# FEDEREAL REGS BAD (Federalism) DA

## Info Sheet

Balance between national and local powers are critical to healthy governance. This dynamic is broadly referred to as federalism, coming from federation-a group of states with a centralized authority. The federalists argue when this balance is upset, usually due to the central authority becoming too powerful, democracy wanes.

Our argument is that despite the Trump administration’s exercise of an over-powering central government through numerous executive orders they have left matters of education to be governed by the states. Under the Trump administration education is among the last spheres of politics the states get full control of. If this were to be reversed then we would risk fracturing one of the last strongholds of federalism.

## Top Shelf

#### U/Q Federalism healthy but fragile now

Heather **Gerken,** Yale Law Professor, June 20**17**, “Long live federalism, federalism is dead” https://www.theatlantic.com/politics/archive/2017/06/feberalism-is-dead-long-live-federalism/531933/

For Yale law professor Heather K. Gerken, the question of how Americans can coexist in relative peace and prosperity, despite their many differences, has a temping answer: “The tempting answer to this question is to invoke our father’s federalism, a vision of democracy in which everyone retreats to their comfortable red and blue enclaves. Peace prevails because people never have to interact with one another.” She argues that “we should not be tempted by this outdated view,” because “red and blue silos are not the products of a well-functioning democracy. Democracy requires us to work out our differences, not shelter ourselves from viewpoints we dislike.” Dispatches from the Aspen Ideas Festival/Spotlight Health Read more Besides, she continues, “ours is not your father’s federalism.” Her assessment of our present civic reality: In our tightly integrated system, the states and federal government regulate shoulder-to-shoulder. Sometimes they lean on one another, and sometimes they deliberately jostle one another. As a result, states are not sites where groups can shield themselves from national policy, national politics, or national norms. Instead, they are the sites where we battle over national policy, national politics and national norms. National movements, be they red or blue, begin at the local and state level and move their way up. National actors depend on states and localities to carry out national policies, which means that they need buy-in from state and local officials to get things done. Think about the Obama administration’s negotiations with red states to bring them into the ACA or the Trump administration’s worry that sanctuary cities might not help carry out federal immigration policy. This interdependence provides a healthy incentive for compromise. President Trump may not need Democratic votes to push his agenda through in DC, but he’ll need the help of blue states like California and New York and Massachusetts if he wants to see his agenda carried out nationwide. Today’s federalism also ensures that red and blue states are forced to interact. In our highly integrated economic and political system, states are always knocking into one another as one state’s policies affect citizens in another state. When California passes climate-change regulation, Detroit carmakers are forced to manufacture more environmentally friendly cars for everyone lest they lose the California market. When Texas insists that school textbooks question evolution, school boards across the country find themselves purchasing textbooks that are considerably more conservative than their population. These “spillovers” force people on different sides of the political aisle to talk to one another. Over time, federalism forces politicians on both sides of the aisle to do what they are supposed to do -- politick, find common ground, and negotiate a compromise that no one likes but everyone can tolerate. She concluded that “our father’s federalism was a solution to the problem of democratic difference, but it was a solution that depended on enclaves and isolation. Today’s federalism offers a more attractive solution: connection and compromise. Our father’s federalism offered an easy out when people disagreed. But today’s federalism? It gives us a better shot at a democracy that works as it should.”

#### Education key; core issues like education are the coordinates of balanced federalist governance.

Ilya Somin, Professor of Law at George Mason, May 2017, Jeffery Rosen on “federalism for the left and the right” https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/05/22/jeffrey-rosen-on-federalism-for-the-left-and-the-right/?utm\_term=.249647d91f19

In an excellent recent Wall Street Journal op ed, National Constitution Center President and leading left of center legal scholar Jeffrey Rosen explains how both left and right can benefit from strengthening constitutional federalism: Many of the issues that recent presidents have tried to decide at the national level through executive orders are best resolved at the state or local levels instead. In an era of fierce partisan divisions, all sides are beginning to see the virtues of our federal system in accommodating differences—and encouraging experimentation—on issues such as immigration, law enforcement and education. Federalism has long been a cause on the right, but now it’s just as likely to be a rallying cry on the left. Rep. Zoe Lofgren, the top Democrat on the House Judiciary’s immigration and border-security subcommittee, recently said: “The Constitution, specifically the Tenth Amendment, protects states’ rights, and it prohibits federal actions that commandeer state and local officials. When it comes to immigration, these principles seem to be overlooked” The framers of the Constitution would be pleased with this emerging consensus. By creating a national government with limited powers, they intended to allow the states and local governments to pursue a range of different policies on matters within what used to be called their “police powers”—that is, their authority to regulate behavior, maintain order and promote the public good within their own territory. The founders considered this arrangement the best way to protect liberty and diversity of opinion, as well as to defend political minorities from nationalist tyranny and concentrated power….A respect for federalism and state autonomy is perhaps the only way that all sides can peacefully coexist in today’s political environment. With dysfunction now reigning on Capitol Hill and federal courts increasingly ready to strike down the unilateral action of presidents, Americans will at least be able to take some comfort in local autonomy and control. In these polarized times, citizens who strongly disagree with each other may be able to unite around the goal of making federal power less intrusive and national politics less of a contest where the winner takes all. Later in the article, Rosen explains how reinvigorating federalism can help curb federal government overreaching and enhance state autonomy in such fields as education, immigration, and law enforcement. I don’t agree with every single point Rosen makes. But I certainly agree with the bottom line. Like Rosen, I have long argued that both left and right can potentially benefit from stronger cross-ideological support of federalism, and that stronger enforcement of constitutional limits on federal power can help defuse the partisan hatred that is helping to poison our politics. I also agree with his view that the recent federal court ruling against Trump’s executive order targeting sanctuary cities is a notable example of how the left can benefit from constitutional federalism as well as the right. Going beyond specific issues, decentralization of power can give people greater opportunity to “vote with their feet,” which often leads to better decision-making than when we have to decide issues at the ballot box, at the federal government level. There is much we can do to make foot voting easier for all Americans, particularly the poor and disadvantaged.

#### Link- Trump admin has signaled that education is where federalism will remain balanced-plan is a reversal of this

Inez Feltscher Stepman, Director of Education and Workforce Development Task Force, April 2017, “President Trump Signs Executive Order Directing Department of Education to Review Regulation and Return Control to States”, https://www.alec.org/article/president-trump-signs-executive-order-directing-department-of-education-to-review-regulation-and-return-control-to-states/.

On Wednesday, President Trump issued an Executive Order directing the Department of Education to review all of its programs and regulations relating to the three major federal education laws for compliance with principles of federalism and local control over education. After the review, the Department will rescind regulations and guidance documents that inappropriately intrude into state educational decision-making. This executive order is a wonderful first step in reining in a bloated and overreaching Department of Education and curtailing what has been a decades-long list of failed federal adventures into the U.S. education system. The first large-scale federal intervention in education came under President Lyndon Johnson, as part of the “War on Poverty.” The additional funds from the federal government were intended to close gaps between rich and poor districts, and ensure opportunity for all Americans, directing $1 billion to local education agencies with high poverty rates. Since then, the scope and the role of the federal government have grown in education. The Department of Education now has an operating discretionary budget of $38 billion, the third-largest agency discretionary budget behind the Department of Defense and Health and Human Services. Since its creation in 1979, the Department’s funding has quintupled, and federal per-pupil funds have tripled from Johnson’s initial allocation. And what results have come from this federal “bureaucratic boondoggle?” Achievement on the National Assessment of Educational Progress—frequently referred to as the Nation’s Report Card—has stagnated since 1970. American students rank an embarrassing 27th place out of 34 OECD countries in mathematics on the PISA assessment, with only marginally-better rankings in reading and science. But what about Johnson’s original goal of closing socio-economic and racial gaps? Racial achievement gaps have actually been getting wider as federal intervention and spending has increased. When it was first tested in 1992, the gap between the average white and black 12th grader was 24 points on NAEP (which equates to over two years of learning). Today, after taxpayers’ billions have been spent, the gap is 29 points, adding an additional half-year of learning to the gap. To the extent that evaluations of large federal education programs have been done, the results are not brag-worthy either. The Department recently had to report that the School Improvement Grant (SIG) program, into which $7 billion has been poured, has reported no statistical effect whatsoever on achievement. Don’t worry though, the Department does manage to get some things done. For example, it pays its employees an average salary of $107,000, whose work is responsible for around 40 percent of the paperwork burden in the states. Funding a bureaucratic haven is not what the American people had in mind when they imagined that the federal government would improve education for the nation’s children. The whole federal project in education has failed to achieve progress towards its stated goals. At a bare minimum, this bloated Department should be tasked with evaluating where its programs have overreached into state prerogative in areas such as curricula and instruction, school administration and personnel, and selection of instructional materials. The states are forging ahead into the choice and individually-based future of American education. This new Executive Order from the Trump Administration is not a solution, but it is the beginning of one. Through this order, the Trump administration is hopefully signaling that it will ratchet down the federal government’s failed experimentation, and restore control over education to where it should be—with the states.

#### Impact-Federalism key to human rights

Steven G. Calabresi, Professor of Law at Northwestern and visiting prof at Yale since 2014, 1995, A Government of Limited and Enumerated Powers": In Defense of United States v. Lopez, The Michigan Law Review Association, https://www.jstor.org/stable/1289947?seq=1#page\_scan\_tab\_contents

Sixth and finally,56 an advantage to international federation is that it may facilitate the protection of individual human rights. For reasons Madison explained in the Federalist Ten,57 large governmental structures may be more sensitive than smaller governmental structures to the problems of abuse of individual and minority rights.58 Remote federal legislatures or courts, like the U.S. Congress and Supreme Court, sometimes can protect important individual rights when national or local entities might be unable to do so.59 As I have explained elsewhere, this argument remains a persuasive part of the case for augmented federal powers.60

## Uniqueness Debate

#### U/Q-Trump admin shifting power to states on education now

Freddie Allen, Special to The Informer via NNPA, June 2017, http://newamericamedia.org/2017/06/trump-administration-takes-on-obamas-education-law.php

President Donald Trump and Education Secretary Betsy DeVos continue to make misleading statements about Common Core State Standards, muddying the waters for school districts working to implement the Every Student Succeeds Act (ESSA). President Barack Obama signed ESSA into law on December 10, 2015, reauthorizing the landmark Elementary and Secondary Education Act (ESEA). According to the U.S. Department of Education, ESSA includes provisions designed to advance equity in education by upholding critical protections for America’s disadvantaged and high-need students; requires that all students in America be to high academic standards that will prepare them to succeed in college and careers; helps to support and grow local innovations—including evidence-based and place-based interventions developed by local leaders and educators; ensures that vital information is provided to educators, families, students, and communities through annual statewide assessments that measure students’ progress toward those high standards; and sustains and expands this administration’s historic investments in increasing access to high-quality preschool. The law does not, however, eliminate CCSS. The Los Angeles Times reported, that President Trump said that he wanted to get rid of Common Core, during a recent town hall with business leaders. “Common Core to me, we have to end it,” said Trump. “We have to bring education local.” Last year, as the Republican presidential nominee, the reality TV star even proposed getting rid of the Education Department altogether, according to Breitbart.com. During an interview with Sean Hannity on Fox News, Trump said that the Department of Education “can be largely eliminated.” Education Week reported that DeVos told a Michigan radio host that ESSA “effectively does away ‘with the notion of the Common Core.’” She later went on Fox News and made the same false claim. “There isn’t really any Common Core any more,” said DeVos on Fox News. “Each state is able to set the standards for their state. They may elect to adopt very high standards for their students to aspire to and to work toward. And that will be up to each state.” Neither President Trump, nor Education Secretary Betsy DeVos can make any changes to CCSS, because states, local officials and community stakeholders developed those standards. Writing for The Washington Post’s “Answer Sheet” blog, Valerie Strauss called the Common Core State Standards, “among the most controversial topics in education for years,” noting that, “It started as a bipartisan effort to create a set of math and English language-arts standards for students across the country to use, but it became an educational and political mess.” Strauss wrote, “Most states adopted and implemented the standards early in the Obama administration—but failed to give teachers sufficient time to learn it, and critics from every part of the political spectrum found fault with some part of the initiative.” In a blog for Education Week, posted back in February, Andrew Ujifusa wrote that, “states adopt content standards like the common core—the federal government doesn’t get to choose for them. Washington also didn’t write the common core. There was intense debate during President Barack Obama’s administration about whether Washington improperly coerced states into adopting the common core through programs like Race to the Top grants. But regardless of that debate, the president by himself doesn’t have the authority to scrap the standards with the stroke of a pen.” Ujifusa continued: “What about Congress? The Every Student Succeeds Act explicitly bars the education secretary from influencing states’ decisions about standards. So right now, neither Trump nor DeVos can bar states from using the common core. Absent a change to federal education law that bans the common core outright or in some way relaxes those prohibitions on the secretary (neither of those possibilities appears at all likely right now), their hands are tied.” Politifact also debunked the myth that ESSA eliminated Common Core standards, back in 2016, when Senator John McCain (R-Ariz.) made similar claims. “[The Every Student Succeeds Act] prevents the federal government from mandating what a state decides to do with its specific education policies, such as requiring Common Core,” Politifact reported. “The government did not, however, require states to adopt Common Core before this law.” While some education writers like Strauss try to decipher what DeVos might have meant and conservative columnists simply dismiss journalists who take the president’s vows and campaign promises, “literally, but not seriously,” the fact remains that limiting the role of the federal government in how states designed their own education policies, received bipartisan support under ESSA. Yet, the Republican-controlled Congress has taken votes weakening ESSA’s accountability standards, further reducing the federal government’s influence over the states to close the achievement gap between Black and White students and to ensure equal education standards for all students. While making misleading statements about national educational policies, the Trump Administration also issued a new template for state education plans that “appears to place fewer requirements around how a state explains its outreach to various groups in the state for their feedback and ideas,” according to Education Week. “The Obama template says states must engage in timely and meaningful consultation with stakeholders in developing its consolidated state plan. And it added that these ‘stakeholders’ must ‘reflect the geographic diversity of the state,’” Education Week reported. “The Trump template, on the other hand, says merely that states can describe their outreach to these groups if they want to, but it’s not a must. To be sure, educators and advocates never had veto power over a state’s plan. Still, a state will no longer be required to involve their local community in crafting their plan.” According to Education Week, Laura Bay, the president of the National Parent Teacher Association, said that she’s worried that the states won’t place a priority on reaching out to key groups, including parents, now that it’s no longer required. In a statement about the revised template, Senator Patty Murray (D-Wash.), ranking member of the Senate Health, Education, Labor, and Pensions (HELP) Committee, and Rep. Bobby Scott (D-Va.), ranking member of the House Committee on Education and the Workforce said that they were “disappointed that Secretary DeVos is casting aside input from teachers, parents and stakeholders and is refusing to implement the Every Student Succeeds Act as Congress intended.” The statement continued: “Without the strong federal guardrails ESSA puts in place—including requirements for stakeholder consultation and a common state plan—decision making becomes less transparent and puts our most vulnerable children at risk of falling through the cracks.”

#### U/Q-Trump admin delaying federal power over education now

Alyson Klein, Reporter for education week, June 2017, Trump Ed. Dept. Gives States, Districts Extra Time on ESSA Financial Transparency Requirement, http://blogs.edweek.org/edweek/campaign-k-12/2017/06/betsy\_devos\_financial\_transparency.html

U.S. Secretary of Education Betsy DeVos and her team are giving states and districts an extra year to comply with new financial transparency requirements in the Every Student Succeeds that are aimed at shining a light on how much schools spend on each student. And at least one key civil rights group is unhappy about the delay. ESSA calls for states to report per-pupil expenditures for all their schools on school report cards for the first time beginning in the 2017-18 school year. The requirement was intended in part to help local policymakers—and the public—figure out if there are significant spending disparities between schools that serve high percentages of poor kids and other schools, and whether schools that lag behind in student achievement are getting as much money as more successful schools. When ESSA passed, civil rights advocates were excited about the new transparency around per-pupil spending. But school superintendents and state leaders warned that providing that sort of detailed data on such a tight timeline could be a tough lift. The Education Department is giving states until the 2018-19 school year to begin putting the per-pupil expenditure information on their report cards. Jason Botel, who is serving as the acting assistant secretary for elementary and secondary education, told state chiefs in a June 28 letter that, if they're ready to start including the information sooner, they should go ahead and do so in the 2017-18 school year. States that aren't should instead use their report cards to explain how they plan to meet the requirement next year, Botel said. Liz King, the director of education policy at The Leadership Conference on Civil and Human Rights, is not pleased with the new flexibility offered by the feds. "If we keep waiting until states and districts have the capacity before we require them to acquire that capacity, we will be waiting forever," King said in an email. "Unfair funding is so foundational to so many other challenges in education—we can't just continue to ignore the problem." She noted that states and districts have already been required to provide per-pupil expenditure data under the American Recovery and Reinvestment Act and for inclusion in data collected by the Office for Civil Rights. "This requirement is one of the most important levers we have in ESSA to make progress on the pernicious problem of resource inequities," King said. Want more background on the per pupil expenditure requirement and what it takes to comply with it? Check out this great story by my colleague Daarel Burnette II. Also check out this breakdown of how states decided to tackle the new requirement in their ESSA plans, which were written before the deadline was extended. And if you want more on ESSA itself, we've got this video:

#### U/Q- Fed education budget cuts now-ceding power to the local

Violet Ikonomova, reporter, June 17, “Trump slashes education”, https://www.metrotimes.com/news-hits/archives/2017/06/06/betsy-devos-defends-trumps-plan-to-slash-education-spending-by-14-percent

Education Secretary Besty DeVos has defended President Donald Trump's proposal to cut $9 billion in education spending, saying the budget request lays out a series of proposals that will "give parents more control over their child’s education, a right that has been denied for too long." DeVos spoke on the issue Tuesday at a Senate Appropriations Subcommittee hearing. Trump's budget would, if approved, cut $1 billion from before- and after-school programs and $2 billion from an effort to reduce class sizes and train teachers. It would also eliminate a loan forgiveness program for higher ed and and keep the federal government from subsidizing the interest on many student loans. Those are among the 22 programs DeVos says the agency has targeted for elimination or phase-out, after finding them to be duplicative, ineffective, or "better supported through state, local or philanthropic efforts." But while Trump's budget slashes overall education spending by 13.5 percent, it increases funding for DeVos' pet cause, school choice, which is what the education secretary was referring to when she on Tuesday touted the budget as giving "parents more power and students more opportunities." The proposal aims to give a $1 billion infusion to school choice programs, which include voucher programs that let parents use state money to put kids in private schools. The managing director for K-12 education policy at the Center for American Progress says that under the plan, states and districts would essentially "have to enact DeVos' preferred school choice polices in order to recover some of the cuts to longstanding programs." (For the backstory on how DeVos and her husband, Dick, worked to create a voucher system in Michigan, you can check out this Metro Times piece Curt Guyette penned when Dick DeVos ran for governor.) USA today reports the proposal faces an uphill battle in Congress. Subcommittee chair Sen. Roy Blunt (R-Mo.), on Tuesday called it difficult to defend, as deep cuts to programs like after-school would be “all but impossible” to get through committee. Sen. Patrick Leahy (D-Vt.) told the paper Trump’s budget request “can be summed up in one word: abysmal.”

#### U/Q- Executive order dismantles federal role in education now

Associated Press, April 17, The Latest: Trump to Sign Executive Order on Education,https://www.usnews.com/news/politics/articles/2017-04-25/the-latest-trump-says-canada-has-outsmarted-us

WASHINGTON (AP) — The Latest on President Donald Trump (all times EDT): 11:45 p.m. President Donald Trump plans to sign[ed] an executive order Wednesday aimed at minimizing the federal government's role in education. The order will direct the education secretary to conduct a study to identify potential over-reach by the federal government on education issues. That's according to a White House official who spoke on condition of anonymity to outline details of the order that will be signed during an event with governors. Trump has spent little time discussing education issues since taking office, despite promising during the campaign to deliver more control to state and local entities. The president will sign a handful of executive orders this week as he seeks to rack up accomplishments ahead of his 100th day in office.

#### U/Q-Executive order empowers local at cost of federal

Dan Merica, reporter, April 17, Trump starts review of federal 'overreach' in education, http://www.cnn.com/2017/04/26/politics/trump-betsy-devos-education/index.html

Washington (CNN) In a move meant to follow through on promises he made to conservatives during the 2016 campaign, President Donald Trump signed an executive order Wednesday that aims to rein in federal control of education in the United States. The order, which Trump signed while flanked by Education Secretary Betsy DeVos, Vice President Mike Pence and Nevada Gov. Brian Sandoval, initiates a process that could see substantial changes made to K-12 education in the United States, the clearest signal yet that Trump hopes to put his stamp on the Education Department before his 100th day in office on Saturday. "We know that local communities do it best and know it best," Trump said, calling the order "another critical step to restoring local control, which is so important." The order is tailor-made for the conservatives that animated Trump, many of whom have long complained about the federal government guiding education standards and practices in their local schools. It is also in line with DeVos' long record advocating for more local control of schools, something the top Republican donor has done for decades through her political giving. Trump: DeVos went through unfair trial 01:35 The order specifically calls for a 300-day review of education regulations on grades K-12 proposed and enacted by former President Barack Obama -- and instructs DeVos, a longtime advocate for local control of education, to produce a report that details which actions she believes overreached. It isn't entirely clear, however, whether the order actually provides the education secretary with more power. "We will make those decisions once the report has concluded," a White House official said, after being asked how the order empowers DeVos. At the end of the review, according to the order, DeVos will be asked to "rescind or revise any regulations that are identified" as oversteps. In particular, the order asks for DeVos to review the Every Student Succeeds Act, an Obama-era education law, and Common Core, education standards that were initially adopted by most states but have drawn the ire of conservative critics in recent years. Democrats slammed the executive order as nothing more than empty rhetoric on Wednesday, with a spokesperson for the Democratic National Committee flatly saying, "this EO changes absolutely nothing." "Trump isn't signing it to actually improve education for American students, he is doing it to put a fake point on the board within his first 100 days because he doesn't have any accomplishments of significance," said Adrienne Watson, spokeswoman for the Democratic National Committee. The executive order is the 28th Trump has signed since taking office in January, more than any president in the last 72 years. "Previous administrations have wrongly forced states and schools to comply with federal whims and dictates for what our kids are taught," Trump said Wednesday. "The time has come to empower teachers and parents to make the decisions that help their students achieve success." DeVos, in her January confirmation hearing, told senators that "it won't be Washington, DC that unlocks our nation's potential, nor a bigger bureaucracy, tougher mandates or a federal agency." "The answer," DeVos said, "is local control and listening to parents, students, and teachers."

