverse and fragmented people into a limited union united for collective action while preserving local liberties and autonomy.¹

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Though not specifically mentioned in the Constitution, federalism is inherent in the Constitution's division of powers and responsibilities between the national and state governments. The Tenth Amendment confirms that the states are not subjects of the national government but have their own sovereign jurisdiction. However, the ambiguity created by constitutional provisions like the commerce clause and the necessary and proper clause means that American federalism is not a rigid separation of powers but a dynamic system operating within some hard constraints.

Today, nearly 40% of the world’s population lives under a federal form of government. Yet, federalism in the United States is commonly misunderstood and maligned. Some people equate federalism with racism, segregation, and slavery. Others think federalism means states’ rights. Neither is accurate. Federalism’s core purpose is to protect and preserve the foundational American value of self-government.² It does this by, among other things, establishing a strong national government that can provide security and a common market, protecting minority rights, and local liberties. Federalism is not political; federalism is a structural cornerstone of the Constitution.³

Federalism emerges from the desire to be both united for some things and autonomous for others. It is a compromise between contrasting desires to be big enough to fulfill a common interest (such as to deter outside aggressors or create a common market) and the desire to preserve the liberties that come from being small, local, and autonomous. Sustaining that tension is difficult because the “natural tendency of any political community, whether large or small, is to completeness, to the perfection of its autonomy.”⁴ In other words, the natural tendency is towards either centralization or complete separation. Sustaining a federal union requires recognizing and valuing both unity and multiplicity.

Today, some falsely think multiplicity causes disunity. Unity need not mean uniform, unanimous, or even agreement. Unity can form over commitments to address common problems by following established procedures or to let each be if certain rules and values are respected. This form of unity is created by the Constitution which creates a structure and processes for resolving common problems that do not require standardization or uniformity but respect and value differences and diversity.⁵

As our history and growing scholarship demonstrates, unity and good governance do not require a uniform, centralized approach, but rather a limited union united by a few common values and institutions while respecting local liberty and the diversity and divergence it produces.

Our unity, however, is threatened by an affective partisanship that increasingly wants all to think one way, by growing and unsustainable debts that will require reworking current commitments,⁶ and by a national-state relationship that no longer reflects contemporary realities.

The way forward will likely require restoring appreciation for the values and benefits of a federal system, and reworking the national-state relationship to restore shared-rule (as a nation) and self-rule (as states, local communities, families, and individuals).⁷

FEDERALISM’S VALUES & BENEFITS

The Constitution’s purpose is “to create a more perfect union.” Federalism contributes to that in many ways including the following: fostering peace and security, promoting prosperity with a national common market, increasing local and individual liberty by bringing government closer to the people and providing rights beyond those listed in the Constitution, checking authoritarianism, promoting innovation, and facilitating synergy between governments to address common problems.⁸

Federalism protects liberty by creating fundamental checks and balances between the national and state governments. For example, the national government may check tyranny within the states, or states may stand against authoritarianism at the national level. If action is slow to happen, a federalism structure may confine dangerous movements to within a state until the movement burns itself out or broader action can be taken.⁹

Some severely criticize federalism for allowing racism, segregation, lynchings and other heinous violations of rights. It is true that the federal bargain at the 1787 Constitutional Convention in Philadelphia left the decision to be free or slave to the states. While some chose to abolish slavery, others did not. But the national government’s record on protecting rights is also not stellar. In 1832, despite a Supreme Court ruling to do so, the national government failed to protect the Cherokees, and later many other Indigenous Americans. In the corrupt bargain of 1877 and the 1896 Supreme Court decision in *Plessy v. Ferguson*, national institutions turned away from protecting the individual rights guaranteed by the Fourteenth Amendment, thus paving the way for Jim Crow and segregation. In World War II, the national government interred US citizens of Japanese ancestry without due process of law. At various times in America’s history, the national and state governments have both acted as tyrannies and bulwarks of liberty. There is no permanent protection to be found by sheltering under just one. The division of powers between the federal and state governments is a guarantee of security.

In the compound republic of America, the power surrendered by the people, is first divided between two distinct governments, and then the portion allotted to each, subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will controul each other; at the same time that each will be controuled by itself.

- James Madison, Federalist #51 -

Federalism fosters democratic values by bringing popular government power closer to the people where they have greater influence to shape the policies according to their values and where they can better monitor the government and policies that govern their lives. That is, federal structures sustain democracy and diversity, but their continuance requires valuing real diversity to tolerate other polities that may be governed by values different from our own.

Policy innovation is more likely to come from within the more than 70,000 governments in the United States than from one supreme national government. Though some criticize the resulting intergovernmental competition as creating a “race to the bottom,” studies have found, however, that such races are rare and are much more likely to create a “race to the top.”¹⁰ Innovation and improvement in our public policies and services is essential in our modern age when the problems are complex and wicked and less likely to be solved by a central, standardized set of policies.

