# \*\*Federalism Disadvantage\*\*

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### File Notes

The Federalism Disadvantage argues that the plan gives too much authority to the federal government in education, usurping the role of the states. This argument says that currently, the balance of federalism, especially regarding federalism, is trending back towards the states. The Trump administration has promised to implement a vison of education policy that includes increased state decision-making and authority. However, the plan would reverse this trend, granting substantial power back to the federal government. Taking on such a project will overstretch bog the federal government down in domestic affairs, which undermines US leadership abroad. US leadership is essential to maintaining global stability. Affirmative answers are included in the bottom of this file. The affirmative has a variety of arguments, including that federal power currently far exceeds state power, that the plan does not significantly change this balance, and that there is no impact to US leadership abroad.

### Glossary

Centralization: the concentration of control of an activity or organization under a single authority.

Constitutional authority: an authority of a governmental agency that is lawful under the constitutional systems of the USA.

Decentralization: the transfer of authority from central to local government.

Federalism: the sharing of power between national and state governments. In the context of this disadvantage, it is often used to refer to granting more power to the state governments.

Normative: establishing, relating to, or deriving from a standard or norm, especially of behavior.

Overreach: to try to do something that is beyond your ability to do.

Framework: a basic structure underlying a system, concept, or text.

Power vacuum: when someone has lost control of something and no one has replaced them.

Progressive federalism: claimed as a system by the Obama administration, progressive federalism provides states with greater control over issues previously reserved for the federal government, such as environmental and consumer protection.

Scientific consensus: the collective judgment, position, and opinion of the community of scientists in a particular field of study.

Subnational action: action taken by a subdivision of a nation; e.g. the states.

## 1NC

### 1NC – Federalism DA (1/3)

#### A. Uniqueness: New political consensus for Federalism is strong now. Education is key.

Somin 5/22/17 - Ilya Somin is Professor of Law at George Mason University. His research focuses on constitutional law, property law, and popular political participation., “Jeffrey 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=.8c85cf84846f

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.

#### B. Link: Federal action on education upsets the overall balance of federalism.

Lawson 13 – Aaron Lawson, Associate at Edelson PC where his practice focuses on appeals and complex motion practice, J.D. from UMich, Educational Federalism: A New Case for Reduced Federal Involvement in K-12 Education, Brigham Young University Education and Law Journal, Article 5, Volume 2013, Issue 2, Published in the summer of 2013, http://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=1333&context=elj

Every state constitution, in contrast with the Federal Constitution, contains some guarantee of education.18 State courts split into two groups on how to give effect to these guarantees: (1) by evaluating education policy under Equal Protection by declaring education a fundamental right or by treating wealth as a suspect classification,19 or (2) by evaluating education policies under a framework of educational adequacy.20 In either case, these clauses establish substantive educational guarantees on the state level that do not exist at the federal level and provide the courts with a role in ensuring the fulfillment of these guarantees.21 These clauses also help to create a valuable political dynamic, which has inured to the benefit of children. As part of this political dynamic, courts define the contours of these affirmative guarantees, and the legislature fulfills its own constitutional duty by legislating between those boundaries.2 However, when the federal government legislates or regulates in a given field, it necessarily constrains the ability of states to legislate in that same field.23 In the field of education, the ability of courts to protect the rights of children is dependent on the ability of legislatures freely to react to courts. As such, anything that constrains state legislatures also constrains state courts and upsets this valuable political dynamic created by the interaction of state legislatures and state courts. An expansive federal role in educational policymaking is normatively undesirable when it threatens to interfere with this political dynamic. This dynamic receives scant attention in the literature described above. <<card continues>>

### 1NC – Federalism DA (2/3)

<<card continues>> However, mindfulness of this dynamic is crucial to the proper placement of the educational policymaking and regulatory epicenter. Constraints on state legislatures would not be as problematic if the federal government had proven itself adept at guaranteeing adequate educational opportunity for all students. However, RTTT and NCLB have, in some cases, proven remarkably unhelpful for poor and minority students.24 These negative outcomes, of course, are not guaranteed. However, the fact that federal involvement in education has produced undesirable outcomes for poor and minority students should cause policymakers to reexamine whether it is most desirable for the federal government to play such a significant role in education. This Comment argues that it is not.

#### C. Internal Link: Federal overreach on domestic affairs undermines U.S. leadership.

Nivola 7 — Pietro S. Nivola, Vice President and Director of Governance Studies at The Brookings Institution, former Associate Professor of Political Science at the University of Vermont, former Lecturer in the Department of Government at Harvard University, holds a Ph.D. from Harvard University, 2007 (“Rediscovering Federalism,” *Issues in Governance Studies*—a publication of the Brookings Institution, Number 8, July, Available Online at https://www.brookings.edu/wp-content/uploads/2016/06/07governance\_nivola.pdf, Accessed 06-19-2017, p. 1-2)

This paper stipulates that federalism can offer government a helpful division of labor. The essay argues that the central government in the United States has grown inordinately preoccupied with concerns better left to local authorities. The result is an overextended government, too often distracted from higher priorities. To restore some semblance of so-called “subsidiarity”—that is, a more suitable delineation of competences among levels of government—the essay takes up basic principles that ought to guide that quest. Finally, the paper advances several suggestions for how particular policy pursuits might be devolved. Whatever else it is supposed to do, a federal system of government should offer policy-makers a division of labor.1 Perhaps the first to fully appreciate that benefit was Alexis de Tocqueville. He admired the federated regime of the United States because, among other virtues, it enabled its central government to focus on primary public obligations (“a small number of objects,” he stressed, “sufficiently prominent to attract its attention”), leaving what he called society’s countless [end page 1] “secondary affairs” to lower levels of administration.2 Such a system, in other words, could help officials in Washington keep their priorities straight. It is this potential advantage, above all others, that warrants renewed emphasis today. America’s national government has its hands full coping with its continental, indeed global, security responsibilities, and cannot keep expanding a domestic policy agenda that injudiciously dabbles in too many duties best consigned to local authorities. Indeed, in the habit of attempting to do a little of everything, rather than a few important things well, our overstretched government suffers a kind of attention deficit disorder. Although this state of overload and distraction obviously is not a cause of catastrophes such as the successful surprise attacks of September 11, 2001, the ferocity of the insurgency in Iraq, or the submersion of a historic American city inundated by a hurricane in 2005, it may render such tragedies harder to prevent or mitigate.

### 1NC – Federalism DA (3/3)

#### D. Impact: U.S. leadership is vital to global stability. Relative decline opens a power vacuum that spurs conflict.

Goure 13 — Daniel Goure, President of The Lexington Institute—a nonprofit public-policy research organization, Adjunct Professor in Graduate Programs at the Center for Peace and Security Studies at Georgetown University, Adjunct Professor at the National Defense University, former Deputy Director of the International Security Program at the Center for Strategic and International Studies, has consulted for the Departments of State, Defense and Energy, has taught or lectured at the Johns Hopkins University, the Foreign Service Institute, the National War College, the Naval War College, the Air War College, and the Inter-American Defense College, holds Masters and Ph.D. degrees in International Relations and Russian Studies from Johns Hopkins University, 2013 (“How U.S. Military Power Holds the World Together,” *inFocus Quarterly*—the Jewish Policy Center's journal, Volume VII, Number 2, Summer, Available Online at http://www.jewishpolicycenter.org/4397/us-military-power, Accessed 08-17-2013)

The Centrality of U.S. Power There are three fundamental problems with the argument in favor of abandoning America's security role in the world. The first problem is that the United States cannot withdraw without sucking the air out of the system. U.S. power and presence have been the central structural feature that holds the present international order together. It flavors the very air that fills the sphere that is the international system. Whether it is the size of the U.S. economy, its capacity for innovation, the role of the dollar as the world's reserve currency or the contribution of U.S. military power to the stability and peace of the global commons, the present world order has "Made in the USA" written all over it. The international system is not a game of Jenga where the worst thing that can happen is that one's tower collapses. Start taking away the fundamental building blocks of the international order, particularly American military power, and the results are all but certain to be major instability, increased conflict rates, rapid proliferation of nuclear weapons, economic dislocation and, ultimately, serious and growing threats to security at home.

## Uniqueness

### Uniqueness: Education-specific

#### Federalism is seen as in balance now---education reform remains largely under state control

Jacob 17 – Brian A. Jacob, Nonresident Senior Fellow - Economic Studies, Center on Children and Families, February 2, 2017, How the U.S. Department of Education can foster education reform in the era of Trump and ESSA, https://www.brookings.edu/research/how-the-u-s-department-of-education-can-foster-education-reform-in-the-era-of-trump-and-essa/

The current administration has vowed to leave education matters up to the states, continuing a movement started with the Every Student Succeeds Act (ESSA), which dramatically limited the federal government’s role in school accountability. While greater local control certainly has some benefits, it risks exacerbating the massive disparities in educational performance across states that already exists. In 2015, there was almost a 30 percentile point difference in 4th grade math proficiency rates between the top and bottom states, only some of which can be explained by state-level social and economic factors. The massive disparity in progress is perhaps even more disturbing. Between 2003 and 2015, student proficiency rates grew by over 40 percent in some states, while remaining flat or even declining in other states. The Department of Education (DoED) should take steps to highlight these disparities by identifying the lowest performing states and providing information on the status and progress of all states on a variety of educational metrics. The DoED might also provide modest funding and technical assistance to help demographically similar states work together to improve their public education systems. On the campaign trail, President Trump often called for giving more discretion over education policy to states and localities, critiquing Common Core and what he viewed as other instances of federal overreach. In her recent confirmation hearing, President Trump’s nominee for Education Secretary—Betsy DeVos—repeatedly argued for leaving education matters up to the states. And this desire for local control is not limited to the current administration. In 2015, Congress passed the Every Student Succeeds Act (ESSA) with strong bipartisan support. This legislation replaced the No Child Left Behind (NCLB) system of school accountability with a more narrowly tailored and flexible approach to school reform. Instead of requiring all schools to meet annual performance targets, ESSA requires states to focus on a small set of low-performing schools and gives them considerable latitude to design the interventions they deem appropriate. In discussing ESSA, chair of the Senate Education Committee Lamar Alexander claimed, “The department was in effect acting as a national school board for the 42 states with waivers—100,000 schools. The states were doing fine until the federal government stuck its nose into it…So it was important to get the balls back in the hands of the people who really should have it.” But the evidence suggests that not all states are doing fine. Indeed, there are massive disparities across states in terms of current student performance, and these differences are not merely a factor of the social and economic conditions in the state. All states have been actively engaged in efforts to turnaround failing schools, but the effectiveness of such efforts has varied dramatically across jurisdictions. Public education will (and should) always be driven predominantly by local actors—teachers, administrators, school board members, and state legislators. Even under NCLB, states and districts had a mostly unfettered ability to run schools as they saw fit. But with autonomy comes the potential for greater disparity, as more capable, focused, and well-resourced states pull even further ahead of those with less capacity, fewer resources, and greater political dysfunction.

### Uniqueness: Education-specific

#### Trump is dismantling the federal role in education — DOE budget reductions and federal limits.

Wong 17 — Kenneth K. Wong, Walter and Leonore Annenberg Professor of Education Policy at Brown University, 2017 (“Redefining the federal role in public education: The 1st quarter of the Trump “insurgent” presidency,” *Brookings*, March 27th, Available Online at <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/>, Accessed 06-22-2017)

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.

### Uniqueness: Education-specific

#### Obama’s legacy leaves education authority to the states.

McGuinn 16 — Patrick McGuinn, Associate Professor of Political Science and Education at Drew Univesrity, earned his Ph.D. in Government (and an M.Ed. in Education Policy) at the University of Virginia, 2016 (“From No Child Left behind to the Every Student Succeeds Act: Federalism and the Education Legacy of the Obama Administration,” *Publius*—The Journal of Federalism, Volume 46, Issue 3, Summer, Available Online at <https://academic.oup.com/publius/article/46/3/392/1753622/From-No-Child-Left-behind-to-the-Every-Student>, Accessed 06-26-2017, Lil\_Arj)

Political scientists Paul Peterson, Kenneth Wong, and Barry Rabe (1986 ) observed thirty years ago that federal education policy tends to go through cycles of overreach and consolidation. The Obama Administration embraced an expansive view of the federal role in education and one which built on the test-based accountability framework put into place by NCLB, even as it sought to push in some new directions ( McDonnell 2010 ). Education reform is likely to be viewed, along with health care, as one of the most significant domestic policy legacies of the Obama Administration. While the Affordable Care Act was drafted by Congress and enacted through the “normal” legislative process, the Obama Administration opted to push its education agenda through unilateral executive branch action. The long-term impact of these actions on the separation of powers and federalism remains uncertain but may ultimately prove to be significant. Through the use of competitive grant programs such as Race to the Top (RTTT), Investing in Innovation (I3), and School Improvement Grants (SIG), and the NCLB waiver process, the administration was able to change the national conversation around education, move the Democratic Party to embrace reform, and push states to enact important policy changes, particularly around charter schools, common core standards and assessments, teacher evaluation processes and school turnarounds. The administration’s aggressive push on school reform, however, eventually led to a political backlash against those same reforms and against federal involvement in education more generally, which resulted in an ESEA reauthorization (the ESSA) that rolls back the federal role in K-12 schooling in some important ways. There is, to be sure, some debate about the extent to which ESSA undoes important elements of the Obama education agenda or in fact codifies them into law ( Weiss 2015 ). Nevertheless, the legacy of the Obama Administration in education is bifurcated: on the one hand, federal activism effectively advanced the standards-based accountability movement in states, but it also mobilized opposition against “federal overreach” which helped to enact a law (ESSA) that will constrain the power of the national government in K-12 schooling in the future ( Ujifusa 2015 ). However, ESSA for the most part is not likely to result in a return of education policymaking authority to the local level, but rather to the state level. A 2015 report from the Council of Chief State School Officers, for example, proclaimed that “Regardless of this uncertainty at the federal level, state education leaders remain firmly committed to state accountability systems that support educators, parents, and students by providing useful information that leads to improved outcomes for all students” (CCSSO 2015). While states have historically been relatively minor players in school reform, one of the enduring legacies of the Obama presidency may well be the invigoration and expansion of the state role in education ( Anagnostopolous 2013 ). Going forward states will now have considerably more latitude to determine their own education agendas, though also less political cover from federal mandates. What remains to be seen is if states have developed (or can develop) sufficient political will and administrative capacity to maintain the momentum that has built up behind education reform over the past two decades ( Camera 2015 ). Precisely how states will utilize this newfound authority is unknown, but one thing is certain: flexibility from federal mandates will result in widely divergent state levels of commitment to school reform, a wide range of policy approaches, and widely varying levels of effectiveness in improving school outcomes across the fifty states ( Weiss and McGuinn 2016 ). That is American federalism at work, for better or worse.

### Uniqueness: Education-specific

#### Trump guarantees state lead in status quo federalism balance---federal overreach decks effective policymaking

Burke 16 – Lindsey Burke, Director, Center for Education Policy and Will Skillman Fellow in Education, Reducing Federal Intervention in Education and Moving Toward Student-Centered Policies: 10 Steps for the Incoming Administration, Dec. 19th, 2016, http://www.heritage.org/education/report/reducing-federal-intervention-education-and-moving-toward-student-centered

The Trump Administration has the opportunity to advance education choice as appropriate, and to dramatically reduce the intervention of the federal Department of Education into local schools. The Department has been wholly ineffective at improving educational outcomes for students, loading states and local school leaders with a bureaucratic burden that saps time and financial resources and overseeing a subsidized student loan structure that has enabled colleges and universities to raise tuition at breathtaking rates and place taxpayers on the hook for loan defaults in the process. Pursuing a package of reforms that begins the important work of making federal education funding limited, targeted, and, as appropriate, student-centered and portable holds the promise to restore state and local control of education and better serve students and taxpayers across the country.

#### Betsy DeVos has a history of supporting state control of education policy.

Boehm 17 — Eric Boehm, a reporter at Reason, 2017 (“Federalism in the Age of Trump,” *Reason*, January 19th, Available Online at <http://reason.com/archives/2017/01/19/federalism-in-the-age-of-trump-three-are>, Accessed 06-22-17)

Expanding Choice in Education No Child Left Behind, the federal law that increased spending for schools in exchange for more testing to track student learning, turned 15 this month. It's old enough to be high school sophomore, but it's hasn't earned good grades. By the end of the 2014 school year, 100 percent of all American students were supposed to meet the standards outlined by the Bush era law. Schools that failed to meet those goals were supposed to face consequences like restructuring. Most of that hasn't happened. States lowered standards to make sure that more students could meet them and the Obama administration issued blanket waivers for the schools in states that adopted a new set of federal teaching guidelines called Common Core. The problems with No Child Left Behind illustrate two of the biggest problems with the current status of public education. First, it was a one-size-fits-all solution that, second, funded education infrastructure—school buildings, administrators, and teachers—instead of funding students. Yet the past decade-and-a-half has seen an upwelling of innovative education policy ideas from the state level, including expansions of charter schools, voucher programs, and education savings accounts. Many of those reforms have been focused on giving families a choice when it comes to public education, particularly for students trapped in failing schools for no reason other than their ZIP code. DeVos, in her home state of Michigan, has a long history of fighting for those kinds of reforms. In 2000, she was heavily involved in an unsuccessful effort to remove the state constitution's ban on voucher programs via ballot initiative, and since then she has backed efforts to expand public charter schools there. In her new federal post, she could help nudge states towards reform, says Ben DeGrow, director of education policy for the Michigan-based Mackinac Center. That's where conservatives and libertarians find themselves walking a bit of a policy tightrope. Federal interventions, like No Child Left Behind, in state education policy has not worked, DeGrow says, but school choice activists should resist the urge to call for more federal action to implement policies they like. At best, DeVos should work to peel back layers of federal regulation and encourage—not mandate—states to move in a direction that favors choice for parents and students. Of all the things on this list, this is the area where the greatest potential exists for the federal government to simply get out of the way and let the states experiment with new ideas.

### Uniqueness: General

#### Trump means states are winning across the board – he’s a functional reset button

AP, writing in the Minneapolis Star Tribune, 17

(Associated Press, “Walker calls for more states' rights under Trump”, http://www.startribune.com/walker-calls-for-more-states-rights-under-trump/414620243/)

MADISON, Wis. — Gov. Scott Walker says he is optimistic that states will get more power under President Donald Trump's administration. Walker spoke about transferring more power to the states Thursday at the Conservative Political Action Conference's annual meeting in suburban Washington. He says other than the military and "maybe preserving things like Social Security and Medicare, I think just about everything else is better done by the states." Walker says he "loved" Trump's Cabinet and hoped it, along with Congress, would make transformational changes to send more power back to the states. He says "this is a unique opportunity in time to have transformational change."

#### Trump’s sending power to subnational governments across the board

Mayer, President @ Buckeye Institute for Public Policy, 17

(Matt, “An Era of True Competitive Federalism”, https://www.usnews.com/opinion/economic-intelligence/articles/2017-03-20/donald-trump-ushers-in-era-of-true-competition-for-states-with-his-budget)

With the release of his federal budget, President Donald Trump [appears to be making good](https://www.washingtonpost.com/politics/in-trumps-blueprint-to-reorder-the-federal-government-echoes-of-reagan-81/2017/03/15/af4b5c44-09bd-11e7-93dc-00f9bdd74ed1_story.html?utm_term=.398db3e43b5e) on his promise to send power back to the states. This proposed devolution over federal programs, long demanded by the right (and, [after Trump's election, on the left](https://www.washingtonpost.com/opinions/liberals-are-learning-to-love-states-rights/2017/03/15/c40044e6-098c-11e7-93dc-00f9bdd74ed1_story.html?utm_term=.f9b2c95db295)), pits theory and rhetoric against reality and governing. This power shift must come with tax reform that lowers the federal taxes on Americans and businesses, as well as a reduction in the federal bureaucracy connected to devolved programs. After all, it is fundamentally unfair for the federal government to devolve power but keep the money taxpayers send to it for that power and force states to fund the inefficient federal bureaucracy built up around these programs. Some on the right promote the use of block grants, but that vehicle is a poor substitute for cutting federal taxes by the amount currently appropriated to those federal programs. Under block grants, the federal government still determines how much each state gets and ties strings to those grants. Block grants are better than the status quo, but we can do even better by cutting federal taxes and letting states determine how best to fund the programs they design with the funds that used to head to Washington, which now remain in the states. With decentralization, federal tax cuts and shrinkage of the administrative leviathan, states will be able to compete against each other more meaningfully than at any point in the last 85 years. Specifically, under the current nationalized model, states really can only compete on the margins of areas like welfare, education, transportation and energy, as they are burdened by federal rules, regulations and mandates and limited to act based on the amount of funds they get from and waiver requests approved by Washington.

## Links

### Link – Education Reform

#### Federal education policy preempts the states and makes everything worse

McCluskey, director of the Cato Institute’s Center for Educational Freedom, 17

(Neal, “For the Love of Choice, Don’t Federalize It”, https://www.cato.org/publications/commentary/love-choice-dont-federalize-it)

The case for federalism The first question facing any federal proposal should be whether it is allowed by the Constitution. That may seem quaint or quixotic, but it is fundamental: the Constitution gives Washington specifically enumerated powers, and that is all. Governing education, aside from enforcing civil rights legislation and regulating schooling on federal lands, is not among them. There are sound practical reasons for respecting these constitutional limits. First and foremost, federalism defends against centralized control of America’s diverse communities and people. In addition, when sub-national units, such as states and school districts, try something new, the damage is isolated if a plan does not work; if it succeeds, others are free to replicate it and adapt it to their needs. But isn’t school choice fundamentally different from and better than federalism? Doesn’t it inherently move power from higher, more centralized levels to the lowest levels possible: children and families? It does, and that is a tremendous strength. But as we’ve learned from roughly a quarter-century of experience with state-level school choice programs and federal higher education policy, any connection to the federal government can have unintended consequences for choice, including incentivizing government control of the schools to which public money flows. That control can diminish and even eliminate the core value of school choice: the ability to choose something truly different. A federal program would be too dangerous, threatening to snuff out federalism and impose uniformity on private schools nationwide.

### Link – Education Reform

#### Education policy is a matter of states’ rights---fed lead decks the balance of federalism

Lawson 13 – Aaron Lawson, Associate at Edelson PC where his practice focuses on appeals and complex motion practice, J.D. from UMich, Educational Federalism: A New Case for Reduced Federal Involvement in K-12 Education, Brigham Young University Education and Law Journal, Article 5, Volume 2013, Issue 2, Published in the summer of 2013, http://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=1333&context=elj

Courts are important players in education reform not by articulating the content of educational policy but by setting the rules governing how education reform can proceed. Educational reform involves an important give and take as interested parties advance their own solutions, but there are constitutional limits on this give and take that should be defined by state courts. The experience of educational adequacy lawsuits indicates that there is an important political dynamic at play here, which involves courts and ultimately inures to the benefit of students, as all education reform should. To the extent that the federal government is involved, through programs like NCLB and RTTT, that involvement has the potential to diminish the effectiveness of state legislative response to state courts by binding the legislature to the requirements of federal funding programs. Thus, through NCLB and RTTT, the federal government threatens this valuable political dynamic in which courts play an important role in vindicating the substantive educational entitlements enjoyed by students. Although state legislatures may be able to respond to both the federal government and to state courts simultaneously, the very real possibility that state legislatures may, in some instances, be placed in an untenable position between federal requirements and state court dictates should counsel against extensive federal involvement in education. An adequacy framework for educational policy requires more than that a state legislature commit to a certain level of education funding. It requires also that a legislature be sensitive to the ways in which educational policies, especially those that go beyond the funding context, affect student performance and achievement. NCLB and RTTT focus legislatures in ways that may not actually be helpful. These policies may have any number of constitutionally relevant consequences, particularly for poor and minority students. There is a role for courts to play in educational policy, and that role is to make sure that legislatures remain sensitive to the ways educational policies affect students and especially that they remain sensitive to the unique challenges posed to racially and socioeconomically isolated students within our educational systems and society. State constitutional text demands that closing the achievement gap cannot merely be a legislative priority. State courts cannot effectively play that role in a system riddled with federal commands. There are reasons for federal involvement in local educational policy, but protection of student interests counsels in favor of more restrained involvement, rather than the ever-expanding role the federal government has given itself in the last decade.

#### Results in ineffective policymaking

Lawson 13 – Aaron Lawson, Associate at Edelson PC where his practice focuses on appeals and complex motion practice, J.D. from UMich, Educational Federalism: A New Case for Reduced Federal Involvement in K-12 Education, Brigham Young University Education and Law Journal, Article 5, Volume 2013, Issue 2, Published in the summer of 2013, http://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=1333&context=elj

III. THE PROBLEM WITH FEDERAL INVOLVEMENT Restrictions on the ability of state legislatures and courts to remedy constitutionally deficient education systems are problematic, in large part because the federal government has proven inept at formulating education policy that is responsive to the needs of states. Nothing about the federal government suggests that it should be unskilled at formulating education policy. However, there are times in which federal education policy is ineffective. These instances should force us to ask whether and when it is normatively desirable for the federal government to be formulating educational policy, particularly when a substantive guarantee of some level of educational opportunity exists in the vast majority of states but not at the federal level. Accordingly, this Part describes instances in which federal involvement in education has proven to be less-than-successful.