#### **U/Q-Current federal policy allows the states to choose evaluation standards for educational programs**

Saultz 16 (Andrew Saultz is an assistant professor of Educational Leadership at Miami University. Dr. Saultz’s research focuses on accountability policy, educational federalism, and teacher policy. His work has been published in Educational Researcher, Teachers College Record, Educational Policy, and the American Journal of Education among others; “Educational Federalism, the Every Student Succeeds Act, and the Future of Educational Policy,” http://edwp.educ.msu.edu/green-and-write/2016/educational-federalism-the-every-student-succeeds-act-the-future-of-educational-policy/) drr

It is rare to see government limit its own power. Conventional wisdom, and political science literature, indicates that government tends to hold onto, or expand, power over time. So why did Congress return power to states under the Every Student Succeeds Act? The Every Student Succeeds Act (ESSA), signed into law in December of 2015, changes the role of the federal government. Most notably, the law allows states to choose certain provisions of the accountability system. For example, states will choose which ‘non-academic’ indicator (i.e. school climate, discipline, access to advanced courses) to include in evaluating schools, what assessments to use, and how to measure teacher effectiveness. ESSA replaces No Child Left Behind (NCLB) as the major federal education law. Over the last year, I spent a lot of time researching how ESSA was passed despite such Congressional partisanship, why the federal government chose to reduce its role under the new law, and what this all means for the future of educational policy. Here is what I learned. Congress passed ESSA for three main reasons. First, Congress passed ESSA in response to executive overreach through programs like Race to the Top and NCLB waivers. The U.S. Department of Education (USDOE) and Secretary of Education Arne Duncan used these programs to incentivize, and cajole, states to change laws around teacher evaluation, standards, and accountability systems more broadly. Race to the Top used stimulus funds from 2009-2010 to create a state competition that rewarded certain state policy changes. The USDOE granted states waivers from some of the provisions of NCLB, most notably the 2014 deadline for all students to be proficient in reading and mathematics. This clearly unattainable goal led state policymakers to jump at the opportunity to gain flexibility from it. However, the USDOE knew that they held incredible bargaining power in this negotiation, so they mandated states to alter policy in substantial ways. Congressional leaders in both parties viewed these programs, especially the waivers, as outside the purview of the executive branch. As a result, a bipartisan consensus emerged around placing stringent limitations on the USDOE through ESSA. Second, 2015 opened with new leadership in three of the four major Congressional leadership positions. Senators Lamar Alexander (R-TN) and Patty Murray (D-WA) took over in the Senate Health, Education, Labor and Pensions Committee and Representative Bobby Scott (D-VA) emerged as the House Education Committees ranking Democrat, while Representative John Kline (R-MN) remained the Chair. This shift in leadership allowed for fresh negotiations. Further, Speaker Boehner’s resignation reset some of the tension among House Republicans around divisions in the party, particularly between the Tea Party and others. The Tea Party had previously been seen as a coalition that obstructed efforts for a bipartisan compromise. In sum, leadership changes helped reset discussions about how to best shape the new federal role in education. Third, major interest groups shifted their support away from federal involvement in educational policy. The two major teacher unions opposed federal efforts to tie teacher evaluations to student test scores, and began to distance their organizations from the Obama Administration. The Chamber of Commerce, National Governors Association, and over 100 civil rights groups joined the unions in support of ESSA. In short, the largest interest groups in education were all advocating for change. This broad coalition led to bipartisan congressional support for ESSA. What does this mean for the future of federalism? State policymakers are now tasked with making decisions about how to define teacher effectiveness, what measures to include in the school accountability system, and which standards to use. This provides an important opportunity for educators, researchers, policymakers and the public to discuss normative questions around what schools should prioritize and what is good teaching. In Ohio, the department of education is holding a number of information sessions to garner public feedback about these decisions. Now is the time to get involved in this discussion, as the new ESSA accountability system will be implemented in the 2017-2018 school year. The federal government doesn’t reauthorize major laws frequently, so these decisions are likely to be engrained in the educational system for the foreseeable future. The role of the Secretary of Education is limited under ESSA. The law stipulates that the federal government may not define how teachers are to be evaluated or what standards or standardized test states should use. The Secretary of Education will have to be creative in how she influences state policy. While the use of waivers is very limited under ESSA, the executive branch can still bring stakeholders together, use the bully pulpit to advocate for change, and support state departments of education. While these options have less potential to create rapid policy changes, they have a better chance of creating more lasting change. Educational policy has been rightly criticized for narrowing the curriculum and over relying on standardized test scores. While ESSA continues annual testing, it also provides an important opportunity to redefine what we measure and include in school accountability. We know that the public wants more than academic test results from their schools. ESSA provides an opportunity to make that a reality.

#### U/Q-Trump actions signal a pivot away from federal involvement in education

Miller 4-26-17 (S.A. Miller, S.A. Miller reports from the White House on politics, policy and political campaigns for The Washington Times, “Trump to pull feds out of K-12 education”, April 26th, 2017, http://www.washingtontimes.com/news/2017/apr/26/donald-trump-pull-feds-out-k-12-education/, accessed 6/24/17, drr)

President Trump signed an executive order Wednesday to start pulling the federal government out of K-12 education, following through on a campaign promise to return school control to state and local officials. The order, dubbed the “Education Federalism Executive Order,” will launch a 300-day review of Obama-era regulations and guidance for school districts and directs Education Secretary Betsy DeVos to modify or repeal measures she deems an overreach by the federal government. “For too long the government has imposed its will on state and local governments. The result has been education that spends more and achieves far, far, far less,” Mr. Trump said. “My administration has been working to reverse this federal power grab and give power back to families, cities [and] states — give power back to localities.” He said that previous administrations had increasingly forced schools to comply with “whims and dictates” from Washington, but his administration would break the trend. “We know local communities know it best and do it best,” said Mr. Trump, who was joined by several Republican governors for the signing. “The time has come to empower teachers and parents to make the decisions that help their students achieve success.”

#### U/Q-White House policy signals a massive shift away from federal involvement in education policy

Wong 3-27-17 (Kenneth Wong is the Walter and Leonore Annenberg Chair for Education Policy at Brown. He has conducted extensive research in the politics of education, federalism, policy innovation, outcome-based accountability, and governance redesign (including city and state takeover, management reform, and Title I school-wide reform). He has advised the U.S. Congress, the U.S. Secretaries of Education and Interior, state legislature, governors, mayors, and the leadership in several large urban school systems on how to redesign the accountability framework, “Redefining the federal role in public education: The 1st quarter of the Trump “insurgent” presidency,” https://www.brookings.edu/blog/brown-center-chalkboard/2017/03/27/redefining-the-federal-role-in-public-education-the-1st-quarter-of-the-trump-insurgent-presidency/) drr

THE INSURGENT PRESIDENCY ATTEMPTS TO SCALE BACK THE FEDERAL ROLE Trump’s White House aims to significantly repurpose the federal role in K-12 education. The administration has dismantled key initiatives that were associated with the Obama administration. At this point, Trump’s proposed initiatives constitute a critical reassessment, but do not yet amount to an all-out dismantling of the federal role in K-12 as embedded in the long-established “marble cake” federalism. In the FY18 budget proposal, for example, the Trump administration maintains federal funding for major categorical programs for high-needs students, such as Title I and the Individuals with Disabilities Education Act. The Every Student Succeeds Act (ESSA) reporting requirement on performance among student subgroups remains a central federal focus. It is too early to tell whether the Trump administration plans to fundamentally reconstruct the terms of federal engagement in public education, which have been largely framed since the Great Society era of the Lyndon Johnson administration. But the administration could be headed in that direction, considering that the first quarter of the Trump presidency has included the following education policy initiatives: Scaling back federal direction and shifting substantial decisionmaking to state and local government; Proposing substantial budgetary reduction of the U.S. Department of Education, such as programs in college and career access, arts, health, after-school programs, teacher education, and technology; Expanding federal support for a broad portfolio of school choice, including charter schools, vouchers for parents to enroll their children in public and private schools, federal tax credit scholarship program, and magnet programs; Easing possible entry of for-profit providers in K-12 education; Placing limits on federal capacity to promote equal education access, such as limiting the scope of Title IX enforcement; and Reducing investment in data and research infrastructure. SCHOOL CHOICE AS A FEDERAL PRIORITY The appointment of U.S. Secretary of Education Betsy DeVos signals a strong commitment to school choice from the Trump administration. To be sure, this is not the first time a U.S. president advocated for school choice: Ronald Reagan was a strong proponent of school choice, but was unable to gain much congressional support. President George H. Bush was receptive to the notion of charter schooling, when AFT President Albert Shanker first proposed it in the 1980s. Further, President Bill Clinton popularized charter schools with federal startup funding, a position endorsed by both presidents George W. Bush and Barack Obama.

## Link Debate

### Vouchers

#### Vouchers link- Vouchers overturn state constitutions via the uniformity provision

Sasha Volokh, associate professor at Emory Law, March 14 “What do state constitutions say about vouchers?”, https://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/03/07/what-do-state-constitutions-say-about-vouchers/?utm\_term=.41400e751a69

In posting about the [North Carolina anti-voucher decision](http://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/03/06/north-carolina-judge-strikes-down-vouchers/) yesterday, I referred to an [article by Preston Green and Peter Moran](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2388824) on state constitutional provisions that may restrict vouchers, and also to a [Reason.org post I did on the subject](http://reason.org/news/show/louisiana-supreme-court-vouchers) a few months ago, when the Louisiana Supreme Court struck down a voucher plan. I thought this would be a good time to recap the variety of different state constitutional provisions at issue. My Reason post discusses the religious aspects — how the participation of religious schools doesn’t violate the Establishment Clause of the federal constitution, and how some states might impose further restrictions through [Blaine](http://en.wikipedia.org/wiki/Blaine_Anderson) Amendments. Less well-known, though, are all the non-religious state-law constitutional grounds that voucher plans might be invalid, either per se or in a particular form. Here’s what I’ve written about these, drawing on the Green and Moran article: Uniformity provisions First, there are “uniformity provisions,” present in the constitutions of fourteen states. Wisconsin’s constitution, for instance, requires the legislature to establish “district schools, which shall be as nearly uniform as practicable.” Florida’s constitution, similarly, provides that “[a]dequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools.” Though both constitutions have similar uniformity provisions, their courts have come to different conclusions regarding the permissibility of voucher programs. The Wisconsin Supreme Court, in [Davis v. Grover (1992)](http://www.leagle.com/decision/1992667166Wis2d501_1627.xml/DAVIS%20v.%20GROVER), upheld the Milwaukee Parental Choice Program (MPCP) against a uniformity-based challenge, holding that the uniformity clause is about giving children the opportunity to attend a free, uniform district school, not about mandating that they do so. “The MPCP,” the court held, “merely reflects a legislative desire to do more than that which is constitutionally mandated.” The Florida Supreme Court, on the other hand, in [Bush v. Holmes (2006)](http://www.floridasupremecourt.org/decisions/2006/sc04-2323.pdf), held that Florida’s Opportunity Scholarship Program (OSP) violated the uniformity clause. The court held that the uniformity sentence quoted above should be read in light of the sentence that precedes it: “It is . . . a paramount duty of the state to make adequate provision for the education of all children residing within its borders.” This sentence requires adequate provision; the following one mandates how: through “a uniform, efficient, safe, secure, and high quality system of free public schools.” In other words, the uniformity sentence is a restriction on the state legislature, limiting them to this particular way of achieving the adequate-education goal established in the previous sentence. In this light, the OSP violated the uniformity clause “by devoting the state’s resources to the education of children within our state system through means other than a system of free public schools.”

#### Vouchers link- Vouchers overturn state constitutions via local control provisions

Sasha Volokh, associate professor at Emory Law, March 14 “What do state constitutions say about vouchers?”, https://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/03/07/what-do-state-constitutions-say-about-vouchers/?utm\_term=.41400e751a69

Local control provisions Second, there are “local control provisions,” present in the constitutions of six states. Colorado’s constitution, for instance, mandates that the legislature organize “school districts of convenient size, in each of which shall be established a board of education,” the directors of which “shall have control of instruction in the public schools of their respective districts.” One might think that this provision has no bearing on voucher programs, since presumably voucher schools aren’t “public schools” and therefore don’t need to be subject to board of education control. But, for a century, Colorado courts have interpreted the provision to mean that “local school districts must retain control over any instruction paid for with locally-raised funds.” In light of this interpretation, the Colorado Supreme Court held in [Owens v. Colorado Congress of Parents, Teachers & Students (2004)](http://caselaw.findlaw.com/co-supreme-court/1047872.html) that the Colorado Opportunity Contract Pilot Program (COCPP) violated the local control provision because “it direct[ed] the school districts to turn over a portion of their locally-raised funds to nonpublic schools over whose instruction the districts ha[d] no control.” Note, though, that the Colorado holding depends crucially on the structure of the COCPP, under which participating parents got their “assistance payments” for attending private schools directly from their child’s school district. Presumably, Colorado could have financed vouchers directly from the state’s general fund without running afoul of the local control provision.

#### Vouchers link- funding provisions

Sasha Volokh, associate professor at Emory Law, March 14 “What do state constitutions say about vouchers?”, https://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/03/07/what-do-state-constitutions-say-about-vouchers/?utm\_term=.41400e751a69

Third, there are “funding provisions,” which come in several types. The constitutions of seven states explicitly bar the funding of private schools; Arizona’s, for instance, provides that “[n]o tax shall be laid or appropriation of public money made in aid of any church, or private or sectarian school.” The Arizona Supreme Court, in [Cain v. Horne (2009)](http://www.azcourts.gov/Portals/23/pdf2009/CainOpinionCV080189PR.pdf), held that the funding of an Arizona voucher program was “in aid of” private schools: even though the vouchers went directly to parents, private schools were the true beneficiaries. Three states bar funding any school not under the exclusive control of the state. (This has a similar flavor to the “local control” provisions above.) Nebraska’s constitution, for instance, provides that “appropriation of public funds shall not be made to any school . . . not owned or exclusively controlled by the state or a political subdivision thereof.” The Nebraska Supreme Court, in [State ex rel. Rogers v. Swanson (1974)](https://www.courtlistener.com/neb/9GhM/state-ex-rel-rogers-v-swanson/), invalidated a program providing public grants to students attending private schools: here, too, though the funds went to parents, the court held that the state couldn’t avoid the prohibition on funding schools by funneling the payments through parents. And at least ten states have provisions limiting educational funds to public schools, though these provisions don’t seem to rule out funding a voucher program out of the general fund. ([Louisiana](http://reason.org/news/show/louisiana-supreme-court-vouchers) seems to fall into this category, as does [North Carolina](http://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/03/06/north-carolina-judge-strikes-down-vouchers/).)

#### Vouchers link-public purpose provisions

Sasha Volokh, associate professor at Emory Law, March 14 “What do state constitutions say about vouchers?”, https://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/03/07/what-do-state-constitutions-say-about-vouchers/?utm\_term=.41400e751a69

Finally, there are “public purpose provisions,” present in most state constitutions, mandating that the state spend funds for public purposes. These mostly aren’t a bar to voucher provisions because courts defer to the legislature on what a private purpose is, but Kentucky courts have used these provisions to strike down some programs that loaned textbooks or subsidized transportation for private school students.

### Lunch

#### Lunch link-school lunch regulation is the battleground of federalism in the status quo.

David Corbin and Matthew Parks, Professors of politics, 2014, Who Killed Federalism?, http://www.newrevolutionnow.org/nrn-blog/category/federalism

Nothing testifies to the death of federalism better than the rash of stories last week about federal requirements for public school lunches. Consider just a few: The representatives of the once-free people of Connecticut voted unanimously in both the state House and Senate to ban chocolate milk, lest its troublesomely high levels of sodium endanger a portion of their federal school lunch subsidies. In Washington, lawmakers debated how to respond to complaints that schools are having to divert money from teaching budgets “to cover the costs of mounds of wasted fruits and vegetables.” Experts suggest that enlisting “technical assistance” in organizing lunch lines and presenting food might help local schools cut their losses–especially since the US Department of Agriculture (USDA) gives extra subsidies to those who serve these not-so-enticing meals. The USDA closed out the week by offering a “whole grain-rich pasta products” waiver to those schools that have found quality pasta difficult to come by–as long as said hardship is properly certified by their respective state board of education. We’ll pause a moment to let your nausea pass—hopefully not inspired by the thought of school children having to eat non-whole grain-rich pasta, at least while the two-year waiver period lasts. The dynamic at work in this case illustrates the contemporary relationship between states and the federal government. It begins with the promise of federal funding—assuming certain conditions are met. Revenue-strapped states scramble for the money like children diving for candy after a piñata bursts. This “extra” money is soon not extra at all—but rather a vital (even if relatively small) part of a barely balanced budget. Meanwhile, the federal bureaucracy realizes that the original conditions attached to the money are inadequate to reach its ever-elusive goals. New rules follow with threats of withheld funds for non-compliance. For most states (see CT above), the decision is easy: comply. But what happens when the new regulations are impossibly onerous? Finally, out come the champions of federalism, whose alternative simply shovels a little less dirt on its grave. Hear the Republican lion in the un-eaten fruit and veggie war: “‘I want to do all I can to fight childhood obesity,’ Rep. Rodney Davis (R-Ill.), who has been sharply critical of the standards, said in an interview. ‘But I’ve heard from school districts, superintendents, and they are asking for flexibility. This top-down approach from Washington isn’t working. The plate waste is piling up.’” What’s the alternative to a “top-down approach from Washington”? Waivers from Washington. The USDA seems to get what Republicans miss: the name of the game is power. Grant a “whole grain-rich pasta products” waiver and you’re still running the game by your rules. The USDA giveth, and the USDA taketh away. Real federalism—and, more importantly, real self-government—looks quite a bit different. In Federalist 45, James Madison addresses concerns that the sum total of power granted to the national government in the Constitution will endanger the powers, in the language of the 10th Amendment, “reserved to the States.” He begins to build his case to the contrary by reminding his audience, as we do well to be reminded of today, that federalism is a means, not an end: Was, then, the American Revolution effected, was the American Confederacy formed, was the precious blood of thousands spilt, and the hard-earned substance of millions lavished, not that the people of America should enjoy peace, liberty, and safety, but that the government of the individual States, that particular municipal establishments, might enjoy a certain extent of power, and be arrayed with certain dignities and attributes of sovereignty? Madison asserts that the balance between state and federal authority should be struck at the point where it most contributes to the “peace, liberty, and safety” of the American people, not the dignity of state or federal officeholders. In his day, that meant escaping the anarchic tendencies of the Articles of Confederation with a more robust national government, one capable of securing the common defense, among other essential purposes. Today, we might simply posit the reverse—that we need to strengthen the states at the expense of the federal government. Madison did not expect such a day to come any time soon, given five ways the “State governments will have the advantage of the Federal government” in maintaining its share of power: …whether we compare them in respect to the immediate dependence of the one on the other; to the weight of personal influence which each side will possess; to the powers respectively vested in them; to the predilection and probable support of the people; to the disposition and faculty of resisting and frustrating the measures of each other. On the first point, Madison submits that given that state legislatures possessed the power of “direct intervention” in electing Presidents, an “absolute and exclusive” power in electing Senators, and great “influence” in electing Representatives, “each of the principal branches of the federal government will owe its existence more or less to the favor of the State governments.” But given the democratization of the national election process brought on by19th and 20th century Progressive sentiments and reforms, state legislatures no longer (1) appoint members of the electoral college; (2) directly elect Senators, or (3) possess much of an influence over the election of the Congressmen. Thus the Federal government is no longer dependent on the State governments for its election. The greater “weight of influence” Madison thought state governments would possess relative to the Federal government, given the higher ratio of local and state employees to federal employees, also has not diminished the power of the federal government. Consider this graph that charts the total number and ratio of federal to state to local employees since 1955. Approximately one out of every fourteen Americans is a government employee today, compared to one in twenty-two Americans in 1955. The greatest part of the total increase of government employees amounts to the enlargement of state and local government employment. It matters little if the lunch lady pouring chocolate milk down the sink and serving fruits and vegetables is a local government employee if her job ultimately depends on monies slopped out by federal bureaucrats wielding carrot sticks. Which brings us to the third part of Madison’s argument as to why the proposed federal republic was a great improvement over the earlier confederation; namely, its powers would be “few,” “defined,” and “exercised principally on external objects, as war, peace, negotiation, and foreign commerce.” Madison likely never could have imagined the Federal government adding management of sodium intake to this list as the American people sat listless on the political sidelines. As troubling as the death of federalism is, we need more fundamental reform, as the Republican response to the school lunch mandates makes clear. There is, after all, an even more important third leg to the governing stool, implicit in Madison’s argument, but made explicit in the 10th Amendment: the people. Often conservatives read that Amendment as if it is meant to protect the rights of the states. But it is much better understood, both textually and historically, as an attempt to protect the people’s distribution of powers among themselves, the states and the national government. If we really want to restore 10th Amendment government, we’ll need to work much harder at removing power from both state and federal hands than at replacing the divine right of the Washington King with the divine right of state Barons. We’ll know we’ve made progress when line-arranging technical assistants in Lunch Lady Land are hard to come by; when at least one Connecticut legislator is willing to take a stand for chocolate milk; when federal legislators and bureaucrats are embarrassed to discuss the whole grain content of a third grader’s pasta; and when, once again, government at all levels aims to protect the “peace, liberty, and safety of the American people,” rather than its own prerogative and “dignities.”

#### Lunch link-federal funding of school lunch=federal regulation of school lunch

Reed Troutman, Attorney, 2011, Health Food Advocacy and the National School Lunch Program, Jefferson Journal of Law, 40 J.L. & Educ. 383, Lexis Nexis

The special place allotted to milk in school lunch menus presents a noteworthy example of how statutory law and America's larger food culture can affect school lunch fare. There is a federal condition on the receipt of National School Lunch Program funds which requires participating schools to provide milk on the lunch line, and this appears to have been left unaffected by the Healthy, Hunger-Free Kids Act. n31 The wording of the requirement also explicitly allows flavored milk to be served in school lunch lines, stating that schools "may offer students flavored and unfla-vored fluid milk and lactose-free fluid milk." n32 This provision was a source of conflict in the television documentary, Food Revolution, featuring British celebrity chef Jamie Oliver, which aimed to expose the unhealthy food items served in American schools. n33 Oliver pled with the school administration to eliminate flavored milk from the lunch line, but the school district administrator informed him that it was more important that kids get calcium than avoid the sugar in flavored milk. n34 As a result, the fla-vored milk was repeatedly put Back on the line. The statute requiring that milk be served in school lunch lines goes on to prohibit restrictions on both milk sales and advertising. n35 It reads, "[a] school that participates in the school lunch program under this chapter shall not directly or indirectly restrict the sale or marketing of fluid milk products by the school (or by a person approved by the school) at any [\*388] time or any place." n36 Conceivably, statutory language like this might have some chilling effect on the creativity of kitchen staffs executing their culinary duties, since there is a linguistic "air of importance out of propor-tion to the substance of what is said." n37 At any rate, the rationale behind the express statutory allowance for flavored milk is at least partly responsive to the realities of American food culture. It is reasoned that having flavored milk on the lunch line will cause an increase in the consumption of milk, which is nutritionally preferable to other sugar-laden alternatives like sodas. n38 This rationale for the inclusion of flavored milk was lost on Jamie Oliver in his documentary, however. n39 Ironically, for a person crusading against America's poor eating habits, Oliver fell short of understanding how nutritionally bankrupt the American diet is. At this point, Americans are trying to refrain from the otherwise ubiquitous fizzy pop, and considering the alternative beverages, flavored milk is a veritable health food. n40 It may, therefore, be incumbent on decision makers -- from Washington, DC down to the local school board--to work with the lowest common nutritional denominator in mind. This may be frustrating to health food advocates, but it may also be a necessary interim measure until a better solution is found to overcome such cultural hurdles. The statutory requirement that milk be included in lunch lines raises another concern for Americans who think the federal government is the improper body for making school meal decisions. Simple principles of federalism require that schools be as free as possible at the local level to meet the dietary needs of their students. Ideally, schools which are willing to make the effort to provide healthier meals should be allowed to do so. The Healthy, Hunger-Free Kids Act is moving in the right direction in expanding the funds for local and organic food, but it remains important that such funds not coerce uniformity where flexibility is needed. n41 [\*389] "[I]ndependent thinkers," like Ann Cooper, "are working out [their menus] and [should] have the right . . . to try them out without getting the approval of some govern-ment bureau." n42

#### Lunch link- the balance of federal power favors the local on food regulation now. Plan disrupts this.

Lindsay F. Wiley, professor of law, 2015, Deregulation, Distrust, and Democracy: State and Local Action to Ensure Equitable Access to Healthy, Sustainably Produced Food, American Journal of Law and Medicine 41 Am. J. L. and Med. 284.