Federalism promotes problem-solving synergy between states and the national government. States are not subordinate actors but partners in the federal agreement. The nation’s law and regulations are supreme only when they are consistent with the powers delegated to the national government. Many powers are reserved to the states. Consequently, states may go it alone or they may pool their resources and collaborate in multiple ways to address common problems with other states and with the national government.

The Federal Tension

These fundamental federalism values exist in a tension with each other that prevents the perfection of any one value and requires a tradeoff between them. For example, local autonomy may fail to protect individual liberty; centralized authority to address collective action problems (e.g., protecting individual liberties) may undermine checks and balances that prevent authoritarianism. Emphasizing one value, consequently, may result in deemphasizing another.¹¹ The value of federalism is that it creates a balance between these competing values to achieve each well enough. As our history demonstrates, however, that balance has not always been maintained and some would sacrifice it altogether for the fulfillment of one or a narrower set of values.

The abolishment of federalism would not result in a golden era of individual rights or progress. It would result in the elimination of the valuable benefits federalism provides, such as checking tyranny and authoritarianism, bringing government closer to the people, and fostering innovation.

The Dynamic Constitution

While the Constitution never specifically mentions federalism, federalism is inherent in the structures and processes created by the Constitution. For example, the Constitution grants limited and enumerated powers to the national government and affirms that other powers are reserved to the states. States are guaranteed a “republican form of government.” They may not be divided without their consent, they are responsible for elections, and they play a fundamental role in structure of the Senate, election of the president, and passage of constitutional amendments. The supremacy clause ensures that in conflicts between national and state laws the national laws prevail only if those laws are consistent with the Constitution. In short, federalism is a fundamental feature or cornerstone of the Constitution.

Yet, there is considerable ambiguity in the boundaries between the national and state governments. Constitutional phrases like the commerce clause and the necessary and proper clause mean that American federalism is not built on an absolute and rigid separation of powers between the national and state governments. The Constitutional Convention in 1787 rejected many proposals to limit national power including an effort to prohibit any constitutional amendment that would limit states’ police

powers. In the congressional debates over the Bill of Rights, an amendment to limit the national government’s powers to those “expressly” delegated was rejected. Many founders, including James Madison and Roger Sherman, a strong advocate for states, acknowledged that drawing a clear line between national and state powers and responsibilities is nearly impossible.

The imprecise boundary between national and state government powers and responsibilities often leads to the question, “Who decides?”¹² While the Supreme Court may police the borders of federalism, the final arbiters in our system are often the people who decide by who they elect to office in national, state, and local elections.¹³ The result is a limited but dynamic federal system. This means each generation of Americans is able to evaluate and rework the national-state relationship.

The American federal system, in short, is based on an essential and unalterable core, but it is not limited to the nineteenth century institutions that attempted to rigidly separate national and state powers. Rather the American federal system is dynamic and adaptable, hence, capable of multiple permutations within its broad outlines.¹⁴

The dynamic nature of American federalism led historian Wilfred McClay to describe it as less an immutable institution or set of relations and more an idea.¹⁵ Recognizing this, Alexis de Tocqueville in the early nineteenth century praised America’s federal system of government but cautioned that preserving local liberties will be difficult because the natural tendency will be for energetic leaders to push for centralization so they might operate the levers of power.¹⁶

THE THREE (CRUMBLING) PILLARS OF MODERN AMERICAN FEDERALISM

Since its inception at the Constitutional Convention in 1787, America’s federal system of government has taken many forms. In the last century, significant powers were centralized in the national government based on a belief that experts should decide policy, good government could be scaled, and centralized authority would create a national democratic union and national unity. Regarding our system of government today, Senator Daniel Patrick Moynihan wrote, “There is no significant aspect of national life about which there is not likely to be a rather significant national policy. It may be a hidden policy . . . But it is policy withal.” In other words, the national government governs almost without borders.

After nearly a century of growing nationalization, the justification for that centralization is suspect. Excessive executive power, James Madison perspicuously warned, would result from placing too much responsibility on the national government. Madison reasoned that Congress would become deadlocked if asked to do too much. It would thus defer decision-making authority to the executive, which was designed to act with dispatch. The result is what we see today, each party advances its partisan preferences as far as possible when it controls the executive via executive orders and emergency measures.¹⁷

In addition, the rise of national preemptions, unfunded mandates, conditional grants, and unsustainable national debt has led some to decry an increasingly powerful and coercive national government.¹⁸ The policy decisions during the COVID epidemic,¹⁹ declining K-12 students’ test scores, almost insurmountable obstructions to growth,²⁰ and political polarization are strong indicators that nationalization is not the solution.