### Link – Education Reform

#### It’s a massive violation of the 10th amendment

Hornbeck 17 – Dustin Hornbeck, Ph.D. Student in Educational Leadership and Policy, Miami University, Federal Role in Education Has a Long History, May 10th, 2017, https://www.higheredjobs.com/Articles/articleDisplay.cfm?ID=1285

President Donald Trump has directed the United States Department of Education to evaluate whether the federal government has "overstepped its legal authority" in the field of education. This is not a new issue in American politics. Ever since the Department of Education became a Cabinet-level agency in 1979, opposition to federalized education has been a popular rallying cry among conservatives. Ronald Reagan advocated to dismantle the department while campaigning for his presidency, and many others since then have called for more power to be put back into the states' hands when it comes to educational policy. In February of this year, legislation was introduced to eliminate the Department of Education entirely. So, what is the role of the state versus the federal government in the world of K-12 education? As a researcher of education policy and politics, I have seen that people are divided on the role that the federal government should play in K-12 education -- a role that has changed over the course of history. Growth of Public Education in States The 10th Amendment to the United States Constitution states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." This leaves the power to create schools and a system for education in the hands of individual states, rather than the central national government. Today, all 50 states provide public schooling to their young people -- with 50 approaches to education within the borders of one nation. Public schooling on a state level began in 1790, when Pennsylvania became the first state to require free education. This service was extended only to poor families, assuming that wealthy people could afford to pay for their own education. New York followed suit in 1805. In 1820, Massachusetts was the first state to have a tuition-free high school for all, and also the first to require compulsory education. By the late 1800s, public education had spread to most states, in a movement often referred to as the common school movement. After World War I, urban populations swelled, and vocational education and secondary education became part of the American landscape. By 1930, every state had some sort of compulsory education law. This led to increased control of schools by cities and states.

**State led-policymaking is key to uphold the balance of federalism**

**Evers 14** –Williamson Evers (member of the Editorial Board of Education Next and a research fellow at Stanford University’s Hoover Institution. Evers was the U.S. Assistant Secretary of Education for policy, from 2007 to 2009). “How the Common Core Suppresses Competitive Federalism.” Education Next. September 8th, 2014. <http://educationnext.org/common-core-suppresses-competitive-federalism/>

We know that national standards are not needed for success in international comparisons. Back in the 1970s, the United States and Canada were both in the middling, mediocre ranks internationally. Both countries are rather similar in culture and level of commercial and industrial development. The United States has continued to wallow in mediocrity, even as we centralize K-12 education. Yet Canada (which has more competitive federalism in education than the United States and has no Ministry of Education in its central government) has climbed into the ranks of advanced nations in academic performance. Why is this important? Because one of the pillars of the case for national curriculum-content standards is that they are necessary for individuals to succeed in a global marketplace and that all top-performing countries have them. The case of Canada refutes that. Let’s turn to the background of the Common Core. Content standards, tests, and curriculum that had been provided by the states—thus far—will now because of Common Core be provided by federally-endorsed national curriculum-content standards, federally-funded tests, and curriculum (some of it federally funded) based on those tests and curriculum-content standards. The Common Core national standards had their origins in several Washington, D.C.-centric lobbying and policy-advocacy groups—namely, the National Governors Association (NGA), the Council of Chief State School Officers (CCSSO), and Achieve Inc. Shortly after the Obama administration came to power, it adopted and endorsed the national standards. It used competitive grants to coerce states into adopting Common Core. It paid for Common Core national tests and intervened in the test-creation process. It created a panel to oversee and monitor the national tests. It granted states waivers from the burdens of No Child Left Behind (NCLB)—conditional on continued adherence to Common Core or a federally-approved alternative. Central to the thinking (and rhetoric) of the advocates of Common Core on education reform was the idea that state performance standards were already on a downward slide and that, without nationalization, standards would inexorably continue on a “race to the bottom.” The name given to the Obama administration’s signature school reform effort, the Race to the Top program (RttT), reflects this belief. The idea is that to prevent states from following their supposed natural dynamic of a race to the bottom, the federal government needs to step in and lead a race to the top. I would disagree. <<card continues>>

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<<card continues>> While providers of public education certainly face the temptation to do what might look like taking the easy way out by letting academic standards slip, there is also countervailing pressure in the direction of higher standards (especially, as long as there are competing standards in other states). If policymakers and education officials let content standards slip, low standards will damage the state’s reputation for having a trained workforce. Such a drop in standards will even damage the policymakers’ own reputations. In 2007, the Thomas B. Fordham Institute looked empirically at state performance standards over time in a study called The Proficiency Illusion. The study showed that while states had a variety of performance standards (as would be expected in a federal system), the supposed “race to the bottom” was not happening. The proponents of the Common Core wrong in their claims that state performance standards were inevitably and everywhere on a downward slide. Why is this important? Because the other case for national curriculum-content standards is that without nationalization there will be a race to bottom and that only national standards can reverse a supposedly already-existing “race to the bottom.” But the facts refute this. This topples the other principal argument for national standards. To finance its Race to the Top program, the U.S. Department of Education took discretionary stimulus money that could be used as conditional grants, and then turned a portion of that money into a competitive grant program. It used the grants to encourage states to adopt the national standards. Policy analyst Michael Petrilli aptly called inducements to adopt the standards “the carrot that feels like a stick.” The department also paid for national consortia to develop national tests aligned with the national curriculum–content standards. The administration created another inducement in the form of No Child Left Behind waivers. In return for adopting the national standards or a federally approved alternative, states could escape NCLB sanctions for not making timely gains in student achievement. U.S. Education Secretary Arne Duncan went beyond what the law allows, by substituting the Obama administration’s favored education reforms (including national curriculum-content standards and tests) for NCLB’s accountability measures. I would add that the new accountability systems under the waivers can all too easily hide deficiencies in the performance of children in previously closely watched sub-groups and may weaken incentives to improve performance of those children. To some extent, federal officials have commandeered state curriculum-content standards and tests and substituted national standards and tests; to some extent, some state officials embraced the national standards-and-testing cartel as a relief from political pressure within their state and a relief from competitive pressure from other states. In any case, national standards and tests will change curriculum content, homogenize what is taught, and profoundly alter the structure of American K-12 public education. Nationalizing standards and tests would, according to this analysis, eliminate them as differentiated school-reform instruments that could be used by states in competition over educational attainment among the states. Sonny Perdue, governor of Georgia at the time Common Core was created, did not like it when the low-performing students of his state were compared with students in other states that had different standards from Georgia’s. He became the lead governor in bringing the NGA into the national standards effort. So, Yes, Common Core does undermine “competitive federalism.” Indeed, in part, it was designed to do so. Federalism is not only distinction from and rivalry between the federal government and the states; it is also rivalry among the states and among local governments within the states. As economist Richard McKenzie writes, the Founders sought to disperse power “among many different and competing governments—at the federal, state, and local levels.” The insight of competitive federalism is that fifty-one state school boards are better than a single federal Executive-branch office. Fifteen-thousand local school boards are better than either fifty-one state school boards or a single federal office. As political scientist Thomas Dye puts it, “intergovernmental competition” was seen by the Founders as an “auxiliary precaution” against the “monopoly abuse of power by a single centralized government.” Competitive federalism encourages innovation, allows movement between jurisdictions that enhances liberty, and permits a better match between policies and voter preferences. Common Core’s national uniformity runs counter to competitive federalism. Let’s turn to Alexis de Tocqueville, the most famous observer of American society in our history and see what he can tell us about national education standards. Tocqueville is famous for his portrait of nineteenth-century America and his philosophic insights on why the American society has flourished—and also where it might go wrong. It is worth reminding ourselves what some of Tocqueville’s insights were. Once we do, we can consider the current nationalization of K-12 public-school curriculum, with Tocqueville’s insights in mind. One of Tocqueville’s major insights was that Americans have benefited from popular participation in the large number of churches, charities, clubs, and voluntary associations in our country, as well as in state and local governments, which stand between the individual and the national government in Washington, D.C. In essence, Tocqueville believed that the civic health of America depended on popular participation in entities like associations to create and maintain religious, private, or charter schools, as well as in local authorities like school districts with fully-empowered schools boards. Such activity fosters civic virtue and “habits of the heart” and encourages everyday citizens to take on necessary social tasks that in pre-modern society lowly subjects were not allowed to undertake, but were instead the duty of the aristocracy. <<card continues>>

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<<card continues>> When Tocqueville described nineteenth-century American society he spoke, for example, of township school committees that were deeply rooted in their local communities. In those days, state control of local public education took the form of an annual report sent by the township committee to the state capital. There was no national control. Large sums (much of it taxed from laborers and farmers) were spent by these school committees, and their efforts reflected, Tocqueville thought, a widespread American desire to provide basic schooling as a route to opportunity and advancement. He admired the fact that in self-activating America, one might easily chance upon farmers, who had not waited for official permission from above, but were putting aside their plows “to deliberate upon the project of a public school.” At the same time, Tocqueville observed in European countries that activities like schooling that had formerly been part of the work of guilds, churches, municipalities, and the like were being taken over by the national government of those countries. Tocqueville feared that if either Americans neglected their participation in associations or local governments or Europeans lost their intermediate entities to the national governments, the tendency would be toward a loss of a liberty and a surrender to a soft despotism. In Democracy in America, Tocqueville described how in Europe “the prerogatives of the central power” were increasing every day and making the individual “weaker, more subordinate, and more precarious.”Once, he said, there had been “secondary powers” that represented local interests and administered local matters. Local judiciaries, local privileges, the freedoms of towns, provincial autonomy, local charities—all were gone or going. The national central government, he wrote, “no longer puts up with an intermediary between it and the citizens.” Tocqueville said that, in Europe, education, like charity, “has become a national affair.” The national government receives or even takes “the child from the arms of his mother” and turns the child over to “the agents” of the national government. In nineteenth-century Europe, the national governments already were infusing sentiments in the young and supplying their ideas. “Uniformity reigns” in education, Tocqueville said. Intellectual diversity was disappearing. He feared that both Europe and America were moving toward “centralization” and “despotism.” Tocqueville believed that in non-aristocratic societies (like America), there is strong potential for the national government to become immense and influential, standing above the citizens, not just as a mighty and coercive power, but also as a guardian and tutor. Tocqueville maintained that religion (as a moral anchor) as well as involvement in local government (such as school districts) and voluntary organizations could help America counter the tendency toward tyranny. Joseph Califano, President Jimmy Carter’s Health, Education and Welfare Secretary, articulated Tocqueville-style concerns about a centralization of schooling: “Any set of test questions that the federal government prescribed should surely be suspect as a first step toward a national curriculum. … [Carried to its full extent,] national control of curriculum is a form of national control of ideas.” Unless Common Core is stopped, its officials will dismantle what remains of state and local decision-making on classroom lessons and replace it with a new system of national tests and a national curriculum. This policy is Tocqueville’s nightmare: As in Europe, education “has become a national affair” and Common Core is the vehicle for imposing in America a one-size-fits-all centralization like that administered by the National Ministry of Education in France. Federalism, including horizontal inter-jurisdictional competition, allows policies better matched to needs and preferences of voters. It allows individuals and families to “vote with their feet”—to move to jurisdictions that they like, where the authorities don’t act counter to their liberties and preferences. Competitive federalism allows experimentation by alternative jurisdictions. One state can try one policy, while another state tries something else. This is why it is called the “laboratory of democracy.” This feature of federalism is what brought Massachusetts, Indiana, California and several other states to have the outstanding curriculum-content standards that they had before the Common Core. This is the feature of federalism that facilitates an exit strategy from Common Core: It allows states that are leaving Common Core to repeal and replace the national curriculum-content standards with outstanding pre-Common Core state standards. This can be done on an interim basis, while those states design their own replacement standards for the long run. Then the rivalry that takes place under competitive federalism will go back to work to the benefit of teachers, students, and everyone who wants a well-educated citizenry—and also everyone who wants to have the freedoms that are protected by the U.S. Constitution’s Madisonian system of federalism.

### Link – Title I Reform

#### Federal Title I reform disrupts the federalist system and hurts school choice

Forster 17, (Greg Forster, Ph.D., Yale University, Friedman Fellow with EdChoice, 4-1-2017, "Keep Education–and Choice–in the StatesOCPA," Oklahoma Council Of Public Affairs, http://www.ocpathink.org/article/keep-educationand-choicein-the-states)

But make no mistake about where things are heading. If we want to continue living in a democratic republic and not in a technocratic oligarchy, we should be fighting tooth and nail to resist the process of federal takeover, not strengthening it. Title I portability would accelerate our already-breakneck slide toward a society with a permanent coastal ruling class. There is even an exception that proves the rule. When Bill Clinton proposed federal reform of welfare programs, which turned out to be a tremendous success, some conservatives balked at the idea of the federal government imposing welfare reform. Charles Krauthammer pointed out, however, that the federal government had already taken almost complete control of welfare programs, and had badly broken them. Under the principle of ancient wisdom known as “you break it, you bought it,” he said, the federal government ought to fix what it had broken before returning these programs to local control. That still makes sense to me. But it’s much better to avoid federal control in the first place. Title I portability would establish federal control of education. What irony! Conservatives took the lead in fighting against the Common Core initiative on federalism grounds, because the federal government was using Common Core as an opportunity to establish control of education. Will they now hand over our schools to the feds for a promise of school choice? Damage to the constitutional order is not the only price to pay, however. Title I portability would be a short-term win for school choice, but the cause of choice itself would be imperiled in the long term. It would be the states, not the federal government, which would create systems for parents to access choice through Title I portability. And not just the states, but the education bureaucracies of the states. So the bureaucrats most directly threatened by school choice would be the ones designing the programs. In other words, these programs would be designed to fail. Think it can’t happen? In Florida a decade ago, a school voucher program for students in academically failing public schools was totally sabotaged by the way the state education bureaucracy implemented it. Difficult application procedures and other artificially created obstacles made it extremely difficult for parents to access the choice to which they were entitled. And make no mistake, the movement would pay a huge price for that. Just as successful school choice programs make it easier to create more programs, failed programs do the reverse. Just look at how the failure of one very poorly designed voucher program in Louisiana is being used by teacher unions nationwide to discredit all school choice.

#### School finance has a larger impact on federalism than any other issue

**Robinson, 15** - Professor, University of Richmond School of Law (Kimberly, “How Reconstructing Education Federalism Could Fulfill the Alms of Rodriguez” in The Enduring Legacy of Rodriguez, <http://scholarship.richmond.edu/cgi/viewcontent.cgi?article=2299&context=law-faculty-publications>

In the Rodriguez decision, the U.S. Supreme Court held that the plaintiffs did not have a right under the Constitution's Equal Protection Clause, which required the state of Texas to remedy disparities in funding for schools in high-wealth and low-wealth school districts. One of the principal reasons that the Court rejected the plaintiffs' claims was the need to maintain the current balance of power between the federal and state governments over education. Indeed, the Court acknowledged in Rodriguez that even though all equal protection claims implicate federalism, "it would be difficult to imagine a case having a greater potential impact on our federal system than the one now before us," because upholding the plaintiffs' claims would ultimately lead the Court to invalidate the school systems in all fifty states. Although some contend that these decisions and results are driven more by a lack of political will rather than education federalism, the consistency with which federalism has arisen as a real or imagined obstacle to reforms aimed at ensuring equal educational opportunity suggests that federalism is a significant contributing factor, even if other factors also adversely influenced these reforms.6

### Link – Title I Reform

#### Federal mandates in education are unconstitutional and a clear overreach of federal power

Kleven 10—Professor of Law, Thurgood Marshall School of Law (Thomas, “Federalizing Public Education,” Villanova Law Review, 9/4/10, Lexis, 55 Vill. L. Rev. 369)//JLE

D. The Validity and Viability of a Greater Federal Role An increased federal role may be necessary, but whether it is legally valid or politically viable is another matter. The validity of all the models depends on the scope of federal power. The Supreme Court has interpreted the Tenth Amendment’s protection of states’ rights to forbid the federal government from ordering states to pass laws or implement federal programs.74 Consequently, the federal government could not simply mandate states and localities to run their educational systems in accordance with federal standards. So far the Court has not used the Tenth Amendment to limit the federal spending power. Thus, strings attached to federal money, as with most of the existing federal interventions into public education, is currently an available route.75 Whether the Court would invoke the Tenth Amendment if the federal government tried to use the spending power to fully finance public education and prohibit state and local supplementation, to take over the states’ role in superintending local school districts, or to totally federalize education and establish a federal public school system, is hard to say and likely depends on the ideological tilt of the Court at the time. The basis of a decision striking down federal intervention would likely be that public education is a traditional state function that the federal government may control to a limited degree but not so extensively as per the three models.76 While such a decision is certainly conceivable, my view is that the extent of the federal role should be treated as a political question, on the ground that tradition should not stand in the way of progress in education and that the political process is the appropriate place to resolve whether an increased federal role would be progressive.77

### Link – Desegregation

#### Even if federal protection of civil rights was justifiable in the past- Trump changed everything and federal action comes at the expense of more progressive state powers

Love, 17 – Philadelphia based journalist and commentator who writes on politics, social justice, race and human rights (David, “THE NEW STATES’ RIGHTS” The Philadelphia Citizen, 7/25, <http://thephiladelphiacitizen.org/the-new-states-rights-josh-shapiro/>

The term “states’ rights” often conjures up images of Jim Crow segregation and the Civil Rights movement, of governors, sheriffs and local officials who abuse their power and violate the rights of their citizens. In the past, under those circumstances, we’ve turned to the federal government as a last resort to protect our rights from oppressive state and local governments. But what if the issue of states’ rights is turned on its head, and the states are actually doing the hard work of preserving democracy from an oppressive, overreaching federal government? Welcome to the new reality of the Trump era. Not very long ago, states’ rights was code for insidious and disastrous policies enacted at the state level, including slavery and secession, bans on interracial marriage, and voter suppression. Haters of democracy have long invoked states’ rights as a justification for the curtailment of liberties. Now the oppression is coming from the federal government; in response to President Trump’s executive orders—the Muslim travel ban, sanctuary cities, withdrawal from the Paris Accord—a cadre of governors and attorneys general are fighting back. Chief among them is our state’s Josh Shapiro, who joined 17 other AGs who sued the Trump administration over the first travel ban. (Shapiro did not join the AGs who sued over the reworked executive order.) When Environmental Protection Agency Administrator Scott Pruitt announced cuts to regulations on methane and other pollutants, Shapiro and 13 other state AGs sued the EPA to intervene. The Pennsylvania Attorney General joined 19 of his colleagues across the nation in affirming support for the Paris Climate Agreement, and 32 AGs in opposing federal cuts to legal services. And he sued the U.S. Department of Education and Secretary Betsy DeVos for abandoning federal protections on abusive student loan practices. We’ve long thought of the three branches of federal government as checks on one another. In May, Shapiro delivered the commencement address at Temple University’s Beasley School of Law, and made it clear that perhaps the greatest check on runaway federal power belongs to the states. “Fundamental to who we are is that we are not ruled by a king but rather the power of our government emanates from the people whose rights act as specific checks on the powers of our leaders,” Shapiro said. “That principle is being tested again today. But to limit our view of checks and balances as merely horizontal and federal misses a key element of our democracy, which is that states also serve as a check on the federal structure…Here in Pennsylvania, voters elected Donald Trump as President and me—a progressive Democrat—as the Commonwealth’s Attorney General. Perhaps these voters intuitively understood…that State’s rights can not only be a shield against federal overreach, but a sword for protecting and advancing individual rights.” It seems that Shapiro is actively rebranding the role of a state Attorney General in these Trumpian times. Last month, he appeared at the Aspen Ideas Festival in conversation with Yale Law School Dean Heather Gerken, and made his case: “I think ultimately, attorneys general post January 20th—and I say this with respect to all the other elected officials—are probably the most important elected officials in our democracy.” Counties getting in front of their state governments on the issues of the day is one thing, but states stepping up and standing up to the federal executive branch is quite another. When I caught up with Shapiro after his return from Aspen, I asked how he came to champion such an activist agenda. Turns out Shapiro has been beating the drum of the burgeoning movement to reconsider states’ rights for quite some time. “I was talking about these issues through the campaign, on how the states can be a force for progressive change—long before Donald Trump thought he was going to be president,” Shapiro told me. “The states can be a progressive national force for change. It’s not about my policy differences with the president, but about making sure I am protecting the interests and rights of all Pennsylvanians.” Make no mistake, Shapiro’s thinking represents a sea change in democratic governance. It represents a fundamental shift in our thinking of the Tenth Amendment, which reserves powers for the states that are not delegated to the feds. In fact, Shapiro is well aware that the movement has come to be called progressive federalism, as outlined by Jeffrey Rosen, CEO of the Constitution Center, in The New York Times last year—before Trump was even sworn in. Rosen describes Yale’s Gerken as the movement’s “intellectual guru” and quotes her defining progressive federalism as a way to create a decentralized system “where national minorities constitute local majorities,” thus allowing “minorities to protect themselves rather than look to courts as their source of solace.” In other words, now that all three branches of the federal government have fallen under conservative control, once big-government progressives have no choice but to focus on enacting change at the local level.

### Link – Desegregation

#### Desegregation of schools needs local control – Federal involvement violates federalism

Parker 04 Wendy Parker Professor of Law, Wake Forest University School of Law. B.A., 1986, The University of Texas; J.D., 1990, The University of Texas School of Law. Co-counsel, Brief of the Society of American Law Teachers as Amicus Curiae in Support of Respondents in Grutter v. Bollinger, 123 S. Ct. 2325 (2003) (No. 02-241). I wish to thank participants in the workshops at the Southern Methodist University Dedman School of Law, University of San Diego School of Law, and Wake Forest University School of Law, at which I presented earlier versions of this paper. Comments from Jane Dolkart, David Levine, Frank Partnoy, and Mike Selmi, and from my former colleagues at the University of Cincinnati College of Law, Jack Chin, Donna Nagy, Suja Thomas, Verna Williams, and Ingrid Wuerth, were particularly helpful. I also thank my research assistants, Billy Guinigundo and Tim Cahill, who provided invaluable assistance. “Connecting the Dots: Grutter, School Desegregation, and Federalism” William & Mary Law Review Volume 45 | Issue 4 Article 6 p.1752-1754 http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1334&context=wmlr, EP

Yet, one cannot disconnect the idea of local control from federalism. Local control, at its core, prefers state and local authority over federal intervention; and this approach is, by definition, federalism at work. In addition, the American history of education rests on a solid foundation of "local control" of schools.32 Schools are typically governed not by the national government, but by state and, particularly for primary and secondary schools, local governments.325 Granted, public schools are not operated entirely independently of the national government, but local and state governance still predominates in theory and practice. Three of the four values associated with state and local authority support school desegregation's allowance of local control over the remedial process. First, the value of public participation in democracy is furthered by state and local power over desegregating schools. If the alternative is authority by non-elected, life-tenured judges, then the opportunity for participation will only exist within the confines of party participation in litigation. Affording authority to officials in the state and local executive and legislative branches will further democratic ideals by increasing the number of voices heard in the remedial process and by holding the decision makers accountable through any attending electoral process. Second, promoting state and local officials' authority will decrease the chances for tyranny because the checks on the abuses ofjudicial power-appellate review and impeachment-are significantly weaker than that afforded by the electoral process. Third, local control furthers experimentation in school desegregation more than exclusive judicial control. Given educators' superior knowledge of education, promoting local control has the strong possibility of increasing experimentation. While judges could certainly draw upon the educators' knowledge in any number of ways, imagining judges taking responsibility for educational innovation in school desegregation is difficult. Educators, on the other hand, likely would have the necessary confidence and incentive to undertake experimentation. Further, because school desegregation will vary by locality-local conditions will affect every aspect of school desegregation-then experimentation is of high value and a national standard is of low value. In sum, not only is school desegregation's promotion of local control faithful to the American tradition of school governance, but it is consistent with three values supporting state and local authority. Left open is the impact of the fourth value associated with state and local authority-creating communities of shared interest-and the value supporting federal authority over schools--establishing a national standard. The two are obviously related. When is it acceptable for Americans to form their own unique communities, or when must they live by the same standard? Federalism itself provides no answer to these two questions, for they relate not to who should be the decision maker but what should be the available decisions. The questions depend on policy unrelated to federalism. For example, Brown I established a national standard because the Court had determined that the Equal Protection Clause must outlaw dejure segregation.327 Green and Swann evidenced ajudicial conclusion that the local experimentation with remedying school desegregation had gone astray because of the continued segregation.3 " Only then was a national rule again necessary. None of these cases asserted a need to usurp state and local authority in every instance, but only when the Equal Protection Clause required a uniform standard. Thus, the national rule in Brown I was the end to de jure segregation, and the national value in Green and Swann was the end to continued segregation. These Equal Protection Clause values, unrelated to federalism, were enough to overcome the American tradition of local control. Despite these exceptions, however, federalism provides a solid foundation for the promotion of local control in school desegregation. When a uniform standard is necessary, the national judiciary will assert its authority. More typically, the values supporting state and local authority are found in the school desegregation setting

### Link – Desegregation

#### Even if there’s a federal role in civil rights protection – in practice this becomes a justification for federal overreach – the precedent of the plan will collapse federalism

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Even when the federal judiciary intervenes in matters reserved to the states to protect human liberty, the judges often reserve the authority to impose arbitrary restrictions and regulations concerning the rights in question. For example, this occurred in the 1925 case of Gitlow v. New York. In this matter, the court announced that the 14th Amendment prohibited the states from infringing upon an individual’s free speech, but that right could not be utilized to challenge the legitimacy of a government or advocate an overthrow. In the 2008 case of District of Columbia v. Heller, the Supreme Court maintained that the Second Amendment affirmed the right to keep and bear arms, but made the following restrictive decree: “Like most rights, the Second Amendment right is not unlimited. It is not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose: For example, concealed weapons prohibitions have been upheld under the Amendment or state analogues. The Court’s opinion should not be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms. Miller’s holding that the sorts of weapons protected are those “in common use at the time” finds support in the historical tradition of prohibiting the carrying of dangerous and unusual weapons.”[12] Of course, this contention is historically unfounded – the Second Amendment was constructed to prevent the federal government from even so much as approaching the issue, thus voiding the potential for any restrictive firearm legislation. The founders were wise enough to embrace federalism and rely on the states to determine these matters for themselves. If a state carried its own policy to undesirable ends, the people within that state could simply migrate with impunity. Through these types of decisions, the federal courts have systematically negated founding doctrine and supplanted state law with edicts that are passed down from a nine member oligarchy. I wrote in my book, Compact of the Republic, that “while the incorporation doctrine has sometimes acted to preserve individual liberty, in most cases it is just used as a federal excuse to meddle in the business of state law. It has given federal judges the ability to interject their own opinions into state issues, provides the federal government a pretext for policing the entities that built it, and allows the federal courts to redefine rights in a way that it was never meant to.” I went on to write that “it has made the federal judiciary into a nationalist, untouchable branch of government.” While I often justify my political opinions based the constitutionality of a policy, let’s take that out of the equation for a moment. An honest observer may ask – the Constitution notwithstanding, is the incorporation doctrine good for the continuance of human liberty and the preservation of inalienable rights? I think the answer lies in the fallibility of government and civil officers. If we were ruled by failsafe angels of liberty, I believe the answer may be yes. If federal judges read and understood the Constitution in the same way I do, I might concede that they could act to intervene upon state infringements of liberty. However, the sad and obvious fact is that they do not. We are not governed by angels that understand human liberty; far from it. If the federal judges cannot fail to see how the NSA surveillance program or federal firearm restrictions are complete violations of constitutionally recognized rights, how can we trust them to sort such things out at the state level, or pinpoint state violations? Realistically, they can’t and won’t. If the incorporation doctrine is embraced to the fullest extent, it would render the need for state bills of rights irrelevant. Do its advocates really expect us to believe that a person’s right to keep and bear arms began only in 1791? At that point, many states had explicit affirmations of such rights that pre-dated the federal counterpart. Until the 1830s, many had official state religions. The idea that the federal bill of rights should supersede and override the state counterparts is as big of a blow against federalism as any other form of government overreach.

