

We the People

COMPETITIVE FEDERALISM

Leveraging the
Constitution to
Rebuild America



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Competitive Federalism: Leveraging the Constitution to Rebuild America

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March 2013



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Foreword

Like so many of the ideas enshrined in the U.S. Constitution, the concept of “federalism” was considered by the Founders to be essential to the success of the American experiment.

In *Federalist*, No. 39, James Madison reassured critics that the Constitution would not establish a strictly “national” government—that is, one that derives its powers exclusively from and operates directly upon the people, with no regard for the authority and responsibility of the states. Instead, Madison explained, the Constitution would establish a government that was both “national” and “federal”—i.e. respectful of state sovereignty.

In the first place, the states had to ratify the Constitution for it to take effect. As Madison wrote, “The act, therefore, establishing the Constitution, will not be a national, but a federal act.” Years later, Ronald Reagan summed it up this way: “The states created the federal government, not the other way around.”

In the second, while the national government would operate directly upon the people in matters of its jurisdiction, its jurisdiction would be scrupulously limited to “certain enumerated objects only.” In other words, “if the government be national with regard to the operation of its powers,” it is not “in relation to the extent of its powers.”

Unfortunately, and also like so many of the ideas enshrined in the U.S. Constitution, “federalism” seems to have lost its luster in the latter half of U.S. history. Yet we have the most enduring written constitution in the world for a reason: When actually applied, it works to limit government and to ensure the greatest possible measure of liberty for individuals—and, in the process, it simultaneously maintains order and stability and unleashes Americans’ creative potential in such a way as to almost inevitably lead to material prosperity.

It takes education for Americans to understand why this is so, though. At a time when most Americans consider the words “national” and “federal” to be interchangeable, an exposition of the meaning of “federalism” is clearly necessary and important. Yet, such an exposition must respect the apparent reality that Americans no longer relate to and interpret the word “federalism” as they did when they were debating whether to support ratification of the Constitution. We must speak in terms everyone can understand.

Americans understand competition. For proof, look no farther than the success of the sports industry. Billions of dollars are invested and countless hours dedicated to watch agile athletes compete with one another. There is a reason college athletics is referred to as the doorstep of the university. People thrive on competition.

In this report, we apply the relevant adjective “competitive” to the abiding concept “federalism” to illuminate the inherent advantage of a truly federal system of government—it works!—and to urge lawmakers to revive our own.

Matt Mayer is the perfect scholar to write this report, and the Liberty Foundation is its logical publisher. As the President of Opportunity Ohio, an award-winning Visiting Fellow at The Heritage Foundation, and the author of two books that incorporate keen reflections on the importance of competition among the states, Mayer is one of the foremost voices in favor of a return to federalism. The Liberty Foundation coordinates activity among the free-market movements in each state to remind Americans that government exists to do the bidding of the people, not the other way around.

Consider this report just such a reminder.

Onward to liberty.

State think tanks endorsing competitive federalism, making competitive federalism one of the most broad-reaching projects arising from the states in U.S. history.



MATT MAYER

Competitive Federalism

I. Introduction: Leveraging the Constitution to Rebuild America

Nothing is more unpopular than Washington, D.C. Americans rightfully identify that the federal government's power over their lives is too invasive. A September 2011 Gallup poll found that 81 percent of citizens were dissatisfied with how America was being governed.¹ Key findings of the Gallup Poll are:

- 82 percent of Americans disapprove of the way Congress is handling its job;
- 57 percent have little or no confidence in the federal government to solve domestic problems;
- Americans believe, on average, that the federal government wastes 51 cents of every dollar; and
- 49 percent of Americans believe the federal government has become so large and powerful that it poses an immediate threat to the rights and freedoms of ordinary citizens.²

More recently, Gallup reported that 77 percent of Americans believe that “the way politics works in Washington these days” causes serious harm to America.³ From the size of Swiss cheese holes to how

we run our local schools, Washington's presence in our day-to-day lives is as pervasive and negative as ever.

Over the last forty years, several efforts were made to reduce the power of the federal government. All of those efforts (President Richard Nixon in 1972; President Ronald Reagan in 1981; and Speaker Newt Gingrich in 1994) ultimately failed because the system fights even the strongest reform efforts. Washington and those reformers in it seem utterly powerless against the centralized behemoth of the federal government.

Our Founding Fathers would not recognize the massive centralization of powers in America that began during the Progressive Era. The centralization of powers required the rise of a powerful administrative state to engage in the actions that needed to be taken to govern. It is this leviathan that repels many Americans, as its sheer size overshadows so much of American life.

One of its intellectual and political leaders was President Woodrow Wilson. The Progressive Movement's chief aim was to centralize power by eliminating those pesky little concepts of separation of powers and checks and balances and escape the confines of a fixed constitution so that America could progress (not that it hadn't up to that point as evidenced by the abolishment of slavery and its rise as a world power).

Wilson despised those constitutional mechanisms because they prevented government from

1 Gallup, “Americans Express Historic Negativity Toward U.S. Government,” September 26, 2011.

2 Ibid.

3 Gallup, “Most in U.S. Say Politics in Washington Cause Serious Harm,” January 7, 2013.

“proceeding” in accordance with the will of “an outside master.”⁴ Wilson believed that the Constitution should be a living document. As Wilson stated: “All that progressives ask or desire is permission to interpret the Constitution according to the Darwinian principle.”⁵ The outside master, then, was the fittest among us whose societal beliefs could be inserted into the Constitution.