At the center of the problems is a growing debt crisis. In 2008, Alice Rivlin, Director of the Office of Management and Budget during the Clinton Administration, wrote, “The grim outlook for the federal budget makes it inevitable that in the near future strains between the federal government and the states over funding domestic programs will escalate into a crisis . . . Federal decisionmakers will be forced to choose among extremely unpopular options—raising taxes, reneging on promises to the elderly, and drastic cuts in other spending, including money for state and local governments . . . Responding adequately to these widely felt needs will take constant attention to improving the functioning of our federal system.”²¹ The solution, Director Rivlin recognized, will not come from more centralization but a restoration of a functioning federalism.

The compound republic created by the Constitution has slowly been displaced by national rule that entangles the national and state governments in labyrinthian jumbles that impair good governance and undermine American’s fundamental faith in, and ability to exercise, self-government. This system, however, is unsustainable.

For the last century, America’s federal system has rested upon three pillars, each of which is constitutionally suspect and crumbling. The pillars are the intergovernmental grant system, a bipartisan agreement favoring national control, and Supreme Court deference to national administrative agencies’ decisions.

1. The Intergovernmental Grant System

The intergovernmental grant system has grown rapidly since the 1950s (see Figure 2 below). One study found that federal spending to state and local governments grew from 1% of GDP in the 1950s to 5.6% of GDP in 2021.²² Another study examining the same period found it grew from 2% of GDP in 1950 to 14% in 2019.²³ The significant discrepancy between those two studies indicates how complicated and difficult the intergovernmental grant system is to fully understand. Yet, there is broad agreement on the following: (a) the national government has taken on broad new responsibilities since the 1950s; (b) the federal government has passed on to the states significant responsibility to fund many of those programs; and (c) the federal grant system and the debt it creates is unsustainable.

Number of Federal Aid-to-State Programs, 1905–2018

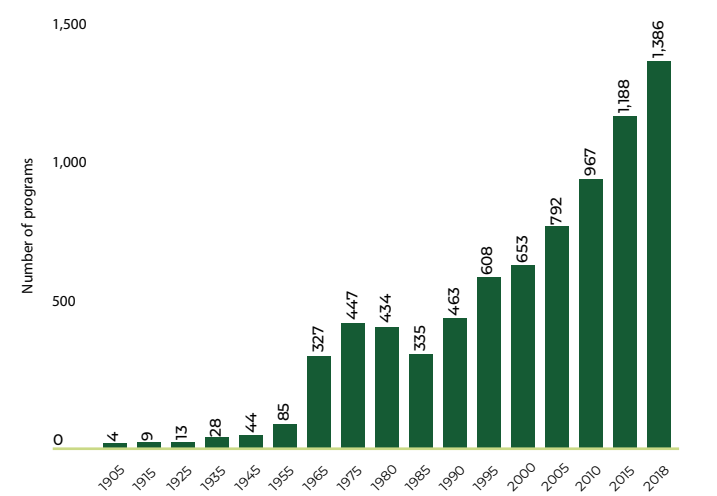
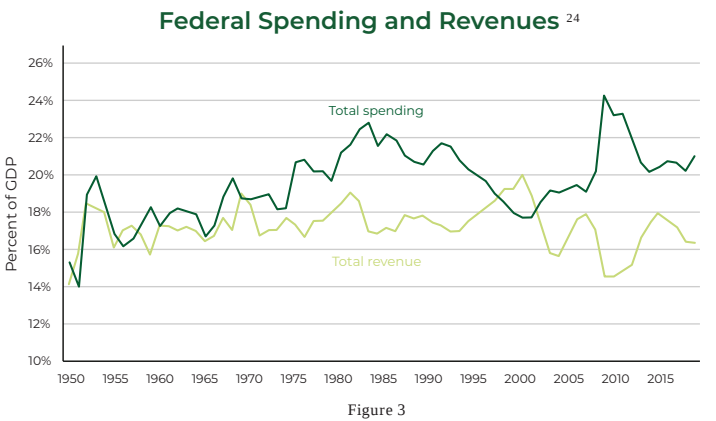


Figure 2: Growth of Federal Grants to States
Source: Chris Edwards, "Restoring Responsible Government by Cutting Federal Aid to States," *Policy Analysis* 20 May 2019, No. 868 (Washington, DC: Cato Institute), p. 2.