### Link – Desegregation

#### Federal school desegregation efforts harm federalism- they undermine local judges and impede state innovation

Parker 4 Wendy Parker, Connecting the Dots: Grutter, School Desegregation, and Federalism, 45 Wm. & Mary L. Rev. 1691 (2004), <http://scholarship.law.wm.edu/wmlr/vol45/iss4/6>. Wendy Parker is a James A. Webster Professor of Public Law at Wake Forest University. Accessed 6/30/17 KDS AK

Three of the four values associated with state and local authority support school desegregation's allowance of local control over the remedial process. First, the value of public participation in democracy is furthered by state and local power over desegregating schools. If the alternative is authority by non-elected, life-tenured judges, then the opportunity for participation will only exist within the confines of party participation in litigation. Affording authority to officials in the state and local executive and legislative branches will further democratic ideals by increasing the number of voices heard in the remedial process and by holding the decision makers accountable through any attending electoral process. Second, promoting state and local officials' authority will decrease the chances for tyranny because the checks on the abuses of judicial power-appellate review and impeachment-are significantly weaker than that afforded by the electoral process. Third, local control furthers experimentation in school desegregation more than exclusive judicial control. Given educators' superior knowledge of education, promoting local control has the strong possibility of increasing experimentation. While judges could certainly draw upon the educators' knowledge in any number of ways, imagining judges taking responsibility for educational innovation in school desegregation is difficult. Educators, on the other hand, likely would have the necessary confidence and incentive to undertake experimentation. Further, because school desegregation will vary by locality-local conditions will affect every aspect of school desegregation-then experimentation is of high value and a national standard is of low value. In sum, not only is school desegregation's promotion of local control faithful to the American tradition of school governance, but it is consistent with three values supporting state and local authority.

### Link – CTE

#### Federal tech education is overreach and fails—turns case

Burke and Mcneill 11 – Lindsey Director, Center for Education Policy and Will Skillman Fellow in Education in the Institute for Family, Community, and Opportunity Jena Baker Senior Associate Fellow (1-5-2011, "“Educate to Innovate”: How the Obama Plan for STEM Education Falls Short, "Heritage Foundation, )http://www.heritage.org/education/report/educate-innovate-how-the-obama-plan-stem-education-falls-short //pleb

A One-Size-Fits-All Approach. Despite increasing federal control over the American education system over the past 50 years, educational achievement across the country has continued to deteriorate.[12] A large part of the problem is that the federal focus centers on a one-size-fits-all approach. Most recently, this approach is part of the Obama Administration’s efforts to impose national education standards and tests on states. This is a significant federal overreach into states’ educational decision-making authority, and will likely result in the standardization of mediocrity, rather than a minimum benchmark for competency in math and English.[13] Applying a blanket approach to education reform undermines innovation in STEM education, increasing conformity at the expense of meeting the diverse needs of students and parents. Recruiting Quality Teachers. The Educate to Innovate initiative increases Department of Education grants to train teachers in the STEM fields by $10 million, and lauds a promise by 75 of the nation’s largest public universities to train 10,000 new teachers by 2015. But in pledging to train 10,000 new teachers over the next five years, public universities will be training just 2,500 more teachers in the STEM fields than are currently being trained. This means that each of the 75 schools will train just six new teachers per year.[14] A major impediment to improving STEM education in the public school system, however, is the ability of schools to recruit quality teachers in the field. The average salary for K–12 teachers in the 2006–2007 school year was $51,000, 86 percent of the yearly salary of occupations requiring similar education.[15] More than half of the workers in science and engineering fields earned a salary of $70,600 or more in 2007.[16] Students graduating from college with STEM degrees recognize that they can earn more in non-teaching professions and are shying away from careers in education. The Business Higher-Education Forum estimates that by 2015 there will be a shortage of 283,000 science and education teachers in secondary education alone.[17] Concurrently, barriers also exist discouraging those who are currently in STEM professions from becoming teachers. Individuals with a professional background in STEM have the potential to be outstanding teachers because of their in-depth understanding of the subjects and practical experience. In many cases, however, these individuals face difficulties in obtaining teaching certifications, in terms of time, cost, and prohibitions imposed, often from federal policymakers. Fixating on the Traditional School Model. While alternative education programs have long been in development, the American education system has continued to fixate on the traditional school model. Alternative education programs offer much promise for fostering innovation in education across the country. Online or virtual learning programs, for example, allow a break from the traditional model in which educational opportunity is tied to one’s zip code and enables students to gain access to the best teachers regardless of where they are located. In 2009, the U.S. Department of Education conducted a meta-analysis of online-learning studies and concluded that “students who took all or part of their class online performed modestly better, on average, than those taking the same course through traditional face-to-face instruction.”[18] Online-learning options are growing rapidly and present an effective new medium for STEM education. As of 2009, 45 states had some form of online-learning program, with more than one million students enrolled in courses online.[19] Plugging the Leaky Pipe This leaky pipeline is perpetuated as students, ill-prepared by a faltering educational system, face significant challenges in pursuing STEM education in post-secondary school. While the absolute number of students attaining STEM degrees more than doubled between 1960 and 2000, the number of students attending college increased. The percentage of students obtaining STEM degrees has, thus, held relatively constant around 17 percent for the past several decades. In the 2002–2003 school year, for example, of the approximately 2.5 million degrees awarded, 16.7 percent of bachelor’s degrees, 12.9 percent of master’s degrees, and 34.8 percent of doctoral degrees were in a STEM field. In comparison, roughly equal numbers of bachelor’s degrees were awarded in STEM as were awarded in business, and twice as many business master’s degrees were awarded. Only at the doctoral level do STEM degrees exceed most other fields.[20] Despite the low number of STEM degrees awarded, demand for STEM professionals is growing. The Government Accountability Office (GAO) reports that between 1993 and 2004, employment in STEM fields grew by 23 percent, while overall employment in non-STEM fields grew by only 17 percent.[21] Furthermore, in 2010, the National Science Foundation reported that “the S&E [science and engineering] workforce has shown sustained growth for over a half a century, and growth is projected to continue in the future.” The same National Science Foundation report also estimated that the average annual growth rate for the science and engineering workforce is 6.2 percent, compared to 1.6 percent for the overall U.S. workforce. While the current economic recession has strained employment opportunities, the need for STEM remains strong and is a means to foster innovation in national security and industry, as well as promote job growth in research and development and related areas. The current educational system, however, continually fails to prepare students for a post-secondary STEM curriculum. This means that America needs a real solution to the challenges in STEM education, one that develops and fosters interest in the subjects from an early age and builds a strong base of STEM-educated citizens throughout the United States. In order to achieve this goal, federal and state policymakers should work toward genuine education reform that empowers parents to choose a school that best meets the needs of their children. <<card continues>>

### Link – CTE

<<card continues>> Data demonstrate that the one-size-fits-all federal efforts to improve STEM education have simply fallen short in educating America’s children in science, technology, engineering, and mathematics. Educate to Innovate is another broad scheme that will spend taxpayer dollars without getting to the root cause of deficiencies in the K–12 education system. In order to plug the leaky pipeline of STEM education, states should: Seek alternative and flexible means to certify new teachers. Too many science and math teachers do not have a degree in the subjects they teach. STEM majors have the potential to serve as high-quality science and math teachers; however, the rigor of such courses of study makes it difficult for these students to concurrently pursue minors or certificates in education. Traditional education degrees or certificate programs have a high cost in both time and money. Alternative certification programs, however, offer a low-cost, time-efficient means of training greater numbers of quality STEM professionals to enter the teaching field. Organizations such as the American Board for Certification of Teacher Excellence (ABCTE) offer increasing appeal to both potential new teachers and schools seeking to hire these excellent teachers. Last year, ABCTE provided 219 new teachers with certificates, up from 144 in 2008. The cost of this program is a mere $1,995, while a traditional university degree could cost on average $28,080 at a public four-year university, or upwards of $105,092 at a private university.[22] Candidates for an ABCTE certificate need only to hold a bachelor’s degree, pass a background check, and pass teaching-knowledge and subject-area exams, with most completing the program in less than a year. ABCTE certification is already accepted as a teaching qualification in Florida, Idaho, Mississippi, Missouri, New Hampshire, Pennsylvania, South Carolina, Utah, and Oklahoma.[23] While alternative teacher-certification skeptics have argued that such programs are not as rigorous, research has shown these concerns to be unfounded.[24] ABCTE reports that only 40 percent of its candidates are able to complete their rigorous program, highlighting its quality and merits.[25] Nevertheless, traditional four-year universities are also stepping up in forming programs to encourage and enable STEM majors to pursue teaching after graduation. The University of Texas at Austin’s UTeach program, for example, offers students the opportunity to obtain a STEM degree and a teaching certificate concurrently.[26] The University of Texas is now graduating 70 science and math teachers per year with a 70 percent retention rate compared to the 50 percent national retention rate.[27] Following on the UTeach example, 13 other universities, including the University of California at Berkeley, have begun similar programs as part of the National Science and Mathematics Initiative (NSMI).[28] Encourage greater access to online classes and programs. In recent history, the quality of education available to a student has largely been determined by zip code. Online education programs, however, provide quality STEM education to students regardless of geography. Approximately 1 million students, or 2 percent of U.S. K–12 students, already participate in online education, with 27 states offering statewide virtual schools and 24 states plus the District of Columbia allowing students to attend these schools full-time.[29] Across the nation, there is a great variety of online or virtual learning programs. Many offer supplementary education, presenting students the opportunity to take classes not offered at their schools (whether an upper-level Advance Placement (AP) class or basic physics) or offering a hybrid education to enhance in-class instruction. Others offer full-time programs or cyber charter schools where students “attend” all of their classes online. These programs may be either publicly run, under state, school district, or charter authority, or privately run, as the for-profit education industry now accounts for roughly 10 percent of the education market.[30] Another added benefit to online education is the ability to customize programs to student needs and allow students to work at their own pace. For STEM education and beyond, virtual learning programs address teacher shortages. Students are able to take a chemistry class from the best instructors online, countering the fact that many school districts have trouble finding qualified STEM teachers. Some online programs even offer virtual chemistry or biology laboratories. Link pay to performance. Teachers’ salaries have long been based on seniority and credentials, completely ignoring market influence and teacher efficacy. To help recruit and maintain qualified teachers, school districts should link pay to performance. For STEM teachers or those with degrees or professional experience in the field, higher salaries are more prevalent in industry than in the teaching profession. Recognizing this market demand, employers may need to offer STEM teachers better compensation. Providing bonuses for those teachers who are successful in recruiting more students to enroll and pass AP courses in the STEM fields could attract and retain high-quality teachers.[31] In Florida, a state leader in education reform, the One Florida program offers $50 in state funding to teachers for each of their students who pass an AP exam, up to $2,000 a year.[32] Empower parents with school choice. Millions of students across the country are trapped in low-quality, government-assigned public schools. School choice, however, offers parents the opportunity to choose schools for their children that offer better opportunities that meet their children’s needs. Last year, 23 private-school-choice programs in 15 states and the District of Columbia offered varying degrees of school choice options to 190,000 of the nation’s students. These programs not only provide better educational opportunities, but force schools to have greater accountability to students and their families through competition. In addition, 40 states and the District of Columbia permit charter schools, and 46 states have public-school-choice options.[33] In the case of public-school choice, a key component has been the availability of “backpack funding,” or allowing funding to follow a student to a public school of choice. Such mobile funding also offers great potential for the future of online education, such that students could be able to use either a portion of their educational funding for supplemental virtual education or all of their educational funding for full-time programs. A Nation at Risk A STEM-educated workforce is vital to the security and the prosperity of the U.S. as industry and government increasingly demand highly trained STEM professionals to compete in the global market, and look to science and technology to help stay one step ahead of national security threats. The United States must not allow itself to continue to be outcompeted in science, technology, engineering, and mathematics. While the Administration’s Educate to Innovate initiative is intended to raise the U.S. “from the middle to the top of the pack in science and math,” this one-size-fits-all, federal approach fails to remedy the underlying problems of academic performance and does not plug the leaky pipeline in the American education system.

### Link – CTE

#### States have already taken the initiative now – little federal role, increases harm federalism

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Understanding what is called career and technical education (CTE) in the United States should begin with recognition of the fact that the United States has no national system linking education and the workforce (Stone & Lewis, 2012). Rather, CTE today is a nonsystem built upon a series of ad hoc efforts begun in 1862 to address education for the workplace. Today’s federal legislation that defines CTE is known as Perkins IV and is discussed in greater detail by Imperatore and Hyslop in this issue. Instead of a national system that governs the states, the 50 states individually make and carry out the majority of education policy, with some federal policies providing direction or oversight. Within each state, school districts modify and interpret state policy to run their schools. As a result, state and local efforts have shaped career and technical education policy and programming. Schools, state and local governments, and business organizations operating in very loose partnerships with the federal government have sought to support youth in successfully and efficiently transitioning from public primary and secondary education to other education and the workplace. The federal government has only minimal influence on public education—at most achievement standards or other incentives are tied to federal grants. As a result, the default structural support for youth transitioning to the labor market has become what most term “college,” usually defined as a degree from a two-year or four-year postsecondary institution. Absent a robust system of industry-recognized credentials, employers have come to assume that a college degree is the signal on an applicant’s resume of skill or proper training. This assumption has, for better or worse, led to the notion of “college for all” as the best means of preparing all youth for the emergent labor market. Thus, the college degree has become a proxy for employability or work readiness (Stone & Alfeld, 2006). Yet, only a minority of students who enter ninth grade in the United States ever complete a two-year or four-year college degree, as discussed by Stringfield and Stone in this issue

### Link – CTE

#### States are closer to the problem – better equipped than the FG

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What role should the federal government play in helping people acquire the skills necessary to land and keep good jobs? The answer isn’t obvious. Even those who believe in an activist Uncle Sam will probably struggle to find the right place for him in the world of training. Supporting a massive federal infrastructure program or federally backed community college doesn’t necessarily mean you believe Uncle Sam knows how to transmit construction or manufacturing skills or what community colleges should teach. For those of us more skeptical of muscular federal interventions (especially when it comes to complicated, swift-changing issues), it’s even tougher. Uncle Sam can be clumsy, subsidizing the wrong things and subsidizing the right things too slowly. He can be strong-armed by powerful interest groups into backing parochial policies and preferences. His efforts can be very expensive and, since they are generated and administered from so far away, painfully obtuse to the needs of particular communities. And, given the last 15 years of his meddling in K-12 schools (via NCLB, Race to the Top, SIG, etc.), there’s a strong keep-the-feds-out-of-education sentiment across the land. My general operating principle in this area is that we should lean heavily on the wisdom, nimbleness, trustworthiness, and skin-in-the-game-ness of those closest to the problem and opportunity. So our default setting should be listening to and empowering employers, educators, and local bodies. But can Uncle Sam do worthwhile things to create an environment that supports smart local activity? And what should we do about the existing federal activity?

### A2: No Link – Spending Power

#### Federal funding makes federal regulation inevitable – this hampers state autonomy

McCluskey, director of the Cato Institute’s Center for Educational Freedom, 17

(Neal, “For the Love of Choice, Don’t Federalize It”, https://www.cato.org/publications/commentary/love-choice-dont-federalize-it)

Federal money means federal regulation 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.

### A2: No Link – Spending Power

#### The spending power links because the plan includes conditions on that spending that restrict state flexibility in education

**Lawson, 13** --- J.D. 2013, University of Michigan Law School (Aaron, Brigham Young University Education and Law Journal, “EDUCATIONAL FEDERALISM: A NEW CASE FOR REDUCED FEDERAL INVOLVEMENT IN K-12 EDUCATION,” 2013 BYU Educ. & L. J. 281, Lexis-Nexis Academic, JMP)

As such, it remains true that in the mine run of cases it will be the legislature who is responsible in the first instance for fashioning the remedy for a constitutionally deficient educational system. It is for this reason that extensive and growing federal involvement in education is troubling. Both NCLB and RTTT attach significant strings to state acceptance and receipt of federal funds, n106 which are vitally important if a state is to create a constitutionally adequate education system.Although a state theoretically has a choice as to whether or not to accept the proffered federal funds, n107 there is no other actor that can replace the funds that a state might otherwise receive from the federal government. n108 Given [\*301] these budgetary realities, as well as the constitutional imperative of educating children, state legislatures are significantly limited in their ability to reject these federal funds. Despite some initial resistance to NCLB, n109 every state eventually chose to accept the federal money and the attached conditions, at least initially. Recently, however, due to a provision in the law that would have cut off federal funding if states failed to meet almost impossible goals, n110 most states were granted waivers from some of the program's more onerous requirements. n111 However, these waivers themselves came with conditions attached, as the Obama Administration used the waivers to force states to adopt favored reforms. n112 Thus, these waivers simply represent the shift from one federal policy to another. On the one hand, attaching such limitations on the use of federal money is affirmatively good because it protects federal legislative priorities; federalism is a two-way street and "concern for protecting the states should not obscure the need to vindicate the authority of Congress to choose whether and how to spend its money." n113 But there is another side to this coin, which is that ***"[a] state's freedom from federal interference ... is a freedom to*** [\*302] ***make choices, not just a freedom to choose wisely."*** n114 As such, although "Congress may use its spending power to create incentives for states to act in accordance with federal policies[,] ... when pressure turns into compulsion, the legislation runs contrary to our system of federalism." n115 This is particularly important in the context of education***.*** Where conditions on federal money are too restrictive, they limit the array of choices available to state legislatures in any given area of policy. In the context of education, where a court will establish limits on the exercise of legislative discretion but call upon the legislature to formulate a remedy in the first instance, a state court's action will be less effective since the legislature is already constrained by conditions attached to the receipt of federal funds. Indeed, where the effect of the federal policy is as harmful as some policies may be, n116 the court's ability to vindicate the rights of students might be entirely ineffective. This possibility becomes more plausible as federal intervention grows.

### A2: No Spillover to All Federalism

#### Federalism is fragile and increasing centralization in education threatens the entire model in other policy areas

Kurzweil 15 – Director, Educational Transformation Program, Ithaka S+R; Lecturer in Law, Columbia Law School, (Martin A., “Disciplined Devolution and the New Education Federalism,” 103 Cal. L. Rev. 565 (2015), HeinOnline, p.628-632)//sy

IV. A FRAGILE BALANCE The new education federalism demonstrates the potential of disciplined devolution. It has generated sincere and intensive participation by states, fostered collaboration among intrastate stakeholders (at least at the initial policy formulation stage), yielded policy diversity and experimentation (at least within states), and demonstrated strong accountability mechanisms. It is a promising model for education governance and supports the promise of disciplined devolution as a model in other policy domains. Yet achieving the full potential of disciplined devolution may prove elusive. The ways in which the education example fell short of disciplined devolution's predicted benefits reflect a precarious balance of centralizing and decentralizing forces. While the internal pressure of these competing forces has disrupted implementation, exogenous forces pose a potential systemic risk. Political change, premature legislative lock-in of substantive policy changes, a decrease in the federal government's leverage, or a failure to recognize the nature and benefits of the new structure could each tip the model into a mandate-based, top-down governance structure or leave policy making to states without adequate oversight. The political risk to disciplined devolution takes three forms. First, a change in administration could lead to a change in the agency's approach to policy or interstate relations. Second, a continuing administration may change its approach as the political calculus changes. Finally, changes in the political climate in states may disrupt the model. The potential for each of these political changes exists in the education context, as national Republican politicians have positioned themselves against the Obama Administration's policies, 360 teachers' unions and other Democrat-leaning advocates continue to pressure the Administration to roll back elements of the initiatives,361 and aspects of the reforms remain controversial in the states.362 A second risk for disciplined devolution is federal legislation that prematurely locks in substantive policies without preserving the governance structure. Success of some policies in some contexts may convince Congress to require those policies in all contexts. Legislative incorporation of the lessons learned through policy experimentation is helpful to disciplined devolution, but only if flexibility to deviate is retained. Such flexibility is necessary to motivate critical policy analysis on the part of state and local actors and to permit continued experimentation and adaptation. Legislators are liable to mistake success of a particular policy for success of the policy-making process and act on that mistake to cripple the policy-making process. There is some evidence of this risk in existing bills to reauthorize ESEA. 363 Although premature legislative incorporation of substantive policy runs a risk of shifting the balance to uniform centralization, excessively delaying an update to default legislation may also undermine the framework. It is critical for disciplined devolution that the default statutory scheme remains credible. If it is not, states will have no reason to take it seriously, and the federal agency's leverage will be diminished. The risk of legislative obsolescence is illustrated by NCLB's requirement that all students achieve grade-level proficiency on statewide tests by the end of the 2014 school year. The 2014 deadline, and its related funding penalties, was a major motivator for states to participate in ESEA Flexibility. Now that the deadline has passed, states with waivers may assume that the provision is moot, or that the Education Department's threats to withdraw funding are not credible, and cease to take their commitments under ESEA Flexibility seriously. The NCLB default has also been weakened by the Education Department's willingness to negotiate alternative arrangements with the handful of states that did not apply for or were denied a waiver.365 A final, pervasive risk is that the relevant federal and state actors fail to recognize the nature of the new governance structure and therefore unwittingly take steps that weaken it. In other words, disciplined devolution might disappear without anyone realizing it existed in the first place. There is a high risk of such a category error in the education case study. As discussed above, most education commentators have not focused on the structural changes of Race to the Top and ESEA Flexibility at all, and those who have generally mistake them for federal incursion or unaccountable decentralization.366 If the Administration or Congress takes action on the basis of either of these characterizations, rather than the disciplined devolution understanding, it would jeopardize the regime. Lessening the rigor of evaluation and monitoring to mitigate a perceived federal incursion would lead some states to shirk their substantive commitments and reduce the incentive for collaborative policy experimentation. Conversely, making the federal role more prescriptive to combat a perceived lack of accountability or standardization would limit states' flexibility to tailor policies and experiment. It might also lead them to demonstrate formal compliance while ignoring or undermining the underlying federal goals (as under NCLB and ESEA).

### A2: No Spillover to All Federalism

#### Federal wins on education generate constituencies for further federalization

Hess and Kelly 11 -- \*Resident scholar and director of education policy studies at AEI, Executive editor of Education Next, as lead faculty member for the Rice Education Entrepreneurship Program, on the review board for the Broad Prize in Urban Education, and on the boards of directors of the National Association of Charter School Authorizers and the American Board for the Certification of Teaching Excellence. \*\*Research fellow in education policy studies at AEI and a doctoral candidate in political science at the University of California–Berkeley, (\*Frederick M., \*\*Andrew P., “Reflections on the Federal Role,” Carrots, Sticks, and the Bully Pulpit, p.279-283)//sy

Finally, even federal successes can create their own thorny politics. For instance, IDEA is widely regarded as a sterling example of a successful federal effort. It created a framework of rights for previously underserved children and has led to obvious improvements in the status of disabled students in American public schools. At the same time, IDEA created new political dynamics by creating a potent constituency of special education parents, attorneys, and educators who have aggressively used the law to demand substantial resources for their children. This is a happy story from their perspective, but it has put schools with finite resources in a bind, raised concerns that other students are getting short-changed, and potentially distorted the incentives to identify children as “special needs.” Members of Congress and federal officials now find themselves in the unenviable position of having to search for ways to rein in education spending while defending special education investments. The point is that even the most worthwhile federal policy can give rise to unexpected and sometimes unfortunate political dynamics downstream. Although these dynamics are sometimes difficult to predict at the outset, federal policy makers should not be surprised to learn that creating protected classes of actors gives rise to aggressive attempts to assert and expand their claims.