Our food system is hotly contested territory. In the midst of widespread concern about obesity-related disease and toxic exposures, manufacturers have flooded the market with products touted as "natural," "organic," and "GMO-free," including many that are high in sugar, salt, and fat. Consumers are demanding more information about the food and beverage products they buy and the ways in which they are produced. n13 At a time when federal regulation to protect the public's health, consumers, and the environment has been stymied by legislative inaction and constraints on agency rulemaking, state and local governments have taken on a high-profile role in "regulating to the detriment of politically powerful industries and their allies for the [\*287] purpose of conferring diffuse benefits on the public." n14 City, county, and state governments have become crucial innovators, particularly in areas such as tobacco control, obesity prevention, Genetically Modified Organisms (GMOs), and pesticide use. Industry groups are responding with increasingly sophisticated litigation and legislation strategies, using the First Amendment, Due Process, Equal Protection, federalism, and separation of powers constraints to challenge and preempt food system regulations. In this Part, I introduce four recent cases that illustrate the complexity of these issue.

#### Lunch link- Federal regulation of school lunch programs fail, ruptures federalism.

Federalism in Action, blogger and defender of our liberties, May 2017 “Federalism Debate Moves to School Cafeterias” http://www.federalisminaction.com/2014/05/federalism-debate-moves-school-cafeterias/#sthash.UTp0wsJZ.oKoQ4gzW.dpbs

School lunches have become the latest hot topic in the federalism debate, and once again, federal funding is at the center of this controversy. “The Healthy, Hunger-Free Kids Act of 2010” requires public schools that accept federal funding for free and reduced lunch programs to abide by more restrictive food guidelines. These parameters require healthier school cafeteria options, including lighter menu items and reduced additives. The law went into effect in 2012, and now many school boards are appealing to Washington to let them out. Why? Schools are reporting that a significant amount of cafeteria food is now going to waste, as kids are opting not to eat the healthier options on their plate. These schools then face hefty costs to dispose of the large quantities of wasted food. Some districts report they are using teaching budgets to make up for the financial shortfalls that occur from the disposal process. As a result, this week, a U.S. House subcommittee approved a spending bill that would provide temporary waivers for school lunch programs that could prove that they were operating at a net loss for six months. Some school districts are taking matters into their own hands. Recently, Arlington Heights District 214 in Illinois voted to opt out of the U.S. Department of Agriculture (USDA) free and reduced lunch program. They decided the $900,000 federal grant they received was not worth the financial hit they would take from having to comply with the federal subsidy’s stipulations. Dist. 214 Superintendent David Schuler warned the district would likely lose money if it complied with the federal requirements. They are still trying to figure out how they will make up the lost funding to continue the free and reduced-lunch meal program. This is yet another example of a failed one-size-fits-all approach to public policy. While healthy school lunches are a noble goal, mandating federal guidelines has only done a disservice to students, parents, and schools alike. If more districts like Arlington Heights opt out, then funding for the most vulnerable school children’s meal program will be at risk. School lunch policies, like many other decisions, should instead be made at the most local level possible and empower local people to solve problems locally.

#### Lunch link-Federal food regulation changes the direction of the constitution upsetting the checks on federal power by privileging certain foods over others, effectively eliminating choice at the local level

Mathilde Cohen, Associate Professor and Robert D. Glass Scholar, University of Connecticut School of Law, 2017, Harvard journal of law and gender, Lexis Nexis 40 Harv. J.L. & Gender 115

A close reading of the Court's milk cases confirms that milk played a significant role in the Court's shifting conception of federalism. But something more is at stake in these milk cases. In the Court's discourse, not only is milk consumption normal and normative, but it is also characterized as a form of quasi-constitutional right, resulting in a distinct dairy jurisprudence. II. The Quasi-Constitutionalization of Milk What can account for the abundance of legislation and litigation pertaining to milk products? Not only health, safety, and economic considerations, but also a form of dairy jurisprudence. In case after case, the Supreme Court assumed that a safe milk supply was essential to the flourishing of the American people both because milk is an essential staple of the American diet and because the dairy industry is a critical economic player. These premises lay the basis for what I call the "quasi-constitutionalization" of milk. I choose this term because it highlights milk's enjoyment of a privileged status no other food product, or perhaps even no other mass production product, has achieved in constitutional discourse. This Part fleshes out what I understand to be the scope and limits of milk's "quasi-constitutionality," before examining the three social values the Court protects with its dairy jurisprudence: nutrition, economics, and a distinct form of political morality.

### Funding

#### Funding link- Federal financing=federal regulation

Neal McCluskey, director of Cato’s Center for Educational Freedom, March 17, For the Love of Choice, Don’t Federalize It, https://www.cato.org/publications/commentary/love-choice-dont-federalize-it

We should protect federalism both to ensure that differing methods of delivering choice can be tried without having to compete against a choice monopolist—an oxymoronic but all-too-real concept when discussing the feds—and to prevent national homogenization of private schools via the kinds of regulations that inevitably get attached to federal dough. On the first major concern—avoiding a monopoly choice system—I believe the most meaningful form of accountability is having to satisfy parents. But while I oppose most rules and regulations on schools participating in choice programs, I would never declare that my preferred amount of regulation is always and everywhere incontrovertibly right. Research does not make a slam-dunk case for any specific system. Research is limited, as are our minds. The way we learn what’s best now and continue to discover methods that may be better is to allow free action on a level playing field. Federalism helps us do just that. On the second point—federal “help” rendering once-autonomous private institutions increasingly homogenous—all major forms of choice are susceptible to government control to varying degrees. The danger is far greater when that control comes from Washington, because you can’t even move to another state to escape it. Consider: Charter schools are public schools, which means that they have to administer and be evaluated using state tests, which in turn encourages the schools to use curricula similar to those of traditional public schools. And reports of [“wild west” chartering](http://www.washingtonexaminer.com/michigan-charter-schools-are-not-westworld/article/2613072)notwithstanding, you can forget about charters charging prices, or controlling their own admissions, or implementing lots of other variables that make a choice a choice. Many private school voucher [programs](https://www.edchoice.org/wp-content/uploads/2017/02/The-ABCs-of-School-Choice-1.pdf#page=7) are also heavily regulated, rendering private schools cramped alternatives, at best. In Milwaukee, home of the first modern voucher program, participating schools must administer state tests, allow students to opt out of religious programs, and meet teacher qualification rules. In Louisiana—where we’ve seen the first negative, lottery-based [study](http://www.nber.org/papers/w21839) [results](http://www.uaedreform.org/downloads/2016/02/report-1-the-effects-of-the-louisiana-scholarship-program-on-student-achievement-after-two-years.pdf), quite possibly because the program’s heavy-handed [regulatory approach](http://educationnext.org/the-folly-of-overregulating-school-choice/) led the strongest private schools to sit out—participating schools must have open admissions for voucher holders, administer state exams, and maintain a curriculum roughly comparable to that of the public schools.

#### Funding/credits link-**More money more problems**. Even small amounts of federal funding in education raise prices overall and manufacture dependence of the federal government weakening federalism overall.

Neal McCluskey, director of Cato’s Center for Educational Freedom, March 17, For the Love of Choice, Don’t Federalize It, https://www.cato.org/publications/commentary/love-choice-dont-federalize-it

But what if the proposed numbers of federal choice dollars, potential beneficiaries, and participating schools were small? Wouldn’t that allay concerns about Washington dictating terms to private schools nationwide? Well, not exactly. The numbers may start small, but the allure, and eventual necessity, of getting those dollars would likely grow quickly. Once a single group starts getting aid, others naturally demand the same thing. Looking further at higher education is instructive. In 1970-71, there were only a [relative handful](https://trends.collegeboard.org/student-aid/figures-tables/total-student-aid-and-nonfederal-loans-2015-dollars-over-time) of federal student aid programs, and total aid, including loans, amounted to just $16.5 billion in 2015 dollars. The number of programs has since nearly doubled, and the total amount of federal aid in the 2015-16 academic year was $140.1 billion. Readily available data on the share of students receiving federal aid only goes back to the 1992-1993 academic year, but the [growth in aid dependence](https://nces.ed.gov/programs/digest/d15/tables/dt15_331.60.asp?current=yes) is also clear: In 1992-93, 45 percent of full-time, full-year undergraduates used some form of federal aid. By 2011-12, that had jumped to 73 percent. What about federal higher education tax incentives? Though nonexistent until the 1996-97 school year, more than $18 billion in tax benefits were claimed in 2015-16. Aid money got baked into the system, and now colleges can no longer exist without taking students with federal aid. Aid-eschewing institutions would be unable to pay for all the stuff, academic [and](http://www.nber.org/papers/w18745) [otherwise](https://www.cato.org/publications/commentary/how-am-i-supposed-learn-anything-without-lazy-river-wet-wall), that aid-accepting schools provide and would struggle mightily to attract students. And since aid is built into the prices, students need it, too. With federal school choice, K-12 schools and families would also likely become hooked on federally connected cash, including money furnished through donation tax credits, and the vicious cycle of aid leading to price inflation would take off. This danger is especially acute in the context of a federal program since, unlike individual states, Washington can easily borrow or even print money it does not have. These abilities matter even for credits, allowing the feds to more easily forego tax revenue. With burgeoning federal aid, federal rules that would make autonomous private schools ever more homogenous and, well, public would also likely proliferate. We have seen the regulation impetus in state-funded school choice programs. We have also seen it in higher education. That sector deals with adults and, hence, has been less prone to regulation than K-12 education, but it has nonetheless become increasingly subject to federal controls, including through [accreditation](https://www.insidehighered.com/news/2016/06/24/federal-panel-votes-terminate-acics-and-tightens-screws-other-accreditors) and a Sword of Damocles—separation from student aid—hanging over institutions that, regardless of the mix of [students](http://www.seethruedu.com/for-profits-have-the-toughest-challenge/) they serve, do not meet federal [performance metrics](https://www.insidehighered.com/news/2017/01/10/federal-data-show-hundreds-vocational-programs-fail-meet-new-gainful-employment). Imagine if there had been a federal voucher or tax credit program just a few years ago. Private schools nationwide could have faced heavy pressure to [adopt nationally uniform curriculum standards](http://www.heritage.org/education/report/common-core-and-the-centralization-american-education). They could have been subjected to [“Dear Colleague” letters prescribing](https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf), even for religious schools, their bathroom and locker room access policies. They could have been [coerced into teacher evaluations](http://www.pbs.org/newshour/rundown/teacher-evaluations-without-student-test-scores-cost-washington-waiver-school-sanctions/) based in part on standardized test scores. Choice, quite simply, could have been kneecapped, even if more people were able to exercise it. If the goal is to maximize true choice—not just give more people something called “choice”—the conclusion is clear: A federal program would be too dangerous, threatening to snuff out federalism and impose uniformity on private schools nationwide. It would also violate the Constitution, which was written as it was because the Founders knew that education was no place for the national government.

#### States control education now in federalist distribution of powers; more funding = more regulation historically

Gerard Robinson, Resident Fellow at the American Enterprise Institute for Public Policy Research and former Secretary of Education for the Commonwealth of Virginia. Ed.M., Harvard University; B.A., Howard University, 2016, SCHOOL INEQUALITY: CHALLENGES AND SOLUTIONS, University of Richmond Law Review

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society." n7 - Brown v. Board of Education Part I discusses the basic contours of education, federalism, and the key financial contributors to education. This information provides the foundation for my recommendations of an encouragement philosophy to guide the federal role in education. Education is the responsibility of state and local governments. Each state has an education clause in its constitution. n8 Each state also maintains a funding formula to determine the costs for educating a student in elementary and secondary public schools, the appropriate taxing methods to generate revenue for it, and the percentage of funding coming from state, local, and federal government [\*921] sources. n9 And, contrary to popular belief, the federal government is not the biggest investor in public education. According to The State Expenditure Report, state governments spent $ 344.6 billion on elementary and secondary education in 2014. n10 Although Medicaid was the largest state expenditure at $ 445 billion, of which the federal government paid 58.2% of the costs, elementary and secondary education remains the largest recipient of general funds in the states (i.e., revenue generated by state taxes). n11 When you disaggregate funding sources for education, a clear picture emerges about who funds America's schools: state funding accounts for 45.6%, local governments provide 45.3%, and the federal government provides 9.1%. n12 Table 1 shows the sources of state expenditures for elementary and secondary education for the 2014 fiscal year. Table 1 n13 FUND PERCENTAGE General Revenue 72.4% Federal Funds 15.1% Other State Funds 11.9% Bonds 0.5% These data reveal that the federal government is not the biggest investor in elementary and secondary public schools. This is not to say the federal contribution is insignificant. In 2014, for example, the federal government contribute $ 37.2 billion to elementary and secondary education programs administered [\*922] through the U.S. De-apartment of Education ("DOE"). n14 The federal contribution has risen significantly over time. For instance, the federal government allocated $ 6.9 billion to education when the DOE gained cabinet status in 1980. n15 The amount increased to $ 10.7 billion in 1990 and tripled to $ 38.9 billion in 2010. n16 The increase in federal spending on elementary and secondary education came with additional federal regulations. This trend began with the passage of the Elementary and Secondary Education Act of 1965 ("ESEA"), n17 which was a signature piece of legislation in President Johnson's War on Poverty. Other Presidents reauthorized or amended ESEA during the next fifty years to put their stamps on education federalism. For example, President Carter's reauthorization of ESEA through the Education Amendments of 1978 expanded the definition of Title I to include school-wide pro-grams. n18 President Reagan's reauthorization of ESEA in 1988 required improvements in student achievement and greater accountability. n19 President Clinton's reauthorization through the Improving America's Schools Act of 1994 supported state standards and federal rules for schools. n20 President George W. Bush's reauthorization through the No Child Left Behind Act of 2001 created rewards and sanctions for students and districts alike. n21 And President Obama's reauthorization through the Every [\*923] Student Succeeds Act of 2015 provides states with more flexibility for innovation while curtailing some DOE oversight of standards for students and teachers.

### Tax Credit

#### Tax credit link- tax credits lead to additional regulations and demand federal regulation

Neal McCluskey, director of Cato’s Center for Educational Freedom, March 17, For the Love of Choice, Don’t Federalize It, https://www.cato.org/publications/commentary/love-choice-dont-federalize-it

Scholarship tax credits and education savings accounts appear to attract less regulation. Andrew Coulson compared vouchers and tax credits empirically and [found that](https://object.cato.org/sites/cato.org/files/articles/coulson-journalofschoolchoice-june-2011.pdf) credits are less prone to regulation, probably because no one has tax dollars taken away and sent to someone else. Education savings accounts are too new to know for sure, but the hope is that they will avoid onerous rules because funds can be spent on multiple uses. But even these seemingly less-regulation-prone choice mechanisms can come with controls. For instance, schools taking kids with scholarships funded through Florida’s tax credit program must be approved by the state, meet teacher-qualification requirements, and show gains on either state exams or nationally norm-referenced tests. Students in Tennessee’s Individualized Education Account Program must take either a nationally norm-referenced test chosen by the state department of education or the state exam. Even expanding tax-preferred [529 plans](https://www.irs.gov/publications/p970/ch08.html), which currently only apply to higher education expenses, to include K-12 education expenses could threaten schools’ autonomy. Any college on which a student wants to spend 529 account money must be accredited, and requiring that colleges be accredited to take students with federal aid is [a major reason](http://www.heritage.org/education/report/accreditation-removing-the-barrier-higher-education-reform) that we do not see more postsecondary education innovation. Indeed, accreditation is the primary way Washington regulates colleges; a student can only use federal aid at an accredited school, and the federal government [regulates the accreditors](https://www.ed.gov/news/press-releases/education-department-establishes-enhanced-federal-aid-participation-requirements-acics-accredited-colleges).

#### Tax credit link-Incentives fail, they are mandates in disguise and allow the federal government to slowly tack on more and more conditions the state must meet

Jennifer Marshall and Lindsey Burke, Heritage Foundation policy analysists, May 2010, Why National Standards Won’t Fix American Education: Misalignment of Power and Incentives, http://www.heritage.org/education/report/why-national-standards-wont-fix-american-education-misalignment-power-and.

Centralized standard-setting would force parents and other taxpayers to relinquish one of their most powerful tools for school improvement: control of the academic content, standards, and testing through their state and local policymakers. Moreover, it is unclear that national standards would establish a target of excellence rather than standardization, a uniform tendency toward mediocrity and information that is more useful to bureaucrats who distribute funding than it is to parents who are seeking to direct their children’s education. Common national standards and testing will not deliver on proponents’ promises. Rather than addressing the misalignment of power and incentives from which many public education problems arise, national standards and testing would further complicate these same problems. An effort by the Clinton Administration to produce national standards and tests during the 1990s was roundly rejected because of strong opposition among Members of Congress, state leaders, and others.[1] This renewed push for common national standards and assessments should be similarly resisted. Instead, federal policy can improve the alignment of power and incentives in public education by enhancing transparency of existing accountability tools and providing flexibility in program funding for states to do the same. State policy should advance systemic reforms that better align power and incentives with educational outcomes, including enhanced accountability and parental empowerment through educational choice. By pursuing this combination of reforms, Americans can better address the core issues that continue to inhibit meaningful education reform. From a “Common Core” to National Standards The Obama Administration’s current push for national education standards builds on an initiative led by the National Governors Association (NGA) and the Council of Chief State School Officers (CCSSO). In September 2009, the groups’ Common Core State Standards Initiative (CCSSI) released college and career readiness standards for math and English language arts.[2] In March 2010, CCSSI published grade-by-grade benchmarks for each of these two subject areas. From the beginning, proponents of the Common Core State Standards Initiative have maintained that the standards are voluntary and outside of the realm of the federal government. But federal funding has been linked to their adoption from the early stages. The February 2009 American Recovery and Reinvestment Act (ARRA)—the “stimulus bill”—included $4.35 billion in discretionary funding for the Secretary of Education, known as Race to the Top. One of the requirements for states to qualify for this competitive grant funding was to have signed on to the CCSSI. Failing to adopt common standards and assessments puts a state at a significant disadvantage in the Race to the Top competition.[3] In the context of state budget shortfalls, the prospect of funding was enticing enough for most states to sign on to the common standards—sight unseen.[4] Initially, only Texas and Alaska resisted. Texas Education Commissioner Robert Scott stated that the common standards movement amounted to a “desire for a federal takeover of public education.”[5] Now, additional states, including Massachusetts, Iowa, Kansas, and Virginia, are expressing concerns about the common standards initiative.[6] Meanwhile, the Obama Administration announced in February 2010 that it intends to make receipt of Title I funding contingent on the adoption of common standards. Nearly every school district participates in the $14.5 billion Title I program, which provides federal funds for low-income students.[7] Furthermore, the Obama Administration has announced a grant competition for the creation of common assessments among states that would replace state assessments.[8] Federal pressure to adopt national standards and assessments has elicited concerns across the political spectrum. During a House Education and Labor Committee hearing, Representative Glen Thompson (R–PA) observed that “the Common Core is being transformed from a voluntary, state-based initiative to a set of federal academic standards with corresponding federal tests.”[9] National School Boards Association Executive Director Anne L. Bryant voiced similar concerns in a recent statement: While the goal of high academic standards is laudable and school boards strongly support it, this amounts to an unnecessary over-reach by the federal government to coerce states to adopt a particular approach or be shut out of future funding for key programs…. This new condition on funding for key federal programs also opens the door for the federal government to call for even more conditions, such as the use of national tests for accountability purposes.[10] Misconceptions About the Promise of National Standards and Testing Advocates paint the national standards and testing movement as the key missing ingredient in K– 12 education reform while dismissing concerns that this would lead to further misalignment of power and incentives in American education.

### Generic Links

#### **Rapid policy shift incites political gridlock and chaos**

McGuinn 15 (Patrick McGuinn is an associate professor of Political Science and Education and the Chair of the Department of Political Science and International Relations at Drew University, “Schooling the State: ESEA and the Evolution of the U.S. Department of Education,” The Russell Sage Foundation Journal of the Social Sciences, 1(3), 77-94, drr)

Education in the United States historically has been characterized by local control and the federal government has no constitutional authority to dictate education policy to the states. Beginning with the National Defense Education Act of 1958 and the Elementary and Secondary Education Act of 1965, however, national policymakers have used the grant-in-aid system to pursue federal goals in public education. To claim their share of a growing pot of federal education funds, states have had to agree to comply with a wide array of federal policy mandates. These mandates initially focused on ensuring more equitable school funding and access rather than the academic performance of students and schools. A new federal focus on accountability for student achievement and school reform was outlined in the Improving America's Schools Act of 1994 and was given more “teeth” in the No Child Left Behind Act (NCLB) in 2001. These developments have involved the federal government for the first time in core matters of school governance—such as academic standards, student assessment, teacher quality, school choice, and school restructuring—and fundamentally altered the relationship between the federal government and the states in education policy. They have also severely strained the federal grant-in-aid system and the administrative capacity of the Department of Education. For the ED to be effective in gaining state compliance with federal education policies, it needs sufficient statutory authority, administrative capacity, and political support. Still, throughout most of the thirty-five-year history of the department, these resources have not been present. This article provides an overview of the evolution of national administrative capacity and the implementation of federal education policy in the United States between 1965 and 2015 to examine the process by which federal power over schools has become institutionalized over time. The relationship between Washington and the states in the area of education has historically been predicated on cooperation rather than conflict, due to state education agencies’ long dependence on the Department of Education for a considerable portion of their budgets (about 40 percent on average), and because the federal government rarely interfered with core state education policies before the 1990s. (The department did, however, intervene forcefully on behalf of the civil rights of minority, English-language learners, and special education students in response to a series of Supreme Court rulings between 1950 and 1975.) The challenge in the post-NCLB era is that the feds have demanded that states develop new systems for tracking and disseminating student achievement data and intervening in struggling schools. States resent this new level of federal involvement and have struggled to meet all of the federal mandates. Consequently, as federal goals and methods have diverged from those of the states, the intergovernmental relationship has undergone a significant transformation. A central contribution of this article is thus to offer a detailed analysis of the new educational federalism in the post-NCLB era. It assesses how the policy mandates of the law have affected the institutional capacities and incentives for reform in state and federal departments of education to illuminate the administrative mechanisms through which this new federalism operates. Writing in the 1960s, Stephen Bailey and Edith Mosher articulate the many challenges to using federal power to drive school reform, challenges that continue to ring true today. “Both in the innovative and administrative aspects of public policy, a grant-in-aid agency must operate in a complex political environment. It must function in an intricate web of tensions spun by historical circumstance and by both coordinate and cross-purposes: congressional, presidential, judicial, group interest, intra-agency, inter-agency, inter-governmental, personal, societal, and even international. When as is the case with aid to education, the magnitude of Federal involvement is increased with dramatic suddenness, these tensions are particularly illuminated and exacerbated” (1968, vii).