2. Bipartisan Support for National Control

Since the end of World War II, the balance of power has shifted toward the national government and away from state and local governments.²⁵ This centralization of power in the national government was the result of bipartisan agreements. State governments accepted the grants and attached requirements with little more than pro forma complaints. Republican efforts to return power to the states, from Eisenhower’s Kestenbaum Commission to Nixon and Reagan’s New Federalism, were topdown driven and selective proposals that favored realigning the national governments’ priorities rather than reducing the national government’s power.²⁶

National policy, consequently, prevails in nearly every policy field. “[T]here is no significant aspect of national life,” Daniel Patrick Moynihan proclaimed, “about which there is not likely to be a rather significant national policy. It may be a hidden policy . . . But it is policy withal.”²⁷ The objective may not have been national policy on nearly everything but that is the ultimate result. The bipartisan consensus that once existed for top-down, centralized governance is now gone. The consequence is a government run by dueling sets of executive orders that give states “whiplash,” and leave them trapped in the middle, holding the bag.²⁸

3. Supreme Court Deference to Executive Agencies

The modern federal administrative state is distinct from what existed before the New Deal. Its key feature is rules and regulations created by administrative agencies that closely resembles legislative action but by unelected officials. Under the Chevron Doctrine, established in 1984, the federal courts deferred to agencies’ rulemaking. From 1975 until 2019, the total page count of national regulations grew 161 percent.²⁹ That is nineteen regulations issued by federal agencies per law enacted by Congress.³⁰ Once adopted, federal agency rules were hard to challenge in court because of the difficulty in establishing standing to challenge the rules, judicial permissiveness of agency rules under the Chevron Doctrine, and the relative weakness of common judicial remedies.³¹ This led one major study on the evolution of American federalism to conclude, “[W]e are moving toward ‘indirect federal administration’ . . . a system in which states are increasingly administrative agents for the national government.”³²

In 2024, however, the Supreme Court struck down the Chevron Doctrine that favored judicial deference to administrative rules and regulations. The basis for the Court’s decision was what Chief Justice John Roberts called the “federal canon,” which “presumes federal statutes do not preempt state laws because of the sovereignty States enjoy under the Constitution.”³³ What comes next is not clear.



Troy E. Smith speaking at the 2025 Federalism Summit of the States

In sum, the three pillars that have supported the current federal system since the New Deal are constitutionally suspect and crumbling. What will replace them and how the federal system will be structured in the coming decades is yet to be determined.

CONCLUSION

It is increasingly clear that our current federal system cannot sustain the existing stresses. Fortunately, our constitutional federal system is dynamic enough to be reworked to meet twenty-first century needs. Doing that will require the political will to put structure over politics. And it will force us to address other issues, such as: Can we sustain the federal tension of not being wholly complete nor completely autonomous? Do we possess the tolerance required to allow the differences and diversity that arise naturally within a federal polity? Can we reform the national-state relationship to meet contemporary problems or will we do nothing and resign ourselves to crisis and conflict? 🏰

Endnotes

- 1 Bari Weiss, “Bari Weiss: American Regeneration,” *The Free Press*, July 2, 2025, <https://www.thefp.com/p/bari-weiss-americanregeneration-ben-franklin-join-or-die> (accessed September 2, 2025).
- 2 On self-government: James Madison, *The Federalist* No. 39; Abraham Lincoln, “Gettysburg Address,” November 19, 1863; C. Eugene Steuerle, Hugh Hecló, Edward Gramlich, and Demetra Smith Nightingale, *The Government We Deserve: Responsive Democracy and Changing Expectations* (Washington, DC: Urban Institute Press, 1998), 95.
- 3 Michael Stokes Paulsen and Luke Paulsen, *The Constitution: An Introduction* (New York: Basic Books, 2015).
- 4 Martin Diamond, “The Ends of Federalism,” in *As Far as Republican Principles Will Admit: Essays by Martin Diamond*, ed. William A. Schambra (Washington, DC: AEI Press, 1992), 145.
- 5 Yuval Levin, *American Covenant: How the Constitution Unified Our Nation—and Could Again* (New York: Basic Books, 2024).
- 6 C. Eugene Steuerle, Hugh Hecló, Edward Gramlich, and Demetra Smith Nightingale, *The Government We Deserve: Responsive Democracy and Changing Expectations* (Washington, DC: Urban Institute Press, 1998).

⁷ Daniel J. Elazar, *Exploring Federalism* (Tuscaloosa: University of Alabama Press, 1987); Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge: Cambridge University Press, 1990).

⁸ John Kincaid, “Values and Value Tradeoffs in Federalism,” *Publius: The Journal of Federalism* 25, no. 2 (Spring 1995): 29–44; Erin Ryan, *Federalism and the Tug of War Within* (New York: Oxford University Press, 2011); Yuval Levin, “Federalism,” in *American Covenant* (New York: Basic Books, 2024), chap. 4.

⁹ Clinton Rossiter. “Federalist No. 39.” *The Federalist Papers* (New York: Monitor, 1961).

¹⁰ Wallace E. Oates, “Fiscal Competition or Harmonization? Some Reflections,” *National Tax Journal* 54, no. 3 (2001): 507–12; Daniel R. Fischel, “Organized Exchanges and the Regulation of Dual Class Common Stock,” *University of Chicago Law Review* 54 (1987): 119–152; Marc Schneiberg and Tim Bartley, “Organizations, Regulation, and Economic Behavior: Regulatory Dynamics and Forms from the Nineteenth to Twenty-First Century,” *Annual Review of Law and Social Science* 4 (2008): 31–61

¹¹ Erin Ryan, *Federalism and the Tug of War Within* (New York: Oxford University Press, 2011), 15, 65–66.