#### Federal action on education jeopardizes the legitimacy of all local governance

Roberts, 15 – Associate Professor @ Virginia tech Center for Public Administration and Policy (Patrick S., “The Centralization Paradox”, The American Interest, 10 June 2015, <https://www.the-american-interest.com/2015/06/10/the-centralization-paradox/>, Accessed: 6/30/17)//SL

Thus, in Agency Under Stress, Derthick shows how the Social Security Administration suffered from a lack of innovation when it was the domain of experts alone.8 So yes, bureaucrats can be henpecked by “courts and parties”, to be sure, but left alone they can be highly inertial, too. This led Derthick to the conclusion that experts should be on tap, not on top. In other cases, politicians, judges, and advocacy lobbies henpeck relentlessly, hobbling administrative agencies so severely that they cannot see straight or work effectively. For example, Derthick pointed out the absurdity of bureaucracy-ensconced school reformers who purport to improve student achievement by punishing the teacher workforce.9 Honest observers can differ on whether the generic problem with bureaucracy is too much autonomy or too little, but the problem isn’t really amenable to generic determination. Each situation is different and things change; Derthick understood that. Nevertheless, she believed that the lack of transparency in state and national policy should be cause for concern for anyone who holds democracy to be the best form of government because it offers citizens informed consent. If democratic decision-making processes are transparent, the rules of the game are clear, and citizens have an opportunity to debate and discuss the wisest course of action, then, rational apathy given its due, democracy can provide for informed consent. If the authors of policy hide behind the scenes, or bury their designs in obscure “tax credit” amendments, the authority for government action becomes unclear, special interests have a field day, and citizens are pushed away from meaningful participation. Then the political process fails at offering the meaningful informed consent that gives the political system legitimacy. The Anti-Federalists worried that the Constitution would oppress people from two directions. They suspected that the legislature would be unable to stand up to the unchecked power of the Supreme Court, and they feared that the populist presidency would grow in power until it overwhelmed popular rule and sober self-government. <<card continues>>

### A2: No Spillover to All Federalism

<<card continues>> Such concerns have risen to high collective consciousness many times in American history. The trope of the “imperial presidency” rings out from Lincoln to FDR to Richard Nixon. Several contemporary observers of the American political scene have predicted that, if the United States government were ever to fall, a despotic presidency would be to blame. Derthick did not frame her criticism of American politics in such apocalyptic terms, but she did worry that the rise of a populist presidency could obscure how policy is actually made and put too great a distance between citizens and the policy process. A populist American President appears on television and video daily as a sponsor of grandiose policy proposals: free community college education; a mission to Mars. The populist-style President himself is a product of the cauldron of election contests that demand ambitious proposals but offer hazy details on implementation or any reasonable metric as to how such proposals might be evaluated. This sort of President nowadays invariably gets absorbed into an electronic celebrity culture saturated by advertising language. Nowhere is this form of political theater more evident than in recent education policy, where proposals for reform—first charter schools, then school choice and vouchers, then smaller class sizes—appear as “flavors of the month” without enough time having passed to evaluate their effects. Meanwhile, laws emerge behind the scenes from issue networks rather than the minds of lawmakers. The presidentialization of everything has spread beyond health, welfare, and education to other domains, including disaster management.10 At the founding, disaster management was a responsibility for states and localities, if for the government at all. Today, the President is the responder-in-chief to any major disaster, from floods to hurricanes to oil spills.11 Disasters make for good news stories, and responding to them is one way in which the President and the Federal government can palpably affect citizens’ lives and deliver benefits. The President cannot issue “waivers” in disaster management, but he does have sufficient discretion to issue “declarations” that trigger Federal resources to flow and pre-planned protocols to spring into action.12 The number of disaster declarations has increased over time. While “no dough for snow” was once a rallying cry at the Federal Emergency Management Agency, it is now routine for the President to declare snow disasters. In emergency management, as in the tobacco settlement, politicians sometimes derive benefits from a social ill. Disaster losses offer politicians an opportunity to come to the rescue. It is too perverse to say that politicians hope for disaster losses, but they do have more incentives to respond ably than to take steps to prevent disaster losses in the first place by, for example, limiting development in flood plains and other risky locations. Questions about how to manage sustainable development, however, depend on context and buy-in rather than on rational planning.13 These decisions are best left to communities, which can draw on expert guidance to come to their own decisions about implementation. Making the presidency the locus of policymaking in areas previously reserved for the states, such as education or welfare, risks closing off avenues for participation and for creative implementation in different regions. Critics of the contemporary Anti-Federalist approach might point out that state legislatures, elected judges, and city councils are even more likely to be captured by special interests than Presidents.14 In reply, a defender of local and state prerogatives would point out that centralization is at best a temporary fix to special-interest control, and often no fix at all. Derthick’s study of the Federal and federalized tobacco settlement shows how mercenary state officials engaged in a “race to the trough” of tobacco settlements.

## Leadership Impact

### 2NC – Federalism Key to US leadership

#### Federal overreach on domestic affairs undermines U.S. global leadership.

Rivlin 92 — Alice M. Rivlin, Senior Fellow and Former Director of Economic Studies at the Brookings Institution, former Hirst Professor of Public Policy at George Mason University, former Founding Director at the Congressional Budget Office, holds a Ph.D. in Economics from Radcliffe College (Harvard University), 1992 (“Federal Policy Goes Global,” *Reviving the American Dream: The Economy, the States & the Federal Government*, Published by the Brookings Institution, ISBN 0815774761, p. 30-31)

The inexorably rising frequency and complexity of U.S. interaction with the rest of the world add to the stress on federal decisionmaking processes and underline the need for making those processes simpler and more effective. If the United States is to be an effective world leader, it cannot afford a cumbersome national government, overlapping responsibilities between the federal government and the states, and confusion over which level is in charge of specific domestic government functions. As the world shrinks, international concerns will continue threatening to crowd out domestic policy on the federal agenda. Paradoxically, however, effective domestic policy is now more crucial than ever, precisely because it is essential to U.S. leadership in world affairs. Unless we have a strong productive economy, a healthy, well-educated population, and a responsive democratic government, we will not be among the major shapers of the future of this interdependent world. If the American standard of living is falling behind that of other countries and its governmental [end page 30] structure is paralyzed, the United States will find its credibility in world councils eroding. International considerations provide additional rationale, if more were needed, for the United States to have a strong effective domestic policy. One answer to this paradox is to rediscover the strengths of our federal system, the division of labor between the states and the national government. Washington not only has too much to do, it has taken on domestic responsibilities that would be handled better by the states. Revitalizing the economy may depend on restoring a cleaner division of responsibility between the states and the national government.

### 2NC – Federalism Key to US leadership

#### State power over domestic issues is key to U.S. leadership — resource constraints.

Rivlin 92 — Alice M. Rivlin, Senior Fellow and Former Director of Economic Studies at the Brookings Institution, former Hirst Professor of Public Policy at George Mason University, former Founding Director at the Congressional Budget Office, holds a Ph.D. in Economics from Radcliffe College (Harvard University), 1992 (“The Dream, The Reality, and Some Solutions,” *Reviving the American Dream: The Economy, the States & the Federal Government*, Published by the Brookings Institution, ISBN 0815774761, p. 10-11)

The Impact of Global Interdependence The first reason is that dramatic changes in the world are radically altering the tasks facing national governments. Rapid advances in the technology of transportation, communications, and weaponry have shrunk distances and intertwined the United States with the rest of the world, intimately and irreversibly. Goods, services, money, and people are flowing easily across oceans and borders. So are economic, political, and environmental problems. Global interdependence requires international cooperation to solve common problems and some delegation of sovereignty to supranational authorities. The Gulf war and growing nuclear capacity in developing nations leave no doubt that stronger international controls are needed on sophisticated weapons. The rapidly thinning ozone layer dramatizes the stake that all nations have in controlling harmful atmospheric emissions. Despite its political appeal, isolationism is no longer a viable option. If the United States is to protect its own citizens and help shape a more habitable world, it must take an active part in international partnerships focused on everything from chemical weapons to acid rain to narcotics traffic. These partnerships are already demanding increasing attention from both the executive and legislative branches of the federal government. Global interdependence creates a paradox for the U.S. government. On the one hand, since both the president and Congress [end page 10] will be spending greater time and energy on international affairs, domestic policy will get less attention in Washington. At the same time, global interdependence makes domestic policy more important than ever. The United States needs rising productivity, a skilled labor force, and modern physical capital, both public and private, if it is to generate the improved standard of living necessary not only to foster domestic well-being, but also to play an effective role in international partnerships. The added complexity of Washington's international role strengthens the case for sorting out domestic responsibilities more clearly. Washington cannot do everything and should not try. The states should take responsibility for a larger and more clearly defined segment of the domestic agenda.

### 2NC – Federalism Key to US leadership

#### Federalism is key to effective responses to security threats — 9/11 proves.

Nivola 5 — Pietro S. Nivola, Vice President and Director of Governance Studies at The Brookings Institution, former Associate Professor of Political Science at the University of Vermont, former Lecturer in the Department of Government at Harvard University, holds a Ph.D. from Harvard University, 2005 (“Why Federalism Matters,” Brookings Institution Report, October 1st, Available Online at https://www.brookings.edu/research/why-federalism-matters/, Accessed 06-19-2017)

Apart from creating confusion and complacency in local communities, a second sort of disorder begot by a national government too immersed in their day-to-day minutia is that it may become less mindful of its own paramount priorities. Consider an obvious one: the security threat presented by Islamic extremism. This should have been the U.S. government’s first concern, starting from at least the early 1990s. The prelude to September 11, 2001 was eventful and ominous. Fanatics with ties to Osama bin Laden had bombed the World Trade Center in 1993. Muslim militants had tried to hijack an airliner and crash it into the Eiffel Tower in 1994. U.S. military barracks in Dhahran, Saudi Arabia, were blown up, killing nearly a score of American servicemen in 1996. Courtesy of Al Qaeda, truck bombings at the American embassies in Tanzania and Kenya in 1998 caused thousands of casualties. Al Qaeda operatives attacked the USS Cole in 2000. And so it went, year after year. What is remarkable was not that the jihadists successfully struck the Twin Towers again in the fall of 2001 but that the United States and its allies threw no forceful counterpunches during the preceding decade, and that practically nothing was done to prepare the American people for the epic struggle they would have to wage. Instead, the Clinton administration and both parties in Congress mostly remained engrossed in domestic issues, no matter how picayune or petty. Neither of the presidential candidates in the 2000 election seemed attentive to the fact that the country and the world were menaced by terrorism. On the day of reckoning, when word reached President George W. Bush that United Airlines flight 175 had slammed into a New York skyscraper, he was busy visiting a second-grade classroom at an elementary school in Sarasota, Florida. The government’s missteps leading up to September 11th, in short, had to do with more than bureaucratic lapses of the kind identified in the 9/11 Commission’s detailed litany. The failure was also rooted in a kind of systemic attention deficit disorder. Diverting too much time and energy to what de Tocqueville had termed “secondary affairs,” the nation’s public servants from top to bottom grew distracted and overextended. To be sure, the past four years have brought some notable changes. Fortifying the nation’s security and foreign policy, for instance, remains a problematic work in progress, but is at least no longer an item relegated to the hind sections of newspapers and presidential speeches. Nonetheless, distraction and overextension are old habits that the government in Washington hasn’t kicked. Controversies of the most local, indeed sub-local, sort—like the case of Terri Schiavo—still make their way to the top, transfixing Congress and even the White House. The sensible way to disencumber the federal government and sharpen its focus is to take federalism seriously—which is to say, desist from fussing with the management of local public schools, municipal staffing practices, sanitation standards, routine criminal justice, family end-of-life disputes, and countless other chores customarily in the ambit of state and local governance. Engineering such a disengagement on a full scale, however, implies reopening a large and unsettled debate: What are the proper spheres of national and local authority?

### 2NC – Federalism Key to US leadership

#### Federal involvement in domestic issues creates overlapping responsibilities and ineffective federal action — Katrina proves.

Nivola 7 — Pietro S. Nivola, Vice President and Director of Governance Studies at The Brookings Institution, former Associate Professor of Political Science at the University of Vermont, former Lecturer in the Department of Government at Harvard University, holds a Ph.D. from Harvard University, 2007 (“Rediscovering Federalism,” *Issues in Governance Studies*—a publication of the Brookings Institution, Number 8, July, Available Online at https://www.brookings.edu/wp-content/uploads/2016/06/07governance\_nivola.pdf, Accessed 06-19-2017, p. 18)

Conclusion Diverting too much of its limited attention to what de Tocqueville had termed “secondary affairs,” the U.S. government overextends itself. This proclivity courts inefficacy up and down the line. When the federal government is expected to “do it all,” state and local officials fall short of fulfilling their basic obligations. That, in part, is what happened in the Hurricane Katrina debacle. The city of New Orleans and the state of Louisiana proved woefully ill-prepared for the storm, even though everyone knew one like it would eventually strike. Whatever the multiple explanations for their fatal error, part of the story almost certainly was excessive dependence on direction and deliverance by Uncle Sam. Meanwhile, relentlessly pressured to spread their resources, and unable to plan centrally for every possible disaster that might occur somewhere in this huge country, agencies at the national level faltered just as badly every step of the way in the flood prevention, the response, and the recovery. Federalism, at least in its authentic form, is less a source of such disarray than a possible solution. A wider and less ambiguous scope of self-rule for the states would signal that, for most of what governance entails, the buck stops with them, and that Washington’s omnivorous policy process should quit biting off more than it can chew.

### 2NC — U.S. Leadership Good

#### Declining U.S. leadership would create a power vacuum that risks war.

Friedberg and Schoenfeld 8 — Aaron Friedberg, Professor of Politics and International Relations at the Woodrow Wilson School at Princeton University, and Gabriel Schoenfeld, Senior Editor of Commentary and Visiting Scholar at the Witherspoon Institute—an independent research center in Princeton, NJ, 2008 (“The Dangers of a Diminished America,” *Wall Street Journal*, October 21st, Available Online at http://online.wsj.com/article/SB122455074012352571.html, Accessed 11-11-2008)

If America now tries to pull back from the world stage, it will leave a dangerous power vacuum. The stabilizing effects of our presence in Asia, our continuing commitment to Europe, and our position as defender of last resort for Middle East energy sources and supply lines could all be placed at risk. In such a scenario there are shades of the 1930s, when global trade and finance ground nearly to a halt, the peaceful democracies failed to cooperate, and aggressive powers led by the remorseless fanatics who rose up on the crest of economic disaster exploited their divisions. Today we run the risk that rogue states may choose to become ever more reckless with their nuclear toys, just at our moment of maximum vulnerability. The aftershocks of the financial crisis will almost certainly rock our principal strategic competitors even harder than they will rock us. The dramatic free fall of the Russian stock market has demonstrated the fragility of a state whose economic performance hinges on high oil prices, now driven down by the global slowdown. China is perhaps even more fragile, its economic growth depending heavily on foreign investment and access to foreign markets. Both will now be constricted, inflicting economic pain and perhaps even sparking unrest in a country where political legitimacy rests on progress in the long march to prosperity. None of this is good news if the authoritarian leaders of these countries seek to divert attention from internal travails with external adventures. As for our democratic friends, the present crisis comes when many European nations are struggling to deal with decades of anemic growth, sclerotic governance and an impending demographic crisis. Despite its past dynamism, Japan faces similar challenges. India is still in the early stages of its emergence as a world economic and geopolitical power. What does this all mean? There is no substitute for America on the world stage. The choice we have before us is between the potentially disastrous effects of disengagement and the stiff price tag of continued American leadership.

### 2NC — U.S. Leadership Good

#### U.S. leadership creates a political framework for global cooperation — addresses multiple transnational threats.

Brooks, 13 — Stephen G. Brooks, Associate Professor in the Department of Government at Dartmouth College, former Fellow in the Belfer Center for Science and International Affairs at Harvard University, holds a Ph.D. in Political Science from Yale University, G. John Ikenberry, Albert G. Milbank Professor of Politics and International Affairs in the Department of Politics and the Woodrow Wilson School of Public and International Affairs and Co-Director of the Center for International Security Studies at Princeton University, Global Eminence Scholar at Kyung Hee University (South Korea), former Senior Associate at the Carnegie Endowment for International Peace, former Fellow at the Woodrow Wilson International Center for Scholars, former Senior Fellow at the Brookings Institution, holds a Ph.D. in Political Science from the University of Chicago, and William C. Wohlforth, Daniel Webster Professor in the Department of Government at Dartmouth College, holds a Ph.D. in Political Science from Yale University, 2013 (“Lean Forward: In Defense of American Engagement,” *Foreign Affairs*, Volume 92, Issue 1, January/February, Available Online to Subscribing Institutions via Academic Search Elite)

Creating Cooperation What goes for the global economy goes for other forms of international cooperation. Here, too, American leadership benefits many countries but disproportionately helps the United States. In order to counter transnational threats, such as terrorism, piracy, organized crime, climate change, and pandemics, states have to work together and take collective action. But cooperation does not come about effortlessly, especially when national interests diverge. The United States' military efforts to promote stability and its broader leadership make it easier for Washington to launch joint initiatives and shape them in ways that reflect U.S. interests. After all, cooperation is hard to come by in regions where chaos reigns, and it flourishes where leaders can anticipate lasting stability. U.S. alliances are about security first, but they also provide the political framework and channels of communication for cooperation on nonmilitary issues. NATO, for example, has spawned new institutions, such as the Atlantic Council, a think tank, that make it easier for Americans and Europeans to talk to one another and do business. Likewise, consultations with allies in East Asia spill over into other policy issues; for example, when American diplomats travel to Seoul to manage the military alliance, they also end up discussing the Trans-Pacific Partnership. Thanks to conduits such as this, the United States can use bargaining chips in one issue area to make progress in others. The benefits of these communication channels are especially pronounced when it comes to fighting the kinds of threats that require new forms of cooperation, such as terrorism and pandemics. With its alliance system in place, the United States is in a stronger position than it would otherwise be to advance cooperation and share burdens. For example, the intelligence-sharing network within NATO, which was originally designed to gather information on the Soviet Union, has been adapted to deal with terrorism. Similarly, after a tsunami in the Indian Ocean devastated surrounding countries in 2004, Washington had a much easier time orchestrating a fast humanitarian response with Australia, India, and Japan, since their militaries were already comfortable working with one another. The operation did wonders for the United States' image in the region. The United States' global role also has the more direct effect of facilitating the bargains among governments that get cooperation going in the first place. As the scholar Joseph Nye has written, "The American military role in deterring threats to allies, or of assuring access to a crucial resource such as oil in the Persian Gulf, means that the provision of protective force can be used in bargaining situations. Sometimes the linkage may be direct; more often it is a factor not mentioned openly but present in the back of statesmen's minds."

### A2: Trump Destroys Leadership

#### Trump’s foreign policy is revitalizing U.S. leadership — critics are wrong.

Kroenig 17 — Matthew Kroenig, Associate Professor of Government and Foreign Service at Georgetown University, Senior Fellow at the Brent Scowcroft Center on International Security at the Atlantic Council, holds a Ph.D. in Political Science from the University of California-Berkeley, 2017 (“The Case for Trump's Foreign Policy: The Right People, the Right Positions,” *Foreign Affairs*, May/June, Available Online to Subscribing Institutions via Hein Online, p. 30)

Media coverage of U.S. President Donald Trump's foreign policy has been overwhelmingly negative. Analysts have seized on early policy missteps, a supposed slowness in staffing the national security bureaucracy, and controversial statements and actions as evidence that Trump's foreign policy is already failing. But the critics have gotten a lot wrong and failed to give credit where credit is due. The Trump administration has left behind the rhetoric of the campaign trail and has begun to adopt foreign policies that are, for the most part, well suited to the challenges ahead. Trump inherited a crumbling international order from President Barack Obama, but he has assembled a highly capable national security team to help him update and revitalize it. Many of the controversial foreign policy statements that Trump has made as president have, in fact, been consistent with established U.S. policy. Where he has broken with tradition, it has often been to embrace much-needed change. It is too early to pass definitive judgment on the Trump administration. But its rapid improvement, combined with Trump's own willingness to take bold action, suggests that former Secretary of State Henry Kissinger may have been right when he told CBS News last December that Trump's presidency could present "an extraordinary opportunity" for U.S. foreign policy.

## Progressive Federalism Impact

### 1NC/2NC – Progressive Federalism Impact

#### Progressive federalism is the *basis* for resistance to Trump’s agenda

Chemerinsky 17 — Erwin Chemerinsky, Founding Dean, Distinguished Professor of Law, and Raymond Pryke Professor of First Amendment Law at the University of California-Irvine School of Law, Fellow of the American Academy of Arts and Sciences, former Alston & Bird Professor of Law and Political Science at Duke University, holds a J.D. from Harvard Law School, 2017 (“Embracing Federalism,” *Take Care*—a scholarly legal blog, March 16th, Available Online at <https://takecareblog.com/blog/embracing-federalism>, Accessed 06-14-2017)

It is time for progressives to embrace federalism and to use Supreme Court precedents protecting states’ rights to fight against Trump administration policies. Throughout American history, “states’ rights” have been used by conservatives to oppose progressive change. In the early 19th century, those opposing abolition of slavery did so in the name of states’ rights. In the late 19th and early 20th centuries, the Supreme Court struck down many progressive federal laws, including the first federal statute restricting the use of child labor, on federalism grounds. In the 1950s and 1960s, Southerners opposed desegregation by invoking states’ rights. In more recent decades, the Supreme Court, in a series of ideologically split 5-4 decisions, used federalism to strike down desirable federal laws, including provisions of the Violence Against Women Act, the Brady Handgun Control Act, and the Patient Protection and Affordable Care Act. But now, with the Trump administration taking far right positions on almost every issue, state and local governments are a key hope. For example, President Donald Trump’s threat to withhold federal funds from “sanctuary cities” is coercion of local governments that violates principles of federalism long advocated by the conservative justices on the Supreme Court. A great deal of confusion exists over what it means for a city to declare itself to be a “sanctuary.” It does not mean that a city will conceal or shelter undocumented immigrants from detection. Instead, when a city says that it is a “sanctuary,” it means that the city will not be an arm of federal immigration authorities. For example, a sanctuary city will not investigate, arrest, or detain individuals on the basis of immigration status. Rather, the city will provide services to all, regardless of immigration status, and generally will not turn over undocumented individuals to federal immigration authorities. There are compelling reasons for cities to adopt such policies. Victims of crime and witnesses to crime will not come forward to the police if they fear deportation. Public health officials worry that sick people, including those with communicable diseases, will not go for treatment if they fear that it could lead to their deportation. Of course, their untreated communicable diseases can spread to all of us. Education officials worry that parents will not send their children to school if they think it might lead to deportation. Educating children, whether documented or undocumented, is a moral obligation and obviously essential for society. Nonetheless, President Trump issued an executive order on January 25, 2017, which threatens sanctuary cities with loss of federal funds. But this violates the Tenth Amendment. The Supreme Court has held that it is unconstitutional for Congress to commandeer state and local governments and force them to administer federal mandates. For example, in United States v. Printz, in 1997, the Supreme Court declared unconstitutional a provision of the federal Brady Handgun Control Act that required that state and local governments do background checks before issuing permits for firearms. The Court, in an opinion by Justice Scalia, said that such coercion violated principles of federalism and the Tenth Amendment. Nor may Congress do this by putting strings on grants to state and local governments. The Supreme Court has said that such strings are constitutional only if the conditions are clearly stated, relate to the purpose of the program, and are not unduly coercive. None of these requirements are met by the Trump Executive Order. No federal statute conditions federal funds on cities denying themselves sanctuary status. And most federal grants to local governments have nothing to do with immigration. But most of all, the Trump Executive Order is impermissibly coercive. In 2012, in National Federation of Independent Businesses v. Sebelius, the Supreme Court, 7-2, declared unconstitutional the Medicaid provisions of the Patient Protection and Affordable Care Act. These provided that if a state accepted federal Medicaid funds, it had to provide coverage for those within 133% of the federal poverty level. The federal government paid 100% of these costs until 2019 and 90% thereafter. The Court, in an opinion by Chief Justice Roberts, declared this unconstitutional as impermissibly coercing state governments in violation of the Tenth Amendment. The Court referred to this as like “a gun to the head” of the states and as “dragooning” them. The Trump Executive Order does exactly the same thing. The federal government can use its agencies and agents to enforce federal immigration law however it chooses. But it cannot turn local governments into enforcement arms of the federal government. That is exactly what the Trump Executive Order does. This is just one of many examples where principles of federalism must be used by progressives. In the area of environmental law, it will be crucial for state governments to adopt stricter pollution control laws in the face of the dismantling of federal environmental protections. <<card continues>>

### 1NC/2NC – Progressive Federalism Impact

<<card continues>> Just last week, Scott Pruitt, the head of the Environmental Protection Agency, once more denied any link between greenhouse gas emissions and climate change. It is clear that he and the Trump administration will gut federal environmental regulations. But there long has been a principle that states can have stricter environmental laws, so long as Congress does not explicitly preempt this. Another important area concerns decriminalization of marijuana. A number of states, including California, have repealed laws that make it a crime to possess small amounts of this drug. Attorney General Jeff Sessions has expressed opposition to these laws. But Congress cannot force state governments to enact or enforce laws. A state does not need to have any law prohibiting marijuana, or can have one with exceptions for possession for medical use or for small amounts. To be sure, the federal government can enforce its own drug laws however it wants, but it cannot compel state governments to do so. States, of course, will vary enormously in their policies. But that, too, is what federalism and states’ rights are about. Progressives should not be hesitant to use conservative decisions to achieve desirable results. We will need all the tools we can find to fight over the next four years.