The adoption of this progressive view was certainly not the natural trajectory of the federal government. Rather, the rise of progressivism and the economic shock from the Great Depression weakened America’s natural resistance to a centralized administrative state. During that moment of weakness, progressivism malformed the American mind and fundamentally changed how we viewed government.

At times, Americans have been schizophrenic about government. They want government cut, but not the parts of government from which they receive benefits. This “cut theirs, not mine” mentality results in few, if any, real cuts. As programs grow, the special interest factions that support those programs only ensure continued funding. With the United States recently crossing the perilous threshold in which a majority of Americans receive a transfer payment from government, as an equal majority pay no federal income taxes, unringing the bell of dependency grows more difficult with each passing year.

The reality is that the federal government is financially broke. Because it is not restricted by a balance budget requirement, the federal government can run up deficits and debts as far as the eye can see. As the fiscal crisis in Washington, D.C. advances, there is no better time than now to have a vigorous debate on how we best pull our country back from the fiscal brink and reinvigorate American Exceptionalism.

Americans face two stark choices: raise taxes to cover the ever-increasing costs of government and tackle the exploding national debt or realign government spending to fit the generous tax revenues Americans already provide to government. While cutting poorly performing programs is necessary, a

core component of this latter choice must be to lower government costs by eliminating inefficiencies and increasing competition.

Central to this competition component is reconsidering the proper roles and responsibilities of and between federal, state, and local governments. We’ve tried the centralization of power in the federal government for the last eighty years. It hasn’t worked.

We must move the discussion away from populist promises to raise taxes on certain segments of Americans or to cut government by programmatic picking and choosing to the real issue—where do Americans want the locus of government power over their lives to reside? If the current federal-centric approach had delivered on the promises made by its advocates, then maintaining the status quo might be a viable route out of our fiscal crisis. Today, however, the federal government’s costs are high and the goods and services provided are mediocre, at best.

Given the disdain Americans have for the federal government and its poor track record of success, we believe a majority of Americans would prefer to deal with their state or local governments instead of the federal government. This preference comes from the fact that those governments, while certainly not perfect, are much closer to the people and, therefore, far more transparent and accountable.

Our conception of competitive federalism is unequivocally not an anti-government idea. Competitive federalism aims to rebalance the powers between the federal government and the states that more faithfully adheres to the Constitution. It is not government itself that is inherently troublesome; rather, it is the misappropriation of power by the federal government that requires action. The antidote is not the destruction of government. It is the returning of power to the states and a proper return to the natural constitutional order.

By advocating for getting power out of Washington and returning it to the states, we can debate the benefits Americans would receive by having more control closer to them and to the fiscal tax benefit of state control.

4 Ronald J. Pestritto, *Woodrow Wilson: The Essential Political Writings*, p. 197 (Lexington Books 2005).

5 *Ibid.*, p. 121.

II. The Constitution Must Be Our Guide

After 80 years of progressivism, many Americans cannot envision a federal government less intrusive or powerful than it is today. That said, the current arrangement was not inevitable or foreordained. It was not the natural outcome of America's experiment with limited government. There is a better way as pointed out in the Constitution.

A. THE ROAD FROM 1787 TO TODAY

Our Constitution recognizes three distinct sovereigns. First and, most critically, the Constitution clearly acknowledges we are sovereigns over ourselves and carries forward the famous axiom from the Declaration of Independence that “[w]e hold these truths to be self-evident, that all men...are endowed by their Creator with certain unalienable rights.”⁶

The Declaration of Independence, as a precursor to the Constitution, gave recognition to a fact that, though ignored by political leaders, was as old as humanity. We the people, endowed with those unalienable rights, are the ultimate sovereigns of ourselves, with government secondarily sovereign as a creation borne by the consent of the governed. As such, government's powers are limited and constrained by that consent.

In the Preamble, the Constitution states that “[w]e the people...in Order to form a more perfect Union...and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution.”⁷ We establish government as secondary sovereigns with limited powers as a means to protect our individual rights vis-à-vis each other and government. The 9th Amendment explicitly preserves this

individual sovereignty by noting: “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”⁸

Secondly, our Constitution expressly provides sovereign spheres of powers between the federal government and state governments. Specifically, Articles I, II, and III identify the various powers and structure of the federal government and Article IV describes the relationship between the federal government and the states.

Most powerfully, the 10th Amendment embeds the concept of federalism and the tripartite sovereignty between the federal government, the states, and the people. The 10th Amendment states: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”⁹ Those 28 words confirm that states possess the ability to tailor policies that best address the issues they confront. Because of the various demographic differences among the states, a one-size-fits-all policy may not work or may not work most effectively and efficiently in a particular state.

Competitive federalism serves as a barrier to centralization. As Madison noted, there is a meaningful difference between parchment barriers contained in the words of the Constitution and structural arrangements such as checks and balances and separation of powers that strengthen the case for limited government.¹⁰ Competitive federalism is a structural arrangement equally as vital to protecting our way of life as checks and balances and separation of powers are.

Competitive federalism focuses on states and the competition that should and must occur among the states. This competition is key to renewing American Exceptionalism. As Proverbs teaches us, “As iron sharpens iron, so one person sharpens another.”¹¹ It also goes beyond just competition among the states

6 Declaration of Independence, Preamble.

7 U.S. Constitution, Preamble.

8 Ibid, at 9th Amendment.

9 Ibid, at 10th Amendment.

10 Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers*, “Federalist, No. 48,” pp. 305–306 (Signet Classic, 1999).