## Impact Debate

### Modeling – Philippines

#### Philippines impact- Philippines will model US federalism now

ABS-CBN, news, May 2017, PH federalism to be modeled after US, Germany, http://news.abs-cbn.com/news/05/07/17/ph-federalism-to-be-modeled-after-us-germany

MANILA - The government’s model for federalism will be the United States or Germany, said Senate President Aquilino “Koko” Pimentel III in a conference on federalism in Davao City, Saturday. Pimentel, who spoke during the Centrist Democratic Party of the Philippines’ eighth national congress, said the country’s form of federalism will both be parliamentary and presidential. “Our model will be like U.S. or Germany. The Partido Demokratiko Pilipino-Lakas ng Bayan (PDP-Laban) model for federalism is uniquely Filipino. They can call it semi-parliamentary and semi-presidential. Kaya nga you cannot label it,” said Pimentel, who is also president of PDP-Laban, Pres. Duterte’s political party. "Nasa education stage pa tayo. We are still in the stage of informing the people [about] the essence of federalism. We are introducing the people the various models of federalism.” PDP-Laban is confident the shift to federalism will happen before Duterte’s term ends in 2022. Presidential Spokesperson Ernesto Abella, who was also present in the conference, that they are only waiting for Pres. Duterte to complete the names of the 25 members of the Constitutional Commission. Abella added that federalism was going to be Duterte's legacy. "’Yung iiwan niya will basically [be] a change in structure and institution na ang pamamahala ay hindi lang sa isang tao kundi ang buong sambayanan ay involved," said Abella, .

#### Philippines Impact-ISIS expanding in Philippines now

Thomas Maresca, freelance journalist SE ASIA, June 2017, ISIS expands foothold in Southeast Asia with Philippine siege, USA Today, https://www.usatoday.com/story/news/world/2017/06/10/philippines-islamic-state-isis-southeast-asia/102704672/

SINGAPORE — As the Islamic State loses territory in Iraq and Syria, fears mount that the militant group is gaining a stronghold in the Philippines and elsewhere in Southeast Asia. The Philippines has become the epicenter for the Islamic State, or ISIS, as it expands into the region where more than 60 groups have pledged allegiance to ISIS, according to the Singapore-based International Centre for Political Violence and Terrorism Research. ISIS has been clear about its intentions to turn to Southeast Asia as one of its major sites for operations, drawing recruits from the Philippines and the Muslim-majority countries of Indonesia and Malaysia. Historically, al-Qaeda had links to extremist groups in Southeast Asia, but ISIS has been connected to several recent attacks, including a May suicide bombing that killed three police offers at a Jakarta bus station and a September bombing in the Philippine city of Davao that killed 14. The drawn-out siege by militants in the city of Marawi is exposing the vulnerability of the Philippine military, which could undermine the region's security, analysts say. Philippine President Rodrigo Duterte declared martial law May 24 in Mindanao, the southern island where Marawi is located, citing the rising threat of ISIS. “I think Marawi is showing the absolute limits of what the armed forces of the Philippines is capable of,” said Zachary Abusa, professor of national security strategy and a Southeast Asia expert at the National War College in Washington, D.C. “After years and years of U.S. counterterrorism assistance, I think we should be very concerned.“ The United States began the Joint Special Operations Task Force-Philippines to assist Philippines counterterrorism efforts in 2002 but ended the operation in 2015. The U.S. Embassy in Manila acknowledged Saturday that U.S. special forces are assisting the Philippine military in the ongoing fight to retake Marawi. The U.S. help was limited to surveillance and technical support, according to the Philippine military. The Philippines has become a destination for militants from around the region, analysts say, especially after ISIS released a video in June 2016 advising potential recruits to head for Mindanao if they couldn’t make it to Syria or Iraq. “The Philippine groups actually control territory,” Abusa said. “There's just been this slow and steady trickle of foreigners into Mindanao the past few years.” Dozens of foreigners have been fighting alongside the Filipino militants in Marawi, with several Malaysians and Indonesians as well as a Chechen, Yemeni and Saudi among those reported killed. At a security forum held recently in Singapore called the Shangri-La Dialogue, defense ministers from around Southeast Asia expressed alarm about the rise of terrorism in the region and pledged closer cooperation, especially in conducting coordinated sea patrols in the Sulu Sea around Malaysia, Indonesia and the Philippines. Terrorism is the region’s “biggest security concern,” said Singapore’s defense minister, Ng Eng Hen. He told the forum that the Philippines is becoming a magnet for extremists: "All of us recognize that if not addressed adequately, it can prove a pulling ground for would-be (extremists) who can launch attacks from there.” At the same conference, Indonesia's defense minister, Gen. Ryamizard Ryacudu, said around 1,200 ISIS operatives are in the Philippines, including 40 from Indonesia. “The terrorism threat in this region has evolved into an unprecedented immediate level of emergency,” he said. “The death group’s area of operation has gone global.” In 2016, ISIS officially recognized Isnilon Hapilon, the head of a faction of the Abu Sayyaf militant group, as leader of its Southeast Asia regional operations and vowed to create a wilayat, or Islamic State province, in Mindanao. Hapilon was the target of the botched military raid that triggered a siege by Abu Sayyaf militants and the Maute group, which also pledged allegiance to ISIS in Marawi on May 23. Hapilon is on the FBI’s Most Wanted Terrorists list, with a $5 million reward for his capture. About 500 militants have seized large parts of Marawi while burning buildings, cutting power and communications lines and taking hostages. The fighting has killed at least 58 government troops, 29 civilians and 138 militants, according to the Philippine military. The ISIS-linked militants still control parts of the central city and have as many as 2,000 hostages, the military said. Rohan Gunaratna, head of the International Centre for Political Violence and Terrorism Research, said the Philippines has long underestimated the ISIS threat, noting the militant group "wants to capture and control territory and govern territory." “You can say Marawi is a game changer in the fight against terrorism in this region,” Gunaratna said. “It demonstrated to all the countries in the region what (ISIS) can do. They thought this business of running cities is something in the Middle East — they never thought it could happen in Asia.”

#### Philippines impact- the conflict is ongoing killing and displacing thousands, leading to cyclical economic ruin and terror recruitment, and disproportionately affecting populations on the fringe of social orders. These costs must only be calculated as a starting point.

Salvatore Schiavo-Campo and Mary Judd Mindanao, political analysts, 2005, “The Mindanao Conflict in the Philippines: Roots, Costs, and Potential Peace Dividend”. http://siteresources.worldbank.org/INTCPR/214578-1111996036679/20482477/WP24\_Web.pdf

The heavy human and social toll of the conflict includes, only since the 1970s: · An estimated 120,000 deaths, and uncounted numbers of wounded and disabled; · Displacement of more than two million people, of whom almost half in 2000 alone, during President Estrada’s “all-out-war”; · The emergence of “Muslim ghettos” in various cities in Mindanao and elsewhere in the country made up of displaced persons and individuals forced out of their areas of residence owing to the disappearance of employment opportunities caused by the conflict; · The exodus of illegal Muslim migrants to the neighboring state of Sabah, Malaysia. The recent crackdown by the Malaysian authorities as part of their anti-terrorist campaign resulted in en-masse deportation, and ensuing social and economic problems in their communities of origin; 9 An argument has been made that the Mindanao conflict is “never-ending” because both Christians and Muslims attach high independent value to political dominance. This is most probably true of certain individuals and fringe groups. The evidence on the ground, however, indicates strongly that the main organized groups attach far greater importance to autonomy than to “dominance” within a localized conflict area. The population at large, certainly, yearns for peace above all else. 6 · Increased incidence of poverty—already the highest in the country—from 56% in 1991 to 62.5% in 1997 and 71.3% in 2000. (Fourteen of the 20 poorest provinces in the Philippines are found in Mindanao); · Rampant kidnap-for-ransom activities and other crimes against persons and property, as a result of the bad security situation directly related to the conflict; and, for the same reason · Trafficking of illegal drugs and the criminal activities spawned by substance abuse have become a major law and order problem in the area – historically free of these problems. Indirect Economic Costs The most important of the indirect economic costs is investment deflection—not only from the conflict-affected areas, but from Mindanao as a whole and, to some extent, the Philippines itself. There is anecdotal but persuasive evidence from the international investment banking community that the “troubles” in the island have adversely affected the image of the country as an investor-friendly venue. This is consistent with the evidence provided by Paul Collier,10 to the effect that capital flight is a main result of civil conflict, with capital repatriation following a settlement of the conflict. In the case of Mindanao, however, such capital flight (limited by the low level of the initial capital) has been compounded by a failure to attract the equity investment that could be expected based on the area’s location and factor endowments—investment which was deflected to other areas in East and Southeast Asia. Related to the above is the impact of insecurity on agricultural production and productivity. Conflict and uncertainty (i) create community-level responses that inhibit agricultural investment—from the establishment of tree farms to irrigation improvements, and (ii) disintegrate agricultural marketing, thus reducing the profitability of current crop production. Binswanger and Rosenzweig,11 demonstrated how the need to cope with risk (weather risks in their case) lead poor farmers to forego otherwise profitable investments. This is an added reason why the estimate of the direct costs of conflict based on allocative input changes from a presumptive optimum equilibrium and within a constant-coefficient production function must be seen as merely a starting point. Even limiting the notion of costs to the purely economic component, consideration of the indirect impact of conflict on investment deflection and agricultural productivity could conservatively raise the overall economic cost of the Mindanao conflict to well over $10 billion during 1975–2002. But, of course, the strictly economic costs are only a part of the overall damage from civil conflict. Governance, Social and Institutional Costs Security has never been fully adequate in Mindanao, and the intensification of the civil conflict since 1975 has compounded the problem. The rule of law—an essential ingredient of good governance and development—has been especially weak in the area. Some advances had been made, particularly in the progressive recognition of customary law and its integration with formal legal and judicial systems. The resurgence of the conflict shortcircuited this progress. Moreover, lack of security has created an incentive for many to join groups of vigilantes, producing the negative externalities typically associated with private provision of security without effective public oversight. In addition to better law enforcement, strengthening of the rule of law in central and southwestern Mindanao will also call for recognizing in practice the need for co-existence of different legal traditions—Islam- 10 “On the Economic Consequences of Civil War,” Oxford Economic Papers, 51, 1999. 11 Hans Binswanger and Mark Rozensweig, “Wealth, Weather Risk and the Composition and Profitability of Agricultural Investments.” WPS 1055, World Bank, 1992. 7 based and “western”—and enabling a judicious mix of customary judicial systems with formal courts. In turn, this can only become possible if the civil conflict stops and security is restored for everyone concerned

#### Philippines impact- Federalism solves violence and terror in the Philippines

ERWIN COLCOL, journalist, 2017, “Federalism 'antidote' to ISIS threat to Bangsamoro”http://www.gmanetwork.com/news/news/nation/616188/federalism-antidote-to-isis-threat-to-bangsamoro-armm-exec/story/

The regional investments chief from the Autonomous Region in Muslim Mindanao (ARMM) on Wednesday said federalism is the "antidote" to counter the impending transnational violent extremism in the country, especially in Mindanao. "This is the antidote to this looming threat in the Bangsamoro right now," ARMM Regional Board of Investments chairman Ishak Mastura told the House Committee on Constitutional Amendments. "Far from it being a threat... if we go to federalism, it will be the antidote towards that dark scenario for the Philippines," he added. The committee, led by Southern Leyte Rep. Roger Mercado, invited officials from ARMM and the Cordillera Administrative Region to discuss their current situation, structure and functions in relation to the possibility of creating federal states. This, in case the government pushes for a shift to federalism. During the discussion, Mastura explained that the threat brought about by ISIS, or "transnational violent extremists," cannot be resolved though negotiations. "The big threat for the Philippines now, as you've seen in Marawi, is the ISIS which are called transnational violent extremists," he said. "When you talk of transnational violent extremists... there's no negotiation with the local actors here. In fact, they will send more people here to carve out territory out of the Philippines," Mastura added. But in other countries where ISIS is also a threat, Mastura said federalism is seen as a solution. "In various contexts around the world - whether Syria, Iraq, Libya, Ukraine - federalism has been pushed there and offered there as a solution and the only way to bring together the country," he said. "In fact, the savior will be federalism. And the president is right, he is from Mindanao, he knows the context," he added. President Rodrigo Duterte has long been planning to change the current unitary and centralized form of government to a federal system to give local governments a greater degree of autonomy. He also said this would solve the lingering problem of criminality in the country, and even went on to say that it is what the Moro people want. “Let me remind you. Per my observation, we cannot have a peaceful country if we do not agree to a federal setup. Ako ayaw kong magpilit ng tao. Para sa akin, kung ayaw mo, 'di 'wag,” Duterte said in his speech during the inauguration of the Mega Drug Rehabilitation and Treatment Center in Nueva Ecija in November last year. “Ang problema, ang Mindanao mismo and the Moro people will go for it at all costs,” he added. Under the proposed shift of government, the country will be divided into states that will be formed from the existing regions. Each state will be granted autonomy

### Modeling – Ethiopia

#### US federalism is modeled globally – history proves it’s the most popular framework

Law & Versteeg 14 (David S. Law is Professor of Law and Professor of Political Science at Washington University in St. Louis and Mila Versteeg is Associate Professor at the University of Virginia School of Law, “The Declining Influence of the United States Constitution,” p. 765-766, drr)

In 1987, to mark the bicentennial of the U.S. Constitution, Time magazine released a special issue in which it called the Constitution “a gift to all nations” and proclaimed proudly that 160 of the 170 nations then in existence had modeled their constitutions upon our own.2 As boastful as the claim may be, the editors of Time were not entirely without reason. Over its two centuries of history, the U.S. Constitution has had an immense impact on the development of constitutionalism around the world.3 Constitutional law has been called one of the “great exports” of the United States.4 In a number of countries, constitutional drafters have copied extensively, and at times verbatim, from the text of the U.S. Constitution.5 Countless more foreign constitutions have been characterized as this country’s “constitutional offspring.”6 It is widely assumed among scholars and the general public alike that the United States remains “the hegemonic model” for constitu- tionalism in other countries.7 The U.S. Constitution in particular continues to be described as “the essential prototype of a written, single-document constitution.”8 There can be no denying the popularity of the Constitution’s most important innovations, such as judicial review, entrenchment against legislative change, and the very idea of written constitutionalism.9 Today, almost 90% of all countries possess written constitutional documents backed by some kind of judicial enforcement.10 As a result, what Alexis de Tocqueville once described as an American peculiarity is now a basic feature of almost every state.11

#### Absent a global model, conflict becomes inevitable -

#### Strong federalist model is necessary to save Ethiopia’s fragile system – that’s key to Ethiopian stability

Gebremeden 6-21-17 (Yared Gebremeden is a senior correspondent for AllAfrica.com and received his degree in journalism and communications from Addis Ababa University, “Ethiopia: Federalism – Best Fit for Ethiopia Amidst Challenges,” drr)

For anyone with a sober and calm reflection about Ethiopia's political past, its present and future, saving Ethiopia's Federalism from the sledgehammer of both its architects and its detractors should now be a matter of national urgency. Scholars in the area strongly stressed that Federalism is the best fit for Ethiopia which needs to get further strengthened and protected as it is now at the younger stage. According to these experts, the federal system is chosen as the best option to Ethiopia due to various reasons. They assume that the system has enabled the nation to correct its long aged past administrative injustices, negligence, disrespectful and denial of identities of nations, nationalities and peoples. These all mistreatments had then initiated mistrust, dissatisfaction, revolts, instability and the possibility of disintegration in different parts of the past Ethiopia. According to the scholars and government officials whom this reporter approached, Ethiopia's Federalism is moving forward amid various challenges since its implementation. Dr. Tarkegne Adebo is a Political Scientist on the area of Conflict Management and Peace, Political Science Lecturer formerly at Sweden University and now at the Addis Ababa University. According to him, Federalism, as a political system, is one of the government structures which is useful for managing diversities to dealing with administrative and political issues both at the federal and state levels. And Ethiopia is implementing such a system to manage religious, ethnic, language and various kinds of diversities. Member states in a federation are usually given authority based on either geographical settlement or administrative purposes. However, in our case language, culture, settlement, Nations, Nationalities and Peoples and other diversities of the nation are used for federating nations, he said. As to him, Federalism first emerged in USA among 13 States with the aim of securing better economic, social, political and cultural development that is anchored on bettering public participation. Bekele Lemi is the other scholar on the area. He is a Lecturer in Oromia State University and now a Ph.D. student at Addis Ababa University on the field. For him, Federalism is one form of governance system usually employed in countries having diversified identities. Its primary objective lies on benefiting the public at large through actively engaging, and involving them. "The system though is crucial for decentralizing power to all government levels, it is beneficial for non-diverse nations as well," he recommended. It is due to this rationale that the system is employed in Ethiopia to engage and involve the public through a constitutional delegation of power given to the states. Conflict Resolution, Peace Building, Research and Constitution Affairs Director in the House of Federation Council Office Aschalew Tekle stated Federalism as an alternative political system which enables to entertain diversity. He stressed the system as the most suitable for Ethiopia as it is home for diverse Nations, Nationalities and Peoples with diverse cultural, ideological and religious backgrounds. Ethiopia has gone a long way to solve past political misdoings. As a result, it has enabled to register amazing social, political and economic achievements. These remarkable achievements, hence, are the fruit of the ongoing Federal system executed within the country, he further said. "Nowadays, Nations, Nationalities and Peoples have got a chance to administer themselves, both at a state and federal level in a way to accommodating diversities and give them a proper representation. It also presses their claims and protect their interest within the accepted channels of the federal frameworks," he further explained. Aschalew further highlighted that the Federal system has benefited women, youths and the public in the economic, social, political and cultural arenas. Deputy Premier Assistant and Communication Office Director Abiy Efrem on his part expressed Federalism as a chosen system to change nations in all aspects. "In our context Federalism entertains and appreciates our beautiful diversity through bringing about paradigm transformation with a heartfelt love and tolerance among the people of the nation." Abiy stressed that Federalism is the best system for Ethiopia to correct past faults of the dictatorial regimes. Stating to the past experience Abiy said "There were injustices, economic exploitation, political oppressions, human rights violation and denial of democratic rights prevailed for long in Ethiopia. Linguistic, cultural and religious differences, rather than being sources of respect and tolerance, had been causes to hatreds, discrimination, and conflict for long in Ethiopia."

#### Ethiopian instability spills over – leads to unchecked ethnic conflict

Lyons 11 (Terrence Lyons is an associate professor of Global Affairs in the College of Humanities and Social Sciences at George Mason University and served as a Fellow associated with the Conflict Resolution in Africa project at the Brookings Institution and as Senior Research and Program Leader for Conflict Resolution and Peacebuilding at the International Peace Research Institute, Oslo. “Ethiopia: Assessing Risks to Stability,” p. 13-14, drr)

Ethiopia’s domestic political dilemmas increasingly adopt transnational characteristics. Tensions along the Ethiopia-Eritrea border, ongoing violent conflict in Somalia and in the Ogaden region of Ethiopia, and the potentially volatile aftermath of South Sudan’s independence in July 2011 all have an impact on domestic politics in Ethiopia. These threats sometimes become linked to the regime’s opponents, as when the OLF and the ONLF operate out of Asmara or when Addis Ababa characterizes its domestic rivals as agents of regional “terrorists.” The global war on terrorism often has specifically local dynamics in the Horn of Africa. At present, Ethiopia’s borders are mostly stable: the Ethiopia/Eritrea border is frozen and unlikely to erupt into a new round of interstate war in the short term, while Ethiopia successfully managed to withdraw from Mogadishu, and Sudan is relatively peaceful following the January 2011 referendum, despite some armed clashes. In the next five years, however, it is possible that one or more of the conflicts in these neighboring states will escalate and have the potential to both absorb Addis Ababa’s attention and resources and to provide a source of cross-border weapons or arenas for war by proxy. From the Ethiopian government’s perspective, security threats from local opposition parties, internal insurgencies, regional rivals, spillover effects from neighboring civil wars, and trans- national anti-Ethiopian mobilization are all interlinked. The EPRDF, opposition parties like the CUD, and insurgent groups such as the OLF and ONLF all mobilize communities that are linked to their homeland through networks that are not restricted by geography. All these parties raise funds, broker political alliances, lobby host governments, engage in political debates through the Internet, and seek to frame their conflicts in ways that will elicit international support and undermine their opponents. When political space is restricted, those segments of the opposition able to operate outside of authoritarian control become more influential. The diaspora in the United States played a fundamental role in the political opening of 2005 and the subsequent crisis. The Ethiopian government and Ogadeni in the diaspora compete to frame the Ogaden conflict as “terrorism” by the ONLF or “genocide” by the EPRDF.16 The resentment against Addis Ababa and increased militancy among the Ogadeni will likely fuel conflicts for many years to come. While the war in the Ogaden is insufficient to topple the EPRDF and does not pose a real risk in the short term, if the incumbent regime were to falter, this movement, along with the OLF, could revive and pose new threats to stability. When linked to threats from Mogadishu and Asmara, the smoldering conflict in the Ogaden could escalate rapidly.

### Trade

#### Trade impact- Federalism = free trade

Steven G. Calabresi, Professor of Law at Northwestern and visiting prof at Yale since 2014, 1995, A Government of Limited and Enumerated Powers": In Defense of United States v. Lopez, The Michigan Law Review Association, https://www.jstor.org/stable/1289947?seq=1#page\_scan\_tab\_contents

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

#### Trade impact- free trade key to avoiding nuclear war

Coply News Service, news and reporting, 1999, Lexis Nexis.

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

### Liberty

#### Regulation leads to a national curriculum and deteriorates liberty

Jennifer Marshall and Lindsey Burke, Heritage Foundation policy analysists, May 2010, Why National Standards Won’t Fix American Education: Misalignment of Power and Incentives, http://www.heritage.org/education/report/why-national-standards-wont-fix-american-education-misalignment-power-and.