#### Resisting Trump’s agenda is essential to lower the risk of multiple existential threats.

Baum 16 — Seth Baum, Co-Founder and Executive Director of the Global Catastrophic Risk Institute, Affiliate Researcher at the Center for Research on Environmental Decisions at Columbia University, and Affiliate Scholar at the Institute for Ethics and Emerging Technologies, and a Research Scientist at Blue Marble Space Institute of Science, earned a Ph.D. in Geography from Pennsylvania State University, an M.S. in Electrical Engineering from Northeastern University, and a B.S. in Optics and a B.S. in Applied Mathematics from the University of Rochester, 2016 (“What Trump means for global catastrophic risk,” *Bulletin of Atomic Scientists*, December 9th, Available Online at <http://thebulletin.org/what-trump-means-global-catastrophic-risk10266>, Accessed 07-09-2017, Lil\_Arj)

In 1987, Donald Trump said he had an aggressive plan for the United States to partner with the Soviet Union on nuclear non-proliferation. He was motivated by, among other things, an encounter with Libyan dictator Muammar Qaddafi’s former pilot, who convinced him that at least some world leaders are too unstable to ever be trusted with nuclear weapons. Now, 30 years later, Trump—following a presidential campaign marked by impulsive, combative behavior—seems poised to become one of those unstable world leaders. Global catastrophic risks are those that threaten the survival of human civilization. Of all the implications a Trump presidency has for global catastrophic risk—and there are many—the prospect of him ordering the launch of the massive US nuclear arsenal is by far the most worrisome. In the United States, the president has sole authority to launch atomic weapons. As Bruce Blair recently argued in Politico, Trump’s tendency toward erratic behavior, combined with a mix of difficult geopolitical challenges ahead, mean the probability of a nuclear launch order will be unusually high. If Trump orders an unwarranted launch, then the only thing that could stop it would be disobedience by launch personnel—though even this might not suffice, since the president could simply replace them. Such disobedience has precedent, most notably in Vasili Arkhipov, the Soviet submarine officer who refused to authorize a nuclear launch during the Cuban Missile Crisis; Stanislav Petrov, the Soviet officer who refused to relay a warning (which turned out to be a false alarm) of incoming US missiles; and James Schlesinger, the US defense secretary under President Richard Nixon, who reportedly told Pentagon aides to check with him first if Nixon began talking about launching nuclear weapons. Both Arkhipov and Petrov are now celebrated as heroes for saving the world. Perhaps Schlesinger should be too, though his story has been questioned. US personnel involved in nuclear weapons operations should take note of these tales and reflect on how they might act in a nuclear crisis. Risks and opportunities abroad. Aside from planning to either persuade or disobey the president, the only way to avoid nuclear war is to try to avoid the sorts of crises that can prompt nuclear launch. China and Russia, which both have large arsenals of long-range nuclear weapons and tense relationships with the United States, are the primary candidates for a nuclear conflagration with Washington. Already, Trump has increased tensions with China by taking a phone call from Taiwanese President Tsai Ing-wen. China-Taiwan relations are very fragile, and this sort of disruption could lead to a war that would drag in the United States. <<card continues>>

### 1NC/2NC – Progressive Federalism Impact

<<card continues>> Meanwhile, Trump’s presidency could create some interesting opportunities to improve US relations with Russia. The United States has long been too dismissive of Moscow’s very legitimate security concerns regarding NATO expansion, missile defense, and other encroachments. In stark defiance of US political convention, Trump speaks fondly of Russian President Vladimir Putin, an authoritarian leader, and expresses little interest in supporting NATO allies. The authoritarianism is a problem, but Trump’s unconventional friendliness nonetheless offers a valuable opportunity to rethink US-Russia relations for the better. On the other hand, conciliatory overtures toward Russia could backfire. Without US pressure, Russia could become aggressive, perhaps invading the Baltic states. Russia might gamble that NATO wouldn’t fight back, but if it was wrong, such an invasion could lead to nuclear war. Additionally, Trump’s pro-Russia stance could mean that Putin would no longer be able to use anti-Americanism to shore up domestic support, which could lead to a dangerous political crisis. If Putin fears a loss of power, he could turn to more aggressive military action in hopes of bolstering his support. And if he were to lose power, particularly in a coup, there is no telling what would happen to one of the world’s two largest nuclear arsenals. The best approach for the United States is to rethink Russia-US relations while avoiding the sorts of military and political crises that could escalate to nuclear war. The war at home. Trump has been accused many times of authoritarian tendencies, not least due to his praise for Putin. He also frequently defies democratic norms and institutions, for instance by encouraging violence against opposition protesters during his presidential campaign, and now via his business holdings, which create a real prospect he may violate the Constitution’s rule against accepting foreign bribes. Already, there are signs that Trump is profiting from his newfound political position, for example with an end to project delays on a Trump Tower in Buenos Aires. The US Constitution explicitly forbids the president from receiving foreign gifts, known as “emoluments.” What if, under President Trump, the US government itself becomes authoritarian? Such an outcome might seem unfathomable, and to be sure, achieving authoritarian control would not be as easy for Trump as starting a nuclear war. It would require compliance from a much larger portion of government personnel and the public—compliance that cannot be taken for granted. Already, government officials are discussing how best to resist illegal and unethical moves from the inside, and citizens are circulating expert advice on how to thwart creeping authoritarianism. But the president-elect will take office at a time in which support for democracy may be declining in the United States and other Western countries, as measured by survey data. And polling shows that his supporters were more likely to have authoritarian inclinations than supporters of other Republican or Democratic primary candidates. Moreover, his supporters cheered some of his clearly authoritarian suggestions, like creating a registry for Muslims and implying that through force of his own personality, he would achieve results where normal elected officials fail. An authoritarian US government would be a devastating force. In theory, dictatorships can be benevolent, but throughout history, they have been responsible for some of the largest human tragedies, with tens of millions dying due to their own governments in the Stalinist Soviet Union, Nazi Germany, and Maoist China. Thanks to the miracles of modern technology, an authoritarian United States could wield overwhelming military and intelligence capabilities to even more disastrous effect. Return to an old world order. Trump has suggested he might pull the United States back from the post-World War II international order it helped build and appears to favor a pre-World War II isolationist mercantilism that would have the United States look out for its unenlightened self-interest and nothing more. This would mean retreating from alliances and attempts to promote democracy abroad, and an embrace of economic protectionism at home. Such a retreat from globalization would have important implications for catastrophic risk. The post-World War II international system has proved remarkably stable and peaceful. Returning to the pre-World War II system risks putting the world on course for another major war, this time with deadlier weapons. International cooperation is also essential for addressing global issues like climate change, infectious disease outbreaks, arms control, and the safe management of emerging technologies. <<card continues>>

### 1NC/2NC – Progressive Federalism Impact

<<card continues>> On the other hand, the globalized economy can be fragile. Shocks in one place can cascade around the world, and a bad enough shock could collapse the whole system, leaving behind few communities that are able to support themselves. Globalization can also bring dangerous concentrations of wealth and power. Nevertheless, complete rejection of globalization would be a dangerous mistake. Playing with climate dangers. Climate change will not wipe out human populations as quickly as a nuclear bomb would, but it is wreaking slow-motion havoc that could ultimately be just as devastating. Trump has been all over the map on the subject, variously supporting action to reduce emissions and calling global warming a hoax. On December 5th he met with environmental activist and former vice president Al Gore, giving some cause for hope, but later the same week said he would appoint Oklahoma Attorney General Scott Pruitt, who denies the science of climate change, to lead the Environmental Protection Agency. Trump’s energy plan calls for energy independence with development of both fossil fuels and renewables, as well as less environmental regulation. If his energy policy puts more greenhouse gas into the atmosphere—as it may by increasing fossil fuel consumption—it will increase global catastrophic risk. For all global catastrophic risks, it is important to remember that the US president is hardly the only important actor. Trump’s election shifts the landscape of risks and opportunities, but does not change the fact that each of us can help keep humanity safe. His election also offers an important reminder that outlier events sometimes happen. Just because election-winning politicians have been of a particular mold in the past, doesn’t mean the same kind of leaders will continue to win. Likewise, just because we have avoided global catastrophe so far doesn’t mean we will continue to do so.

### 2NC – Federalism Checks Trump: General

#### Federalism prevents executive overreach while helping minorities get political power.

Somin 16 — Ilya Somin, Professor of Law at George Mason University, former John M. Olin Fellow in Law at Northwestern University Law School, holds a J.D. from Yale Law School and an M.A. in Political Science from Harvard University, 2016 (“Heather Gerken on Trump and progressive federalism,” *The Washington Post*, December 14th, Available Online at https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/12/14/heather-gerken-on-trump-and-progressive-federalism/?utm\_term=.b6e833c4f04d&tid=a\_inl, Accessed 06-19-2017)

Yale Law School Professor Heather Gerken has long argued that liberals should take a more favorable view of federalism. In an important new article on Vox, she outlines a variety of ways in which they could potentially use state and local power to resist the Trump administration. There are a number of parallels between Gerken’s argument and my own analysis of the same subject. For example, we both outline similar strategies that sanctuary cities could use to resist Trump’s efforts to deport undocumented immigrants. Perhaps the most notable difference between Gerken’s position and mine is that she puts little if any emphasis on judicially enforceable limits on federal power. This is part of a longstanding disagreement between Gerken and other modern progressive champions of federalism on the one hand, and conservative and libertarian federalists on the other. In my view, the new progressive federalism would be on a sounder footing if its advocates accept the need for strong, binding constitutional limits on federal power rather than resist it. In some of her recent writings, Gerken has shown greater openness to such limits on than in the past. But I think she and other liberals should move further in that direction. Gerken’s Vox article actually underscores this point very well, even if perhaps unintentionally. Many of her suggested strategies for resisting Trump implicitly depend on constitutional limits on federal power for their effectiveness. For example, her (and my) recommendation that sanctuary cities should refuse to cooperate with federal deportation efforts relies on Supreme Court decisions forbidding federal “commandeering” of state and local governments. Otherwise, Trump and the GOP-controlled Congress could simply enact laws ordering the states to comply, and potentially imposing severe punishment on officials who refuse to do so. Both the sanctuary city policy and some of Gerken’s other ideas might be undermined if the federal government could use conditional spending grants to pressure dissenting states into obedience. As Gerken briefly notes, such pressure tactics are rendered more difficult by Supreme Court decisions requiring that any such conditions be unambiguously clear, related to the purpose of the federal grant in question, and not so sweeping as to be “coercive.” Tighter constraints on federal power could also curb other dangers posed by Trump to blue states, such as efforts to undermine state-level marijuana legalization. In addition, liberal efforts to use federalism to resist Trump are more likely to succeed in both courts of law and the court of public opinion if they attract at least some conservative and libertarian support. That support is more likely to be forthcoming if it is based on acceptance of generalized limits on federal power that can protect right and left alike, as opposed to ad hoc opposition to specific Trump policies. Some liberals will likely continue to oppose nearly all hard-wired structural constraints on federal power for fear that they might be used to impede federal efforts to protect racial, ethnic, and other minorities. But as both Gerken and I have explained in the past, greater political decentralization can often benefit vulnerable minorities, particularly under modern conditions. Moreover, it is possible to impose tighter limits on federal power in many other areas, while still leaving the federal government broad power to combat invidious discrimination by state and local authorities. Ultimately, the greatest threat to both unpopular minorities and many other groups is a largely unconstrained federal government dominated by their political enemies. In a diverse and increasingly polarized society with deep reservoirs of partisan hatred, both right and left have much to fear from such concentrated power. Recent political history shows that neither side can hope to stave off the threat by establishing a stranglehold over Washington that eliminates the possibility that the other will return to power. Rigorous enforcement of tight constitutional constraints on federal authority cannot completely eliminate the danger posed by the combination of polarization and the vast power of the modern state. But it can make it less menacing than it would be otherwise.

### 2NC – Federalism Checks Trump: General

#### States can constrain Trump and create innovative policies — federalism is key.

Somin 17 — Ilya Somin, Professor of Law at George Mason University, former John M. Olin Fellow in Law at Northwestern University Law School, holds a J.D. from Yale Law School and an M.A. in Political Science from Harvard University, 2017 (“Why we need enforceable constitutional limits on federal power,” *The Washington Post*, January 3rd, Available Online at https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/01/03/why-we-need-enforceable-constitutional-limits-on-federal-power/, Accessed 06-19-2017)

Yale Law School Professor Heather Gerken has a posted a thoughtful response to my commentary on her analysis of the ways in which liberals and others could use federalism to resist the upcoming Trump administration. We agree that federalism can play a valuable role in many ways. But Gerken argues that we don’t need judicially enforceable constitutional limits on federal power in order to do so. Gerken argues that such limits are both infeasible and undesirable. I think she is mistaken on both counts. We need enforceable limits on federal power so that dissenting states and localities don’t get trumped by Trump – or any other federal enforcer. In Gerken’s view, “judicial efforts to hold back the tide of federal power have been a failure.” They have indeed not gone as far as I and many others would like. But there has been important progress in recent years. That progress has gone far enough that many of the liberal proposals for resisting Trump actually rely on Supreme Court decisions limiting federal power. As I noted in my earlier post on Gerken’s work, this is true of her own and other liberals’ suggested strategies for protecting “sanctuary cities.” Moreover, judicial enforcement of federalism could be much more effective if it enjoyed broader support, particularly from liberals. If Gerken and other leading liberal scholars and judges come around on the issue, the courts could do a lot more to restrict federal power than is currently the case. As with most forms of judicial review, judicial protection for federalism is likely to be stronger if it enjoys substantial bipartisan support. There is much that liberals could accomplish if they join with libertarians, conservatives, and others to help make federalism great again. Gerken also wants the federal government to retain the power to “trump” state policies because she wants a form of federalism that enables states to help “forge national norms rather than allow us to shield ourselves from the federal policies with which we disagree.” As discussed in my earlier post and earlier critiques of Gerken’s work, I think the idea of a federal trump card is at odds with Gerken’s own emphasis on the value of federalism in protecting vulnerable dissenters and minorities. I cannot resist adding that the trump card looks even more dubious than usual in the soon-to-be era of Donald Trump. A trump card that regularly falls into the hands of Trump and his ilk is not one that liberals – or the rest of us – should support. States that adopt innovative policies can indeed help create better norms that spread to other parts of the nation. But they don’t have to do that through federal coercion that compels the rest of the country to adopt them. In many cases, the better approach is a combination of competition and expanding opportunities for people to “vote with their feet” for better jurisdictions. Competition and foot voting put pressure on underperforming states and localities to improve their policies, while giving citizens greater freedom and more choice than is available with top-down federal norm-setting through trump cards (or even Trump cards). Finally, Gerken reiterates her longstanding argument that states don’t need enforceable constitutional protections to resist the federal government, because they can often do so in other ways. She is surely right to argue that state resistance to federal dictates does not always depend on formal constitutional rules. But, in the absence of enforceable limits on federal power, such resistance will often be either ineffective, or unlikely to arise in the first place. For example, state and local resistance to Trump’s potential attacks on sanctuary cities is not likely to succeed if the federal government could simply order local officials to do its bidding, on pain of severe penalties. State and local resistance to this and other federal policies can also be undermined (and often has been) by conditional federal grants, especially if there are no limits on the scope and extent of the conditions and associated penalties for violators. It is true, as Gerken famously put it, that, absent enforceable constitutional limits on federal power, states and localities can still wield the “power of the servant.” But they can accomplish a lot more if they were also masters of their own domain. There is a reason why we normally assume that masters have greater autonomy than servants do. To adapt one of Gerken’s other famous phrases, those who value “dissenting by deciding” should help ensure that dissenting states actually have the final power of decision over some range of important issues. Otherwise, they might get trumped by Trump.

### 2NC – Federalism Checks Trump: General

#### Only strong states’ rights can constrain Trump executive overreach.

Hamilton 17 — Marci A. Hamilton, a columnist for *News Week*, 2017 (“How to stop Trump? The founding fathers thought of that,” *Newsweek*, January 30th, Available Online at http://www.newsweek.com/how-stop-trump-founding-fathers-thought-550014, Accessed 06-22-2017)

For those panicking at President Donald Trump’s speedy signing of a pile of executive orders that reverse longtime policies during his first week, take a deep breath. The Framers crafted a system to check men like Trump, and in fact they expected most everyone to hold power to abuse it. The Framers of the Constitution, intellectually led by James Madison and James Wilson, were informed by an attitude toward human nature that is the key to the Constitution’s enduring success: Assume anyone who holds power will be tempted to abuse it, and then limit it. It is related to Presbyterian-based Calvinism at the time, and the influence of now-Princeton University’s Reverend John Witherspoon, but they took that principle out of its theological underpinnings and crafted a Constitution for all Americans, whether Deists, Christians, Jews or other believers. This core insight that humans can’t be trusted and need to be checked is the reason the United States will survive and even thrive during a Trump presidency. For the Framers, the question to be addressed for every provision of the Constitution was this: If we give this amount of power to this individual/institution, how do we check it? The result in broad outline produced the following checking structures: separation of powers (between the three branches of government—legislative, executive and judicial); separation of power between the federal government and the states; and separation of power between church and state.

### 2NC – States Model Liberal Policy

#### Liberal states set a national agenda and level out inequity — spillover is real.

Gerken and Revesz 17 — Heather K. Gerken, J. Skelly Wright Professor of Law at Yale Law School, former Professor of Law at Harvard Law School, holds a J.D. from the University of Michigan Law School, and Joshua Revesz, Student at Yale Law School, 2017 (“Progressive Federalism: A User’s Guide,” *Democracy: A Journal of Ideas*, Number 44, Spring, Available Online at http://democracyjournal.org/magazine/44/progressive-federalism-a-users-guide/, Accessed 06-14-2017)

Spillovers

Even when the Trump Administration repeals a statute or rescinds a regulation, leaving no law to enforce, states and cities can often make law themselves. As they do so, they can take advantage of another powerful weapon in the federalist toolkit: the “spillover.” When one state regulates, it often affects its neighbors. When Texas insisted that its textbooks question evolution, for instance, its market power ensured that textbooks used in blue states did the same. When Virginia made it easy to buy a gun, guns flooded into New York City despite its rigorous firearms prohibitions. When West Virginia failed to regulate pollution, toxic clouds floated over Ohio. Spillovers, like federalism, aren’t just the tools of conservative governments. Economists would call spillovers an “externality,” and externalities can be positive or negative depending on your point of view. Just as there are spillovers conservatives cheer, there are some spillovers for progressives to celebrate as well. Consider car emissions. Even if the Trump Administration were to lower environmental standards to protect gas-guzzling cars, it wouldn’t matter. Why? Because California has set higher emissions standards than the federal government. No company wants to give up on the California market. As a result, all cars, whether sold in San Francisco or Texarkana, meet California’s high standards. California is an unusual state. It is the biggest in the nation, with almost 40 million residents. Were it a country, it would be the sixth-largest economy in the world. Its economic significance means that it can enact sweeping nationwide regulation even though it nominally regulates only itself. Democrats have won a super-majority in both houses of the California legislature, and its governor, Jerry Brown, seems to be spoiling for the fight against Trump. The state is more than capable of sending some more spillovers other states’ ways. Like uncooperative federalism, spillovers are a form of agenda-setting—they force debate on issues Washington might want to avoid. But they are also a tool for encouraging compromise. If left to their own devices, politicians in red and blue states will rarely negotiate with their colleagues on the other side. But when a liberal policy spills over to a conservative state (or vice-versa), the other half of the country is impossible to ignore. Politicians must reach out across state or party lines to fix the problem. Spillovers thus force politicking, negotiation, and moderation. They force politicians to do their jobs, in other words. The possibility of progressive spillovers answers another progressive objection to federalism. Liberals are often concerned that federalism leaves too many people behind. They worry that those who are most in need of government action are unaided by blue-state policies. But sometimes that worry is misguided. If New York regulates lead in toys, children everywhere will be safer because of spillovers. If Illinois increases its minimum wage, that may pressure businesses to raise salaries nationwide.

### 2NC – States Model Liberal Policy

#### Federalism enables states to fuel national change from the bottom up.

Gerken and Revesz 17 — Heather K. Gerken, J. Skelly Wright Professor of Law at Yale Law School, former Professor of Law at Harvard Law School, holds a J.D. from the University of Michigan Law School, and Joshua Revesz, Student at Yale Law School, 2017 (“Progressive Federalism: A User’s Guide,” *Democracy: A Journal of Ideas*, Number 44, Spring, Available Online at http://democracyjournal.org/magazine/44/progressive-federalism-a-users-guide/, Accessed 06-14-2017)

Winning the War of Ideas

As mentioned, many think of federalism as a means of entrenching the worst aspects of our politics. But it can also be a tool to change our politics for the better. Many of the best progressive ideas were born in cities and states, and social movements have long used state and local governments as testing grounds for their ideas. The most remarkable example in recent years has been the same-sex marriage movement. LGBT advocates realized that nationwide marriage equality would be a heavy lift. So instead they started local—first in Hawaii, then in Massachusetts, then in San Francisco. Some early state and local battles were lost, but same-sex marriage proponents used those fights as staging grounds for organizing and debate. This process built popular acceptance of same-sex marriage and explains why the Supreme Court’s nationwide ruling in Obergefell v. Hodges—a decision that would surely have caused intense controversy before states started to act—was greeted enthusiastically by an overwhelming majority of Americans. Many crown jewels of the national progressive agenda are similarly the product of progressive federalism. The Affordable Care Act, for example, has its origins in Massachusetts, where it was enacted by then-governor Mitt Romney. A regional initiative of ten northeastern states laid the groundwork for the Clean Power Plan. If the next Democratic presidential nominee pushes for universal pre-kindergarten, he or she can look to states and cities for support: Places as different as Oklahoma and New York City have successfully implemented the policy. If progressives want to take a lesson from the conservative handbook, they will have to consider which parts of the equality project—reforming immigration, policing, sentencing, to give just a few examples—they can directly advance. They should remember the crucial lessons of the same-sex marriage movement: In the United States, change generally comes from the bottom, not from the top. And they should remember that working through state and local institutions to enact progressive ideas is just as important as opposing whatever comes out of Washington. Social movements need pragmatic insiders, forging compromise from within, not just principled outsiders putting pressure from without. Finally, states and cities should remember that they have the power to set the agenda. In the Obama years, red states took full advantage of their power to shape the national conversation. They enacted tough abortion limitations that forced that issue to the front of the political agenda. They sought to reframe the same-sex marriage debate into one about bakers and florists by enacting expansive religious freedom legislation. And they liberalized gun regulations at a time when the national consensus seemed poised to shift the other way. These states understood that action can grab headlines and shape debate in a way that protest alone simply cannot. If blue states and cities wish to follow suit, they should take early lessons from Jerry Brown and Michael Bloomberg. The former made headlines in December by boldly claiming that California would launch its own satellites if the federal government abandoned its climate research. The latter drew attention to environmental issues by pledging that progressive cities would seek to join the Paris climate agreement if the Trump Administration withdraws. These sorts of bold pronouncements are not mere bluster. Rather, they’re essential for keeping important issues in the news and for denying President Trump sole control of the political agenda. We don’t mean to suggest that federalism is a cure-all for either progressives or conservatives. During the next four years, many of the President’s actions will be hard to counter. Heavily indebted cities and states may find fighting the federal government is too expensive. And local politicians will always have to devote time and resources to addressing local concerns. But progressives would be foolish to treat cities and states as nothing more than enclaves sheltered from national policies they don’t like. They can use all the tools we’ve suggested to encourage moderation and reshape the national conversation. Federalism is for everyone, and it’s time that liberals took notice.

### A2: “Fair-weather Federalism Fails”

#### Coalitions with fair-weather federalists are key to incremental progress.

Somin 16 — Ilya Somin, Professor of Law at George Mason University, former John M. Olin Fellow in Law at Northwestern University Law School, holds a J.D. from Yale Law School and an M.A. in Political Science from Harvard University, 2016 ("Federalism as insurance," *The Washington Post*, December 20th, Available Online at https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/12/20/federalism-as-insurance/?utm\_term=.a43be5e90a65, Accessed 07-09-2017, Lil\_Arj)

Like Hills, I am also very critical of “fair weather federalists” who support constitutional limits on federal power only when it is politically convenient to do so. Sadly, as he notes, this kind of behavior is all too common on both left and right. I too wish that there were more consistent supporters of enforcing tight limits on federal power. In that happy scenario, we might all be better off than we are now, and it would be easier to resist overreach by Democrats and Republicans alike. But fair weather federalists’ situational opposition to federal overreach has greater value than Hills suggests. Intellectually, the validity of an argument does not depend on the motives, sincerity, or consistency of those who advance it. In my view, many of the federalism objections to Trump’s likely policies are valid regardless of whether the people making these arguments are being consistent with their own previous views. Fair weather friends of federalism can also often be valuable allies for more consistent ones. Efforts to enforce constitutional limits on government power almost always involve a coalition of principled advocates and people who only care about the issue when their own ox is the one being gored. For example, many of the most important Supreme Court decisions protecting freedom of speech involved the rights of communists, Nazis, and others whose own commitment to free speech was dubious at best. As Lord Acton famously put it, “[a]t all times sincere friends of freedom have been rare, and its triumphs have been due to minorities, that have prevailed by associating themselves with auxiliaries whose objects often differed from their own.” The same is true of constitutional federalism. Where it prevails, it is usually by virtue of similar coalitions of convenience. In the same passage, Acton also warned that “this association [with situational allies], which is always dangerous, has sometimes been disastrous, by giving to opponents just grounds of opposition.” Fair enough. But, often, the risk is worth taking, especially when the alternative is near-certain defeat. By allying with fair weather federalists of the left in some cases and their right-wing counterparts in others, consistent federalists can gradually make important incremental progress. Moreover, situational coalitions can sometimes lead to a more permanent consensus. So it proved over time on issues such as freedom of speech and religion, where groups that started out seeking to protect only their own rights gradually came to accept more general principle that government power in these areas should be strictly limited. In recent years, both liberals and conservatives have learned the painful lesson that they are unlikely to achieve secure, long-term dominance over the federal government anytime soon. Both should realize that they are likely to need a federalism insurance policy in the future. That might make some of them more willing to pay their dues than they were previously. Be that as it may, sincere advocates of federalism, like Acton’s “sincere friends of liberty,” must be willing to make situational coalitions to further their goals. I argued for enforcing tight constitutional limits on federal power under both Bush and Obama. Today, I am doing it yet again in the face of Trump’s likely policies. And I’m happy to work with anyone who will join me in that cause, regardless of where they might have stood in the past.