¹² Jeffrey S. Sutton, *Who Decides? States as Laboratories of Constitutional Experimentation* (New York: Oxford University Press, 2022).

¹³ Troy E. Smith, “Divided Publius: Democracy, Federalism, and the Cultivation of Public Sentiment,” *The Review of Politics* 69, no. 4 (Fall 2007): 568–598.

¹⁴ One study concluded, that “the Constitution did create a governmental structure with an essential and unalterable core [but] that the core lay not in any ‘assigned’ or ‘carefully crafted’ balance but rather in a dynamic combination of [] interrelated elements that allow a range of acceptable permutations” Edward A. Purcell Jr., *Originalism, Federalism, and the American Constitutional Enterprise: A Historical Inquiry* (New Haven: Yale University Press, 2007), 177–79, quoted in Erin Ryan, *Federalism and the Tug of War Within* (New York: Oxford University Press, 2011), 15; Wilfred M. McClay, “The Federal Idea,” *The Imaginative Conservative*, November 27, 2016, <https://theimaginativeconservative.org/2016/11/federal-idea-timeless-wilfred-mcclay.html>; Woodrow Wilson, *Constitutional Government in the United States* (New York: Columbia University Press, 1908; repr. 1911), 173; David Brian Robertson, “Federalism and the Dynamism of American Politics,” *Scholars Strategy Network*, May 1, 2012, <https://scholars.org/contribution/federalism-and-dynamism-american-politics>; Morton Grodzins, *The American System: A New View of Government in the United States*, ed. Daniel J. Elazar (New Brunswick, NJ: Transaction Books, 1984). For a different view, see Harry N. Scheiber, “The Condition of American Federalism: An Historian’s View,” in *American Intergovernmental Relations*, 2nd ed., ed. Laurence J. O’Toole Jr. (Washington, DC: CQ Press, 1993), 67–74.

¹⁵ Wilfred M. McClay, “The Federal Idea,” *The Imaginative Conservative*, November 27, 2016, <https://theimaginativeconservative.org/2016/11/federal-idea-timeless-wilfred-mcclay.html>

¹⁶ Alexis de Tocqueville, *Democracy in America*, trans. and ed. Harvey C. Mansfield and Delba Winthrop (Chicago: University of Chicago Press, 2000), 645; see note on 703.

¹⁷ John J. Wallis and Wallace E. Oates, “The Impact of the New Deal on American Federalism,” in *The Defining Moment: The Great Depression and the American Economy in the Twentieth Century*, ed. Michael D. Bordo, Claudia Goldin, and Eugene N. White (Chicago: University of Chicago Press, 1998), 155–80; John Kincaid, “The Rise of Social Welfare and the Onward March of Coercive Federalism,” in *Networked Governance: The Future of Intergovernmental Management*, ed. Jack W. Meek and Kurt Thurmaier (Los Angeles: SAGE/CQ Press, 2012), 8–38.

¹⁸ James Madison, “Consolidation” *National Gazette December* 3, 1791. <https://founders.archives.gov/documents/Madison/01-14-02-0122>

¹⁹ Stephen Macedo and Frances E. Lee, In Covid’s Wake: *How Our Politics Failed Us* (Princeton: Princeton University Press, 2025).

²⁰ Ezra Klein and Derek Thompson, *Abundance* (New York: Avid Reader Press/Simon & Schuster, 2025).

²¹ Alice M. Rivlin, “Foreword,” in *Intergovernmental Management for the 21st Century*, ed. Timothy J. Conlan and Paul L. Posner (Washington, DC: Brookings Institution Press, 2008), x; see also Steuerle et al., *The Government We Deserve*.

²² Jeffrey Clemens and Stan Veuger, “Intergovernmental Grants and Policy Competition: Concepts, Institutions, and Evidence,” *National Bureau of Economic Research Working Paper* 31251 (May 2023), <https://www.nber.org/papers/w31251> (accessed September 2, 2025).

²³ John F. Cogan, “The Budgetary Impact of the Abandonment of Federalism,” in *American Federalism Today: Perspectives on Political and Economic Governance*, ed. Michael J. Boskin (Stanford: Hoover Institution Press, 2024), 2.

²⁴ John F. Cogan, “The Budgetary Impact of the Abandonment of Federalism,” in *American Federalism Today: Perspectives on Political and Economic Governance*, ed. Michael J. Boskin (Stanford: Hoover Institution Press, 2024), 83–112.

²⁵ “Centralization: Power Shift,” *Federalism Index*, 2021, <https://www.federalismindex.org/centralizationpowershift>; “Centralization: De/Centralization,” *Federalism Index*, 2021, <https://www.federalismindex.org/de-centralization>.