11 Bible, New International Version, Proverbs 27:17.

and promotes competition between the federal government and the states. Competitive federalism is an alternative way to think about federalism; namely, it moves beyond the mistaken historical view that federalism equated to a confrontational fight between the federal government and the states.

This confrontational view of federalism is insufficient to make and keep America great. Confrontation divides us; competition energizes us. America's greatness comes from a competitive spirit that is woven into the very DNA of the Constitution. By encouraging competition among the states and between the states and the federal government, our Founding Fathers guaranteed the ultimate success of America, as failure in one state couldn't doom the entire country and state successes could be adopted and tailored by other states. We can solve our complex problems in an iterative process as states learned from and built upon the lessons emanating from the fifty laboratories of competition across the United States.

When the federal government nationalizes an inherently state or local issue, it ensures that whatever policy it produces will fail to solve the problems. We know from the welfare reforms in the 1990s that a policy solution in one state may not work well in another state, which demonstrated the importance of states maintaining the flexibility and authority to tackle issues as they saw fit. A robust policy competition among the states will enable America to find out what works and what does not.

Our written Constitution purposefully promoted a competitive federalism by limiting the powers of the federal government and reserving remaining powers to the states to the degree we the people ceded other powers to our state governments via state constitutions. By so doing, our Founding Fathers guaranteed the states would serve as laboratories of competition within the contours of the Commerce Clause in Article I, Section 8.

Alexander Hamilton identified this competitive friction in *The Federalist*, No. 7 when he wrote:

“Competition of commerce would be another fruitful source of contention.”¹² James Madison submits in *The Federalist*, No. 44 that the Commerce Clause struck a proper balance that still permitted states “reasonable discretion” over commerce.¹³ In discussing the general power of taxation, Hamilton notes in *The Federalist*, No. 34 that the power to tax:

leaves open to the States far the greatest part of the resources of the community, there can be no color for the assertion that they would not possess means as abundant as could be desired for the supply of their own wants, independent of all external control. That the field is sufficiently wide will more fully appear when we come to develop the inconsiderable share of the public expenses for which it will fall to the lot of the State government to provide.¹⁴

With the Commerce Clause being the only limitation placed on states over commerce and tax policies, the ability of states to compete with each other was “sufficiently wide.”

Under this competitive system, America rose from an agrarian society in 1787 to a global economic power by the turn of the 20th century. Following the Civil War, the states competed to develop robust industries that spurred economic growth and prosperity. From the steel mills in Pennsylvania to the textile factories in Massachusetts to the stockyards in Illinois, by 1890, the United States had surpassed Britain in manufacturing production.

This “Gilded Age” gave rise to the American tycoon, as men like John D. Rockefeller and Andrew Carnegie made fortunes building massively powerful companies. At the same time, America gained the capability to project military force across the globe and increasingly played a key role in securing the trade lanes.

This powerful system remained an effective tool

12 Ibid, p. 57.

13 Ibid, p. 280.

14 Ibid, pp. 201-202.

until the rapid growth of federal powers beginning in the New Deal Era when the Supreme Court interpreted the Commerce and Necessary and Proper clauses far more broadly than intended by the Founding Fathers.

This interpretive outcome, however, was not entirely unforeseen in 1787. In opposing the proposed Constitution, Melancton Smith, a New York anti-federalist who wrote a series of letters challenging *The Federalist Papers* that became known as the “Letters from the Federal Farmer,” correctly noted the potential power grab that could be accomplished using the Necessary and Proper Clause. Specifically, Smith observed in Letter IV dated October 12, 1787: “But the general presumption being, that men who govern, will in doubtful cases, construe laws and constitutions most favourably for increasing their own powers.”¹⁵

Another powerful case against the vague language in the proposed Constitution came from Judge Robert Yates in *Essays of Brutus* who wrote under the pseudonym Brutus. In Essay I dated October 18, 1787, Yates wrote:

The powers given by this article [Article I, Section 8] are very general and comprehensive, and it may receive a construction to justify the passing almost any law. A power to make all laws, which shall be necessary and proper, for carrying into execution, all powers vested by the constitution in the government of the United States, or any department or officer thereof, is a power very comprehensive and definite, and may, for ought I know, be exercised in such manner as entirely to abolish the state legislature.¹⁶

Though Congress has not yet tried to abolish state legislatures, the functional outcome of the centralization of power rendered state legislatures superfluous on many issues, most recently on health care.

The Great Society’s push for even greater centralized power generated the rise of the massive federal administrative state under which we live today. As the federal government expanded its powers into the smallest corners of our lives and issued one-size-fits

all policies and mandates, our ability to hold government accountable receded. Similarly, the ability of states to compete with each other on crucial policy issues grew weaker.

The nationalization of our lives implicitly contained an anti-competitive mentality. Liberal-progressive adherents abhor competition and seek to mandate an equality of outcomes in both our public and private lives. Permitting states to compete undermines this belief that America ought to operate as a monolithic, centralized political entity modeled, not on the tripartite sovereign system embedded in our Constitution, but rather on the European Union.

As President Wilson commented, certain men were able to “embody the projected consciousness of their time and people” and that these men whose “thought[s] run forward apace into regions whither the race is advancing” would master progress.¹⁷ Progressives believed that a centralized administrative state could do a far better job of governing America. The European Union adopted President Wilson’s theory of the superior master bureaucrat.

This anti-competitive mindset and the growth of the federal tax burden as compared to the state and local tax burden undermined the ability of states to serve as true laboratories of competition that would strive to create the best environments for their residents. We must inject competition back into the fabric of our governments.