More disturbingly, the initiative to create and implement national standards and tests is likely to detract further from the real reforms that would align the incentives and power in public education so that they lead to better outcomes. But national standards and testing would not just fail to empower parents. National standards would force parents and taxpayers to surrender one of their most powerful tools for improving their schools: control of academic content, standards, and testing. Moreover, a national criterion-referenced test will inevitably lead to a national curriculum—a further misalignment of means and ends in education intended to equip self-governing citizens for liberty, and not a prospect most Americans would embrace. When President Jimmy Carter was intrigued by a national test proposed by Senator Claiborne Pell (D–RI) in 1977, Secretary of Health, Education, and Welfare Joseph Califano warned that “[a]ny set of test questions that the federal government prescribed should surely be suspect as a first step toward a national curriculum…. In its most extreme form, national control of curriculum is a form of national control of ideas.”[24]

#### Each violation of liberty could lead to massive atrocities- turns case

Harry Browne, Free-Market Investment Analyst, Writer, and Libertarian Party Candidate for President, 1995. “Why Government Doesn't Work.” p. 66-67. http://sandiego.indymedia.org/media/2006/10/119977.pdf

The reformers of the Cambodian revolution claimed to be building a better world. They forced people into reeducation programs to make them better citizens. Then they used force to regulate every aspect of commercial life. Then they forced office workers and intellectuals to give up their jobs and harvest rice, to round out their education. When people resisted having their lives turned upside down, the reformers had to use more and more force. By the time they were done, they had killed a third of the country’s population, destroyed the lives of almost everyone still alive, and devastated a nation. It all began with using force for the best of intentions — to create a better world. The Soviet leaders used coercion to provide economic security and to build a “New Man” — a human being who would put his fellow man ahead of himself. At least 10 million people died to help build the New Man and the Workers’ Paradise.37 But human nature never changed — and the workers’ lives were always Hell, not Paradise. ¶ In the 1930s many Germans gladly traded civil liberties for the economic revival and national pride Adolf Hitler promised them. But like every other grand dream to improve society by force, it ended in a nightmare of devastation and death. Professor R. J. Rummel has calculated that 119 million people have been killed by their own governments in this century.38 Were these people criminals? ¶ No, they were people who simply didn’t fit into the New Order — people who preferred their own dreams to those of the reformers. Every time you allow government to use force to make society better, you move another step closer to the nightmares of Cambodia, the Soviet Union, and Nazi Germany. We’ve already moved so far that our own government can perform with impunity the outrages described in the preceding chapters. These examples aren’t cases of government gone wrong; they are examples of government — period. They are what governments do — just as chasing cats is what dogs do. They are the natural consequence of letting government use force to bring about a drug-free nation, to tax someone else to better your life, to guarantee your economic security, to assure that no one can mistreat you or hurt your feelings, and to cover up the damage of all the failed government programs that came before.

### Cyber Security

#### Federalization destroys cybersecurity and public health

Mayer et al [Matt A. Mayer, Former senior official with the U.S. Department of Homeland Security and Visiting Fellow at The Heritage Foundation; James Jay Carafano, Ph.D., Deputy Director of the Kathryn and Shelby Cullom Davis Institute for International Studies and Director of the Douglas and Sarah Allison Center for Foreign Policy Studies; Jessica Zuckerman, Research Assistant in the Allison Center, August 23, 2011. “Homeland Security 4.0: Overcoming Centralization, Complacency, and Politics,” The Heritage Foundation. http://www.heritage.org/research/reports/2011/08/homeland-security-4-0-overcoming-centralization-complacency-and-politics]

Federal catastrophic disaster planning remains moribund, while Washington declares more federal disaster declarations every year for events of lesser and lesser consequence. Bad policies are endangering progress in disaster preparedness, immigration, and border security. For its part, Congress’s performance has remained lackluster. Unworkable mandates, such as the requirement for 100 percent scanning of inbound transoceanic shipping containers, remain on the books. Congressional oversight, scattered across dozens of committees and subcommittees, remains dysfunctional. Getting the national homeland security enterprise right remains one of the most difficult challenges in Washington because it runs up against the standard Washington practices of overcentralization, complacency, and entrenched politics. Centralization. The U.S. Constitution divides power between the federal government and state and local governments. This federalist principle is not some archaic concept dreamt up by the Founding Fathers to placate skeptics of a strong central government, but rather deliberately designed to protect the nation from overcentralization of power in Washington. It also recognizes the reality that state and local governments have the resources, geographic locus, and experience to best deal with physical threats in their own communities. Complacency. Ensuring national security is a competition between determined, innovative adversaries and the American people. If the U.S. becomes complacent or focuses on the past, it will pay a heavy price. On the other hand, Americans and their representatives must temper expectations with realistic outcomes, realizing that the nation cannot expect to stay one step ahead of the terrorists if it accepts the status quo. Politics. Homeland security is at least as susceptible to politics as every other function of the federal government. Every Member of Congress has constituents, companies, and other stakeholders lobbying for more money and more resources. Every Member has committee assignments that endow him or her with power and attract powerful “friends.” Congress has a reputation for passing laws that send politically expedient messages, but call for unattainable results. Politics frequently fails to produce good policy results. Ten years after 9/11 is a good time to address these challenges directly. The Department of Homeland Security (DHS) recently released its 67-page report “Implementing 9/11 Commission Recommendations: Progress Report 2011.” Regrettably, this summary report epitomizes everything that is wrong with the current state of homeland security: too much triumphalism and not enough recognition of the pressing challenges in building the homeland security enterprise that the nation needs. The report does not acknowledge how overcentralization, complacency, and misguided politics have thwarted efforts to address the challenges laid out by the 9/11 Commission. It contains little discussion of whether these recommendations are still relevant or whether they were the right answers in the first place. Finally, the 9/11 Commission findings focused on the problems of 10 years ago as they were understood then, not on today’s threats. The experience of the past 10 years suggests different answers. The recommendations in this report are based on research by Heritage Foundation analysts over the past decade and on extensive outreach to and engagement with many of the stakeholders in the homeland security enterprise. This is the third in a series of reports in which The Heritage Foundation has participated. “DHS 2.0: Rethinking the Department of Homeland Security” (2004) served as a basis for the reorganization undertaken in 2005. “Homeland Security 3.0: Building a National Enterprise to Keep America Safe, Free, and Prosperous” (2008) provided insights for the department’s first Quadrennial Homeland Security Review (QHSR) in 2010. The Obama Administration also followed the report’s recommendation to integrate the National Security and Homeland Security Council staffs. Now is the time to think about the next iteration of homeland security. The recommendations in this report outline the essential steps for establishing enduring and effective homeland security for the United States. This report does not address every challenge. For example, it does not discuss cyber security in depth, which has become a critical homeland security concern that the nation is not well poised to address, according to many experts. The first step in addressing the problem of cybersecurity and other emerging challenges that range from bioterrorist threats and pandemics to natural catastrophes is to lay the foundation for homeland security. That is the aim of this report. The report’s 35 recommendations are organized in three sections, corresponding with the three significant obstacles: overcentralization, complacency, and politics. In each section, the research team has noted critical findings and observations and identified means to address them. Part I: Making Federalism Work The U.S. Constitution created a federalist system. It gave the federal government expressed, but limited, powers and reserved all remaining powers for the states and the people. The Ninth and Tenth Amendments firmly established the federalist system of government by stating that the rights contained in the Bill of Rights should “not be construed to deny or disparage others retained by the people”[1] and by adding the corollary provision that “powers not delegated to the United States by the Constitution ... are reserved to the States respectively, or to the people.”[2] As James Madison noted in The Federalist Papers, “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 States.”[3] Yet over the past 70 years, Washington has continued to seize or de facto possess ever-growing control over activities that had long been the purview of state and local governments. This is equally true in homeland security. For example, the federal government continues to subsidize more and more of the response to disasters, increasing reliance on the federal government and undermining efforts to create stronger and more resilient communities. This trend is making Americans less safe. The inherent bureaucratic processes of federal decision making, the geographic size and diversity of the United States, and the minimal manpower that the federal government actually controls across America are poorly suited to many homeland security tasks. This problem has also taken the U.S. further away from its constitutional foundation, with the federal government taking still more power away from state and local governments under the guise of the latest emergency. It is time to end this power grab. The next homeland security agenda should lead the United States back toward its constitutional foundation, in which the federal government possessed limited and discrete powers and the state and local governments exercised the bulk of the powers that impacted lives of Americans. Choosing the right path back toward federalism will not be easy. It will require hard choices by decision makers and an American public willing to stop looking to Washington to solve every problem.

#### Cyberattack escalates to global war

Sean Lawson Assistant professor in the Department of Communication at the University of Utah, 2009 Cross-Domain Response to Cyber Attacks and the Threat of Conflict, http://www.seanlawson.net/?p=477

At a time when it seems impossible to avoid the seemingly growing hysteria over the threat of cyber war,[1] network security expert Marcus Ranum delivered a refreshing talk recently, “The Problem with Cyber War,” that took a critical look at a number of the assumptions underlying contemporary cybersecurity discourse in the United States.  He addressed one issue in partiuclar that I would like to riff on here, the issue of conflict escalation–i.e. the possibility that offensive use of cyber attacks could escalate to the use of physical force.  As I will show, his concerns are entirely legitimate as current U.S. military cyber doctrine assumes the possibility of what I call “cross-domain responses” to cyberattacks. Backing Your Adversary (Mentally) into a Corner Based on the premise that completely blinding a potential adversary is a good indicator to that adversary that an attack is iminent, Ranum has argued that “The best thing that you could possibly do if you want to start World War III is launch a cyber attack. [...] When people talk about cyber war like it’s a practical thing, what they’re really doing is messing with the OK button for starting World War III.  We need to get them to sit the f-k down and shut the f-k up.” [2] He is making a point similar to one that I have made in the past: Taking away an adversary’s ability to make rational decisions could backfire. [3]  For example, Gregory Witol cautions that “attacking the decision maker’s ability to perform rational calculations may cause more problems than it hopes to resolveÃ¢â‚¬Â¦ Removing the capacity for rational action may result in completely unforeseen consequences, including longer and bloodier battles than may otherwise have been.” [4] Ã¯Â»Â¿Cross-Domain Response So, from a theoretical standpoint, I think his concerns are well founded.  But the current state of U.S. policy may be cause for even greater concern.  It’s not just worrisome that a hypothetical blinding attack via cyberspace could send a signal of imminent attack and therefore trigger an irrational response from the adversary.  What is also cause for concern is that current U.S. policy indicates that “kinetic attacks” (i.e. physical use of force) are seen as potentially legitimate responses to cyber attacks.  Most worrisome is that current U.S. policy implies that a nuclear response is possible, something that policy makers have not denied in recent press reports. The reason, in part, is that the U.S. defense community has increasingly come to see cyberspace as a “domain of warfare” equivalent to air, land, sea, and space.  The definition of cyberspace as its own domain of warfare helps in its own right to blur the online/offline, physical-space/cyberspace boundary.  But thinking logically about the potential consequences of this framing leads to some disconcerting conclusions. If cyberspace is a domain of warfare, then it becomes possible to define “cyber attacks” (whatever those may be said to entail) as acts of war.  But what happens if the U.S. is attacked in any of the other domains?  It retaliates.  But it usually does not respond only within the domain in which it was attacked.  Rather, responses are typically “cross-domain responses”–i.e. a massive bombing on U.S. soil or vital U.S. interests abroad (e.g. think 9/11 or Pearl Harbor) might lead to air strikes against the attacker.  Even more likely given a U.S. military “way of warfare” that emphasizes multidimensional, “joint” operations is a massive conventional (i.e. non-nuclear) response against the attacker in all domains (air, land, sea, space), simultaneously. The possibility of “kinetic action” in response to cyber attack, or as part of offensive U.S. cyber operations, is part of the current (2006) National Military Strategy for Cyberspace Operations [5]: (U) Kinetic Actions. DOD will conduct kinetic missions to preserve freedom of action and strategic advantage in cyberspace. Kinetic actions can be either offensive or defensive and used in conjunction with other mission areas to achieve optimal military effects. Of course, the possibility that a cyber attack on the U.S. could lead to a U.S. nuclear reply constitutes possibly the ultimate in “cross-domain response.”  And while this may seem far fetched, it has not been ruled out by U.S. defense policy makers and is, in fact, implied in current U.S. defense policy documents.  From the National Military Strategy of the United States (2004): “The term WMD/E relates to a broad range of adversary capabilities that pose potentially devastating impacts.  WMD/E includes chemical, biological, radiological, nuclear, and enhanced high explosive weapons as well as other, more asymmetrical ‘weapons’.   They may rely more on disruptive impact than destructive kinetic effects.  For example, cyber attacks on US commercial information systems or attacks against transportation networks may have a greater economic or psychological effect than a relatively small release of a lethal agent.” [6] The authors of a 2009 National Academies of Science report on cyberwarfare respond to this by saying, “Coupled with the declaratory policy on nuclear weapons described earlier, this statement implies that the United States will regard certain kinds of cyberattacks against the United States as being in the same category as nuclear, biological, and chemical weapons, and thus that a nuclear response to certain kinds of cyberattacks (namely, cyberattacks with devastating impacts) may be possible.  It also sets a relevant scale–a cyberattack that has an impact larger than that associated with a relatively small release of a lethal agent is regarded with the same or greater seriousness.” [7]

#### The threat is real

Eugue Habiger Retired Air Force General, 2010 Cyberwarfare and Cyberterrorism, The Cyber Security Institute, p. 11-19,

However, there are reasons to believe that what is going on now amounts to a fundamental shift as opposed to business as usual. Today’s network exploitation or information operation trespasses possess a number of characteristics that suggest that the line between espionage and conflict has been, or is close to being, crossed. (What that suggests for the proper response is a different matter.) First, the number of cyberattacks we are facing is growing significantly. Andrew Palowitch, a former CIA officialnow consulting with the US Strategic Command (STRATCOM), which oversees the Defense Department’s Joint Task Force‐Global Network Operations, recently told a meeting of experts that the Defense Department has experienced almost 80,000 computer attacks, and some number of these assaults have actually “reduced” the military’s “operational capabilities.”20 Second, the nature of these attacks is starting to shift from penetration attempts aimed at gathering intelligence (cyber spying) to offensive efforts aimed at taking down systems (cyberattacks). Palowitch put this in stark terms last November, “We are currently in a cyberwar and war is going on today.”21 Third, these recent attacks need to be taken in a broader strategic context. Both Russia and China have stepped up their offensive efforts and taken a much more aggressive cyberwarfare posture. The Chinese have developed an openly discussed cyberwar strategy aimed at achieving electronic dominance over the U.S. and its allies by 2050. In 2007 the Department of Defense reported that for the first time China has developed first strike viruses, marking a major shift from prior investments in defensive measures.22 And in the intervening period China has launched a series of offensive cyber operations against U.S. government and private sector networks and infrastructure. In 2007, Gen. James Cartwright, the former head of STRATCOM and now the Vice Chairman of the Joint Chiefs of Staff, told the US‐China Economic and Security Review Commission that China’s ability to launch “denial of service” attacks to overwhelm an IT system is of particular concern. 23 Russia also has already begun to wage offensive cyberwar. At the outset of the recent hostilities with Georgia, Russian assets launched a series of cyberattacks against the Georgian government and its critical infrastructure systems, including media, banking and transportation sites.24 In 2007, cyberattacks that many experts attribute, directly or indirectly, to Russia shut down the Estonia government’s IT systems. Fourth, the current geopolitical context must also be factored into any effort to gauge the degree of threat of cyberwar. The start of the new Obama Administration has begun to help reduce tensions between the United States and other nations. And, the new administration has taken initial steps to improve bilateral relations specifically with both China and Russia. However, it must be said that over the last few years the posture of both the Chinese and Russian governments toward America has clearly become more assertive, and at times even aggressive. Some commentators have talked about the prospects of a cyber Pearl Harbor, and the pattern of Chinese and Russian behavior to date gives reason for concern along these lines: both nations have offensive cyberwarfare strategies in place; both nations have taken the cyber equivalent of building up their forces; both nations now regularly probe our cyber defenses looking for gaps to be exploited; both nations have begun taking actions that cross the line from cyberespionage to cyberaggression; and, our bilateral relations with both nations are increasingly fractious and complicated by areas of marked, direct competition. Clearly, there a sharp differences between current U.S. relations with these two nations and relations between the US and Japan just prior to World War II. However, from a strategic defense perspective, there are enough warning signs to warrant preparation. In addition to the threat of cyberwar, the limited resources required to carry out even a large scale cyberattack also makes likely the potential for a significant cyberterror attack against the United States. However, the lack of a long list of specific incidences of cyberterrorism should provide no comfort. There is strong evidence to suggest that al Qaeda has the ability to conduct cyberterror attacks against the United States and its allies. Al Qaeda and other terrorist organizations are extremely active in cyberspace, using these technologies to communicate among themselves and others, carry out logistics, recruit members, and wage information warfare. For example, al Qaeda leaders used email to communicate with the 9‐11 terrorists and the 9‐11 terrorists used the Internet to make travel plans and book flights. Osama bin Laden and other al Qaeda members routinely post videos and other messages to online sites to communicate. Moreover, there is evidence of efforts that al Qaeda and other terrorist organizations are actively developing cyberterrorism capabilities and seeking to carry out cyberterrorist attacks. For example, the Washington Post has reported that “U.S. investigators have found evidence in the logs that mark a browser's path through the Internet that al Qaeda operators spent time on sites that offer software and programming instructions for the digital switches that run power, water, transport and communications grids. In some interrogations . . . al Qaeda prisoners have described intentions, in general terms, to use those tools.”25 Similarly, a 2002 CIA report on the cyberterror threat to a member of the Senate stated that al Qaeda and Hezbollah have become "more adept at using the internet and computer technologies.”26 The FBI has issued bulletins stating that, “U. S. law enforcement and intelligence agencies have received indications that Al Qaeda members have sought information on Supervisory Control And Data Acquisition (SCADA) systems available on multiple SCADA‐related web sites.”27 In addition a number of jihadist websites, such as 7hj.7hj.com, teach computer attack and hacking skills in the service of Islam.28 While al Qaeda may lack the cyber‐attack capability of nations like Russia and China, there is every reason to believe its operatives, and those of its ilk, are as capable as the cyber criminals and hackers who routinely effect great harm on the world’s digital infrastructure generally and American assets specifically. In fact, perhaps, the most troubling indication of the level of the cyberterrorist threat is the countless, serious non‐terrorist cyberattacks routinely carried out by criminals, hackers, disgruntled insiders, crime syndicates and the like. If run‐of‐the‐mill criminals and hackers can threaten powergrids, hack vital military networks, steal vast sums of money, take down a city’s of traffic lights, compromise the Federal Aviation Administration’s air traffic control systems, among other attacks, it is overwhelmingly likely that terrorists can carry out similar, if not more malicious attacks. Moreover, even if the world’s terrorists are unable to breed these skills, they can certainly buy them. There are untold numbers of cybermercenaries around the world—sophisticated hackers with advanced training who would be willing to offer their services for the right price. Finally, given the nature of our understanding of cyber threats, there is always the possibility that we have already been the victim or a cyberterrorist attack, or such an attack has already been set but not yet effectuated, and we don’t know it yet. Instead, a well‐designed cyberattack has the capacity cause widespread chaos, sow societal unrest, undermine national governments, spread paralyzing fear and anxiety, and create a state of utter turmoil, all without taking a single life. A sophisticated cyberattack could throw a nation’s banking and finance system into chaos causing markets to crash, prompting runs on banks, degrading confidence in markets, perhaps even putting the nation’s currency in play and making the government look helpless and hapless. In today’s difficult economy, imagine how Americans would react if vast sums of money were taken from their accounts and their supporting financial records were destroyed. A truly nefarious cyberattacker could carry out an attack in such a way (akin to Robin Hood) as to engender populist support and deepen rifts within our society, thereby making efforts to restore the system all the more difficult. A modestly advanced enemy could use a cyberattack to shut down (if not physically damage) one or more regional power grids. An entire region could be cast into total darkness, power‐dependent systems could be shutdown. An attack on one or more regional power grids could also cause cascading effects that could jeopardize our entire national grid. When word leaks that the blackout was caused by a cyberattack, the specter of a foreign enemy capable of sending the entire nation into darkness would only increase the fear, turmoil and unrest. While the finance and energy sectors are considered prime targets for a cyberattack, an attack on any of the 17 delineated critical infrastructure sectors could have a major impact on the United States. For example, our healthcare system is already technologically driven and the Obama Administration’s e‐health efforts will only increase that dependency. A cyberattack on the U.S. e‐health infrastructure could send our healthcare system into chaos and put countless of lives at risk. Imagine if emergency room physicians and surgeons were suddenly no longer able to access vital patient information. A cyberattack on our nation’s water systems could likewise cause widespread disruption. An attack on the control systems for one or more dams could put entire communities at risk of being inundated, and could create ripple effects across the water, agriculture, and energy sectors. Similar water control system attacks could be used to at least temporarily deny water to otherwise arid regions, impacting everything from the quality of life in these areas to agriculture. In 2007, the U.S. Cyber Consequences Unit determined that the destruction from a single wave of cyberattacks on critical infrastructures could exceed $700 billion, which would be the rough equivalent of 50 Katrina‐esque hurricanes hitting the United States all at the same time.29 Similarly, one IT security source has estimated that the impact of a single day cyberwar attack that focused on and disrupted U.S. credit and debit card transactions would be approximately $35 billion.30 Another way to gauge the potential for harm is in comparison to other similar noncyberattack infrastructure failures. For example, the August 2003 regional power grid blackout is estimated to have cost the U.S. economy up to $10 billion, or roughly .1 percent of the nation’s GDP. 31 That said, a cyberattack of the exact same magnitude would most certainly have a much larger impact. The origin of the 2003 blackout was almost immediately disclosed as an atypical system failure having nothing to do with terrorism. This made the event both less threatening and likely a single time occurrence. Had it been disclosed that the event was the result of an attack that could readily be repeated the impacts would likely have grown substantially, if not exponentially. Additionally, a cyberattack could also be used to disrupt our nation’s defenses or distract our national leaders in advance of a more traditional conventional or strategic attack. Many military leaders actually believe that such a disruptive cyber pre‐offensive is the most effective use of offensive cyber capabilities. This is, in fact, the way Russia utilized cyberattackers—whether government assets, governmentdirected/ coordinated assets, or allied cyber irregulars—in advance of the invasion of Georgia. Widespread distributed denial of service (DDOS) attacks were launched on the Georgian governments IT systems. Roughly a day later Russian armor rolled into Georgian territory. The cyberattacks were used to prepare the battlefield; they denied the Georgian government a critical communications tool isolating it from its citizens and degrading its command and control capabilities precisely at the time of attack. In this way, these attacks were the functional equivalent of conventional air and/or missile strikes on a nation’s communications infrastructure.32 One interesting element of the Georgian cyberattacks has been generally overlooked: On July 20th, weeks before the August cyberattack, the website of Georgian President Mikheil Saakashvili was overwhelmed by a more narrowly focused, but technologically similar DDOS attack.33 This should be particularly chilling to American national security experts as our systems undergo the same sorts of focused, probing attacks on a constant basis. The ability of an enemy to use a cyberattack to counter our offensive capabilities or soften our defenses for a wider offensive against the United States is much more than mere speculation. In fact, in Iraq it is already happening. Iraq insurgents are now using off‐the‐shelf software (costing just $26) to hack U.S. drones (costing $4.5 million each), allowing them to intercept the video feed from these drones.34 By hacking these drones the insurgents have succeeded in greatly reducing one of our most valuable sources of real**‐**time intelligence and situational awareness. If our enemies in Iraq are capable of such an effective cyberattack against one of our more sophisticated systems, consider what a more technologically advanced enemy could do. At the strategic level, in 2008, as the United States Central Command was leading wars in both Iraq and Afghanistan, a cyber intruder compromised the security of the Command and sat within its IT systems, monitoring everything the Command was doing. 35 This time the attacker simply gathered vast amounts of intelligence. However, it is clear that the attacker could have used this access to wage cyberwar—altering information, disrupting the flow of information, destroying information, taking down systems—against the United States forces already at war. Similarly, during 2003 as the United States prepared for and began the War in Iraq, the IT networks of the Department of Defense were hacked 294 times.36 By August of 2004, with America at war, these ongoing attacks compelled then‐Deputy Secretary of Defense Paul Wolfowitz to write in a memo that, "Recent exploits have reduced operational capabilities on our networks."37 This wasn’t the first time that our national security IT infrastructure was penetrated immediately in advance of a U.S. military option.38 In February of 1998 the Solar Sunrise attacks systematically compromised a series of Department of Defense networks. What is often overlooked is that these attacks occurred during the ramp up period ahead of potential military action against Iraq. The attackers were able to obtain vast amounts of sensitive information—information that would have certainly been of value to an enemy’s military leaders. There is no way to prove that these actions were purposefully launched with the specific intent to distract American military assets or degrade our capabilities. However, such ambiguities—the inability to specifically attribute actions and motives to actors—are the very nature of cyberspace. Perhaps, these repeated patterns of behavior were mere coincidence, or perhaps they weren’t. The potential that an enemy might use a cyberattack to soften physical defenses, increase the gravity of harms from kinetic attacks, or both, significantly increases the potential harms from a cyberattack. Consider the gravity of the threat and risk if an enemy, rightly or wrongly, believed that it could use a cyberattack to degrade our strategic weapons capabilities. Such an enemy might be convinced that it could win a war—conventional or even nuclear—against the United States. The effect of this would be to undermine our deterrence‐based defenses, making us significantly more at risk of a major war.