### A2: “Fair-weather Federalism Fails”

#### Fair-weather federalism is inevitable due to political polarization — liberals should still embrace the tool.

Gerken 17 — Heather K. Gerken, J. Skelly Wright Professor of Law at Yale Law School, former Professor of Law at Harvard Law School, holds a J.D. from the University of Michigan Law School, 2017 ("Balkinization: Federalism or Politics: A reponse to Rick Hills," *Balkinization*, January 2nd, Available Online at https://balkin.blogspot.com/2017/01/federalism-or-politics-reponse-to-rick.html, Accessed 07-09-2017, Lil\_Arj)

I’ve spent a long time arguing that federalism doesn’t have a political valence, so it’s been nice to see “progressive federalism” and the “nationalist school of federalism” getting some attention in the wake of the election. While I’m glad to be in conversation with a new group of academics, I’ve nonetheless found myself gravitating to the work of those with whom I’ve been debating these issues for a long time. Two of them have recently written quite thoughtful posts on this federalism revival – Rick Hills and Ilya Somin. I’ll respond to Rick today and Ilya tomorrow. As Rick correctly notes, it’s a political ritual for those who lose the presidency to discover a love for federalism. Rick wonders, though, whether progressives have paid their “federalism insurance premium.” He compares federalism to “an insurance policy, protecting the risk averse against loss of national power” and insists that “the protection comes at a price: One must pay the ‘premium’ of protecting subnational power when one controls the national government, tolerating subnational experiments that one regards as more Frankenstein than Brandeis.” I think Rick is both right and wrong. He’s surely right that those who control national power can be more or less tolerant of disagreement. I just don’t think this phenomenon has much to do with federalism. A handful of people – including Rick and myself – are committed to the notion that states and localities play a useful role in a well-functioning democracy (though I take a nationalist’s view as to what constitutes a well-functioning democracy). Rick and I also agree that federalism and localism allow for a distinctively American variant of a loyal opposition. But as Rick himself observes, most people – including most politicians – are fair-weather federalists. Issues, not institutional commitments, drive debates. That’s why I don’t think it matters that much whether one side or the other has paid up its “federalism insurance premium.” Even if progressives learn to love federalism, I don’t think blue states will be more likely to win concessions from a conservative federal government. Nor do I think that conservatives – who have often allied themselves with federalism – will hesitate to impose national mandates where they can. This isn’t a knock on conservatives; progressives would behave in exactly the same fashion were the tables turned. Rick’s core point, though, is right – we should worry about a give-and-take between liberals and conservatives. It’s just that the give-and-take has more to do with politics than institutions. Put differently, it’s not federalism that matters here, but pluralism. And a pluralist system only flourishes when both sides are willing to live and let live. Rick writes of the need to “tolerat[e] subnational experiments that one regards as more Frankenstein than Brandeis,” but the real problem is the underlying assumption that one’s opponent is closer to Frankenstein rather than to Brandeis. Maybe skepticism of one’s political foes depends on debates over decentralization, but I suspect it has a great deal more to do with the forces that political scientists have identified as the sources of polarization. Federalism, after all, is just one of many institutional and legal strategies we use to instantiate pluralist politics. As Rick notes in the close of his post, “through the exercise of self-control across different political regimes, each Party can slowly confer on institutional arrangements a permanence (sentimentalists would even say "sanctity") that survives change of regimes, sending a signal to their opponents that their self-control will be reciprocated when the tables are turned.” That includes not just federalism and the filibuster (Rick’s example), but a range of institutional practices. Unfortunately, we’re seeing lots of evidence these days that our “pluralism premiums” are not paid up; federalism is just part of that story. Progressives would point to the efforts of North Carolina’s GOP-controlled legislature to disempower their newly elected Democratic governor and the Senate’s refusal to grant Merrick Garland a hearing. Conservatives would point to the efforts of the Obama administration post-election efforts to protect his environmental policies from reversal or the blue states and cities promising to resist the new administration’s policies before Trump has even set foot in the White House. <<card continues>>

### A2: “Fair-weather Federalism Fails”

<<card continues>> Perhaps the best proof of pluralism’s decline is the fact that I have to provide separate lists to make my case, precisely because conservatives and liberals agree on so little these days. We are all watching the same story unfold during Obama’s last days in office, but we have completely different views of whether Trump is violating “sacred” norms . . . or Obama is. Is Obama merely “cement[ing]his legacy” or “putting up policy roadblocks”? In sum, federalism is like pretty much everything else in a well-functioning democracy; while it can help politics works, it also depends on politics to work. Needless to say, reciprocity and trust are hard to build but easy to dismantle in a system like our own. I take it that is Rick’s core concern, and on that point we agree entirely.

### A2: “Rights Turn”

#### Federalism protects minority rights by harnessing local power.

Gerken 12 — Heather K. Gerken, J. Skelly Wright Professor of Law at Yale Law School, former Professor of Law at Harvard Law School, holds a J.D. from the University of Michigan Law School, 2012 (“A New Progressive Federalism,” *Democracy: A Journal of Ideas*, Number 24, Spring, Available Online at <http://democracyjournal.org/magazine/24/a-new-progressive-federalism/>, Accessed 06-14-2017)

More importantly, what we have today is not your father’s federalism. The federalism that haunts our history looks quite different from the form of local power that prevails now. Federalism of old involved states’ rights, a trump card to protect instances of local oppression. Today’s federalism involves a muscular national government that makes policy in virtually every area that was once relegated to state and local governments. The states’ rights trump card has all but disappeared, which means that the national government can protect racial minorities and dissenters when it needs to while allowing local forms of power to flourish. It would be foolish to insist that every state and local policy must be progressive for progressives to favor federalism. Decentralization will produce policies that progressives adore, and it will produce policies that they loathe. The same, of course, is true of a national system. Progressives have to make their case to the American people, just like everyone else. The point here is that progressives can fight for their causes in our current system, and they can win. Gone are the days of policy-making enclaves shielded from national power. If progressives are simply looking for guaranteed wins, it’s not decentralization that they should worry about—it’s democracy. Moreover, progressives tend to overstate the problem of parochialism. When progressives talk about democracy, they celebrate the idiosyncratic dissenter, the nobility of resistance, the glory of getting things wrong, and the wild patchwork of views that make up the polity. When progressives turn to governance, however, they crave administrative efficiency, worry about local incompetence, and have a strong impulse to quash local rebellion. We join de Tocqueville in celebrating the eccentric charms of local democracy, but our tastes in bureaucracy run with Weber: impersonal, rationalized, and hierarchical. It should come as no surprise that de Tocqueville’s democracy fails to produce Weber’s bureaucracy. But rather than spending all of our time worrying about that failure, maybe we should acknowledge the fact that decentralization offers so many benefits that progressive nationalists can value. Progressive nationalists have long worried that decentralized power needlessly fractures the national, exercising a centrifugal force on the polity. But ours is a system where local power can turn outsiders into insiders, integrating them into a political system and enabling them to protect themselves. It is one where the energy of outliers can serve as a catalyst for the center, allowing them to tee up issues for national debate. It is, in short, a form of federalism that progressive nationalists can celebrate. Progressives were right to worry about federalism in the past. They are wrong to worry about it now. Minority rule and minority rights are tools for achieving the same ends. Both can help further equality and nurture dissent. Progressives have long endorsed the nationalist case for national power. Now is the time to acknowledge the nationalist case for local power.

### A2: “Rights Turn”

#### Federalism is essential for minorities to fight discrimination by enabling minority rule. Rights are *not enough*.

Gerken 12 — Heather K. Gerken, J. Skelly Wright Professor of Law at Yale Law School, former Professor of Law at Harvard Law School, holds a J.D. from the University of Michigan Law School, 2012 (“A New Progressive Federalism,” *Democracy: A Journal of Ideas*, Number 24, Spring, Available Online at <http://democracyjournal.org/magazine/24/a-new-progressive-federalism/>, Accessed 06-14-2017)

Progressives are deeply skeptical of federalism, and with good reason. States’ rights have been invoked to defend some of the most despicable institutions in American history, most notably slavery and Jim Crow. Many think “federalism” is just a code word for letting racists be racist. Progressives also associate federalism—and its less prominent companion, localism, which simply means decentralization within a state—with parochialism and the suppression of dissent. They thus look to national power, particularly the First and Fourteenth Amendments, to protect racial minorities and dissenters from threats posed at the local level. But it is a mistake to equate federalism’s past with its future. State and local governments have become sites of empowerment for racial minorities and dissenters, the groups that progressives believe have the most to fear from decentralization. In fact, racial minorities and dissenters can wield more electoral power at the local level than they do at the national. And while minorities cannot dictate policy outcomes at the national level, they can rule at the state and local level. Racial minorities and dissenters are using that electoral muscle to protect themselves from marginalization and promote their own agendas. Progressives have long looked to the realm of rights to shield racial minorities and dissenters from unfriendly majorities. Iconic measures like the First and Fourteenth Amendments, the Civil Rights Act, and the Voting Rights Act all offer rights-based protections for minorities. But reliance on rights requires that racial minorities and dissenters look to the courts to shield them from the majority. If rights are the only protections afforded to racial minorities and dissenters, we risk treating both groups merely as what Stanford Law Professor Pam Karlan calls “objects of judicial solicitude rather than efficacious political actors in their own right.” Minority rule, by contrast, allows racial minorities and dissenters to act as efficacious political actors, just as members of the majority do. Think, for example, about where groups we would normally call a “minority” now actually constitute a majority: a mostly African-American city like Atlanta, a city such as San Francisco where the majority favors same-sex marriage, or a state like California or Texas where Latinos will soon be in the majority. In each of those cases, minority rule—where national minorities constitute local majorities—allows minorities to protect themselves rather than look to courts as their source of solace. It empowers racial minorities and dissenters not by shielding them from the majority, but by turning them into one. Why should we care? We should care because the success of our democracy depends on two projects. The first is integration—ensuring that our fractious polity remains a polity. The second is dialogue—ensuring a healthy amount of debate and disagreement within our democracy. We have made progress on both fronts, but there is a great deal more work to do. Our social, political, and economic life still reflects racial divides. Our political system is immobilized; the issues that matter to everyday citizens are stuck in the frozen political tundra we call Washington. We have long looked to deeply rooted rights as tools for promoting equality and protecting dissent. But everyday politics can be just as important for pursuing these goals. We should look to minority rule, not just minority rights, as we build a better democracy. An emphasis on minority rule isn’t intended to denigrate the importance of minority rights. It is simply to insist that while rights are a necessary condition for equality, they may not be a sufficient one. Too often we assume in the context of race that rights alone will suffice, as if the path to equality moves straight from civic inclusion to full integration. We miss the possibility that there is an intermediary stage: empowerment. Such a strategy would be impossible without the hard-won battles of the civil rights movement. <<card continues>>

### A2: “Rights Turn”

<<card continues>> But it’s possible to believe in, even revere, the work of that movement and still wonder whether rights, standing alone, will bring us to full equality. Civic inclusion was the hardest fight. But it turns out that discrimination is a protean monster and more resistant to change than one might think. We may require new, even unexpected tools to combat discrimination before we reach genuine integration. Similarly, while the First Amendment has long been thought of as part of the bedrock of our democracy, it does not represent the only tool for furthering dialogue and nurturing dissent. Decentralization gives political outliers one of the most important powers a dissenter can enjoy—the power to force the majority to engage. It thus helps generate the deliberative froth needed to prevent national politics from becoming ossified or frozen by political elites uninterested in debating the hard questions that matter most to everyday voters.

#### Even if states are imperfect, governance at the local level empowers minorities.

Gerken 12 — Heather K. Gerken, J. Skelly Wright Professor of Law at Yale Law School, former Professor of Law at Harvard Law School, holds a J.D. from the University of Michigan Law School, 2010(“Foreword: Federalism All the Way Down,” Yale Law School Legal Scholarship Repository, January 1st 2010, Available online at http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=4835&context=fss\_papers, Accessed 7-21-17)

Localism as a Double-Edged Sword. - Once we move federalism all the way down, it becomes clear that localism is a double-edged sword. The benefits of minority control can extend not just to Southern racists, but to blacks and Latinos. And yet we continue to look with suspicion upon institutions where racial minorities dominate. Federalism thinks about states as sites of political integration precisely because they allow national minorities to rule. So why don't we think of cities or juries or school committees as sites of racial integration precisely because they allow racial minorities to rule? Such an account requires us to move not just past sovereignty, but past history, rejecting the assumption that federalism's future can only reproduce its past. That move depends on two premises. First, while rights are a necessary condition for equality, they may not be a sufficient one. Too often we assume that rights alone will suffice, as if the path to equality moves straight from civic inclusion to full integration. We thus miss the possibility that there is an intermediary stage: empowerment. An empowerment strategy would be fruitless if times had not changed, of course, and civil rights enforcement played a crucial role in bringing about that change. The question, though, is where we go from here. It should be possible to believe in, even revere, the work of the civil rights movement and still wonder whether a rights strategy, standing alone, will bring us to full equality. Civic inclusion was the hardest fight. But it turns out discrimination is a protean monster and more resistant to change than one might think. We may require new, even unexpected tools to combat discrimination before we reach genuine integration. Second, this is not your father's federalism. To restate the obvious, my arguments are premised on the notion that it is perfectly acceptable for the national majority to play the Supremacy Clause card whenever it sees fit. While this is not a complete answer, for the reasons discussed below,185 at the very least the absence of sovereignty substantially mitigates the potential costs associated with local power.

## Environment Impact

### 1NC/2NC Impact: Environment

#### Federalism is key to solve climate change - utilities prove that federalism is necessary for flexible regulations

Boyd & Carlson 16 (William Boyd Is a Professor and John H. Schultz Energy Law Fellow at the University of Colorado Law School; Ann E. Carlson is a Professor of Environmental Law at UCLA and Faculty Co-Director, Emmett Institute on Climate Change and the Environment “Accidents of Federalism: Ratemaking and Policy Innovation in Public Utility Law,” UCLA Law Review, Vol. 63, <http://www.uclalawreview.org/wp-content/uploads/2016/05/Boyd-Carlson-63-4.pdf>)

Our attention to the innovation that is occurring and the interaction of state and federal policy aligns us with an emerging school of federalism theory that suggests that states can be deployed not just for local ends but also to promote national policies and values.348 The emergence and persistence of the three models of electricity regulation combined with federal subsidies and nudges are helping to promote low- and zero-carbon electricity at a time when the U.S. government is working to meet ambitious goals to cut carbon emissions. And they are producing innovation by taking advantage of precisely those traditional values federalism is meant to promote: diversity and experimentation. Yet they are doing so at least in part because the federal government has allowed the states to continue operating as important players in the national system of electricity regulation.349 Our description thus also provides another example of the dynamic interaction between and among levels of government, one that defies standard explanations of our federal system and that recognizes the important role the federal government often plays in creating and supporting policies that emerge from systems of federalism.350 CONCLUSION When Congress passed Part II of the FPA in 1935, it sought to complement rather than replace existing state authority to regulate the electricity sector. In doing so, it recognized the value and importance of state policy experimentation and the traditional role of state PUCs in regulating electricity rates. Today, despite significant change in the sector and in a moment of great technological and regulatory innovation, we are still working with the basic jurisdictional split established in 1935. Rather than modify this framework, and notwithstanding multiple opportunities to do so, Congress has left it largely intact, leaving states with the ability to choose whether and how to participate in electricity restructuring. The resulting system of regulation is messy and uneven, with three major models in operation across the country. But this three-model system, combined with specific federal policy nudges and subsidies that have worked to de-risk certain state experiments, is also facilitating innovation across many aspects of the electricity sector. The standard, largely negative account of our current system of electricity regulation contends that we need a statutory overhaul to bring order and efficiency to our regulatory framework to better equip it to deal with new challenges. Perhaps. But what we have sacrificed in efficiency, we may have gained in experimentation. Although the counterfactual is impossible to assess with confidence, we have argued that the three-model system may be producing more (and underappreciated) policy innovation than would occur under a single, national approach. At a minimum, we argue, the diversity inherent in the three-model system has, when combined with directed federal policy nudges and subsidies, allowed for different experiments across different kinds of states and across different aspects of the machine than we would expect to see under a more uniform approach. In a very real way, then, the structure of federalism at the heart of the U.S. system of electricity regulation, and the diversity and experimentalism it has enabled, may be promoting rather than diminishing certain national policy goals—a recognition that animates much of the EPA’s Clean Power Plan with its embrace of state autonomy. Basic principles of public utility law and, specifically, the practice of PUCs in designing and setting rates have been central to the innovations we describe. All of which suggests that we may finally be at a place where we are able to catch up with and realize the value of the experimentalist impulse that was at the heart of an earlier, more expansive concept of public utility but that has lain dormant for so long. We need this creative force now more than ever as we grapple with the need to transform the most complex machine ever built into something vastly cleaner, more distributed, and more interactive. Ratemaking, and the innovation it enables, must be front and center in that effort.

### 1NC/2NC Impact: Environment

#### Climate change is a system disruptor and risk amplifier--only mitigation prevents biodiversity loss, ecosystem collapse, resource wars, and extreme weather events.

IPCC 15 (The Core Writing Team Synthesis Report IPCC “Climate Change 2014 Synthesis Report”, First published 2015, IPCC, 2014: Climate Change 2014: Synthesis Report.” Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change. IPCC, Geneva, Switzerland, 151, http://epic.awi.de/37530/1/IPCC\_AR5\_SYR\_Final.pdf)

SPM 2.3 Future risks and impacts caused by a changing climate Climate change will amplify existing risks and create new risks for natural and human systems. Risks are unevenly distributed and are generally greater for disadvantaged people and communities in countries at all levels of development. {2.3} Risk of climate-related impacts results from the interaction of climate-related hazards (including hazardous events and trends) with the vulnerability and exposure of human and natural systems, including their ability to adapt. Rising rates and magnitudes of warming and other changes in the climate system, accompanied by ocean acidification, increase the risk of severe, pervasive and in some cases irreversible detrimental impacts. Some risks are particularly relevant for individual regions (Figure SPM.8), while others are global. The overall risks of future climate change impacts can be reduced by limiting the rate and magnitude of climate change, including ocean acidification. The precise levels of climate change sufficient to trigger abrupt and irreversible change remain uncertain, but the risk associated with crossing such thresholds increases with rising temperature (medium confidence). For risk assessment, it is important to evaluate the widest possible range of impacts, including low-probability outcomes with large consequences. {1.5, 2.3, 2.4, 3.3, Box Introduction.1, Box 2.3, Box 2.4} A large fraction of species faces increased extinction risk due to climate change during and beyond the 21st century, especially as climate change interacts with other stressors (high confidence). Most plant species cannot naturally shift their geographical ranges sufficiently fast to keep up with current and high projected rates of climate change in most landscapes; most small mammals and freshwater molluscs will not be able to keep up at the rates projected under RCP4.5 and above in flat landscapes in this century (high confidence). Future risk is indicated to be high by the observation that natural global climate change at rates lower than current anthropogenic climate change caused significant ecosystem shifts and species extinctions during the past millions of years. Marine organisms will face progressively lower oxygen levels and high rates and magnitudes of ocean acidification (high confidence), with associated risks exacerbated by rising ocean temperature extremes (medium confidence). Coral reefs and polar ecosystems are highly vulnerable. Coastal systems and low-lying areas are at risk from sea level rise, which will continue for centuries even if the global mean temperature is stabilized (high confidence). {2.3, 2.4, Figure 2.5} Climate change is projected to undermine food security (Figure SPM.9). Due to projected climate change by the mid-21st century and beyond, global marine species redistribution and marine biodiversity reduction in sensitive regions will challenge the sustained provision of fisheries productivity and other ecosystem services (high confidence). For wheat, rice and maize in tropical and temperate regions, climate change without adaptation is projected to negatively impact production for local temperature increases of 2°C or more above late 20th century levels, although individual locations may benefit (medium confidence). Global temperature increases of ~4°C or more 13 above late 20th century levels, combined with increasing food demand, would pose large risks to food security globally (high confidence). <<card continues>>

### 1NC/2NC Impact: Environment

<<card continues>> Climate change is projected to reduce renewable surface water and groundwater resources in most dry subtropical regions (robust evidence, high agreement), intensifying competition for water among sectors (limited evidence, medium agreement). {2.3.1, 2.3.2} Until mid-century, projected climate change will impact human health mainly by exacerbating health problems that already exist (very high confidence). Throughout the 21st century, climate change is expected to lead to increases in ill-health in many regions and especially in developing countries with low income, as compared to a baseline without climate change (high confidence). By 2100 for RCP8.5, the combination of high temperature and humidity in some areas for parts of the year is expected to compromise common human activities, including growing food and working outdoors (high confidence). {2.3.2} In urban areas climate change is projected to increase risks for people, assets, economies and ecosystems, including risks from heat stress, storms and extreme precipitation, inland and coastal flooding, landslides, air pollution, drought, water scarcity, sea level rise and storm surges (very high confidence). These risks are amplified for those lacking essential infrastructure and services or living in exposed areas. {2.3.2} Rural areas are expected to experience major impacts on water availability and supply, food security, infrastructure and agricultural incomes, including shifts in the production areas of food and non-food crops around the world (high confidence). {2.3.2} Aggregate economic losses accelerate with increasing temperature (limited evidence, high agreement), but global economic impacts from climate change are currently difficult to estimate. From a poverty perspective, climate change impacts are projected to slow down economic growth, make poverty reduction more difficult, further erode food security and prolong existing and create new poverty traps, the latter particularly in urban areas and emerging hotspots of hunger (medium confidence). International dimensions such as trade and relations among states are also important for understanding the risks of climate change at regional scales. {2.3.2} Climate change is projected to increase displacement of people (medium evidence, high agreement). Populations that lack the resources for planned migration experience higher exposure to extreme weather events, particularly in developing countries with low income. Climate change can indirectly increase risks of violent conflicts by amplifying well-documented drivers of these conflicts such as poverty and economic shocks (medium confidence). {2.3.2}

### 2NC – Federalism Solves Warming

#### Federalism is necessary to solve warming - absent federalism lack of emissions restrictions will make unmitigated warming inevitable

Ibbitson 6/2/17 (John, Globe & Mail Reporter, “Federalism might be our best hope in fighting climate change” https://www.theglobeandmail.com/news/politics/federalism-might-be-our-best-hope-in-fighting-climate-change/article35197342/)

Federal systems of government are splendid things: robust, flexible, able to accommodate conflicting local values. When it comes to the fight against global warming, federalism is the ace up Canada’s sleeve, while south of the border it’s America’s last, best hope. Conservative prime minister Stephen Harper was right to withdraw Canada from the Kyoto Protocol on climate change in 2011. The Chrétien government had made promises at Kyoto that no Canadian government could keep without wrecking the economy. The expanding oil sands in Alberta had become a major driver of growth. The U.S. Congress was blocking president Barack Obama’s efforts to fight global warming. Any Canadian tax on carbon without an equivalent American action would simply kill Canadian jobs, without lowering the planet’s temperature even a smidgeon, Mr. Harper argued, and that argument made sense. But, although Ottawa wasn’t ready to fight climate change, some provincial governments thought differently. Quebec had a natural advantage, because most of its electricity is generated by hydro. The Liberal government in Ontario wanted to replace lost manufacturing jobs in traditional industries by developing green-energy technology. British Columbia premier Gordon Campbell believed that a carbon tax was the most business-friendly way to lower emissions. When Rachel Notley’s NDP came to power in Alberta, committed to bringing that province in line with others in the fight against climate change, Mr. Harper shrugged. Ottawa’s job, he believed, was to get a pipeline to tidewater somehow, somewhere. If the provinces wanted to go all green, they were welcome to knock themselves out. But then Mr. Harper was replaced by Justin Trudeau, and Mr. Obama by Donald Trump. The White House is now even more of a climate-change-denier than the House of Representatives or Senate, while the Liberal government is as enthusiastic about fighting climate change as any province. In Canada’s case, federalism worked to provide in advance what Ottawa now seeks: a national (if piecemeal) strategy to reduce carbon emissions through provincial cap-and-trade or carbon tax schemes, with only Saskatchewan’s Brad Wall seriously offside. In America’s case, federalism and the entrepreneurial energy of the private sector have combined to limit the damage inflicted by Washington. About 30 states have green-energy strategies in place. Elon Musk resigned Thursday from two of Mr. Trump’s advisory councils in protest over the President’s decision to withdraw the United States from the Paris accord on climate change. Of course he resigned: His Tesla Model 3 electric car will soon hit the streets in an increasingly competitive electric vehicle market, going head-to-head with, among other competitors, the Chevy Bolt and the Volkswagen eGolf. The battle in North America against global warming will be most successfully fought in dealer show rooms. Mr. Trump, with his Luddite refusal to recognize the transformation under way in his own country’s economy, is making that battle harder to win, which is why dozens of mayors and CEOs vowed to continue efforts to reduce carbon dioxide emissions in the wake of the President’s announcement.