B. STATES HAVE NO CHECK ON FEDERAL POWER

The key to this debate is getting people to understand that there is no check on the growth to Washington’s power anymore. When the Founding Fathers constructed our system of government, they carefully inserted many checks and balances both among the branches of the federal government and between the federal and state governments. Because America is a republic, not a direct democracy, the Founding Fa-

15 *The Anti-Federalists Selected Writings & Speeches*, Bruce Frohnen, ed., p. 175 (Regnery 1999).

16 *Ibid.*, p. 377.

17 Pestritto, p. 279.

thers sought to ensure that the elected federal government officials represented the various interests outside of Washington.

The House of Representatives, being popularly elected by the people, served to protect the interests of the people within their congressional districts, and districts were allotted to states by population totals. The Founding Fathers felt that the small house districts would serve as a check on the ability of local factions to gain control of the levers of the federal government to enact bad laws or oppress opponents.

In contrast to the House of Representatives, the Senate was made-up of two senators from every state who were elected by the state legislatures. The senators' primary role was to represent the interests of their states (which might, at times, be in conflict with the majority of people of the states). The fundamental reason why senators were elected by state legislatures was because that process guaranteed that the senators would fight in Washington for the interests of the states. The equality of representation among the states served as a check so that larger states could not exert undue influence over the smaller states, which could be done in the house due to the allocation of seats by population.

Finally, the President was elected in a manner that gave both the people and the states a role in his election and he served to represent America writ large (both the people in America and the states that make-up America). Specifically, the people vote for electors in each state who are then certified by the state to support the candidate who received the most votes in the Electoral College process, which is when the President technically gets elected.

With the passage of the 17th Amendment in 1913 during the Progressive Era, senators were elected popularly by the people, which disconnected them from being accountable to state legislatures. Not surprisingly, both the era of unfunded mandates and the massive expansion of the federal government began soon thereafter – especially given that the passage of the federal income tax under the 16th Amendment

in the same year provided for the means to fund the activities of the expanding federal government.

When states lost their check to rein in recalcitrant senators who voted for legislation that would grow federal power at the expense of state power or for legislation that would pose an unfunded mandate on the states, senators could support legislation that proved popular despite the short or long-term consequences of the legislation on the states.

A recent example is the passage of the Patient Protection and Affordable Care Act (PPACA). On a strict party line vote, a Democratic-controlled House and Senate passed PPACA and President Barack Obama signed the bill into law. Under the individual mandate, PPACA nationalized the American health care system and forces every American to purchase health insurance or pay a fine. Never before has the federal government used its power to force Americans into buying a commercial good or service.

During the debate, many states expressed serious concerns with the legislation, especially as the Medicaid mandates alone placed significant financial burdens on the states. In fact, roughly 28 states (i.e., a clear majority and possessing 56 senators) filed lawsuits over the constitutionality of PPACA.¹⁸ Unless the Supreme Court eventually finds PPACA unconstitutional, states have no other means to combat this massive expansion of federal power.

C. THE POWER OF COMPETITIVE FEDERALISM

In *The Federalist*, No. 45, Madison clearly articulated the constitutional balance of power between the federal government and state governments as drafted by the Founding Fathers. Madison wrote:

The powers delegated by the proposed Constitution to the federal government are few and defined. Those who are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war,

18 Lambert, Lisa, "FACTBOX-Lawsuits challenging U.S. healthcare law," January 28, 2011, <http://www.reuters.com/article/2011/01/28/usa-healthcare-legal-idUSN2823552420110128> (accessed April 24, 2012).

peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part be connected. The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State.¹⁹

No matter your ideological views, few Americans today would claim that the federal government's powers are "few and defined" and that the states' powers are "numerous and indefinite."

The broad brushstrokes of unconstrained federal power perpetually inhibits states from solving America's toughest challenges. Federal laws, rules, and regulations constrain states from freely acting on virtually every subject matter. One-size-fits all policies render meaningful competition among the states limited to few issues.

To rebalance the powers and honor our constitutional heritage, Americans should embrace competitive federalism. Properly defined, competitive federalism is the powerful harnessing of our tripartite sovereignty system that allows states to compete with each other over a broad range of issues to provide citizens with the best value goods and services at the lowest cost. Unlike other federalism proposals, competitive federalism involves far more than rejecting a specific law; rather, competitive federalism requires the full decentralization of issues properly controlled by the states.

Initially, we propose the issues ripest for applying our concept of competitive federalism are Medicaid, education, and transportation. These issues are typically among the largest parts of state and local budgets. It is simply disrespectful of our tripartite sovereignty system to have such enormous budgetary issues driven by decisions in Washington, D.C. States are more than capable of deciding how best to take

care of our poor, educate their kids, and maintain their infrastructure.

Instead of taking a "mother may I?" approach to federal power, competitive federalism requires a cut to federal taxes and an end to grants, tax transfers, and other inefficient tax schemes. With full control over issues, states, as Hamilton recognized, must retain the tax dollars of their residents so they directly can fund the programs. No more will citizens of one state be forced to subsidize the domestic policy decisions of other states. Equally important, states will no longer be incented to provide goods or services they can't self-fund or to delay reforming their programs.