### Terrorism Impact

#### Terror threat high – federalist decentralization of power is key to solve

Matt A. Mayer, Former senior official with the U.S. Department of Homeland Security, is a visiting fellow at the American Enterprise Institute, October 15, 2016. “Terrorism’s Dark Clouds Are Gathering on the Horizon,” Foreign & Defense Policy: American Enterprise Institute. https://www.aei.org/publication/terrorisms-dark-clouds-are-gathering-on-the-horizon/

The terrorist threat is higher than ever. It is only going to get worse. Two trends occurring in the Middle East foreshadow a worsening threat environment in the West. First, with the collapse of ISIS’s dominance in Syria and Iraq, the foreign fighters who made their way to the Middle East are coming back. Security entities in the West are doing all they can to prevent their return, but, given the numerous land and water entry points around the Mediterranean Sea and continued migrant flows within which they can hide, they simply can’t stop every returning fighter. Equally troubling is the presence in the West of frustrated fighters who wanted to travel to the Middle East to join ISIS, but couldn’t find a way. Estimates place the number of these radicalized individuals at more than 10,000 — roughly 10 times the number of returning fighters. Combined with the million-plus migrants (about whom we know very little) who poured into Europe over the last year, European security agencies are spread too thinly. Their ability to identify and monitor, let alone stop, all of these individuals is weak, at best. The second trend is the re-emergence of al-Qaeda (not that it ever went away), especially in Syria where an al-Qaeda affiliate has patiently established itself. In a shift toward the ISIS model, al-Qaeda has moved from focusing largely on spectacular, catastrophic attacks on the West to calling on adherents to “attack the West by whatever means.” The West’s intelligence agencies have become very good at detecting and thwarting the former types of attacks, but simply aren’t constructed and resourced for an Uberized terrorism environment. In the United States, the Federal Bureau of Investigation, with only 35,000 personnel, is grossly outmanned. Moreover, a centralized entity is ill-equipped to fight a decentralized enemy. The only way to increase our capabilities and odds of winning is to evolve our national security apparatus by decentralizing elements to local law enforcement, which has a million badged officers and decades of experience to contribute to the fight. First, with a growing volume of terrorist recruiting, communications, planning and execution occurring behind encrypted technologies, substantially increasing the use of human intelligence (HUMINT) being done by local law enforcement is vital. Given their years of experience infiltrating organized crime, gangs and transnational networks, local law enforcement in our higher-risk cities possess the skill and legal framework to monitor, surveil and go undercover when necessary. HUMINT will give us the access undermined by the decline in signals intelligence due to encryption. Next, we can’t defeat terrorism without the help of Muslim communities. Most of the attacks over the last year involved suspicious precursor activities witnessed by family, friends, neighbors or acquaintances. We must build inroads into the Muslim community to increase the trust they have in law enforcement and open critical lines of communication. Doing so will facilitate cooperation, as Muslim parents realize reaching out to law enforcement could get their wayward child help, not handcuffs or worse. We need to build off-ramps before young Muslims are too far down the radicalization path. Last, we must reform our domestic intelligence enterprise to consolidate information and intelligence activities in our states. Currently, in too many places, those activities are bifurcated into two different entities (FBI-led Joint Terrorism Task Forces and DHS-funded fusion centers) residing in physically separate locations. While sincere efforts are made to connect the two entities, it is axiomatic that separation and distinct operations increase the odds key data are not gathered and analyzed in one place. We can’t keep failing to connect the dots. Terrorism’s dark clouds are gathering on the horizon. Our Constitution gives the federal government great powers to act to keep us safe. It also recognizes the important role local law enforcement plays in our domestic security. We need a president who will bring both pieces together to form a national security whole.

#### Bioterror attack is highly probable and causes extinction – tech diffusion makes acquisition and deployment easy

Nathan Myhrvold, formerly Chief Technology Officer at Microsoft, co-founder of Intellectual Ventures, MA in mathematical economics and PhD in theoretical and mathematical physics @ Princeton, 13 “Strategic terrorism: a call to action,” Lawfare, July 2013, http://www.lawfareblog.com/wp-content/uploads/2013/07/Strategic-Terrorism-Myhrvold-7-3-2013.pdf

Biotechnology is advancing so rapidly that it is hard to keep track of all the new potential threats. Nor is it clear that anyone is even trying. In addition to lethality and drug resistance, many other parameters can be played with, given that the infectious power of an epidemic depends on many properties, including the length of the latency period during which a person is contagious but asymptomatic. Delaying the onset of serious symptoms allows each new case to spread to more people and thus makes the virus harder to stop. This dynamic is perhaps best illustrated by HIV , which is very difficult to transmit compared with smallpox and many other viruses. Intimate contact is needed, and even then, the infection rate is low. The balancing factor is that HIV can take years to progress to AIDS , which can then take many more years to kill the victim. What makes HIV so dangerous is that infected people have lots of opportunities to infect others. This property has allowed HIV to claim more than 30 million lives so far, and approximately 34 million people are now living with this virus and facing a highly uncertain future.15 A virus genetically engineered to infect its host quickly, to generate symptoms slowly—say, only after weeks or months—and to spread easily through the air or by casual contact would be vastly more devastating than HIV . It could silently penetrate the population to unleash its deadly effects suddenly. This type of epidemic would be almost impossible to combat because most of the infections would occur before the epidemic became obvious. A technologically sophisticated terrorist group could develop such a virus and kill a large part of humanity with it. Indeed, terrorists may not have to develop it themselves: some scientist may do so first and publish the details. Given the rate at which biologists are making discoveries about viruses and the immune system, at some point in the near future, someone may create artificial pathogens that could drive the human race to extinction. Indeed, a detailed species-elimination plan of this nature was openly proposed in a scientific journal. The ostensible purpose of that particular research was to suggest a way to extirpate the malaria mosquito, but similar techniques could be directed toward humans.16 When I’ve talked to molecular biologists about this method, they are quick to point out that it is slow and easily detectable and could be fought with biotech remedies. If you challenge them to come up with improvements to the suggested attack plan, however, they have plenty of ideas. Modern biotechnology will soon be capable, if it is not already, of bringing about the demise of the human race— or at least of killing a sufficient number of people to end high-tech civilization and set humanity back 1,000 years or more. That terrorist groups could achieve this level of technological sophistication may seem far-fetched, but keep in mind that it takes only a handful of individuals to accomplish these tasks. Never has lethal power of this potency been accessible to so few, so easily. Even more dramatically than nuclear proliferation, modern biological science has frighteningly undermined the correlation between the lethality of a weapon and its cost, a fundamentally stabilizing mechanism throughout history. Access to extremely lethal agents—lethal enough to exterminate Homo sapiens—will be available to anybody with a solid background in biology, terrorists included.

### Economy Impact

#### Federalism maintains U.S. economic competitiveness

Christopher DeMuth, D.C. Searle Senior Fellow at AEI and former president (1986-2008), J.D. from University of Chicago, 6/12/2011. “Beware the Erosion of Competition” American Enterprise Institute. http://www.aei.org/article/society-and-culture/free-enterprise/beware-the-erosion-of-competition/

Competition is a fact of life--the driving force of biological evolution and a constant presence in all human interactions. It is also a method of organization, used to promote efficiency and excellence and to resolve conflict peaceably. Competition is the key to the success of private-market economies and is used in many other areas; for example, the Nobel and Pulitzer prizes spur competition in the sciences and in journalism. Even when we don't like competition when we face it in our personal lives, we appreciate its benefits and admire it in action--from Steve Jobs to Li Na. The American Constitution uses competition to promote good government. Regular democratic elections limit incumbents' hold on power and open succession to outside competition. The "separation of powers" in our national government forces Congress and the president to compete for public favor and to balance each other's excesses; the 2010 election is only the latest to demonstrate that Americans like their government divided. Under our federalist system, states compete for citizens and employers by offering different mixes of schools, transportation, public amenities, regulations, and taxes--think of booming Texas versus bankrupt California. And the federal and state governments compete with each other, as in the current state challenges to the Affordable Care Act (Obamacare) and the federal challenge to Arizona's immigration law. The Constitution also protects and promotes private competition. The First Amendment is more than a matter of individual rights: it also ensures unbridled competition in the supply of news, religious faiths, political creeds, and information of all kinds. These are great goods in themselves and also keep political officials relatively honest and well-informed. And out of mischief: the First Amendment averts political-religious violence, stemming from the prospect of a state religious monopoly, of the sort that was common in England and Europe when the Constitution was drafted and that remains a terrible problem in the Arab Muslim world today. Finally, the Constitution contains many provisions protecting private property and free economic competition. The Founders regarded competitive enterprise as a critical source of prosperity and national strength. They also hoped that numerous competing and conflicting interests would cancel each other out politically, thereby weakening demands for special-interest favoritism. The competitive nature of the American system means that our government is often fractious, muddled, and indecisive. As a result, we hear frequent calls for a parliamentary system where the executive is a handmaiden of the legislature. But parliamentary systems are prone to instability--especially in the face of crises, when legislative divisions can cause the government to fall at the worst possible time. Also, authoritarian governments such as China's are sometimes envied (sotto voce) for their superior decisiveness and orderliness. But authoritarian governments become corrupt, sclerotic, and insular over time. The American regime, now 222 years old, has outlasted hundreds of regimes that looked stronger for a time but came to ignominious and often ruinous ends. In government as in biology, competition promotes resilience and adaptability. Our political system is, however, becoming markedly less competitive. State policy competition is being supplanted by "cooperative federalism"--as a result of federal policies (such as Medicaid) that encourage state uniformity and judicial policies that permit states to "export" taxes and regulatory requirements to citizens of other states. The National Labor Relations Board's current effort to prevent Boeing from opening a new plant in South Carolina rather than Washington state is a conspicuous effort to inhibit state policy competition. But the most worrisome instance of declining political competition is the weakening--collapse might be a better word--of the separation of powers. Our national government is now, in many critical respects, a unilateral Executive government with occasional oversight by the Congress and Judiciary. Most domestic discretionary policy-making is now conducted by regulatory agencies. The agencies are executive-legislative hybrids that write and enforce rules--de facto laws which often have enormous economic consequences--under very broad delegations of authority from the Congress. The migration of law-making from the Congress to regulatory agencies has been underway for many decades, but has accelerated dramatically since the financial crisis of 2008. In the course of the financial crisis, the Federal Reserve Board and Treasury Department made financial commitments of more than $2 trillion, used regulatory powers aggressively to arrange mergers of private banks, and bailed out and acquired substantial control over scores of major financial institutions and two automobile companies. The major decisions were all made within the executive branch, with scant congressional involvement. Congress was outraged--yet promptly acquiesced through supporting legislation. And then, a year later, Congress passed two laws--the Dodd-Frank Act and Affordable Care Act--which set new standards of legislative delegation. Although both statutes are very long, they decide very little; instead they create new regulatory agencies and launch many hundreds of new rule-making proceedings, under extraordinarily vague standards that leave the serious policy choices to the agencies. The new structures of national policy in the financial and health-care sectors are still largely unknown, to be determined as the agency proceedings run their course. But one thing is certain: both sectors will become much less competitive. A few large financial institutions will be designated "systemically important" and thereafter operate under the government's protection. When power is concentrated in government, it becomes concentrated in the private sector as well.

#### Economic collapse causes global wars

Jedediah Royal, Director of Cooperative Threat Reduction at the U.S. Department of Defense, 10 Economics of War and Peace: Economic, Legal, and Political Perspectives

Less intuitive is how periods of economic decline may increase the likelihood of external conflict. Political science literature has contributed a moderate degree of attention to the impact of economic decline and the security and defence behaviour of interdependent stales. Research in this vein has been considered at systemic, dyadic and national levels. Several notable contributions follow. First, on the systemic level. Pollins (20081 advances Modclski and Thompson's (1996) work on leadership cycle theory, finding that rhythms in the global economy are associated with the rise and fall of a pre-eminent power and the often bloody transition from one pre-eminent leader to the next. As such, exogenous shocks such as economic crises could usher in a redistribution of relative power (see also Gilpin. 19SJ) that leads to uncertainty about power balances, increasing the risk of miscalculation (Fcaron. 1995). Alternatively, even a relatively certain redistribution of power could lead to a permissive environment for conflict as a rising power may seek to challenge a declining power (Werner. 1999). Separately. Pollins (1996) also shows that global economic cycles combined with parallel leadership cycles impact the likelihood of conflict among major, medium and small powers, although he suggests that the causes and connections between global economic conditions and security conditions remain unknown. Second, on a dyadic level. Copeland's (1996. 2000) theory of trade expectations suggests that 'future expectation of trade' is a significant variable in understanding economic conditions and security behaviour of states. He argues that interdependent states are likely to gain pacific benefits from trade so long as they have an optimistic view of future trade relations. However, if the expectations of future trade decline, particularly for difficult to replace items such as energy resources, the likelihood for conflict increases, as states will be inclined to use force to gain access to those resources. Crises could potentially be the trigger for decreased trade expectations either on its own or because it triggers protectionist moves by interdependent states.4 Third, others have considered the link between economic decline and external armed conflict at a national level. Mom berg and Hess (2002) find a strong correlation between internal conflict and external conflict, particularly during periods of economic downturn. They write. The linkage, between internal and external conflict and prosperity are strong and mutually reinforcing. Economic conflict lends to spawn internal conflict, which in turn returns the favour. Moreover, the presence of a recession tends to amplify the extent to which international and external conflicts self-reinforce each other (Hlomhen? & Hess. 2(102. p. X9> Economic decline has also been linked with an increase in the likelihood of terrorism (Blombcrg. Hess. & Wee ra pan a, 2004). which has the capacity to spill across borders and lead to external tensions. Furthermore, crises generally reduce the popularity of a sitting government. "Diversionary theory" suggests that, when facing unpopularity arising from economic decline, sitting governments have increased incentives to fabricate external military conflicts to create a 'rally around the flag' effect. Wang (1996), DcRoucn (1995), and Blombcrg. Hess, and Thacker (2006) find supporting evidence showing that economic decline and use of force arc at least indirecti) correlated. Gelpi (1997). Miller (1999). and Kisangani and Pickering (2009) suggest that Ihe tendency towards diversionary tactics arc greater for democratic states than autocratic states, due to the fact that democratic leaders are generally more susceptible to being removed from office due to lack of domestic support. DeRouen (2000) has provided evidence showing that periods of weak economic performance in the United States, and thus weak Presidential popularity, are statistically linked lo an increase in the use of force. In summary, rcccni economic scholarship positively correlates economic integration with an increase in the frequency of economic crises, whereas political science scholarship links economic decline with external conflict al systemic, dyadic and national levels.' This implied connection between integration, crises and armed conflict has not featured prominently in the economic-security debate and deserves more attention.

#### US key to global economy

David Caploe, CEO of the Singapore-incorporated American Centre for Applied Liberal Arts and Humanities in Asia, “Focus Still on America to Lead Global Recovery” April 2009, online

While superficially sensible, this view is deeply problematic. To begin with, it ignores the fact that the global economy has in fact been 'America-centred' for more than 60 years. Countries - China, Japan, Canada, Brazil, Korea, Mexico and so on - either sell to the US or they sell to countries that sell to the US. To put it simply, Mr Obama doesn't seem to understand that there is no other engine for the world economy - and hasn't been for the last six decades. If the US does not drive global economic growth, growth is not going to happen. Thus, US policies to deal with the current crisis are critical not just domestically, but also to the entire world. This system has generally been advantageous for all concerned. America gained certain historically unprecedented benefits, but the system also enabled participating countries - first in Western Europe and Japan, and later, many in the Third World - to achieve undreamt-of prosperity. At the same time, this deep inter-connection between the US and the rest of the world also explains how the collapse of a relatively small sector of the US economy - 'sub-prime' housing, logarithmically exponentialised by Wall Street's ingenious chicanery - has cascaded into the worst global economic crisis since the Great Depression. To put it simply, Mr Obama doesn't seem to understand that there is no other engine for the world economy - and hasn't been for the last six decades. If the US does not drive global economic growth, growth is not going to happen. Thus, US policies to deal with the current crisis are critical not just domestically, but also to the entire world. Consequently, it is a matter of global concern that the Obama administration seems to be following Japan's 'model' from the 1990s: allowing major banks to avoid declaring massive losses openly and transparently, and so perpetuating 'zombie' banks - technically alive but in reality dead. As analysts like Nobel laureates Joseph Stiglitz and Paul Krugman have pointed out, the administration's unwillingness to confront US banks is the main reason why they are continuing their increasingly inexplicable credit freeze, thus ravaging the American and global economies. Team Obama seems reluctant to acknowledge the extent to which its policies at home are failing not just there but around the world as well. Which raises the question: If the US can't or won't or doesn't want to be the global economic engine, which country will? The obvious answer is China. But that is unrealistic for three reasons. First, China's economic health is more tied to America's than practically any other country in the world. Indeed, the reason China has so many dollars to invest everywhere - whether in US Treasury bonds or in Africa - is precisely that it has structured its own economy to complement America's. The only way China can serve as the engine of the global economy is if the US starts pulling it first. Second, the US-centred system began at a time when its domestic demand far outstripped that of the rest of the world. The fundamental source of its economic power is its ability to act as the global consumer of last resort. China, however, is a poor country, with low per capita income, even though it will soon pass Japan as the world's second largest economy. There are real possibilities for growth in China's domestic demand. But given its structure as an export-oriented economy, it is doubtful if even a successful Chinese stimulus plan can pull the rest of the world along unless and until China can start selling again to the US on a massive scale. Finally, the key 'system' issue for China - or for the European Union - in thinking about becoming the engine of the world economy - is monetary: What are the implications of having your domestic currency become the global reserve currency? This is an extremely complex issue that the US has struggled with, not always successfully, from 1959 to the present. Without going into detail, it can safely be said that though having the US dollar as the world's medium of exchange has given the US some tremendous advantages, it has also created huge problems, both for America and the global economic system. The Chinese leadership is certainly familiar with this history. It will try to avoid the yuan becoming an international medium of exchange until it feels much more confident in its ability to handle the manifold currency problems that the US has grappled with for decades. Given all this, the US will remain the engine of global economic recovery for the foreseeable future, even though other countries must certainly help. This crisis began in the US - and it is going to have to be solved there too.

## 2NC

### A2 Central Power Key

#### A2 National Standards = global competitiveness

Jennifer Marshall and Lindsey Burke, Heritage Foundation policy analysists, May 2010, Why National Standards Won’t Fix American Education: Misalignment of Power and Incentives, http://www.heritage.org/education/report/why-national-standards-wont-fix-american-education-misalignment-power-and.

The following are a few of the most frequently cited arguments in favor of national standards and tests: Misconception #1: National standards and tests will make U.S. students more competitive with their global counterparts. Proponents argue that national standards will make American students more competitive with their international peers. They point to international evaluation measures such as the Trends in International Mathematics and Science Study (TIMSS), in which American students rank in the middle of the performance distribution. Proponents note that countries that outperform the United States have national standards and that the U.S. needs national standards to move up in the ranking.[11] But the relationship between existence of standards and strong educational outcomes is not clear. While the countries that outperform the United States on international tests have national standards, so do most of those countries that score lower than the U.S.[12] In further defiance of the hypothetical rule, Canada handily outscores the United States on international exams but has no national standards.[13] Even the relationship between the quality of state standards in the U.S. and academic performance is weak and inconsistent across subject areas.[14] More careful attention is needed to understand the role that national standards play in other countries before asserting that national standards would add the same value in the United States. Alternatively, state standards and tests might be a closer analogy to standards and assessment systems in countries with populations the size of American states. There are limits to international comparisons in education given the size, diversity, and federal system of the United States.

#### A2 National standards= measurement of success

Jennifer Marshall and Lindsey Burke, Heritage Foundation policy analysists, May 2010, Why National Standards Won’t Fix American Education: Misalignment of Power and Incentives, http://www.heritage.org/education/report/why-national-standards-wont-fix-american-education-misalignment-power-and.

Misconception #2: National standards are necessary so that parents can understand how their children’s academic achievement compares to that of other students across the country. The CCSSI claims that “the common core state standards will enable participating states to work together to make expectations clear to parents, teachers, and the general public.”[15] The case for national standards and testing, however, has neither addressed the question of why current tools are inadequate to inform parents about their children’s educational progress nor specified with much precision why Americans should expect the proposed system to improve the situation. Moreover, rather than making public schools more accountable to families, the new regime is likely to make them more responsive to the centralized scorekeeper. In this way, national standards and testing fail to address the critical problems of power and incentive structures in public education today. What kind of information do parents need about their children’s educational performance? First, they need to know whether their children are mastering the curriculum content. State criterion-referenced tests, which measure a student’s mastery of the content outlined by state standards, currently supply this kind of information. Parents also need to know that when the state test determines that, for example, a child has mastered third-grade content, the child is keeping pace with third-grade students across the country. In other words, parents need to know how rigorous their state standards and tests are. To provide this information, some states also offer norm-referenced tests, which measure student achievement compared to other students nationally. Another tool that can provide comparative information is the National Assessment of Educational Progress (NAEP), which is administered to a sample of students in each state. In this way NAEP provides an external “audit” and common gauge on the quality of state standards and tests. The meaningful information that parents and other taxpayers need is already available. The tools already exist to supply straightforward information on student, teacher, and school performance—sometimes referred to as report cards on the school system. All states are currently required by the No Child Left Behind Act (NCLB) to create such report cards. Some states, such as Florida and Massachusetts, supply more detailed reporting and straightforward information than others. What has been missing in some other cases is transparency about that information. If access to information has been inadequate, that does not justify a national standards and testing regime. Rather, policies should insist on clear reporting of the essential data to parents and other taxpayers. Public policy should also empower parents to act on that information. Providing information is important, but it does not go far enough to address the misalignment of power and incentives in public education. Parents not only need to know about their children’s educational standing, but also need the power to do something about it. In many states, parents lack any recourse to remove their children from underperforming schools. If the relevant information to empower parents currently exists, does the U.S. need a new national standards and testing regime? According to advocates of new national standards and testing, existing tests are inadequate. NAEP holds no sway over teachers and students because results are not reported by schools or students. The curriculum-based exams developed at great expense by states in recent years are unacceptable, they say, because differences among the tests make national comparisons difficult. These arguments show the considerable difference that a new national standards and testing system would make: It would empower the federal government. National comparisons are valuable for those who make national decisions; a national exam that has influence over curricula is a useful tool for national policymakers.