²⁶ Timothy J. Conlan, *New Federalism: Intergovernmental Reform from Nixon to Reagan* (Washington, DC: Brookings Institution, 1988).

²⁷ C. Eugene Steuerle et al., *The Government We Deserve*, 67.

²⁸ Martha Derthick, “The Paradox of the Middle Tier,” in *Keeping the Compound Republic: Essays on American Federalism* (Washington, DC: Brookings Institution Press, 2001), chap. 3.

²⁹ Federalism Index Project, “Federal Regulations,” *Federalism Index*, February 2, 2024, <https://www.federalismindex.org/post/regulations>.

³⁰ “CEI Unconstitutionality Index,” Competitive Enterprise Institute, 2025, <https://cei.org/regulations/>.

³¹ Christopher DeMuth, “Can the Administrative State Be Tamed?” *Journal of Legal Analysis* 8, no. 1 (2016): 121–190.

³² “Centralization: De/Centralization,” *Federalism Index*, 2021, <https://www.federalismindex.org/de-centralization>.

³³ *Loper Bright Enterprises v. Raimondo*, 603 U.S. ____ (2024).



The Inaugural National Federalism Summit (2025): Rebalancing the State-Federal Relationship

September 25-26, 2025; Salt Lake City, Utah

In a free nation, politics will always be competitive. What keeps this competition healthy are the structural protections of our Constitution—this includes federalism.

America’s federal system was created to foster unity and self-government—a unity that joins the people and their states in a limited national government to address common problems while reserving locally self-government over most aspects of our daily lives. Federalism reinvigorated, we believe, holds the promise of addressing our most bitter partisan disputes and the framework for innovative policies that address twenty-first century problems.

The increasing centralization of governing power is unsustainable—national debt threatens the grants and aid to state and local governments, competing executive orders with each new presidential administration creates economic and governing whiplash, and top-down mandates and red tape obscure accountability and reject local needs and priorities.

States and state leaders hold the power to correct this course. The Supreme Court has counseled “the independent power of the States also serves as a check on the power of the Federal Government.” Our Constitution depends on states preserving and maintaining clear roles and responsibilities in this governing partnership. Preserving the safeguards of federalism restores greater accountability, respects local diversity, and improves governing innovation and outcomes.

At this time of extreme political and public stress, we again face the fundamental questions of American politics: Who should decide matters affecting our daily lives? and, Do two governments, rather than one, still afford greater protections of liberty, accountability, and governing outcomes? Our future, and the future of our nation depends, in no small part, on the answers these questions.

To address these concerns, the National Federalism Initiative’s inaugural Summit, “Rebalancing the Federal-State Relationship,” was held in Salt Lake City on September 25, 2025, during Constitution Week. The objective of the Summit was to facilitate a discussion among state leaders on how to lower the political temperature in our nation by returning governing focus to structure over politics with a particular emphasis on the structural safeguards of federalism.

With policymakers from fourteen states and a handful of federalism scholars from across the country, the summit engaged participants in a non-partisan exploration of federalism from intersecting perspectives—history, law, policy, and current budget realities. Attendees reviewed developments in Utah funded by the National Federalism Initiative (NFI), shared updates and insights from their states, and left with a commitment to work together across state and party lines to ensure that states are able to exercise their constitutional responsibilities.



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What follows are summaries of the key addresses given during the summit.

Senator Keven Stratton (UT–R), Co-Chair of the Utah Federalism Commission

Senator Stratton’s opening comments highlighted the importance of relationships, inviting attendees to build new relationships by discussing the “why” of their participation in the summit and related work. He described his own “why” as a love for constitutional federalism as a unifying framework for “blue” and “red” states.

Representative Jennifer Dailey-Provost (UT–D), Federalism Commission

Representative Daily-Provost described meaningful discussions with Republican counterparts including Representative Ken Ivory. While disagreeing on some issues, they came together through a joint concern “that our state and our nation were on a dangerous trajectory,” and a belief that constitutional federalism can bring people together across the political spectrum to ensure a sound future for their “Maggies” – Representative Dailey-Provost’s daughter Maggie and Representative Ivory’s granddaughter Maggie.

Representative Ken Ivory (UT–R), Co-Chair of the Utah Federalism Commission

Representative Ivory recounted the creation of the federalism initiative, driven by the belief that “we have the opportunity of a lifetime right now,” and grounded in the directive found in almost every state’s Constitution that “a frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government.” The NFI includes three pillars: first, continuing education for state executive agency leaders and legislators on the lines of jurisdiction between the states

and the federal government; second, an annual conference (of which this Summit was the first); third, a national federalism commission, a “watch-dog” for the states, to replace the Advisory Commission on Intergovernmental Relations that was dissolved in 1996. Representative Ivory shared his pleasure in working with leaders from varying states: “We look at what our Constitution gave us in structure to solve problems, and we can be diverse, in New Hampshire, Utah, Idaho, and Kansas, yet still stand together as a nation for the things that were delegated.” Attendees reported discussions on federal ownership of state lands and payment of state taxes, and the perspective of an attendee in the National Guard who reported to both the President and Governor as Commanders in Chief, highlighting the intersecting roles of state and federal government.