Based on the 2010 federal data, Americans sent \$2.331 trillion in taxes to the federal government.²⁰ Of those tax funds, \$564 billion came back to the states to fund Medicaid, education, and transportation programs. As part of implementing our competitive federalism idea, federal taxes should be cut by that amount. Governors and state legislatures then will have to decide how high to raise their taxes to fund the three programs. Because a meaningful amount of the federal bureaucracy and mandates will no longer be funded and the state and local government bureaucracy erected to comply with federal dictates would be dismantled, the net impact on Americans of cutting federal taxes and raising states taxes will result in meaningfully lower taxes.

This important point bears repeating given our country's fiscal problems. By leveraging competitive federalism, we can meet the needs of Americans more efficiently and more effectively and do so at a lower total cost. With between fifteen and forty cents of every federal tax dollar spent on bureaucracy, we can lower the total tax burden on Americans and dedicate a greater level of funding to producing positive outcomes.

By returning programmatic and taxing power over these issues to the states, we will empower state elected officials to experiment and identify solutions that best serve the unique needs of their citizens. The

19 Hamilton et al., p. 289.

20 U.S. Census Bureau, "Consolidated Federal Funds Report for Fiscal Year 2010: State and County Areas," September 2011, http://www2.census.gov/govs/cffr/cffr_2010_info_sheets.pdf (accessed May 7, 2012).

best solutions can serve as models for other states, allowing for differences based on demographic nuances.

At the same time, citizens will gain greater control over these issues because they will be able to more easily petition their governments, demand transparency, and increase accountability. While federal government bureaucrats and politicians stand to lose, state politicians will get more control over their programs and budgets and citizens will gain as vulnerable populations receive better goods and services at lower costs to taxpayers.

Unlike other federalism approaches, competitive federalism is apolitical. Regardless of which political party controls the two branches of the federal government, we believe governors and state legislatures, whether controlled by Democratic or Republican politicians, are best suited to serve the needs of citizens. Each state can decide how generously to fund programs. With state taxes becoming a far larger amount of each paycheck, we will have true competition among the states.

D. THE MYTH OF THE “RACE TO THE BOTTOM”

Critics of America’s tripartite sovereignty model engage in Chicken Little allegations of a “race to the bottom;” meaning, states will cut Medicaid, education, and transportation programs to the bone, thereby harming children and the poor. This allegation is utterly baseless for three reasons attendant with our modern world.

First, more than ever, Americans have the ability to vote with their feet. If a state failed to provide good services to its residents, it would watch as people moved to neighboring states that performed those services better. Over the last few years, we have witnessed a mass exodus from poorly run California to well run Texas.

Similarly, if a state failed to properly maintain its transportation infrastructure, businesses would relocate to states where operations would not suffer due to a governmental failure to act. The migration of people and businesses from the poorly performing jobs

economies in the Rust Belt and New England to the South and West is proof positive that Americans will go where opportunities for prosperity are the best.

With states having total control over the policies and funding, states could no longer blame Washington, D.C., for unfunded mandates and programmatic failures. This victim mentality unnecessarily undermines confidence in government and allows state and local politicians to evade making tough decisions.

The second reason is competitive federalism would advance the idea of true cost transparency. Today, Americans really have no idea how much of their tax dollars go to specific programs. With tax funding coming from three levels of government (federal, state, and local) and, within each level of government, potentially multiple tax sources (i.e., income, property, sales, gas), our tax structure is grossly opaque. By decentralizing programs and taxes, it will be easier to determine the true cost of key programs. States then would be incented to work aggressively to find the proper balance between providing needed goods and services to citizens and maintaining a competitive tax burden.

The final and, equally important, reason is the prevalence of technology that forces governments to be more transparent and that can be used to hold governments accountable. Forty years ago, state and local governments could engage in activities that were not in the best interest of taxpayers and vulnerable populations. With the enormous and ubiquitous technological innovations that have arisen over the last twenty years, citizens, especially in states and localities, are able to leverage sunshine laws and discover and publicize bad policies and/or bad actors more easily than ever.

From the Internet to blogs to smart phones with video capabilities to 24-hour news channels to Twitter, Facebook, and YouTube to fully funded watchdog groups on the left and the right, any attempt by politicians to race to the bottom and harm residents quickly would be communicated to residents across the state. Once promoted by non-traditional means, the mainstream media would jump onboard ensuring that the bad actions were broadcast far and wide.

With greater mobility, clearer costs, and increased transparency and accountability, our state and local leaders couldn't engage in a race to the bottom without paying a steep political price; rather, they will compete to keep and attract Americans and their businesses.

III. Key Areas to Apply Competitive Federalism

We have a clear choice to make. Do we continue on the progressive path forged over the last eighty years where federal power grew unabated and the debate over reforms centered on how to make federal programs better or spend less than the other side wanted to spend but more than we did the year before? Or, do we take a different path, one built by our Founding Fathers, where the powers we ceded to government are exercised closer to us so we can ensure better outcomes and preserve our liberty most effectively.

If we must fight to reinvigorate America, shouldn't we at least fight for a vision that is something far greater than a slimmed down version of the status quo?

The progressive vision of a centralized administrative state has left us with health care outcomes that cost too much and deliver too little, schools that fail to educate our children, and transportation policies that place the whims of special interests ahead of the needs of America's drivers. The centralized state built to administer these policies requires a confiscatory level of taxation that undermines our prosperity. It simply doesn't have to be this way.

We can and must do better. To do so, we must get power out of the federal government and back into the hands of states and localities that can do a better job at a lower cost, especially once freed from the regulations, red tape, and mandates that ooze out of the federal government.