#### A2 National standards key to uniform quality

Jennifer Marshall and Lindsey Burke, Heritage Foundation policy analysists, May 2010, Why National Standards Won’t Fix American Education: Misalignment of Power and Incentives, http://www.heritage.org/education/report/why-national-standards-wont-fix-american-education-misalignment-power-and.

Misconception #3: National standards are necessary because state standards vary in quality. Some states, such as Massachusetts, California, Indiana, and Virginia, have highly regarded standards. A number of other states have uneven quality of standards across subjects, and some are not up to par generally. Teachers union pressure, pervasive political correctness, and pedagogical and content disputes hamper the quality of state standards. The variation in state standards is one of the most frequently cited reasons for adopting national standards and tests.[19] But the same pressures that detract from the quality of many state standards are likely to plague national standards as well. As a result, the rigor and content of national standards will tend to align with the mean among states, undercutting states with higher quality standards.[20] For example, the Obama Administration’s proposal would force Massachusetts to abandon its highly regarded state standards and sign on instead to a set of national standards that are well beneath the rigor and content of the current state standards.[21] If it fails to do so, Massachusetts would stand to lose $275 million a year in federal funding for Title I.[22] For states like Massachusetts, the Obama Administration’s plan means facing the prospect of losing out on federal funding if they refuse to water down their standards. Secretary of Education Arne Duncan refers to the varying quality of state standards as “50 different goal posts.”[23] That is a catchy phrase, but it begs the question of whether the national standards movement is more concerned with uniformity than it is with excellence. Uniform minimum-competency standards on a national level would provide a one-size-fits-all approach that would likely lead to decreased emphasis on advanced work and a generally dumbed-down curriculum. Centralized standards and testing would eliminate the possibility of competitive pressure for increasing standards of excellence. The Failure to Address Fundamental Problems in American Education Contrary to the claims of proponents, the stubborn persistence of more fundamental problems in American education makes it unlikely that national standards and tests would substantially improve educational outcomes. Ultimately, reform strategies must address the fundamental power and incentive structures in public education and configure them in a way that is most likely to increase the quality of educational outcomes.

### Impact Extensions

#### Terrorism can’t be deterred—no return address and radicalism overwhelms rationality

George Michael, associate professor of political science and administration of justice at The University of Virginia’s College at Wise, PhD in public policy from GMU, 12 “Strategic Nuclear Terrorism and the Risk of State Decapitation,” Defence Studies, Vol. 12, Issue 1, 2012, T&F

During the Cold War, the nuclear balance of terror was thought to follow a certain train of logic, as both the United States and the Soviet Union pursued their foreign policy goals in a rational manner and were loath to risk nuclear annihilation in the form of mutually assured destruction. Some observers fear, though, that nuclear-armed extremist groups would not follow this logic because of their radical worldviews. 6 Moreover, inasmuch as terrorists usually have no return address or fixed assets, classic deterrence theory would be less applicable. 7 As Thomas C. Schelling once explained, deterring nuclear terrorists would be challenging: [A]n organization that needs only a small boat to dock in a metropolitan harbor, with a nuclear weapon on board and someplace to operate a two-way radio, can hardly be starved into second thoughts of denial of soybeans, military spare parts, or air traffic, and it evidently cannot be invaded or captured or we wouldn’t have the problem in the first place. 8 A nuclear first strike launched against the United States by way of intercontinental ballistic missiles would almost assuredly occasion a massive retaliatory strike against the culprit, as the attack, though swift, would not come as a complete surprise insofar as satellites would detect the launch well before the weapons reached their intended targets. By contrast, terrorists would not deliver a nuclear weapon by aircraft or missile, but by a truck or a freighter, thus the attack could come as a complete surprise. 9 Moreover, the time necessary to attribute the attack to the responsible party would rule out a quick retaliatory response. The tremendous potential damage that could be wreaked by a nuclear attack is so great that it could bring about the goals of a revolutionary group. The Bolshevik strategist Vladimir Lenin once reproached his fellow revolutionaries for their childlike assumption that the right bomb in the right place at the right time would bring about the worldwide communist revolution. 10 However, the enormous destructive capacity of a nuclear weapon might make such a far-flung fantasy more plausible. Under certain circumstances, the potential payoff from a nuclear attack could be so great that a terrorist group would undertake the effort. Specifically, an attack on a capital city could decapitate the central government, and by doing so, allow a terrorist organization to achieve its objectives. Even in the United States, with a massive homeland security apparatus, the country could still be at risk of state decapitation as a result of nuclear terrorism. The prospect of using nuclear terrorism to decapitate the government could be seen as an attractive alternative to extremist and terrorist groups that have virtually no hope of achieving their objectives through conventional political means.

#### Educational services are first to go if the economy shrinks

Lisa E. Oliphant, Entitlements policy analyst at the Cato Institute, August 22, 2000, “Four Years of Welfare Reform: A Progress Report,” No. 378. Cato Institute. http://www.cato.org/pubs/pas/pa378.pdf

Despite the fact that in recent years “policy reform—not economics—is the principal engine driving the decline in dependence,”2 3 there remains cause for concern about what would happen during an economic slowdown or recession. The Committee for Economic Development predicts: “This reduction in welfare rolls could quickly reverse itself if the economy weakens. With low seniority and limited skills, many former recipients remain vulnerable to layoffs from their new jobs. In a slack labor market, many would experience considerable difficulty finding new positions, as would current welfare recipients seeking to leave the rolls. A weaker economy would sharply reduce the number of jobs available for former welfare recipients, and many might attempt to return to public assistance.”24 And, in the event of such a slowdown, it is unlikely that states would continue to enforce such important guards against recidivism as strict work requirements, sanctions policies, and time limits.

#### Econ isn’t resilient anymore

Catherine Rapell, reporter, 2011 “Second Recession in U.S. Could Be Worse Than First,” New York Times, 8/7/2011, http://www.nytimes.com/2011/08/08/business/a-second-recession-could-be-much-worse-than-the-first.html?pagewanted=all&\_r=0

If the economy falls back into recession, as many economists are now warning, the bloodletting could be a lot more painful than the last time around. Given the tumult of the Great Recession, this may be hard to believe. But the economy is much weaker than it was at the outset of the last recession in December 2007, with most major measures of economic health — including jobs, incomes, output and industrial production — worse today than they were back then. And growth has been so weak that almost no ground has been recouped, even though a recovery technically started in June 2009. “It would be disastrous if we entered into a recession at this stage, given that we haven’t yet made up for the last recession,” said Conrad DeQuadros, senior economist at RDQ Economics. When the last downturn hit, the credit bubble left Americans with lots of fat to cut, but a new one would force families to cut from the bone. Making things worse, policy makers used most of the economic tools at their disposal to combat the last recession, and have few options available. Anxiety and uncertainty have increased in the last few days after the decision by Standard & Poor’s to downgrade the country’s credit rating and as Europe continues its desperate attempt to stem its debt crisis. President Obama acknowledged the challenge in his Saturday radio and Internet address, saying the country’s “urgent mission” now was to expand the economy and create jobs. And Treasury Secretary Timothy F. Geithner said in an interview on CNBC on Sunday that the United States had “a lot of work to do” because of its “long-term and unsustainable fiscal position.” But he added, “I have enormous confidence in the basic regenerative capacity of the American economy and the American people.” Still, the numbers are daunting. In the four years since the recession began, the civilian working-age population has grown by about 3 percent. If the economy were healthy, the number of jobs would have grown at least the same amount. Instead, the number of jobs has shrunk. Today the economy has 5 percent fewer jobs — or 6.8 million — than it had before the last recession began. The unemployment rate was 5 percent then, compared with 9.1 percent today. Even those Americans who are working are generally working less; the typical private sector worker has a shorter workweek today than four years ago. Employers shed all the extra work shifts and weak or extraneous employees that they could during the last recession. As shown by unusually strong productivity gains, companies are now squeezing as much work as they can from their newly “lean and mean” work forces. Should a recession return, it is not clear how many additional workers businesses could lay off and still manage to function. With fewer jobs and fewer hours logged, there is less income for households to spend, creating a huge obstacle for a consumer-driven economy. Adjusted for inflation, personal income is down 4 percent, not counting payments from the government for things like unemployment benefits. Income levels are low, and moving in the wrong direction: private wage and salary income actually fell in June, the last month for which data was available. Consumer spending, along with housing, usually drives a recovery. But with incomes so weak, spending is only barely where it was when the recession began. If the economy were healthy, total consumer spending would be higher because of population growth. And with construction nearly nonexistent and home prices down 24 percent since December 2007, the country does not have a buffer in housing to fall back on. Of all the major economic indicators, industrial production — as tracked by the Federal Reserve — is by far the worst off. The Fed’s index of this activity is nearly 8 percent below its level in December 2007. Likewise, and perhaps most worrisome, is the track record for the country’s overall output. According to newly revised data from the Commerce Department, the economy is smaller today than it was when the recession began, despite (or rather, because of) the feeble growth in the last couple of years. If the economy were healthy, it would be much bigger than it was four years ago. Economists refer to the difference between where the economy is and where it could be if it met its full potential as the “output gap.” Menzie Chinn, an economics professor at the University of Wisconsin, has estimated that the economy was about 7 percent smaller than its potential at the beginning of this year. Unlike during the first downturn, there would be few policy remedies available if the economy were to revert back into recession. Interest rates cannot be pushed down further — they are already at zero. The Fed has already flooded the financial markets with money by buying billions in mortgage securities and Treasury bonds, and economists do not even agree on whether those purchases substantially helped the economy. So the Fed may not see much upside to going through another politically controversial round of buying. “There are only so many times the Fed can pull this same rabbit out of its hat,” said Torsten Slok, the chief international economist at Deutsche Bank. Congress had some room — financially and politically — to engage in fiscal stimulus during the last recession. But at the end of 2007, the federal debt was 64.4 percent of the economy. Today, it is estimated at around 100 percent of gross domestic product, a share not seen since the aftermath of World War II, and there is little chance of lawmakers reaching consensus on additional stimulus that would increase the debt. “There is no approachable precedent, at least in the postwar era, for what happens when an economy with 9 percent unemployment falls back into recession,” said Nigel Gault, chief United States economist at IHS Global Insight. “The one precedent you might consider is 1937, when there was also a premature withdrawal of fiscal stimulus, and the economy fell into another recession more painful than the first.”

### No solvency

#### Federal control of loans drives up college costs

Mary Clare Reim, Policy Analyst Heritage Foundation, May 2017, “The case for private student loans”, http://www.heritage.org/education/commentary/the-case-private-student-loans.

Most everyone agrees that college costs too much. But what can be done about it? To answer that question, we must first understand why tuition is so high. A growing body of evidence suggests that federal policies aimed at making college more affordable have actually made it more expensive. Consider this: The federal government now controls over 90 percent of all student loans. Moreover, Obama-era lending policies gave students virtually unlimited access to federal loan programs. Colleges realized that this arrangement meant they could raise prices without losing students. The result: an explosion in tuition costs and student loan debt. The latter now totals $1.3 trillion.

#### Federal regulation creates a higher ed monopoly which increases costs and decreases diversity of ideas

Edwin J. Feulner, Ph.D., founder and president of The Heritage Foundation, May 2017, “Better Choices in Higher Education”, http://www.heritage.org/education/commentary/better-choices-higher-education.

Does anyone out there think higher education doesn’t cost enough? Or that there are plenty of ideological points of view for students to choose from? I didn’t think so. Which is one reason that the Obama administration’s hostility toward for-profit colleges was so unfortunate. Policies that limit the ability for new institutions to enter the higher-education market can only exacerbate its high price and lack of intellectual diversity. So why isn’t the Trump administration making greater efforts to change this? The Department of Education, after all, recently moved forward with the Obama administration’s decision to terminate recognition for the Accrediting Council for Independent Colleges and Schools (ACICS). This was startling news to the 245 colleges that ACICS oversees, most of which are for-profit schools. Heavy regulations on higher education is bad policy in general, but no one should be singled out. Regulations should at least be sector-neutral in their application. Regulations place an undue burden on for-profit institutions that limit their ability to grow and improve. With America more than $1.3 trillion in student loan debt, the federal government shouldn’t be picking winners and losers, and driving students toward one type of institution over another. Rather, policy should be geared toward diversifying education choices and allowing students to pursue a wide range of options that put them on a path to reaching their career and life goals. Critics of the for-profit sector often point to the sector’s relatively low graduation rates and contrast them with those who pursue bachelor’s degrees at four-year institutions. However, a true apples-to-apples comparison would be to look at students who pursue credentials at for-profit institutions versus those who attend community college. Both types of institutions offer programs that typically run about two years, and both have more analogous student populations — that is, many students work part time or full time, and are pursuing higher education later in life. The Obama administration heavily praised the community college sector, even proposing making these schools “tuition free.” However, fewer than 20 percent of community college students graduate within 150 percent of the time their program is supposed to take. By contrast, two-year for-profit institutions have an average completion rate of 63 percent. The Department of Education’s decision to remove recognition for ACICS, alas, isn’t unusual. It’s a continuation of years of targeted public policy that maintains the higher education status quo. This needs to change. With the emergence of new education technology, policymakers should embrace the opportunity that for-profit universities provide: the ability to reach more students through innovative models that bypass the drawn-out and expensive bachelor’s degree option. Unfortunately, the system that allows the Department of Education to recognize accreditors has become completely ossified. It limits the ability for true innovation to flourish. In a country where high school graduates represent drastically different backgrounds, interests, and skill sets, it seems shortsighted to assume that everyone should pursue the same four-year bachelor’s degree no matter what their career and life goals are,” writes education expert Mary Clare Reim. A better path forward would be to decouple federal financing from accreditation and allow states to opt out of the current accrediting structure. This model, at the crux of Sen. Mike Lee’s and Rep. Ron DeSantis’s Higher Education Reform and Opportunity (HERO) Act, would allow businesses, non-profits and other experts in industry to accredit individual classes and courses of study, creating nimble pathways to careers. Removing the federal government’s monopoly role in recognizing accreditors also would limit its ability to play favorites with schools, like what is currently happening with ACICS. As Milton Friedman once said of our education system, “The only solution is to break the monopoly, introduce competition and give the customers alternatives.” If the Trump administration wants to make a real difference in education, it will follow this advice — and pursue meaningful reform.

#### Federal reg produces ongoing opportunity costs with bureaucratic and financial resources this diminishes the value of education dollars

Jennifer Marshall, Director of Domestic Policy: Heritage Foundation, March 2011, Effects of the Federal Role and Intervention in Education, http://www.heritage.org/testimony/effects-the-federal-role-and-intervention-education

My name is Jennifer A. Marshall. I am Director of Domestic Policy at The Heritage Foundation. The views I express in this testimony are my own, and should not be construed as representing any official position of The Heritage Foundation. Introduction Major federal intervention into local schools began with the Elementary and Secondary Education Act of 1965 (ESEA). Since then, a half-century of continually expanding, ever-shifting federal intervention into local schools has failed to improve American academic achievement. But it has caused an enormous compliance burden, dissipating dollars and human capital that could have been more effectively directed to achieve educational excellence. The damage should be calculated not only in terms of decades of wasted fiscal and human resources and on-going opportunity costs. We must also take stock of how federal intervention has created a dysfunctional governance system that undermines direct accountability to parents and taxpayers, while at the same time encouraging bureaucratic expansion and empowers special interests. Specifically, we should count the following costs of compliance with federal policy: The proliferation of federal programs and increased federal prescription to leverage “systemic reform” have created a confusing policy maze that only a limited set of experts can navigate. The growth of state bureaucracies to administer and comply with federal programs has given rise to a “client mentality” that undermines effective educational governance and accountability that ought to be directed toward parents and other taxpayers. The administrative set-asides and red tape associated with federal programs diminishes education dollars as they pass through multiple layers of bureaucracy.

#### Fed regulation of education is bloated to the point of inefficiency- producing high administrative costs and subpar application strategies

Jennifer Marshall, Director of Domestic Policy: Heritage Foundation, March 2011, Effects of the Federal Role and Intervention in Education, http://www.heritage.org/testimony/effects-the-federal-role-and-intervention-education

I commend this subcommittee and the larger committee for renewing attention to a pressing problem in education policy today. Serious investigation like this into the scope and effects of federal intervention has not taken place for more than a decade, despite massive growth in the federal role in education. Policymakers need much more information than any of us here today will be able to present. Studies by the Government Accountability Office and others are needed to get a full and updated accounting of the extent and impact of the federal role in schools today. This information is essential to inform policy choices that will restore dollars and decision-making to those closest to the student. Washington’s role currently stands in the way of that objective, and the first order of business is to take stock of that obstacle. 1. The proliferation of federal programs and increased federal prescription to leverage “systemic reform” have created a confusing policy maze. Proliferation of Federal Programs Washington’s role in education has grown to the point where it is difficult to keep track of all the odds and ends of federal intervention into this or that aspect of education. Programs include things like Women’s Educational Equity, the Native Hawaiian Education Program, the Carol M. White Physical Education Program, and the Challenge newsletter to spread the word about how to fight drugs and violence in schools.[1] Even the Government Accountability Office (GAO) has had a hard time counting up all the education programs, or even defining what a federal program is. Using a narrow definition that excludes programs that don’t “enhance student learning through school activities and curricula” (which leaves out, for example, food and nutrition programs administered through schools), GAO determined in 2010 that there were 151 K-12 and early childhood education programs housed in 20 executive branch and independent federal agencies, totaling $55.6 billion in average annual expenditures. According to GAO, 91 percent of these programs are federal grant programs, distributed primarily to state and local school districts. States were eligible for 65 of the grant programs; local districts for 57 programs.[2] This multiplication of programs means multiple applications, monitoring of program notices, and program reporting. This increases administrative overhead and erodes coherent, school-level strategic leadership based on the needs of individual students.

#### Fed education reg fails-creates massive compliance burdens for localities, are too complex to enforce, and trade off with the employment of teaching professionals

Jennifer Marshall, Director of Domestic Policy: Heritage Foundation, March 2011, Effects of the Federal Role and Intervention in Education, http://www.heritage.org/testimony/effects-the-federal-role-and-intervention-education

Case Study: Race to the Top The Obama Administration’s Race to the Top (RTTT) competitive grant program offers a recent example of the compliance burdens that result each time a new strategy emerges from Washington, D.C. Although 41 states exerted enormous energy to apply for $4.35 billion in federal funding (a “small” program compared to Title I at $15 billion), just 11 states ultimately won RTTT awards. Many states’ grant applications totaled hundreds of pages; some states even sent representatives to Washington to give presentations on why their state deserved the additional funding. Florida’s Race to the Top application, for example, totaled 327 pages and included a 606-page appendix. Illinois’ application was 187 pages plus a 644-page appendix, and California submitted an application totaling 131 pages in length with a 475-page appendix. Some states submitted lengthy applications without receiving awards. Louisiana, for example, submitted an application totaling 260 pages with a 417-page appendix. The significant amount of time and money expended on the state’s thorough grant application will not be recouped by taxpayers.[9] Not Just Legislation: Regulations and Guidance Education regulations can be found in Title 34 of the Code of Federal Regulations. Hundreds of pages are dedicated to specifying the operation of the Department of Education’s elementary and secondary education programs. The Title I program has 65 pages of regulations to accompany it, prescribing everything from setting and measuring progress on academic standards, to outreach to parents, to identifying “highly qualified teachers.”[10] The complexity of these regulations is illustrated by the section that describes the duties of a paraprofessional. The regulations dictate that a paraprofessional can have seven specific duties and may not perform duties other than those listed. Furthermore, the paraprofessional may not perform his or her duties unless under the direct supervision of a teacher who meets the several requirements of a “highly qualified teacher,” as outlined by the regulations. The regulations also provide three components of what “direct supervision” means.[11] More than 60 pages dictate the operation of federal Impact Aid, defining each step from the application process to the distribution of funds. The regulations include how the Secretary determines the “timely filing” of an application and how local education agencies are to “count the membership of…federally connected children.”[12] In addition to regulations, the Education Department has issued guidance on elementary and secondary education on 100 occasions since the passage of No Child Left Behind.[13] 2. The growth of state bureaucracies to administer and comply with federal programs has given rise to a “client mentality” that undermines effective educational governance and accountability that ought to be directed toward parents and other taxpayers. Federal intervention beginning in the mid-1960s has shifted state education systems’ orientation toward this new funding source and led to increased state education bureaucracy. Before the 1965 passage of ESEA, the role of state departments of education varied according to each state’s need. ESEA converted them into a network of state education agencies (SEAs) charged with disseminating federal grants to local districts and implementing federal education policy. A massive growth in state education bureaucracy followed: between 1966 and 1970, Congress appropriated $128 million for SEAs, and their staff doubled during that period.[14] Growth in the last half-century has been dramatic: in the early 1960s, just 10 state education agencies had more than 100 employees. By 2002, five state education agencies had more than 1,000 employees.[15] Federal funding significantly underwrites state-level education bureaucracy. In fiscal year 1993, 41 percent of SEA funding came from the federal government.[16] Administrative bloat resulting from federal regulations does not stop at the SEA level; it trickles down to the school level. Trends since the 1950s indicate that the number of teachers as a percentage of school staff has declined significantly. In 1950, more than 70 percent of elementary and secondary instructional staff was composed of teachers; by 2006, teachers made up just slightly more than 51 percent of public school staff. Administrative support staff increased from 23.8 percent to 29.9 percent during that same time period.[17] Another problem with this bureaucratic bloat is the fact that the proliferation of federal programs seems to be reflected in a lack of integration within the program-oriented divisions of state education agencies. Similarly, local administrative staff seem to operate in silos when it comes to federal programs. As a 2010 GAO report noted, “Of the district staff who had administrative responsibilities, two-thirds reported administrative responsibilities for only 1 [program]; few staff had responsibility for more than 3 programs.”[18] In this way, federal programs detract from integrated, strategic education leadership at the state, local and building level. 3. The administrative set-asides and red tape associated with federal programs diminishes education dollars as they pass through multiple layers of bureaucracy. The federal Department of Education has spent the past three decades taxing states, running that money through the Washington bureaucracy, and sending it back to states and school districts. But for 30 years, this spending cycle has failed to improve education. A dollar gleaned from state taxpayers and sent to the federal Department of Education is then sent, through complex funding formulas or grant programs (see the Title I discussion above), back to state education agencies. SEAs in turn send that money to local education agencies, which in turn send that money to individual schools. Each step along the way diminishes the funds available to local schools as a result of administrative set-asides and other spending. By one 1998 estimate, between just 65 to 70 cents of every dollar makes its way to the classroom.[19] A 1999 GAO study of 10 specific federal programs found that by the time a “federal” dollar reached a local school district, between 1 to 17 percent of the funding had been drained on administration. GAO found that “Overall, 94 percent of the federal education funds received by the states for these 10 programs [studied] was distributed to local agencies such as school districts. If the $7.3 billion appropriation for the Title I program is excluded, the overall percentage of funds states allocated to local agencies drops to 86 percent.”[20] The same 1999 GAO report found that “too much federal funding may be spent on administration and that school personnel are incurring ‘hidden’ administrative costs as they spend time fulfilling administrative requirements related to applying for, monitoring, and reporting on federal funds.”[21] The report noted the difficulty in determining what constitutes administrative activities because “what is considered administration varies from program to program.”[22] Even the federal funds that reach school districts are not immune from the administrative compliance burden. Reports from school districts provide real-life examples of the administrative burden felt from heavy-handed federal regulations. A Fairfax County, Virginia, school district, for example, noted: “The school division lengthened the standard teacher contract from 194 days to 195 just to allow for extra [NCLB] training time. The cost of setting aside a single day to train the roughly 14,000 teachers in the division on the law’s complex requirements is equivalent to the cost of hiring 72 additional teachers. The law also affects paraprofessionals: an extra day’s training equates to the cost of hiring about ten additional instructional assistants. There are roughly 1,000 administrators who require training as well. A day’s training represents the cost for four additional assistant principals. Thus, each day out of the year that is set aside to explain the law results in a missed opportunity to assign 86 instructional personnel year-round to interface directly with the community’s children and work directly to address their academic needs.”[23] The administrative compliance burden siphons resources that should be directed to students. Moreover, it is unclear whether the reports required of states are always used in a meaningful way by the U.S. Department of Education. During a lecture delivered in April, 2007 at the Heritage Foundation, then Rep. Pete Hoekstra (R-Mich.) recalled his visits to the U.S. Department of Education as chairman of a House subcommittee on oversight and investigations: “We'd knock on doors, asking, ‘Do any of you read the reports? Who reads these reports and this paperwork that comes back from the states, and who issues these rules and regulations? Have you ever been to Colorado? Is there anybody here from Michigan?’ — you'd have to go through the building for a while before you'd find somebody —‘And is anybody here from the Second Congressional District of Michigan?’ No, but they're putting together all these mandates and requirements without knowing the parents, kids, school boards, or the economic conditions of the people that they're writing all these rules and regulations for.” Conclusion: The federal role in education has created an enormous compliance burden for states and local schools. Some of this can be quantified in terms of paperwork, time, and resources. But the cost of compliance should also be calculated in terms of the erosion of good governance in education. The proliferation of federal programs and the ever-increasing prescription of federally driven systemic reform distract school-level personnel and local and state leaders from serving their primary customers: students, parents, and taxpayers.