Governor Spencer Cox (UT–R)

Governor Spencer Cox, the Summit’s keynote speaker, pointed out that “the Founders’ brilliance lay in this concept of dual sovereignty . . . The powers of the federal government were meant to be limited and defined, and the rest left to the states.” Drawing from his recent service as the President of the National Governor’s Association, he highlighted the need for local decision-making: “we are a pluralistic society. Life in Alabama or Georgia is very different from life in New Hampshire or Massachusetts, and very different from life in Utah or Idaho.”

Noting that Utah recently experienced the political assassination of Charlie Kirk, he observed that “when politics becomes that tribal, people begin to see their opponents as enemies.” He shared an insight from recent work with depolarization experts, that “when a Democrat is president, most political violence comes from the far right. When a Republican is president, it comes from the far left. That pattern tells us the same thing, we are too concentrated, too tribal, too centralized.” However, “the Founders gave us a way out: decentralize power. Keep it as close to the people as possible.” He noted that one solution is to “restore the proper balance between the branches and between the states and the federal government, and we must do it together, in a bipartisan way.” Governor Cox pointed to the dramatic improvement in student literacy rates in Mississippi, rising from forty-ninth in reading to th, and the freedom of other states to learn from the “Mississippi Miracle.” He shared that he sees hope from recent conversations with Democratic colleagues and the President. “This is our time. This is our moment. As we celebrate 250 years of this great nation, we must remind the American people, many of whom never learned it in the first place, what federalism is, why it matters, and how it will make us freer, happier, and stronger.”



Governor Spencer Cox speaking at the 2025 Federalism Summit of the States

Dr. Troy Smith, Director, Utah Constitutional Federalism Initiative

Dr. Smith highlighted that a distinguishing feature of the Constitution is the sharing of power, approved by the people, for the purposes of unity and self-government. This is a partnership in which the people, who are sovereign, grant limited authority to the national and state governments. Dr. Smith traced the development of the American partnership in self-rule from the Mayflower Compact, which created a body politic, to the colonies’ determination that their relationship with Britain was a broken partnership, to Tocqueville’s insight that a distinguishing feature of Americans was joining together in partnerships to “get things done,” demonstrated in Western wagon trains and other enterprises. He noted that in the United States, there are “lines everywhere which separate powers,” from marriage to sports, and cited Jefferson’s view of the importance of lines, which are not always easy to define, and his interpretation of Plato’s definition of justice: “mind your own business—but mind it well.” He argued that “part of our problem is that we’ve forgotten the lines and gotten into other people’s business instead of focusing on our own.” Those lines are a fundamental part of federalism; while some lines are thought to separate us, “those lines actually join us together if done correctly—they help create a robust, dynamic, functioning federal system that serves its intended benefits.”

Speaker Mike Schultz (UT–R), House of Representatives

Speaker Schultz cited James Madison’s statement that the powers of the federal government would be “few and defined,” while those left to the states would be “numerous and indefinite.” He observed that “the federal government has slowly accumulated more and more power at the expense of the states—and more importantly, the citizens of this country;” and that Congress has delegated too much authority to the executive branch and federal agencies. Concentrating power “raises the stakes of every presidential election and only makes our national politics worse.” The NFI seeks to restore that balance in a bipartisan way, not by “shouting at Washington” but by “building coalitions of red and blue states that recognize our country is stronger when power is local,” whether on land use, education, or health care, confirming the states as laboratories of democracy that can innovate and learn from each other’s successes and mistakes. The NFI will seek to re-educate states on their responsibilities, because “too many leaders have forgotten the power they actually have. What we’re talking about isn’t about one administration or political party, it’s about structure, not politics.”

Dr. Jim Moss, Utah Federalism Commission

Dr. Moss reported on the continuing education component of the NFI, centered in a training course being prepared by the Constitutional Federalism Initiative at Utah Valley University in partnership with the Herbert Institute for Public Policy—named after former Governor Gary Herbert, who emphasized education, negotiation, legislation and litigation as tools available to states to achieve the appropriate balance of power. The education component includes a twenty-question matrix that reviews each state agency, including directions from the State Legislature, the constitutional and statutory basis for any federal involvement, the nature of federal funding and mandates, conflicts between federal and state law, and the results of any attempt by the agency to obtain more flexibility or state autonomy. An overarching question is whether and how the state agency’s best judgment might be impeded by unwarranted federal

interference or mandates. That input will inform the NFI’s legislative and agency training and identify needs for action; NFI hopes to exchange results and insights with other states.