#### Undermining cooperative federalism makes climate mitigation impossible --- that turns the aff.

Andreen et al. 08 (William Andreen a professor of Law at the University of Alabama // Robert Glicksman the Chair of the University of Kansas Law School and Director of the CPR // Nina Mendelson a Professor of Law at the University of Michigan and a Resident Scholar at the CPR // Rena Steinzor a Research Professor of Law at the University of Maryland and Director of CPR // Shana Jones a Policy Analyst at the CPR “Cooperative Federalism and Climate Change: Why Federal, State, and Local Governments Must Continue to Partner,” The Center for Progressive Reform, 29 May 2008, p. 10-12, <http://www.progressivereform.org/articles/cooperative_federalism_and_climate_change.pdf>)

Complete preemption of state and local authority to address climate change would not only be inconsistent with federalism values and with nearly forty years of federal environmental regulation, it also would prevent the United States from taking the steps needed to avoid the potentially devastating effects of climate change. In particular, prohibiting state and local governments from acting in areas that have always been within their exclusive jurisdiction – including the regulation of electric utilities, land use control, agriculture, landfills, and building codes – would make it impossible for the United States to achieve the carbon reductions needed to avoid catastrophic climate change. States are now targeting these sources in creative and innovative ways, including renewable portfolio standards, emissions trading programs, and policies relating to residential energy usage, transportation planning, taxation, and waste reduction. <<card continues>>

### 2NC – Federalism Solves Warming

<<card continues>> Preempting these efforts will be detrimental to reducing carbon emissions for the following reasons: A “top-down” approach characterized by complete preemption of state and local climate change programs ignores the reality of climate change, namely that it is a problem caused by disparate and diverse sources and that all of these sources must reduce their carbon emissions if we want to address the problem effectively. As many states have already shown, a rational and effective climate change policy requires the use of many different tools. Such a “portfolio” approach affords state and local governments the flexibility they need to implement the policies and programs that serve their unique constituencies best. In addition, “[d]iversification enhances a state’s resilience to external energy challenges,” allowing states to be better prepared when prices spike. 66 Complete preemption would both preclude flexibility and impair effectiveness in the nation’s quest to minimize the adverse effects of climate change. Not only are state and local governments able to use legal tools that are not available to the national government, they are far better suited to motivate the lifestyle changes among their citizens that will prove essential to an effective climate change policy over the long run. Unless individuals bear some of the burden of combating climate change, the entire task will be thrust upon the industries responsible for generating most of the nation’s GHGs (although compliance with climate change requirements by industries such as electric utilities obviously will affect individual citizens indirectly). Lifestyle changes will require “local commitment, down to individuals, to accomplish the type of economic and societal transformations that will be necessary to achieve very large reductions in carbon.”67 The kinds of emissions trading regimes envisioned under most pending federal climate change bills will not be enough to combat climate change. Development and transportation decisions made by local governments will be key to reducing carbon emissions. One estimate finds that “if 60 percent of new growth” consists of “compact” or “high-density” development,”68 up to 85 million metric tons of carbon gas emissions could be prevented from reaching the atmosphere each year by 2030,” the equivalent of a 28 percent increase in federal vehicle efficiency standards.69 This is five percent greater than the levels of emissions reductions predicted to be generated by the increased vehicle efficiency standards mandated by the 2007 Energy Independence Security Act – reduction predictions that notably do not take into account the likelihood that driving will continue to increase. 70 State and local governments recognize that they must promote less driving, not more, if carbon emissions are to be reduced significantly. Another reason to preserve state and local authority to address climate change, notwithstanding the establishment of federal programs, is to preserve state and local authority to deal with the divergent impacts that climate change is likely to have in different parts of the country. Regional variation in the impacts of climate change is likely to be significant.71 Some regions will experience severe droughts. Others will lose coastlines. Still others will suffer from flooding caused by severe weather events. States will need the authority to enact more stringent programs or supplemental programs tailored to address the unique impacts that climate change will have on their populations and natural resources. States will also play crucial roles in adaptation planning. Although we know that the impacts of climate change will differ by region, we cannot predict with certainty what these differences will be. In the face of such uncertainty, straitjacketing states by forcing them to conform to a single, minimally protective federal regime would be both unnecessarily limiting and unwise. States and localities often serve as the federal government’s agent or partner in the implementation of federal environmental legislation, and the freedom to apply the experience and expertise they have developed over the past four decades by creating programs that supplement federal climate change efforts will be invaluable and necessary if federal climate change programs are to succeed. A cooperative approach that retains state and local authority better utilizes state and local resources than an approach that vests the exclusive power to deal with climate change in the federal government.

### 2NC – Federalism Solves Warming

#### It’s necessary - status quo forced choice between centralized and decentralized climate policy collapses effective policy - federalism is key

Sovacool 08 (Sovacool, Research Fellow in the Energy Governance Program at the Centre on Asia and Globalization Benjamin K. "The best of both worlds: Environmental federalism and the need for federal action on renewable energy and climate change." Stan. Envtl. LJ 27 (2008): 397)

But when environmental problems are national or international in scope, only interactive federalism captures all of these benefits while minimizing the deficiencies that accompany a decentralized, centralized, or dual federalist approach. Interactive federalism creates plurality and dialogue to enhance the innovative and competitive aspects of decentralization while maintaining distributive equity and accountability. In the case of state-based RPSs and greenhouse gas quotas, federal interaction is urgently needed to create a fair, consistent, and constitutional approach to promoting renewable energy and fighting climate change. If designed to include a credit trading scheme, federal intervention would permit considerable differentiation and flexibility among locales and individual generators or emitters with different preferences at the local level while maintaining a level of consistency for investors at the national level. Ultimately, the arguments in favor of decentralization or centralization are not really for unilateral state or federal action but simply for flexible and efficiency-minded regulatory tools and strategies. Interactive federalism on state RPS mandates and greenhouse gas quotas would attain economies of scale in research and development, enforcement, and compliance while avoiding many of the other pitfalls of centralized action. Moreover, both the RPS and greenhouse gas problems are well suited to federal floors since they would provide a minimum level of protection for society but would also retain broad latitude for further action at multiple local and regional scales. The significant benefits that would accrue from the application of interactive federalism to these two issues point to important lessons for environmental policymaking as a whole. The experience with state-based renewable energy and climate change policy suggests that federal interaction is essential when (i) existing state actions are insufficient to promote environmental policy goals; (ii) the states face constitutional challenges to addressing an environmental problem individually; (iii) the state regulatory environment imposes additional costs on businesses and consumers; and (iv) the presence of interstate spillovers and externalities suggests the need for national action. It is then that the call for interactive environmental federalism, providing distributive justice and uniformity along with experimentation and innovation, should ring the loudest.

### 2NC – Subnational Action Key

#### Subnational action is key - leads the way for large scale action that outweighs the effect of Paris

Bloomberg 11/22/16(Michael R. Bloomberg, MBA @ Harvard Business School, BS in Electrical Engineering @ Johns Hopkins, "Washington Won't Have Last Word on Climate Change," Bloomberg View, https://www.bloomberg.com/view/articles/2016-11-22/washington-won-t-have-last-word-on-climate-change)

I can’t tell you what Donald Trump's administration will do -- and in all fairness, they will need time to figure it out themselves. What’s said on the campaign trail is one thing; actually carrying out a specific policy is another. I hope they’ll recognize the importance of the issue. But I am confident that no matter what happens in Washington, no matter what regulations the next administration adopts or rescinds, no matter what laws the next Congress may pass, we will meet the pledges that the U.S. made in Paris. The reason is simple: Cities, businesses and citizens will continue reducing emissions, because they have concluded -- just as China has -- that doing so is in their own self-interest. The U.S.’s success in fighting climate change has never been primarily dependent on Washington. Bear in mind: Over the past decade, Congress has not passed a single bill that takes direct aim at climate change. Yet at the same time, the U.S. has led the world in reducing emissions. That progress has been driven by cities, businesses and citizens -- and none of them are letting up now. Just the opposite: All are looking for ways to expand their efforts. Mayors and local leaders around the country are determined to keep pushing ahead on climate change -- because it is in their interest to do so. Over time, as more and more Americans come to recognize what climate change means to their families and their futures -- by seeing the increasingly severe impact of storms, droughts and other weather events -- they will demand action from the federal government, too. But in the meantime, mayors and other local officials will lead the way.

### A2: Federalism Causes Race to Bottom

#### No race to the bottom — state market incentives encourage pursuit of renewables.

Burtraw 17 — Dallas Burtraw, Darius Gaskins Senior Fellow with the nonpartisan think tank Resources for the Future, served on the National Academy of Sciences Board on Environmental Studies and Toxicology and on the U.S. Environmental Protection Agency’s Advisory Council on Clean Air Compliance Analysis, served on California’s Economic and Allocation Advisory Committee advising the governor’s office and the Air Resources Board on implementation of the state’s climate law, earned a PhD in economics from the University of Michigan, an MPP in public policy from the University of Michigan, and a BS in community economic development from University of California at Davis, 2017 (“States Could Take Lead On Environmental Regulation Under Trump,” *NPR*, January 18th, Available Online at <http://www.npr.org/2017/01/18/510472419/states-could-take-lead-on-environmental-regulation-under-trump>, Accessed 07-10-2017)

ROBERT SIEGEL, HOST: More now on federalism and the environment. States and cities have long taken the lead in pushing for clean energy and climate initiatives, and for a sense of what we might see from the states during a Trump administration, we're joined now by Dallas Burtraw. He's a senior fellow with the nonpartisan think tank Resources for the Future. Welcome to the program. DALLAS BURTRAW: Thank you, Robert. SIEGEL: And perhaps you can help us understand the landscape of state regulations and policies, where they're strongest and where they're weakest. BURTRAW: There are state policies that are strong throughout the nation, but especially in the northeast states, in California and a number of other states, we see leadership on climate and energy policies. There's 10 states nationally that have cap and trade programs in place. A number of other states have climate policy goals already articulated. And they take the shape mostly in the form of clean energy policies with over half the states in the country having funded energy efficiency standards. SIEGEL: But if the federal government were not to have an activist EPA, would you expect the states to continue behaving as they've been behaving? BURTRAW: I would expect to see these states really double down on their commitment to climate and energy policies partly because it's been so important for their economic development and job creation in those states. And even in the states that don't have in place these climate and energy policies that we refer to, we're seeing the breakout of market forces that are leading to the development of clean energy and industry that is very prominent even in so-called red states. SIEGEL: You're saying in many states, there is strong an economic interest in sustainable energy development as in traditional fossil fuels. BURTRAW: Well, that's right. We're seeing that across the solar and renewable industry, for example, there are more than twice as many jobs as there is in the coal electricity generation pathway. SIEGEL: And is it fair to say that those jobs would exist even if the federal government were not subsidizing them in any way? BURTRAW: Well, the federal subsidies have enabled those industries to develop and emerge now, but it's now the case that their costs have fallen that they're really competitive with coal and even natural gas. SIEGEL: Now, California has its own auto emissions standards that are more rigorous than federal standards. Could the federal government say to California, you longer have the authority to do that? BURTRAW: Well, the way it works is California has a unique situation in that it can develop auto standards that exceed the federal standards. And then other states are given a choice about whether to jump onboard with California or to adhere to the federal standards. And time after time over the last four decades, California has taken the lead and sought a waiver to enact its standards, and the federal standards are then ultimately caught up with California. And that's where we are just now with standards going through 2025. SIEGEL: But what about California's waiver? Is that secure until 2025? BURTRAW: Well, that's an uncertain question - whether Pruitt would go after to try to revoke the waiver for California. But every waiver request previously has always been accepted, and for him to go in and try to revoke a waiver that's already been granted - a lot of chicken feathers would hit the fan if that were to happen. <<card continues>>

### A2: Federalism Causes Race to Bottom

<<card continues>> SIEGEL: From the sound of it, from the way you see it, it sounds like no matter what federal policy is at EPA, it's unlikely to have much effect on the environment. Is that being too rosy? BURTRAW: That is being a little bit too rosy. What I would say - it's as though the federal government is taking its foot off the accelerator, and now we're going to be coasting. Many of the states that are providing leadership and developing policies will continue to do their part of the work, and I think the state-level policies will propagate to other states. But the problems cannot ultimately be solved without some sort of federal involvement. The states can go so far, but they cannot really leverage the kind of actions that's necessary, especially on climate, at the international level. That requires a role for the federal government to coordinate and compel international partners to do their part.

### A2: No Warming Impact

#### There’s an unquestionable scientific consensus about warming.

Nuccitelli 16 — Dana Nuccitelli, Climate Writer for the *Guardian*, Environmental Scientist at Tetra Tech—a private environmental consulting firm, holds an M.A. in Physics from the University of California-Davis and a B.A. in Astrophysics from the University of California-Berkeley, 2016 (“It’s settled: 90–100% of climate experts agree on human-caused global warming,” *Climate Consensus – The 97%*—a *Guardian* blog about climate change, April 13th, Available Online at <https://www.theguardian.com/environment/climate-consensus-97-per-cent/2016/apr/13/its-settled-90100-of-climate-experts-agree-on-human-caused-global-warming>, Accessed 07-15-2016)

There is an overwhelming expert scientific consensus on human-caused global warming. Authors of seven previous climate consensus studies — including Naomi Oreskes, Peter Doran, William Anderegg, Bart Verheggen, Ed Maibach, J. Stuart Carlton, John Cook, myself, and six of our colleagues — have co-authored a new paper that should settle this question once and for all. The two key conclusions from the paper are: 1) Depending on exactly how you measure the expert consensus, it’s somewhere between 90% and 100% that agree humans are responsible for climate change, with most of our studies finding 97% consensus among publishing climate scientists. 2) The greater the climate expertise among those surveyed, the higher the consensus on human-caused global warming. [Graphic Omitted] Expert consensus is a powerful thing. People know we don’t have the time or capacity to learn about everything, and so we frequently defer to the conclusions of experts. It’s why we visit doctors when we’re ill. The same is true of climate change: most people defer to the expert consensus of climate scientists. Crucially, as we note in our paper: Public perception of the scientific consensus has been found to be a gateway belief, affecting other climate beliefs and attitudes including policy support. That’s why those who oppose taking action to curb climate change have engaged in a misinformation campaign to deny the existence of the expert consensus. They’ve been largely successful, as the public badly underestimate the expert consensus, in what we call the “consensus gap.” Only 12% of Americans realize that the consensus is above 90%. [Video Omitted] Consensus misrepresentations Our latest paper was written in response to a critique published by Richard Tol in Environmental Research Letters, commenting on the 2013 paper published in the same journal by John Cook, myself, and colleagues finding a 97% consensus on human-caused global warming in the peer-reviewed literature. Tol argues that when considering results from previous consensus studies, the Cook 97% figure is an outlier, which he claims is much higher than most other climate consensus estimates. He makes this argument by looking at sub-samples from previous surveys. For example, Doran’s 2009 study broke down the survey data by profession – the consensus was 47% among economic geologists, 64% among meteorologists, 82% among all Earth scientists, and 97% among publishing climate scientists. The lower the climate expertise in each group, the lower the consensus. [Graph Omitted] Like several of these consensus surveys, Doran cast a wide net and included responses from many non-experts, but among the experts, the consensus is consistently between 90% and 100%. However, by including the non-expert samples, it’s possible to find low “consensus” values. The flaw in this approach is especially clear when we consider the most ridiculous sub-sample included in Tol’s critique: Verheggen’s 2015 study included a grouping of predominantly non-experts who were “unconvinced” by human-caused global warming, among whom the consensus was 7%. The only surprising thing about this number is that more than zero of those “unconvinced” by human-caused global warming agree that humans are the main cause of global warming. In his paper, Tol included this 7% “unconvinced,” non-expert sub-sample as a data point in his argument that the 97% consensus result is unusually high. By breaking out all of these sub-samples of non-experts, the critique thus misrepresented a number of previous consensus studies in an effort to paint our 97% result as an outlier. The authors of those misrepresented studies were not impressed with this approach, denouncing the misrepresentations of their work in no uncertain terms. <<card continues>>

### A2: No Warming Impact

<<card continues>> We subsequently collaborated with those authors in this newly-published scholarly response, bringing together an all-star lineup of climate consensus experts. The following quote from the paper sums up our feelings about the critique’s treatment of our research: Tol’s (2016) conflation of unrepresentative non-expert sub-samples and samples of climate experts is a misrepresentation of the results of previous studies, including those published by a number of coauthors of this paper. Consensus on consensus In our paper, we show that including non-experts is the only way to argue for a consensus below 90–100%. The greater the climate expertise among those included in the survey sample, the higher the consensus on human-caused global warming. Similarly, if you want to know if you need open heart surgery, you’ll get much more consistent answers (higher consensus) if you only ask cardiologists than if you also survey podiatrists, neurologists, and dentists. That’s because, as we all know, expertise matters. It’s easy to manufacture a smaller non-expert “consensus” number and argue that it contradicts the 97% figure. As our new paper shows, when you ask the climate experts, the consensus on human-caused global warming is between 90% and 100%, with several studies finding 97% consensus among publishing climate scientists. There’s some variation in the percentage, depending on exactly how the survey is done and how the question is worded, but ultimately it’s still true that there’s a 97% consensus in the peer-reviewed scientific literature on human-caused global warming. In fact, even Richard Tol has agreed: The consensus is of course in the high nineties. Is the consensus 97% or 99.9%? In fact, some believe our 97% consensus estimate was too low. These claims are usually based on an analysis done by James Powell, and the difference simply boils down to how “consensus” is defined. Powell evaluated the percentage of papers that don’t explicitly reject human-caused global warming in their abstracts. That includes 99.83% of papers published between 1991 and 2012, and 99.96% of papers published in 2013. In short, 97% of peer-reviewed climate research that states a position on human-caused warming endorses the consensus, and about 99.9% of the total climate research doesn’t explicitly reject human-caused global warming. Our two analyses simply answer different questions. The percentage of experts and their research that endorse the theory is a better description of “consensus.” However, Powell’s analysis is useful in showing how few peer-reviewed scientific papers explicitly reject human-caused global warming. In any case, there’s really no question that humans are the driving force causing global warming. The experts are almost universally convinced because the scientific evidence is overwhelming. Denying the consensus by misrepresenting the research won’t change that reality. With all of the consensus authors teaming up to show the 90–100% expert consensus on human-caused global warming, and most finding 97% consensus among publishing climate scientists, this paper should be the final word on the subject.

### A2: No Warming Impact

#### Prefer our evidence — it’s a meta-study of meta-studies.

MTU 16 — Michigan Technological University, 2016 (“Consensus on consensus: Expertise matters in agreement over human-caused climate change,” *Science Daily*, April 12th, Available Online at <https://www.sciencedaily.com/releases/2016/04/160412211610.htm>, Accessed 07-15-2016)

A research team confirms that 97 percent of climate scientists agree that climate change is caused by humans. The group includes Sarah Green, a chemistry professor at Michigan Technological University. "What's important is that this is not just one study -- it's the consensus of multiple studies," Green says. This consistency across studies contrasts with the language used by climate change doubters. This perspective stems from, as the authors write, "conflating the opinions of non-experts with experts and assuming that lack of affirmation equals dissent." Environmental Research Letters published the paper this week. In it, the team lays out what they call "consensus on consensus" and draws from seven independent consensus studies by the co-authors. This includes a study from 2013, in which the researchers surveyed more than 11,000 abstracts and found most scientists agree that humans are causing climate change. Through this new collaboration, multiple consensus researchers – and their data gathered from different approaches – lead to essentially the same conclusion. The key factor comes down to expertise: The more expertise in climate science the scientists have, the more they agree on human-caused climate change. Skeptic vs. Doubter There are many surveys about climate change consensus. The problem with some surveys, Green points out, is that they are biased towards populations with predetermined points of view. Additionally, respondents to some surveys lack scientific expertise in climate science. "The public has a very skewed view of how much disagreement there is in the scientific community," she says. Only 12 percent of the US public are aware there is such strong scientific agreement in this area, and those who reject mainstream climate science continue to claim that there is a lack of scientific consensus. People who think scientists are still debating climate change do not see the problem as urgent and are unlikely to support solutions. This new paper is a rebuttal to a comment criticizing the 2013 paper. Green is quick to point out that skepticism, a drive to dig deeper and seeking to better validate data, is a crucial part of the scientific process. "But climate change denial is not about scientific skepticism," she says. Broader Impacts Refuting climate change doubters is the main purpose of a website Green contributes to called skepticalscience.com. The website is run by the new study's lead author, John Cook from the University of Queensland in Australia. He says consensus studies have helped change political dialogue around climate change. "The progress made at the United Nations Climate Change Conference (COP21) in Paris late last year indicates that countries are now well and truly behind the scientific consensus, too," Cook says. Co-author Naomi Oreskes from Harvard University originally pursued consensus data about climate change in 2004 and co-wrote Merchants of Doubt, which was turned into a documentary in 2014. She says that this latest work places the findings in the broader context of other research. "By compiling and analyzing all of this research – essentially a meta-study of meta-studies – we've established a consistent picture with high levels of scientific agreement among climate experts," she says. And among climate scientists, there's little doubt. There is consensus on consensus.

### A2: No Warming Impact

#### Dismiss evidence from skeptics — it’s single-study syndrome.

Nuccitelli 14 — Dana Nuccitelli, Climate Writer for the *Guardian*, Environmental Scientist at Tetra Tech—a private environmental consulting firm, holds an M.A. in Physics from the University of California-Davis and a B.A. in Astrophysics from the University of California-Berkeley, 2014 (“The 97% v the 3% – just how much global warming are humans causing?,” *Climate Consensus – The 97%*—a *Guardian* blog about climate change, September 15th, Available Online at http://www.theguardian.com/environment/climate-consensus-97-per-cent/2014/sep/15/97-vs-3-how-much-global-warming-are-humans-causing, Accessed 09-26-2014)

A pair of climate scientists recently had a dispute regarding how much global warming humans are responsible for. Gavin Schmidt from NASA represented the consensus of 96–97% of climate experts in arguing that humans have been the dominant cause of global warming since 1950, while Judith Curry from Georgia Tech represented the opinions of 2–4% of climate experts that we could be responsible for less than half of that warming. Curry is to be the featured speaker on this subject at a National Press Club event tomorrow hosted by the Marshall Institute; a right-wing thinktank that has spread misinformation about the dangers of smoking, ozone depletion, acid rain, DDT, and now climate change. She may also discuss the subject at an event next week hosted by the fossil fuel-funded right-wing think tank Texas Public Policy Foundation (TPPF). The exchange between Schmidt and Curry can be read on RealClimate – a blog run by climate scientists. The discrepancy in both the quantity and quality of the supporting evidence used by each scientist was one of the most telling aspects of their debate. For his part, Schmidt referenced the most recent IPCC report. The IPCC summarises the latest and greatest climate science research, so there is no better single source. The figure below from the IPCC report illustrates why 96–97% of climate science experts and peer-reviewed research agree that humans are the main cause of global warming. [graphic omitted] The black bar indicates the amount of global surface warming observed from 1951 to 2010. The green bar shows the amount of warming caused by human greenhouse gas emissions during that time. The yellow is the influence from other human effects (mainly cooling from human sulfate aerosol emissions, which scatter sunlight), and the orange is the combined human effect. Below those are the contributions from external natural factors (mainly the sun and volcanoes) and from natural internal variability (mainly ocean cycles), while the whiskers show the uncertainty range for each. [graphic omitted — IPCC AR5 Figure 10.5: Assessed likely ranges (whiskers) and their mid-points (bars) for attributable warming trends over the 1951–2010 period due to well-mixed greenhouse gases, other anthropogenic forcings (OA), natural forcings (NAT), combined anthropogenic forcings (ANT) and internal variability. The HadCRUT4 observations are shown in black with the 5 to 95% uncertainty range due to observational uncertainty in this record. IPCC AR5 figure 10.5: Likely ranges (whiskers) and their mid-points (bars) for attributable warming trends over the 1951–2010 period due to greenhouse gases, other anthropogenic forcings (OA), natural forcings (NAT), combined anthropogenic forcings (ANT) and internal variability. The HadCRUT4 observations are shown in black.] Notice that the green and orange bars are both bigger than the black bar. This shows that greenhouse gases have caused more warming than has been observed over the past six decades, but some of that was offset by cooling from human aerosol pollution. And the best estimate from the body of peer-reviewed climate science research is that humans are responsible for more than 100% of the global surface warming since 1950, with natural factors probably offsetting a little bit of that with a slight cooling influence. Schmidt illustrated this key point in the figure below, which is called a probability distribution of the warming caused by humans since 1950. The curve is centered at about 110% – the most likely value for the human contribution to global warming, while the probability of the human contribution being less than 50% is almost nil. [graphic omitted — The probability density function for the fraction of warming attributable to human activity (derived from Fig. 10.5 in IPCC AR5). The bulk of the probability is far to the right of the “50%” line, and the peak is around 110%. The probability density function for the fraction of warming attributable to human activity (derived from figure 10.5 in IPCC AR5). The bulk of the probability is far to the right of the ‘50%’ line, and the peak is around 110%. Source: RealClimate] Again it’s important to remember that the IPCC report is just a summary of the latest and greatest climate science research. The figures above are supported by the papers that have specifically investigated the attribution of recent global warming. This isn’t just one study; it’s based on many studies that are all in strong agreement. As the IPCC report concluded, It is extremely likely that human activities caused more than half of the observed increase in GMST [global mean surface temperature] from 1951 to 2010.This assessment is supported by robust evidence from multiple studies using different methods. It’s not just “more than half,” it’s also most likely close to 100%. In fact it’s just as likely that humans are responsible for about 160% of the global surface warming since 1950 as it is that we’re only responsible for 50%. <<card continues>>

### A2: No Warming Impact

<<card continues>> Curry disagrees with the expert consensus on this issue, but her arguments are rather muddled and “confused,” as Schmidt puts it. Her main argument is that there is uncertainty regarding the contribution of internal variability. The problem with that argument is that over long periods of time (like the six decades since 1950), positive and negative phases of ocean cycles tend to cancel each other out, and thus internal variability doesn’t have a large influence on long-term temperatures. As the first figure above shows, the IPCC estimates the temperature influence of internal variability since 1950 at ±0.1°C, during which time we’ve seen about 0.65°C global surface warming. Curry also references a report written by Nic Lewis for the anti-climate policy think tank Global Warming Policy Foundation (GWPF), which I wrote about here. The GWPF report argues that the climate sensitivity is toward the lower end of the IPCC estimated range. However, the report is biased towards Lewis’ preferred approach, finding poor excuses to reject the many other methods that arrive at higher climate sensitivity estimates. Moreover, recent research has identified flaws in Lewis’ approach that explain why it incorrectly yields the lowest climate sensitivity estimates. In any case, even if the GWPF were correct, it wouldn’t disprove that most of the warming since 1950 is human-caused. Curry’s other reference is to a single paper written by Zhou & Tung at the University of Washington in 2013, which concluded that roughly half of the global surface warming over the past 32 or 50 years could be explained by ocean cycles (specifically, the Atlantic Multi-decadal Oscillation). Matt Ridley also recently referenced this paper in an error-riddled Wall Street Journal editorial (debunked here and here and here and here). However, as Schmidt points out, Tung and Zhou assumed that all multi-decadal variability was associated with the Atlantic Multi-decadal Oscillation (AMO) and did not assess whether anthropogenic forcings could project onto this variability. It is circular reasoning to then use this paper to conclude that all multi-decadal variability is associated with the AMO. Recent research led by Michael Mann has confirmed that the approach used by Tung and Zhou misidentifies external influences on the AMO as being part of its internal variability. The problem with relying on a single paper (aka “single study syndrome”) is that flawed studies sometimes get published. On the other hand, when many studies using multiple independent approaches arrive at similar results, they’re probably right. Schmidt’s supporting evidence is far stronger than Curry’s. Thus although Curry doesn’t understand why so few experts agree with her, it’s easy to see why 96–97% of climate scientists and their peer-reviewed research agree that humans are the main cause of global warming. That’s what the scientific evidence overwhelmingly shows. While it’s possible to find one or two flawed papers arguing to the contrary, the balance of evidence is tilted heavily to the side of human-caused global warming. It’s about as settled as science gets. In fact, it’s about as settled as the fact that smoking causes cancer, chlorofluorocarbons cause ozone depletion, sulfur dioxide causes acid rain, and DDT is toxic. Although the science is inconvenient for certain industries and the political think tanks they fund (like the Marshall Institute and TPPF), these effects all pose dangers to public health. Climate change perhaps most of all.