On Medicaid, there really is no reason why states should not simply retain all of the federal tax funds

used for Medicaid and the authority to design a Medicaid program without any involvement by the federal government. Each state is fully capable of creating a Medicaid program that serves its vulnerable populations. As it currently stands, Medicaid is quickly becoming the number one cost driver in state budgets, yet governors and state legislatures have little control over controlling those costs. Because of federal rules and regulations, Medicaid is forcing states to cut other important programs in order to maximize their Medicaid Federal Medical Assistance Percentage.

If California wanted to extend eligibility for Medicaid to those Californians who live at 160 percent of the poverty rate, then California should be able to do so—so long as Californians and not Ohioans or Floridians were taxed to pay for that program. Conversely, if South Dakota wanted to limit the program to those South Dakotans living at 100 percent of the poverty rate, then that state, too, should be able to make that decision. Every state should have the full authority to shape every aspect of its Medicaid policy.

In 2010, the fifty states received roughly \$285 billion from the federal government for Medicaid. The states spent roughly \$120 billion in state funds. As highlighted in Appendix A, we know exactly how much each state receives from the federal government for Medicaid. Instead of taxpayers in each state sending federal income tax payments to Washington, D.C., and then the federal government sending those funds back after taking portions for administrative and programmatic costs, why not just cut federal taxes by the amount spent on Medicaid and let the states raise state taxes as much as they deemed necessary to directly pay the full cost of a state designed Medicaid program?

Why must Washington, D.C., tell the states what to do and how much they will get to do it?

On education, imagine if federal education spending never left the states, but went directly into our classrooms. In 2010, the federal government had education expenditures and liabilities in the states totaling \$204 billion. Instead of the classroom, a significant portion of our federal taxes is spent paying for administrative costs and federal mandates.

As Jennifer Marshall and Lindsey Burke at The Heritage Foundation have noted:²¹

According to a 1994 GAO [Government Accountability Office] report, the burden on states to comply with federal regulations caused states to hire 13,400 employees to oversee these programs. The GAO noted that in 1994, while just 7 percent of education funding was provided by the federal government, 41 percent of the paperwork burden imposed on states was due to compliance with federal regulation.²² ...

Estimates from 2006 found that the new guidelines and regulations created by NCLB increased state and local education agencies' annual paperwork burden by 6.7 million hours, at a cost of \$141 million.²³ According to Representative John Kline (R-MN), chairman of the House Education and the Workforce Committee, the federal burden has continued to grow since that time. "States and school districts work 7.8 million hours each year collecting and disseminating information required under Title I of federal education law. Those hours cost more than \$235 million. The burden is tremendous, and this is just one of many federal laws weighing down our schools."²⁴ ...

A 1998 estimate suggested that just 65 cents to 70 cents of every education dol-

lar leaving Washington makes it into the classroom.²⁵

Why do we tolerate 30 cents to 35 cents of every tax dollar we send to Washington, D.C. to be spent outside the classroom?

As with Medicaid, we don't need bureaucrats in the federal government to tell us how to educate our kids or force our school districts to spend precious resources complying with federal mandates.

Finally, on transportation, the federal government allocated over \$75 billion in 2010 for transportation projects across the United States. Beyond the wisdom of those projects, similar to education spending, just 65 cents of every tax dollar is spent on transportation projects.

As Ronald Utt of The Heritage Foundation observed:²⁶

On a share-by-share basis, some donor states such as Texas, Florida, and South Carolina get less than an 85 percent share of the highway money they pay in, while New York, Connecticut, and Massachusetts get more than 100 percent. As bad as this disparity is, the allocation of federal transit spending is even more inequitable.²⁷ Many highway donor states are also transit donor states, receiving much less for transit projects than they paid into the transit account, while many of the highway donee states are also transit donees. ...

21 Lindsey Burke, "Reducing the Federal Footprint on Education and Empowering State and Local Leaders," The Heritage Foundation, *Backgrounder* #2565, June 2, 2011.

22 U.S. General Accounting Office, "Education Finance: The Extent of Federal Funding in State Education Agencies," GAO/HEHS-95-3, October 1994, p. 11, <http://archive.gao.gov/f0902a/152626.pdf> (accessed May 28, 2011).

23 *Federal Register*, Vol. 71, No. 202, October 19, 2006, pp. 61 and 730, and Jennifer A. Marshall, testimony before the Education Subcommittee on Early Childhood, Elementary, and Secondary Education, Committee on Education and the Workforce, U.S. House of Representatives, March 15, 2011, at http://edworkforce.house.gov/UploadedFiles/03.15.11_marshall.pdf (accessed June 1, 2011).

24 Press release, "Kline Statement: Hearing on Education Regulations," Committee on Education and the Workforce, March 1, 2011, <http://edworkforce.house.gov/News/DocumentSingle.aspx?DocumentID=226697> (accessed May 28, 2011).

25 "Education at a Crossroads: What Works and What's Wasted in Education Today," Subcommittee Report, Subcommittee on Oversight and Investigations, Committee on Education and the Workforce, U.S. House of Representatives, July 17, 1998, <http://www.eric.ed.gov/PDFS/ED431238.pdf> (accessed May 28, 2011).

26 Ronald D. Utt, "Turn Back Transportation to the States," The Heritage Foundation, *Backgrounder* #2651, February 7, 2012.

27 For an analysis of the federal transit program, see Wendell Cox, Alan Pisarski, and Ronald D. Utt, *21st Century Highways: Innovative Solutions to America's Transportation Needs* (Washington, D.C.: The Heritage Foundation, 2005), Chapter 6.