Dr. Jenna Bednar, Gerald R. Ford School of Public Policy

Professor Bednar emphasized the integrity of the Constitution, stating that “our ambition is about democracy’s¹ defense, about its resilience, and about how, by rebuilding our social fabric, we strengthen that democracy,” with federalism a crucial means to that end. The Constitution depends not only on words but what happens between the lines, which depends on norms, and “those norms are undermined by polarization.” Bednar argued that federalism can reduce affective polarization by lowering the perceived stakes of national politics, fostering cross-cutting identities, and sustaining arenas for diverse policy expression. “Whether it does so depends on the degree that national politics has taken hold in our states and in our local communities, and whether citizens are able to maintain multiple overlapping identities instead of purely partisan ones.” Federalism plays a surprising role, as it’s “not only a mechanism for accommodating geographically diverse interests, also a system that fragments authority, sustains diversity and creates multiple areas for norm development. Federalism is an opportunity to rehumanize our political sphere, and in so doing, it helps democracy to be resilient and its people to flourish.”



Dr. Jenna Bednar at the 2025 Federalism Summit of the States

Dr. John Dinan, Professor of Politics at Wake Forest University

Dr. Dinan discussed the challenge and opportunity of developing a new national commission—including whether in the current polarized era such a commission could reach consensus, what benefits could be expected from a commission, and what particular priorities a commission could set. Dr. Dinan suggested attempting to overcome diverging partisan perspectives on federalism by focusing on the perspective of state officials, who are “the ones who are on the ground dealing with governing and dealing with the practicalities of administering policies,” and might support aisle-crossing “because they deal with governing on the ground, and they can see this is not working.” Dr. Dinan suggested that a multi-state commission in 2001 might have envisioned a better approach to the nationally driven No Child Left Behind Act, or the REAL ID Act passed in 2005, which required dramatic changes in how states issued drivers licenses in response to the 9/11 commission. Dr. Dinan argued that “a main function of such a commission would be to monitor federal government actions in a way that goes back to what James Madison saw in the Federalist Papers as helpful for states to monitor federal actions, and that Madison and Jefferson

actually participated in when they sounded the alarm to other states in regard to federal policies.” A commission might also collect and publish data about the effects of federal policies on states, promote education and research about the value of federalism, and collect and report on data about the implications of federal regulations, preemptions, conditions and grants-in-aid.

Derek Brown, Utah Attorney General

Attorney General Brown recounted his work with Utah Senator Bob Bennett, a supporter of federalism, who shared his practice of socializing with other elected officials and observed the friendship between Senators Ted Kennedy (D-MA) and Orrin Hatch (R-UT), which is lacking in the current climate. He compared our political environment to an option in a game to unlock a certain power for one participant which, when unlocked, is unlocked for everyone to the detriment of all. Describing the difference in state-driven collaboration with a uniform national approach, Brown has recently worked with the Attorney General in Connecticut on offshore gaming, and with others on “robo-calls”; and recently filed a joint lawsuit against a pornography provider to restrict access by minors. A number of Supreme Court cases have recently attempted to enforce a structural balance, including the Sackett case in Idaho², which set boundaries on the exercise of federal power regarding environmental concerns on a private lot. He also cited Yuval Levin’s book *American Covenant*, which notes that the intent of the Constitution is to bring people together, to “force us to have conversations.” Working through the legal component of the NFI, he is committed to collaborating with other states.

Senator Kirk Cullimore (UT-R), Utah Senator Majority Leader

Senator Cullimore pointed out that the Constitution assigns to the national government authority over national defense, foreign affairs, currency and commerce while reserving other powers to the states. He identified the present challenge as an “unchecked administrative state,” with unrestrained taxing revenue flowing to the federal government and back to states with associated mandates or “strings,” which has made states dependent on the federal government. He recommended five avenues to pursue: (1) creating federalism commissions in every state, (2) passing joint multi-state resolutions based on templates generated by the NFI, (3) conducting audits of state agencies to determine the cost of federal compliance, (4) encouraging challenges to federal overreach in the courts by “blue states” and “red states,” and (5) encouraging legislative action to lead boldly in state policy. He shared Utah’s experience reducing pollutants, after the Division of Air Quality indicated that the EPA had not established sufficiently clear standards to use, forcing states to lead out. He urged states not to wait for the federal government to act, but to “do what’s in the best interest of our citizens and demonstrate their ability to properly govern.”

Representative Ken Ivory (UT-R)

Representative Ivory closed by charging attendees to join the steering committee to plan the 2026 summit, and thanked the UVU faculty and interns and others involved in preparing the summit. 🙏

1 Democracy, Prof. Bednar explained, refers to various forms of popular government (liberal democracy, representative, and Republican) that prevent mob rule and tyranny of the majority as the U.S. Constitution does.

2 See https://www.supremecourt.gov/opinions/22pdf/21-454_4g15.pdf



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