#### Federal spending on education has shown no improvements in student performance

Neal McCluskey, policy analyst, April 2016, “Downsizing the federal government” https://www.downsizinggovernment.org/education/k-12-education-subsidies

Department of Education K-12 spending has increased rapidly, rising from $4.5 billion in 1965 to $40.2 billion in 2016, in constant 2016 dollars.34 Overall real federal K-12 spending, which comes from numerous agencies and departments, ballooned from $13.5 billion in 1965 to $80.1 billion in 2014.35 Here are the largest grant programs within the Department of Education, with the estimated outlay amounts in fiscal 2016:36 Title I. This is a $17 billion collection of programs, primarily grants to school districts based on complex formulas. Title I is the main leverage the federal government uses to impose regulations on the states for standardized testing, teacher qualifications, reading curricula, and other items. Special Education. Special education programs authorized under the Individuals with Disabilities Education Act account for the second largest part of the department’s budget at about $16 billion. Title II-Improving Teacher Quality State Grants. These grants, which cost more than $2 billion annually, are intended to improve the quality of the teaching force and principals. 21st Century Community Learning Centers. A number of studies have found that this more than $1 billion program to fund enrichment activities is ineffective and may actually have negative effects.37 Outside of the Department of Education, the federal government funds Head Start in the Department of Health and Human Services, Indian education programs in the Department of the Interior, the school lunch program in the Department of Agriculture, and various programs in the Department of Defense. Looking at overall K-12 spending by federal, state, and local governments, there has been a large increase over time. Total per-pupil expenditures have doubled over the past four decades, measured in constant dollars.38 These increases in resources, however, have not lead to equivalent improvements in educational outcomes, as explored next. Educational Outcomes Have Not Improved Despite large increases in federal intervention since the 1960s, combined with large increases in funding by all levels of government, K-12 educational achievement has improved little. The most widely used measures of school achievement are scores from the National Assessment of Educational Progress, including its Long-Term Trend assessment, which has used largely consistent tests back to the early 1970s. 39 Figure 1 shows average NAEP scores for 17-year-olds, essentially the high school seniors who are the “final products” of the public schools. The average mathematics score rose just two points to 306 in 2012 from 304 in 1973.40 The average reading score also rose just two points to 287 in 2012 from 285 in 1971.41 These scores are on a 500-point scale. NAEP scores for 17-year-olds Other measures show similarly poor achievement by the end of K-12 schooling, or at least a lack of improvement. For example, a recent statistical analysis of SAT scores that adjusted for participation rates and student demographics found, just like NAEP, there has been essentially no improvement, despite the large spending increases.42 How have things fared under the 2002 No Child Left Behind Act, Race to the Top, and the added rules related to NCLB waivers? It is difficult to isolate the effects of these measures because numerous variables affect school results, and many results do not closely align with NCLB’s start date. With those caveats in mind, NAEP tests paint a mixed picture. The Long-Term Trend exams show significant jumps in scores for younger kids and some subgroups, but also in some periods before NCLB faster or more sustained improvement. And scores for 17-year-olds-those “final products”-were again largely stagnant. On the “main” NAEP-subject tests given more often than the long-term trends tests and going back only to the 1990s-the story has also been mixed, with math and reading scores rising in many cases since the early 2000s, but also generally dropping in the 2015 test and sometimes having risen faster before NCLB. Some empirical research has suggested that NCLB spurred some improvement, but the positive effects were quite limited.43 As for the goal of full math and reading “proficiency” by 2014, NCLB appears to have failed spectacularly. As of 2015, only 36 percent of fourth-graders were at or above proficiency in reading, and 40 percent in math. For eighth graders, only 34 percent were at or exceeded proficiency in reading, and only 33 percent in math. It is possible that what improvements we have seen have been at least partly a result of students being more focused on standardized tests than in the past-including learning more strategies to exploit test designs and rules-and not necessarily greater learning. And test scores may capture only part-perhaps a small part-of what we want from education. Indeed, while federal law has pushed much greater focus on testing, some countries that place high on achievement exams, such as China, are greatly concerned that they are not instilling crucial attributes in their students such as creativity, and are looking to the United States for solutions.44 Aside from looking at overall test scores, examinations of the effectiveness of particular federal programs also indicates generally poor results. Consider the 21st Century Community Learning Centers program, which in 2016 received more than $1 billion. Repeated random-assignment federal assessments concluded that not only did the program have no overall positive effect, it actually had several negative consequences, including on behavior in class.45 Or consider the Department of Education’s Office of Innovation and Improvement (OII), which has a budget of more than $1 billion. OII claims to be “a nimble, entrepreneurial arm of the U.S. Department of Education” making “strategic investments in innovative educational practices.”46 But experience shows that the department has not been very innovative, notes Diane Ravitch, who headed up the OII’s predecessor office in the 1990s: We were always on the lookout for the latest thing, the newest innovation that would set the world of education on fire. Yet, in retrospect, it is hard to think of a single program that the department funded during that time that actually made a lasting contribution to the advancement of education… . When I first heard the Department of Education had created an Office of Innovation and Improvement, I was less than enthusiastic. It is not because I oppose innovation, but because I have strong doubts about whether the federal government has the capacity to nurture effective practices. My impression, based on the last 30 years, is that the federal government is likely to be hoodwinked, to be taken in by fads, to fund the status quo with a new name, or to impose a heavy regulatory burden on those who seek its largesse.47 Then there is the School Improvement Grants program launched in 2009 to provide $500 million a year to turn around the country’s worst schools. According to a 2015 Department of Education report on grant winners, average proficiency rates increased little in winning schools, and more than a quarter of the schools that had seen three years of funding and turnaround efforts had lost ground.

## 2AC Defense

### Federal Gov Key

#### Federalism destroys innovation- central power key

Lindsay F. Wiley, professor of law, 2015, Deregulation, Distrust, and Democracy: State and Local Action to Ensure Equitable Access to Healthy, Sustainably Produced Food, American Journal of Law and Medicine 41 Am. J. L. and Med. 284.

Given that there are thousands of cities, as compared to a mere fifty states and one federal government, one might suspect, per Brandeis's famous dicta about laboratories of democracy, that a greater number of cities will inevitably lead to more innovation at the local level. n168 On the other hand, in her seminal article on the subject, Susan Rose-Ackerman argued powerfully that federalism actually decreases the possibility of policy innovation. n169 Assuming that elected officials are only interested in winning re-election, she notes that there is relatively little to gain from a "successful" policy innovation, whereas a failure can hurt a candidate's chances significantly. n170 Thus, a self-interested, lower-level, elected official has little incentive to innovate. Moreover, because information about innovation diffuses to other jurisdictions, other policymakers may "free ride" on the first-mover's innovation. n171 Because innovation is costly and its political return speculative, the free-rider effect leads to a collective action problem in which the many jurisdictions wait for others to innovate first, thus producing sub-optimal policy innovation. n172 One would expect the collective action problem to be greater when there are more jurisdictions; thus, cities should be less likely to innovate than states. n173 Rose-Ackerman's theory relies on a number of stylized assumptions and recognizes that more innovation may occur in a two-tier federal system than in her hypothetical one-level, multijurisdictional system due to the possibility of lower-level officials seeking higher office. n174 In the absence of incentives to innovate provided to lower levels of government by the central government, however, Rose-Ackerman expects the effects of federalism on innovation by multiple jurisdictions to be "weak." n175 Rose-Ackerman's work has spawned dozens of empirical and theoretical off-shoots in the last three decades. Brian Galle and Joseph Leahy commendably synthesize these works in a comprehensive review. n176 They [\*1250] largely conclude that Rose-Ackerman's insight remains correct: large numbers of jurisdictions do not necessarily lead to more policy innovation, and, on the whole, the level of innovation to be expected will be "well below the socially optimal level."

#### Strong federal government is key to equality and excellence in education

Kimberly Jenkins Robinson, professor of law, 2016, No Quick Fix for Equity and Excellence: The Virtues of Incremental Shifts in Education Federalism, Stanford Policy and Law Review, 27 Stan. L. & Pol'y Rev 201

My incremental approach makes room for moving beyond incentives and conditions to mandates. A federal mandate that requires states to adopt a funding system that promotes equal access to an excellent education could be adopted through several legal avenues. I briefly explore the possibilities for a federal statute that would accomplish this goal and a constitutional amendment on this issue. Any new federal mandates must build on the lessons and insights of prior reforms. Therefore, my thoughts on this approach are particularly contingent on the impact of and response to those reforms. I include federal mandates as a third option for reform in light of the federalism concerns such a mandate would create. Even though I have proposed a theory for restructuring education federalism that makes the federal government the ultimate guarantor of equal access to an excellent education, I acknowledge that this approach raises federalism concerns. I do not believe that a restructuring of education federalism will happen overnight. Consequently, this Article builds on my theory by developing an approach for federal leadership to reform state funding that can help to address the federalism concerns that a federal mandate would raise. A federal statute that requires states to adopt funding systems that promote equal access to education could be adopted by Congress through its Section 5 authority under the Fourteenth Amendment. n199 Numerous scholars have proposed recognition of a right to education under the Fourteenth Amendment that could be advanced through federal legislation. Areto Imoukhuede has argued that a right to an education of high quality should be recognized within the due process right to human dignity. n200 Barry Friedman and Sara Solow contend that the jurisprudence of the Due Process Clause of the Fourteenth Amendment supports the recognition of a "federal constitutional right to a minimally adequate education" that includes a right to the foundations needed [\*233] for every student to attain a basic achievement level, including "qualified teachers, ... contemporary schoolbooks and buildings, ... [and] remedial pro-grams and specialized forms of instruction." n201 Susan Bitensky also has persuasively argued that the Due Process Clause (among other constitutional rights) supports the recognition of a substantive due process right to education, and contends that this right would require the federal government to ensure that every child receives a quality education. n202 Michael Rebell has argued that the Equal Protection Clause guarantees that children have a right to "meaningful educational opportunities that include a range of comprehensive services." n203 Goodwin Liu has presented compelling arguments that the Fourteenth Amendment includes a congressional duty to ensure that all schoolchildren receive "adequate educational opportunity for equal citizenship." n204 In a 2007 article I proposed that Congress codify a federal right to education through legislation, although I pro-posed such legislation through the Spending Clause. n205 Although that article proposed new conditions for federal funds similar to those envisioned in subpart B above, many of the insights and recommendations within that article remain germane for a federal mandate under the Fourteenth Amendment. I believe that Congress should establish a high standard for what a federal right to education guarantees for children and that such a high standard is essential if the right is going to have a much-needed impact on school funding. n206 I also believe that a collaborative approach to enforcement would reap numerous benefits that a litigation-focused approach would lack, including the avoidance of a zero-sum game for reform and the ability to include input from all interested parties rather than simply from the litigants before a court.

#### The either or approach between federal and state control of education is unproductive. Education policy requires co-operation among both. The aff would leave room for state funding and constitution flexibility

Kimberly Jenkins Robinson, professor of law, 2016, No Quick Fix for Equity and Excellence: The Virtues of Incremental Shifts in Education Federalism, Stanford Policy and Law Review, 27 Stan. L. & Pol'y Rev 201

In designing any federal mandate to influence state education funding, the federal government should draw upon lessons from state funding case law and reforms. For instance, federal mandates should not demand perfect equality for all students because such a standard is quite difficult to maintain. n210 Instead, substantial equality should be deemed adequate n211 although that standard should not be used as a gateway for ever-widening disparities. In addition, the federal government also should follow the lead of states by focusing more attention on equal access to an excellent education than equal outcomes because states possess a greater ability to influence access rather than out-comes. n212 Even if a federal mandate were adopted, states must retain flexibility to reform their funding systems in ways that address their primary shortcomings. Undoubtedly, states will initially struggle to redesign their systems in ways that en-sure equal access to an excellent education, just as numerous states repeatedly failed to meet their state constitutional obligations when courts ordered them to conform the systems to those obligations. n213 The Federal government should follow the lead of state courts that have provided legislatures flexibility to design remedies in response to court decisions without allowing them to circumvent constitutional obligations. The Kansas Supreme Court recently noted that the Kansas legislature had a variety of options to cure [\*235] the constitutional deficiencies that it had identified and reaffirmed that it was the legislature's prerogative - not the court's - to choose appropriate reforms. n214 Flexibility in designing reforms of state funding systems is important for several reasons. Different performance standards will lead to disparate funding systems when those systems are linked to ensuring that students achieve the state performance standards. n215 Even given the substantial number of states that have adopted the common core standards, n216 the continued divergence in standards, goals, implementation approaches, assessments, and political economies may encourage states to adopt a variety of disparate funding systems. Flexibility also enables states to take care in designing systems that address their shortcomings while also avoiding unintended adverse impacts. n217 States should be permitted to determine the funding system that best serves the citizens of the state as well as the national interest in ensuring equal access to an excellent education. However, retaining flexibility for states should not be used as a shield that prevents federal accountability for the funding systems needed for equitable and excellent schools, just as the NCLB requirement of state-determined "challenging" academic standards was used by some states as a means to establish academic standards that were not demanding. n218 As a result, once a federal mandate is enacted, the federal government will need to retain some influence over state funding systems to ensure that reforms are passed, funded, and implemented, just as state courts have needed to retain jurisdiction over school funding systems to ensure that states take action consistent with the guiding principles in court opinions. n219 Retaining this influence ensures that the federal government will remain vigilant in its efforts to guide the states toward more equitable and excellent funding systems.

#### No federalism now-historic number of executive orders prove national take over. A few examples include:

AVALON ZOPPO and AMANDA PROENÇA SANTOS, reporters, 2017, “Here’s the Full List of Donald Trump’s Executive Orders” http://www.nbcnews.com/news/us-news/here-s-full-list-donald-trump-s-executive-orders-n720796

Hours after being sworn in, Trump signed an executive order aimed at reversing the Affordable Care Act — Obama's landmark legislation — which Republicans vowed to "repeal and replace" throughout the campaign. The executive order states that the Trump administration will "seek prompt repeal" of the law. To minimize the "economic burden" of Obamacare, the order instructs the secretary of health and human services and other agency heads to "waive, defer, grant exemptions from, or delay the implementation" of any part of the law that places a fiscal burden on the government, businesses or individuals. Also in the order are directions to give states more control over implementing health care laws. "Expediting Environmental Reviews and Approvals for High-Priority Infrastructure Projects" Signed: Jan. 24, 2017 The order outlines how the administration will expedite environmental reviews and approval of "high priority" infrastructure projects, such as repairs to bridges, airports and highways. The order directs the Chairman of the Council on Environmental Quality (CEQ), within 30 days of a request, to determine a project's environmental impact and decide whether it is "high priority." Project review deadlines are to be put in place by the CEQ's chairman. The order is widely believed to have been issued in response to the protests against the Dakota Access Pipeline. "Enhancing Public Safety in the Interior of the United States" Signed: Jan. 25, 2017 The order outlines changes to a few immigration policies, but most notably it strips federal grant money to so-called sanctuary cities. In addition, the secretary of homeland security is ordered to hire 10,000 more immigration officers, create a publicly available weekly list of crimes committed by undocumented immigrants and review previous immigration policies. The order also creates an office to assist the victims of crimes committed by undocumented immigrants and calls on local and state police to detain or apprehend people in the United States illegally. "Border Security and Immigration Enforcement Improvements" Signed: Jan. 25, 2017 The order is aimed at fulfilling one of Trump's key campaign promises — enhancing border security — by directing federal funding to construction of a wall along the Mexico-U.S. border. It instructs the secretary of homeland security to prepare congressional budget requests for the wall and to "end the abuse of parole and asylum provisions" that complicate the removal of undocumented immigrants. Other parts of the order call for hiring 5,000 more Border Patrol agents, building facilities to hold undocumented immigrants near the Mexican border and ending "catch-and-release" protocols, in which immigrants in the United States without documentation are not detained while they await court hearings. "Protecting the Nation From Foreign Terrorist Entry Into the United States" Signed: Jan. 27, 2017 The order suspends the entry of immigrants from seven Muslim-majority countries — Syria, Iran, Iraq, Libya, Sudan, Yemen and Somalia — for 90 days and stops all refugees from entering the country for 120 days. Syrian refugees are banned indefinitely. During the time of the ban, the secretary of homeland security and the secretary of state will review and revise the refugee admission process. Also in the order is the suspension of Obama's 2012 Visa Interview Waiver Program, which allowed frequent U.S. tourists to bypass the visa interview process. White House officials have made a number of contradictory statements, at times calling the order a "ban" and at other times referring to it as a "travel restriction." After the order was signed, thousands of protesters popped up at airports across the country to denounce it. Follow Donald J. Trump ✔ @realDonaldTrump Our country needs strong borders and extreme vetting, NOW. Look what is happening all over Europe and, indeed, the world - a horrible mess! 5:08 AM - 29 Jan 2017 50,520 50,520 Retweets 219,142 219,142 likes Twitter Ads info and privacy "Ethics Commitments by Executive Branch Appointees" Signed: Jan. 28, 2017 This order stops all executive branch officials from lobbying for five years after they leave office and places a lifetime ban on lobbying a foreign government. The order enacts a number of other lobbying restrictions, including banning appointees from accepting gifts from registered lobbyists and banning appointees who were lobbyists from participating in any issues they petitioned for within the last two years. Some raised concerns over how Trump will fill the jobs in his administration under the new rules. "Reducing Regulation and Controlling Regulatory Costs" Signed: Jan. 30, 2017 The order states that executive departments and agencies must slash two regulations for every one new regulation proposed. Regulation spending cannot exceed $0, and any costs associated with regulations must be offset with eliminations. The order also directs the head of each agency to keep records of the cost savings, to be sent to the president. "Core Principles for Regulating the United States Financial System" Signed: Feb. 3, 2017 The order lays the administration's "Core Principles" regarding the U.S. financial system, which includes: Making regulation "efficient, effective and appropriately tailored" Preventing government bailouts Ensuring that U.S. firms are competitive with foreign companies The order directs the treasury secretary to review financial regulations and report back to the president 120 days later with a determination of whether current policies promote the "Core Principles." "Task Force on Crime Reduction and Public Safety" Signed: Feb. 9, 2017 The order directs Attorney General Jeff Sessions to create a task force that would propose new legislation to reduce crime, highlighting drug trafficking, illegal immigration and violent crime. The task force will submit yearly reports to the president. Throughout the campaign, Trump promised voters a return to "law and order" in the United States and said minorities from inner cities are "living in hell" because of violent crime. "Preventing Violence Against Federal, State, Tribal, and Local Law Enforcement Officers" Signed: Feb. 9, 2017 The order calls on the Justice Department to "enhance the protection and safety" of law enforcement by increasing penalties for crimes committed against officers. The attorney general is also instructed to review and determine whether existing federal laws adequately protect law enforcement and later to propose legislation to better protect officers. The order directs the Justice Department to recommend changes in federal grant funding to law enforcement programs if they do not protect officers. "Enforcing Federal Law With Respect to Transnational Criminal Organizations and Preventing International Trafficking" Signed: Feb. 9, 2016 The order outlines the administration's approach to cutting down on organized crime — including gangs, cartels and racketeering organizations — by enhancing cooperation with foreign governments and the ways in which federal agencies share information and data. It identifies human trafficking, drug smuggling, financial crimes, cyber-crime and corruption as "a threat to public safety and national security." The Threat Mitigation National Intelligence — of which Sessions, Secretary of State Rex Tillerson, and the secretary of homeland security are co-chairmen — will review and recommend changes to federal agencies' practices in a report to be delivered to the president within 120 days. "Providing an Order of Succession Within the Department of Justice" Signed: Feb. 9, 2017 Two weeks after Trump fired Acting Attorney General Sally Yates, this order changes the order of succession for Sessions, who won approval as attorney general last week. The sequence is: the U.S. attorney for the Eastern District of Virginia, the U.S. attorney for the Northern District of Illinois and the U.S. attorney for the Western District of Missouri. A week before leaving office, Obama signed an executive order changing the order of succession without explanation. "Enforcing the Regulatory Reform Agenda" Signed: Feb. 24, 2017 Under this order, each agency must designate an official as its Regulatory Reform Officer (RRO),

#### Education not key- states claiming self-governance power now by defying voter fraud inquires

DARTUNORRO CLARK, reporter, July 17, Backlash at Trump Commission Request for ‘Confidential’ Voter Data, http://www.nbcnews.com/politics/white-house/backlash-trump-commission-request-voter-data-n778661

The White House faced a growing revolt Friday as nearly half of the states refused to comply with a request from President Donald Trump's panel investigating alleged voter fraud to hand over substantial amounts of confidential and sensitive voter data. The Presidential Commission on Voter Integrity sent what some experts called an alarming letter this week to all 50 states and Washington, D.C., asking officials, including those in the home states of the panel's chairs, to turn over "publicly-available voter roll data." However, the panel is also seeking sensitive information, including "dates of birth, political party (if recorded in your state), last four digits of social security number if available, voter history (elections voted in) from 2006 onward, active/inactive status, cancelled status, information regarding any felony convictions, information regarding voter registration in another state, information regarding military status, and overseas citizen information." The panel gave states two weeks to comply and said it would share the data with the public. The letter requests feedback from states with a series of questions, including citing instances of voter fraud, which experts have concluded is extremely rare. Trump established the commission through an executive order and it is headed by Vice President Mike Pence. Kansas Secretary of State Kris Kobach, an immigration hardliner and strict voter identification law advocate, serves as vice chair and penned the letter. Almost immediately, a number of states led by Democrats criticized and flatly rejected the request, with some officials calling it a politically-motivated effort to satisfy Trump’s unfounded claims about rampant voter fraud during the 2016 election.

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