While the diversions focused initially on non-road, transportation-related investments such as urban transit programs, non-transportation projects such as nature trails, museums, flower plantings, metropolitan planning organizations, bicycles, Appalachian regional development programs, parking lots, university research, thousands of earmarks, and historic renovation became eligible over time for financial support from the highway trust fund. As a consequence of this growing number of diversions, as much as 35 percent of federal fuel tax revenues paid by the motorists is spent on projects unrelated to general-purpose roads. ...

Under the allocations mandated by existing law, an additional dollar raised in tax revenues would provide only an extra 65 cents for roads because 35 percent would be siphoned off for other purposes.

It goes without saying that Texans and South Carolinians shouldn't be forced to subsidize bad decision-making in New York and Massachusetts. Under today's system, those states do. It is time for that system to end.

In 2010, the total federal expenditures and liabilities to the states for Medicaid, education, and transportation totaled roughly \$564 billion of the \$2.331 trillion in federal taxes sent from the states to the federal government. Instead of this inefficient approach, we should cut federal taxes by \$564 billion so states could raise taxes by a lesser amount to directly fund their Medicaid programs, schools, and transportation projects. With 15 cents to 35 cents currently spent on administrative costs in Washington, D.C. or complying with federal mandates, taxpayers would pay less in taxes and yet send more money to health care facilities, schools, and roads.

How is that not a win for everyone involved except the federal government?

Competitive federalism can apply to issues other

than the three issues discussed above. For example, since the 9/11 attack, the federal government centralized many elements of America's homeland security enterprise. State and local governments must assume the historical role those entities played, as states and localities possess far more resources than the federal government and are closer to the problems we face.²⁸

Likewise, the nationalization of labor laws that occurred during the New Deal and thereafter undermines America's global competitiveness, runs roughshod over the constitutional authority states should have in managing their jurisdictions, and limits the ability of states to compete with each other. As America struggles to escape from the Blue Social model of the last hundred years, a review of the Wagner Act, the Davis-Bacon Act, and other federal mandates such as the minimum wage law is necessary.

IV. Governors Must Lead and the Grassroots Must Act

Without determined and sustained action, we won't be able to enact any proposed solution to our fiscal crisis, including competitive federalism legislation. It is time for our state political leaders to take the lead on restoring America's greatness. Returning power to the states is not inherently a conservative idea, nor is it a Republican idea; rather, it is an idea that cares not which political party controls the levers of government in Washington, D.C., or in the fifty states.

We firmly believe that it is far more preferable to place more power and finite funding into the hands of Democratic New York Governor Andrew Cuomo or Republican Louisiana Governor Bobby Jindal than it is to leave it with President Barack Obama and House Speaker John Boehner. The federal government, however, won't give up power easily, so the power of competitive federalism will be unleashed only if America's governors, state legislators, mayors, and other state elected officials demand action by the President and Congress.

28 See Matt A. Mayer, *Homeland Security and Federalism: Protecting America from Outside the Beltway* (Praeger, 2009).

To that end, we will ask every governor and state legislator to sign a simple pledge committing themselves to advocating for Congress to pass competitive federalism legislation and the President to sign such legislation when passed. We also will ask every Member of Congress to sign a pledge in support of competitive federalism legislation. Groups can then use the pledge to rank politicians and communicate to their constituents which politicians have and have not signed the pledge.

COMPETITIVE FEDERALISM PLEDGE

“I pledge to do all I can as an elected official to enact or to promote legislation that honors our Constitution and returns power and taxing decisions over Medicaid, education, and transportation to the states and to the people.”

We know it will take more than a pledge from a politician. We also believe that a local clinic nurse, an elementary school teacher, and a transportation laborer would much prefer to have decisions made closer to where they work. We believe that all Americans would like to see their tax dollars maximized by eliminating the inefficiencies of both the federal bureaucracy built to control the administrative process and the state bureaucracy constructed to comply with federal requirements. By maximizing tax dollars, we can deliver better goods and services at a lower cost, with more funds ending up in the health clinic, in the classroom, and in our roads.

To mobilize the grassroots, we will work with other groups across the United States to educate Americans on the benefits of competitive federalism and inspire them to make adherence to the competitive federalism pledge a required act by politicians to gain their support. We will produce and distribute educational kits to governors, state legislators, Member of Congress, and citizens to educate them on competitive federalism. The kits will include this special report; a copy of the Declaration of Independence, the Constitution, and *The Federalist Papers*; and other key publications.

We the people must help our state elected offi-

cial end the practice of putting their hands out and strengthen their resolve to put their hands up. The federal government cannot solve our problems. The work of rebuilding America will end in Washington, D.C.—it doesn't start there. With a pledge and concerted citizen action, we can get government working again.

V. Conclusion

Our goal is to revive the constitutional principle of competitive federalism. We have briefly identified three areas where the principle can be applied to show how competitive federalism works. We believe Americans are eager to embrace competitive federalism, as it will lead to better outcomes, more transparency and accountability, and lower taxes.

The profound question we must settle is a simple one: as Americans, where do we want the bulk of power over our lives to reside? For much of U.S. history, the power resided in our states, counties, cities, villages, and townships. Today, the power resides in Washington, D.C., and it is failing us.

Rather than simply complain to pollsters, let's finally do something about it. With politicians expressly committed to this vital effort and citizens demanding action, we can break from the status quo that is ineffective, inefficient, costly, and at odds with the Constitution. We can empower states via competitive federalism to serve as laboratories of competition that identify and solve our problems.

Together, we can leverage competitive federalism to rebuild America. We must let the states and the people make the fundamental decisions on what government goods and services they want, how they want those goods and services delivered, and what price they are willing to pay for those goods and services. This shift of power and money from the federal government back to the states is the only way out of our fiscal crisis short of massive tax increases and painful government cuts.

Our Constitution has the answer. Are we wise enough to use it?

Appendix: 2010 Federal Expenditures and Liability to the States, in Billions of Dollars

	Total Internal Revenue Collections	Total Transportation Expenditures and Liabilities	Total Education Expenditures and Liabilities	Total Medicaid Expenditures	Total Expenditures and Liabilities
Alabama	\$19.90	\$0.99	\$2.81	\$3.99	\$7.79
Alaska	\$4.69	\$0.99	\$0.47	\$0.89	\$2.35
Arizona	\$31.68	\$1.38	\$11.72	\$7.72	\$20.83
Arkansas	\$28.25	\$0.75	\$1.55	\$3.32	\$5.61
California	\$273.35	\$7.20	\$19.37	\$31.61	\$58.18
Colorado	\$39.29	\$1.37	\$3.90	\$2.60	\$7.87
Connecticut	\$44.00	\$0.88	\$1.62	\$3.56	\$6.06
Delaware	\$15.33	\$0.21	\$0.60	\$0.84	\$1.65
District of Columbia	\$18.40	\$2.37	\$2.85	\$1.54	\$6.76
Florida	\$111.36	\$3.24	\$11.59	\$12.36	\$27.19
Georgia	\$60.51	\$2.46	\$5.55	\$6.34	\$14.34
Hawaii	\$6.28	\$0.39	\$0.58	\$0.96	\$1.93
Idaho	\$6.22	\$0.49	\$0.89	\$1.32	\$2.70
Illinois	\$111.04	\$2.76	\$8.34	\$9.74	\$20.84
Indiana	\$43.32	\$1.52	\$7.13	\$5.43	\$14.08
Iowa	\$17.58	\$0.70	\$4.44	\$2.33	\$7.47
Kansas	\$18.82	\$0.71	\$1.69	\$1.85	\$4.25
Kentucky	\$23.38	\$0.89	\$2.90	\$4.86	\$8.65
Louisiana	\$34.56	\$1.23	\$2.30	\$5.49	\$9.02
Maine	\$5.90	\$0.29	\$0.69	\$1.92	\$2.90
Maryland	\$47.67	\$1.46	\$2.83	\$4.40	\$8.70
Massachusetts	\$71.42	\$1.67	\$6.12	\$8.24	\$16.04
Michigan	\$53.80	\$1.68	\$7.46	\$9.22	\$18.36
Minnesota	\$68.01	\$1.16	\$4.98	\$5.08	\$11.22
Mississippi	\$9.09	\$0.69	\$1.75	\$3.94	\$6.37
Missouri	\$46.10	\$1.61	\$3.99	\$6.45	\$12.05
Montana	\$4.00	\$0.67	\$0.57	\$0.82	\$2.06
Nebraska	\$17.64	\$0.49	\$1.59	\$1.37	\$3.45
Nevada	\$12.88	\$0.66	\$0.89	\$33.78	\$35.33
New Hampshire	\$8.38	\$0.35	\$0.71	\$0.86	\$1.92
New Jersey	\$118.94	\$2.29	\$3.79	\$6.59	\$12.67
New Mexico	\$7.61	\$0.63	\$1.19	\$1.12	\$2.94
New York	\$200.21	\$4.71	\$13.18	\$2.98	\$20.87
North Carolina	\$57.55	\$1.59	\$4.50	\$8.76	\$14.84
North Dakota	\$4.28	\$0.46	\$0.49	\$0.53	\$1.47
Ohio	\$106.48	\$2.43	\$7.50	\$11.51	\$21.43
Oklahoma	\$23.40	\$1.22	\$2.13	\$3.45	\$6.80
Oregon	\$21.14	\$1.20	\$2.35	\$3.26	\$6.80
Pennsylvania	\$101.86	\$2.60	\$11.26	\$12.47	\$26.32
Rhode Island	\$10.51	\$0.32	\$0.93	\$1.29	\$2.54
South Carolina	\$17.36	\$0.93	\$2.24	\$4.20	\$7.37
South Dakota	\$4.30	\$0.44	\$0.98	\$0.62	\$2.05
Tennessee	\$44.56	\$1.34	\$3.87	\$6.59	\$11.81
Texas	\$189.14	\$5.35	\$11.54	\$19.45	\$36.34
Utah	\$13.53	\$0.75	\$1.75	\$1.57	\$4.06
Vermont	\$3.21	\$0.41	\$0.49	\$0.90	\$1.80
Virginia	\$57.95	\$3.14	\$5.52	\$4.25	\$12.90
Washington	\$48.44	\$1.89	\$3.14	\$4.88	\$9.92
West Virginia	\$6.00	\$0.58	\$1.38	\$2.24	\$4.19
Wisconsin	\$38.21	\$1.17	\$3.78	\$5.33	\$10.28
Wyoming	\$3.83	\$0.33	\$0.31	\$0.37	\$1.01
TOTAL	\$2,331.36	\$75.04	\$204.16	\$285.18	\$564.39

Source: U.S. Census Bureau, Consolidated Federal Funds Report for Fiscal Year 2010: State and County Areas, September 2011, http://www2.census.gov/govs/cffr/cffr_2010_info_sheets.pdf (accessed May 7, 2012). Special thanks to David Muhlhausen from The Heritage Foundation for his assistance in gathering this data.

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