# Affirmative Answers

## General Answers

### 2AC – Non-unique

#### Trump violating federalism now

Will ‘17

George Frederick Will is a Pulitzer Prize–winning political commentator. The authors received MA and PhD degrees in politics from Princeton University and has then taught political philosophy at the James Madison College of Michigan State University, at the University of Toronto, and at Harvard University - From the article: “Trump’s violations of federalism would make Obama jealous” – Washington Post - May 10, 2017 - https://www.washingtonpost.com/opinions/trumps-violations-of-federalism-would-make-obama-jealous/2017/05/10/7cf6b5d6-34dd-11e7-b4ee-434b6d506b37\_story.html?utm\_term=.501ab7c57fb7

Trump’s violations of federalism would make Obama jealous “But what good came of it at last?” Quoth little Peterkin. “Why that I cannot tell,” said he, “But ’twas a famous victory.” — Robert Southey “The Battle of Blenheim” (1798) Southey, a pacifist, wrote his antiwar poem long after the 1704 battle for which the Duke of Marlborough was awarded Blenheim Palace, where his great-great-great-great-great-great-grandson Winston Churchill would be born. We, however, do not need to wait 94 years to doubt whether the Trump administration’s action against “sanctuary cities” is much ado about not much. Four months have sufficed to reveal ’twas a constitutionally dubious gesture. The executive order was perpetrated in a helter-skelter, harum-scarum, slapdash manner five days after the inauguration, before the administration was humming like a well-tuned Lamborghini. The order says that sanctuary cities have caused “immeasurable harm” to “the very fabric of our republic,” a thunderous judgment offered without evidence of the shredded fabric or even a definition of “sanctuary city.” The executive order is either a superfluous nullity or it is constitutional vandalism. It says cities “that fail to comply with applicable federal law” shall “not receive federal funds, except as mandated by law.” A U.S. district judge in Northern California has held that the executive order is “toothless” if it pertains to merely a few federal grants, and even they do not unambiguously state in their texts that funding is conditional on active cooperation with federal immigration enforcement. If, however, the order extends to other federal grants, it violates the separation of powers: The spending power is vested in Congress, so presidents cannot unilaterally insert new conditions on funding. Several senior White House officials, operating in pre-Lamborghini mode, denounced this judge’s decision as another excess by the much-reversed U.S. Court of Appeals for the 9th Circuit. Actually, although this court might hear an appeal of the judge’s decision, it had nothing to do with the decision. It is federal law that a state "may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual." This does not, however, prevent any government entity from voluntarily withholding information. Furthermore, the Supreme Court has held that the 10th Amendment ("The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people") means that the federal government may not "commandeer" state and local officials to enforce federal laws. The function of the anti-commandeering doctrine is, in the words of Justice Antonin Scalia, the "preservation of the states as independent and autonomous political entities." Last Sunday, Texas Gov. Greg Abbott (R) signed legislation setting criminal and civil penalties for state and local officials who refuse to comply with federal immigration laws and detention requests. As policy, this may or may not be wise; as an exercise of the state's police power, it is not constitutionally problematic. But regarding the federal executive order, professor Ilya Somin of George Mason University's Antonin Scalia Law School says: "Trump's order is exactly the kind of high-handed federal coercion of states and undermining of separation of powers that outraged conservatives under [President Barack] Obama. In fact, Obama did not go as far as Trump seems to do here. Obama never claimed sweeping authority to impose new conditions on federal grants beyond those specifically imposed by Congress."

### 1AR: Non-unique

#### Federal education policies are inevitable and already exist

Hornbeck, M.A. in American Government, 17

(Dustin, “Federal Role in Education Has a Long History”, https://www.higheredjobs.com/Articles/articleDisplay.cfm?ID=1285)

Federal Role in Education As for the federal government's role, education is not specifically addressed in the Constitution, but a historical precedent of central government involvement does exist. In 1787, the Continental Congress, the central government of the United States between 1776 and 1787, passed the Northwest Ordinance, which became the governing document for Ohio, Illinois, Indiana, Michigan, Wisconsin, and part of Minnesota. The ordinance included a provision encouraging the creation of schools as a key component of "good government and the happiness of mankind." Just two years earlier, the Land Ordinance of 1785 required land to be reserved in townships for the building of schools. The role of the federal government in general grew much larger after the Great Depression and World War II, but this growth largely excluded K-12 education until the 1960s. In 1964, President Lyndon B. Johnson included education policy in his vision of a "Great Society." Elementary and Secondary Education Act In 1965, President Johnson signed the Elementary and Secondary Education Act (ESEA) into law. This law decidedly changed the role of the federal government in the world of K-12 education. ESEA doubled the amount of federal expenditures for K-12 education, worked to change the relationship between states and the central government in the education arena, called for equal treatment of students no matter where they reside, and attempted to improve reading and math competency for children in poverty. ESEA was passed with the intention of bridging a clear gap between children in poverty and those from privilege. Title I of the ESEA, which is still referenced frequently in K-12 education policy, is a major provision of the bill, which distributed federal funding to districts with low-income families. ESEA Today ESEA is still the law of the United States today. However, the law has required periodic reauthorization, which has led to significant changes since 1965. One of the most well-known reauthorizations was President George W. Bush's No Child Left Behind (NCLB) Act of 2001. NCLB called for 100 percent proficiency in math and reading scores nationwide by 2014, and expanded the role of standardized testing to measure student achievement. Under President Barack Obama, Race to the Top was established, requiring states to compete for federal grants through a point system, which rewarded certain educational policies and achievements. This resulted in nationwide changes in the way teachers are evaluated, and placed even more emphasis on test results.

### 2AC: No Spillover

#### No spillover

**Robinson, 15** - Professor, University of Richmond School of Law (Kimberly, “Disrupting Education Federalism” WASHINGTON UNIVERSITY LAW REVIEW [VOL. 92:959, <https://pdfs.semanticscholar.org/2e3c/a1792fa3482b209ae0ba85ed07a05d697f74.pdf>

In offering a theory for how education federalism should be restructured to strengthen the federal role over education, and thus reduce reliance on states to ensure equal access to an excellent education, I build upon Yale Law Professor Heather Gerken's argument that federalism theory should eschew advancing a single theory for all occasions because "both in theory and practice ... there are many federalisms, not one." n39 She astutely contends that scholars developing and critiquing federalism theory should consider the appropriate balance of institutional arrangements for a specific context. n40 Therefore, my theory for how [\*968] education federalism should be restructured does not attempt to propose a federalism theory for other policymaking arenas such as environmental law or healthcare policy. Instead, it solely proposes a shift in the balance of federal, state, and local authority in order to strengthen the federal role in ensuring equal access to an excellent education while preserving the aspects of state and local autonomy over education that do not undermine equal access to an excellent education.

### 1AR: No Spillover

#### No issue spillover and the link isn’t zero-sum

Ryan, Law professor @ Lewis & Clark Law School, 12

(Erin, “Negotiating Federalism Past the Zero-Sum Game,” Administrative and Regulatory Law News, Vol. 38, No. 1 (Fall, 2012).

These instances of intergovernmental bargaining offer a means of understanding the relationship between state and federal power that differs from the stylized model of “zero-sum” federalism that has come to dominate political discourse. The zero-sum model sees winner-takes- all jurisdictional competition between the federal and state governments for power, emphasizing sovereign antagonism within the federal system. Yet countless real-world examples of interjurisdictional governance show that the boundary between state and federal authority is really an ongoing project of negotiation, taking place on levels both large and small. Working in a dizzying array of regulatory contexts, state and federal actors negotiate over both the allocation of policymaking authority and the substantive terms of the mandates that policymaking will impose. Bargaining takes place both in policy realms plagued by legal uncertainty about which side has the final say, and in realms unsettled by uncertainty over whose decision should trump, regardless of legal supremacy. Reconceptualizing the relationship between state and federal power as one heavily mediated by negotiation reveals just how far federalism practice has departed from the zero-sum rhetoric. Better still, it offers hope for moving beyond the more paralyzing features of the federalism discourse, and toward the kinds of good governance that Americans of all political stripes hope for.

#### No single area is key to all federalism

Young, law professor @ Texas, 3

(Ernest, Texas Law Review, May, Lexis)

One of the privileges of being a junior faculty member is that senior colleagues often feel obligated to read one's rough drafts. On many occasions when I have written about federalism - from a stance considerably more sympathetic to the States than Judge Noonan's - my colleagues have responded with the following comment: "Relax. The States retain vast reserves of autonomy and authority over anynumber of important areas. It will be a long time, if ever, before the national government can expand its authority far enough to really endanger the federal balance. Don't make it sound like you think the sky is falling."

### 2AC: No Link – Spending Power

#### Federal government has the constitutional authority to regulate public schools

Takhar, 15 --- J.D. Candidate, 2015, University of California Hastings College of the Law (Summer 2015, Neelam, Hastings Women's Law Journal, “No Freedom in a Ship of Fools: A Democratic Justification for the Common Core State Standards and Federal Involvement in K-12 Education,” 26 Hastings Women's L.J. 355, Lexis-Nexis Academic, JMP)

C. On the Rise: Federal Authority Over Public Schools Article I of the United States Constitution establishes Congress' enumerated powers, including the power to levy taxes, regulate commerce, declare war, and create laws that are necessary and proper. n121 It does not refer to public education directly. The Tenth Amendment reserves power not given explicitly to the federal government to the states. n122 Thus, the power to directly regulate public education is reserved to the states. n123 Despite this limitation Congress does possess the power to spend for the general welfare, and it is under this indirect authority that it regulates public education. n124 Congress uses its spending power in two ways: first, to incentivize states and local governments to adopt programs by offering funding and grants; and second, to require states and local districts that receive federal funding to comply with conditions that serve federal policy goals, such as public safety or civil rights protections. n125 States or districts that act in opposition to federal policy goals lose federal funding. n126 The federal government also adopts administrative rules and regulations affecting education. n127 The U.S. Department of Education was [\*369] created in 1867, with the modest mission of "collecting information on schools and teaching that would help the States establish effective school systems." n128 In 1980, the Department of Education became a Cabinet level agency, n129 and today, it is the primary federal agency that issues regulations to implement federal education statutes, and monitors districts for compliance. n130 Its ultimate power is the authority to withhold federal funds from schools found to be in non-compliance with federal statutes. n131 The U.S. Department of Education's actual control over school operations and policy decisions is somewhat limited, because federal dollars typically account for less than ten percent of the average district budget. n132 Although courts grant broad discretion to administrative agencies like the Department of Education, n133 "critical federal institutions - including the courts - [have] reinforced the prevailing ethos that education in the United States was the principal dominion of state and local authority." n134 In light of the constitutional framework and sources of school funding, federal involvement in K-12 education has traditionally been marginal. The federal government's involvement in elementary and secondary schools began by focusing on groups with narrowly defined needs, such as students with disabilities, low socio-economic status, and other "insular and discrete subpopulations." n135 Most prominent of these programs is Title I of the Elementary and Secondary Education Act which concentrates on the nation's most disadvantaged students. n136 This important piece of federal legislation, as well as the No Child Left Behind Act, The Race To The Top, [\*370] and most recently The Common Core State Standards Initiative are all discussed in detail later in this article. n137 Critics of federal education legislation perceive it as federal interference in a matter that constitutionally has been reserved to the states. n138 However, the Supreme Court has held that although the federal government has limited enumerated powers under Article I, Congress may exercise its Spending Clause n139 power to attach conditions to federal funds, requiring state and local governments to comply with federal statutory and administrative directives. n140 This broad interpretation of the Spending Clause has been applied to federal education legislation as well. n141

### 1AR: No link – Spending Power

#### The spending power means it doesn’t violate federalism

**Robinson, 7 -** Assistant Professor of Law, Emory School of Law; J.D., Harvard Law School (Kimberly, “The Case for a Collaborative Enforcement Model for a Federal Right to Education”, University of California, Davis Law Review [Vol. 40:1653, <https://lawreview.law.ucdavis.edu/issues/40/5/articles/DavisVol40No5_Robinson.pdf>

Congress should recognize a federal right to education through spending legislation that establishes reasonable conditions on federal financial assistance for the general welfare.374 While some may worry that this Article’s proposal would violate federalism principles in which state and local governments principally control education,375 the proposal addresses any potential federalism objections to congressional recognition of a federal right to education. The Supreme Court has set very limited requirements for spending legislation by requiring that such action must be “in pursuit of the ‘general welfare,’” unambiguous, and related “to the federal interest in particular national projects or programs.”376 In addition, spending legislation must not violate other constitutional provisions or be “so coercive as to pass the point at which ‘pressure turns into compulsion.’”377 Many scholars view these requirements as rather weak limitations on the spending power and suggest that the Court revise its current approach.378 While scholars have noted that the Court could apply these factors in a more rigorous fashion in the future, the Court has not yet chosen to do so.379 If the current lenient standards for spending legislation remain in place, this Article’s proposal would satisfy these requirements. First, Congress shapes what is or is not within the general welfare and “courts should defer substantially to the judgment of Congress” on this issue.380 Thus, legislation establishing a federal right to education would advance the general welfare because experts have consistently viewed a strong education system as an important pillar for the foundation of the nation.381 As education scholar Richard Elmore has explained, “There is no avoiding a national interest in education; citizenship and education are inextricable.”382 The federal government has repeatedly demonstrated its interest in education, including improving the quality of education and encouraging equal educational opportunity, through past education spending legislation that has not been successfully challenged, including the Elementary and Secondary Education Act of 1965.383 Second, this approach easily satisfies the “unambiguous” requirement by advocating clear conditions in the federal right to education. Third, the requirement that a statute must not violate any “independent constitutional bar” merely demands that the power “not be used to induce the States to engage in activities that would themselves be unconstitutional.”384 The spending legislation proposed in this Article would not encourage states to take unconstitutional actions, such as encourage states to infringe upon the free speech of local governmental entities.385 The limitation on spending authority that poses the most trouble for this proposal is that the legislation may operate so coercively that it becomes compulsory in effect.386 To analyze this requirement, consider that in South Dakota v. Dole, the Supreme Court upheld the constitutionality of a statute that conditioned five percent of federal highway funds on establishment of a minimum drinking age of twenty-one.387 The Court determined that the statute had not exceeded the boundaries of coercion to become compulsion because Congress merely conditioned the required action on a small percentage of highway funds.388 Several features of this Article’s proposal satisfy the requirement that the legislation must not be compulsory. First, any funding withheld under the statute, while significant in dollar amount, should comprise a relatively small percentage of education funding overall. The Supreme Court approved withholding five percent of federal highway funding in Dole. 389 Therefore, limiting the condition of funds to only a fraction of federal funding for education, even a fraction larger than five percent, could prevent the program from becoming compulsory while still encouraging state action in furtherance of the right to education. Second, the expert panel would issue nonbinding, advisory recommendations to encourage states to develop their own approaches to identified concerns or violations. Rather than trying to convince states to follow the panel’s recommendations, the panel could propose some optional approaches to concerns and leave discretion to the states to choose amongst a variety of solutions.390 Finally, states may choose to reject the funding available under the statute.391 With these limitations, the proposed approach would pass constitutional muster like other exercises of congressional spending authority in recent decades that have “increased the extent to which [Congress] places conditions on recipients of federal aid.”392 Moreover, courts have upheld the constitutionality of far more coercive spending statutes than the mechanism proposed here.393

## Desegregation-Specific

### No Link: Civil Rights

#### Civil rights protection is an area of federal control

Murphy, 3/13/17 (James S., “The Office for Civil Rights's Volatile Power; The influence of the office has waxed and waned with each administration. How will it fare under Betsy DeVos?” <https://www.theatlantic.com/education/archive/2017/03/the-office-for-civil-rights-volatile-power/519072/>, accessed on 5/10/17, JMP)

Here is a question nobody asked Betsy DeVos at her confirmation hearing to become the eleventh secretary of education: Is the U.S. Department of Education a civil-rights agency? The last secretary, John King, thinks so. Over 600 education scholars who protested the nomination of DeVos think so, too. In a letter to the Senate, they recalled that the Elementary and Secondary Education Act of 1965, which created the federal role in American schools, is “at its heart a civil-rights law.” While much of the controversy over the new secretary has focused on school choice and the privatization of public education, the reality is that DeVos will have little power to enact major changes on those fronts because control lies with the state. When it comes to civil rights, however, DeVos and the Department of Education’s Office for Civil Rights (OCR) still possess immense power and responsibility. During her hearing, DeVos was evasive about how she would wield both, promising only to review OCR’s policies should she be confirmed. In a recent interview, she acknowledged that “anti-discrimination issues” require “a federal role,” but, she went on, “I also think there is an opportunity to streamline and simplify a lot of the engagement and involvement the department has had around some of these issues.”

#### Ensuring equal access and limiting discrimination are federal roles

Gregory & Kaufman, 10 (Spring 2010, Erin R. and Dean, Education Law & Policy, “EDUCATION AND FEDERALISM: THE ROLE FOR THE FEDERAL GOVERNMENT IN EDUCATION REFORM,” <https://pdfs.semanticscholar.org/290b/cdfdb2cc2cdab7c352063eaad7d9216d372e.pdf>, accessed on 6/6/17, JMP)

Perhaps the most significant and far reaching attempt was The No Child Left Behind Act (NCLB). The NCLB was an aggressive and ambitious attempt by the federal government to improve American education. However, it was not the first time the federal government inserted itself into the realm of education. These initial attempts by the federal government were largely a response to concerns about considerable racial disparities in education, precipitated by the Supreme Court’s holding in Brown v. Board of Education in 1954.8 The role of the federal government in ensuring access to education for disadvantaged groups should not be underestimated9, particularly when the remnants of discrimination still plague American schools, and the federal government should continue to promote accessible education for these groups. But while racial and gender-based discrimination are problems of national magnitude requiring a decisive national response, other problems facing the United States’ educational system today are quite different.

#### This is a limited area where federal action is justified

Gregory & Kaufman, 10 (Spring 2010, Erin R. and Dean, Education Law & Policy, “EDUCATION AND FEDERALISM: THE ROLE FOR THE FEDERAL GOVERNMENT IN EDUCATION REFORM,” <https://pdfs.semanticscholar.org/290b/cdfdb2cc2cdab7c352063eaad7d9216d372e.pdf>, accessed on 6/6/17, JMP)

V. CONCLUSION The role of the federal government in education should be limited to setting national goals, incentivizing creative approaches to meeting those goals by individual states and local communities, and ensuring accessible education by investigating civil rights violations. Education is an area best left to state and local governments because those closest to the students are in the best position to determine their academic needs. States and local communities also provide most of the funding for local schools and thus, are more invested in the success of these schools. Moreover, schools should be able to respond to the wishes of parents regarding their children’s education without undue federal regulation. Even as the federal role in education has increased in the last several decades, the federal government has been unable to successfully improve schools.

## Title I-Specific

### 2AC: No Impact – Empirically Denied

#### The impact is empirically false – No Child Left Behind was far more intrusive

Rebell 12—Executive Director, Campaign for Educational Equity; Professor of Law and Educational Practice, Teachers College, Columbia University; Adjunct Professor of Law, Columbia Law School; A.B., Harvard College; LL.B, Yale Law School (Michael A., “The Right to Comprehensive Educational Opportunity,” Harvard Civil Rights-Civil Liberties Law Review, 1/1/12, <http://schoolfunding.info/wp-content/uploads/2017/03/RighttoCompEdRebell.pdf>, pg 68-84)//JLE

This is standard fare with federal grant programs. For example, in accepting relatively small amounts of federal funding to support education for students with disabilities, states have, for the past two decades, obligated themselves to provide an extensive array of costly services for such students, as well as a battery of extensive parental due process rights.128 Nor should inclusion of a requirement that states offer assurances regarding the provision of comprehensive services in their compliance plans raise any serious federalism objections. The requirements that states have accepted under the current version of NCLB are already quite far-reaching.129 This new proposal also should not raise federalism concerns in light of the sanctions already provided for in the Act. Currently, school districts that fail to meet their AYP goals must offer students the option to transfer to other schools in the district and spend Title I funds for tutoring by outside vendors. In addition, schools that have not made AYP for multiple years in a row must implement one of a specified list of remedial mechanisms, including replacing most of the staff, converting the school into a charter school, hiring a professional management company to run the school, or allowing a take-over by the state.130 Substituting reasonable requirements for providing an appropriate range of comprehensive services would be less burdensome on states and local school districts than many of the existing mandates, especially those related to the demanding AYP timelines and assessment criteria that are most likely to be substantially revised. Indeed, the existing requirements for local school district plans already mandate that consideration be given to using some of the Title I funds to support preschool programs, coordinating and integrating them with other school services,131 and using Title I funds to support after-school, summer, and school-year extension programs.132 The suggested changes would, in essence, require all schools receiving Title I funds to ensure that they are making these and other comprehensive services available in a coordinated manner in order to provide all students a meaningful educational opportunity. USDOE should vigorously enforce students’ rights to comprehensive educational opportunity under the ESEA, and Congress should explicitly grant students and their parents the authority to enforce this right.133

### 1AR: Empirically False

#### The DA is empirically false

**Robinson, 15** - Professor, University of Richmond School of Law (Kimberly, “Disrupting Education Federalism” WASHINGTON UNIVERSITY LAW REVIEW [VOL. 92:959, <https://pdfs.semanticscholar.org/2e3c/a1792fa3482b209ae0ba85ed07a05d697f74.pdf>

First, the federal role in education has grown exponentially from its original narrow role. After Brown v. Board of Education, 43 Congress passed several statutes that fostered federal responsibility for equal educational opportunity, including the Elementary and Secondary Education Act of 1965.44 In the last two decades, Congress has expanded the federal role to encourage higher standards and greater accountability for the education of all children, most recently through NCLB and its waivers and the RTTT program.45 Indeed, the current reach of federal influence in education extends from the classroom to the state capitol.

#### Federalism impact is empirically false

**Miller, 14** - J.D. Candidate, University of the Pacific, McGeorge School of Law (Jason, McGeorge Law Review, “Telling Schools What to Do, Not How to Do It: Reimagining the Federal Government's Role in Public Education,” 46 McGeorge L. Rev. 605, http://www.mcgeorge.edu/Documents/Publications/46306MillerIssue3.pdf

This controversy exposes a fundamental problem with the manner in which the federal government has influenced public education for the last half century. Rather than claiming a specific federal interest in public education, Congress has taken a piecemeal approach culminating in massive micromanagement without a clearly articulated goal.13 This Comment will demonstrate that the federal threat to withhold funding provided by Title I of NCLB for the temporary suspension of standardized testing is a manifestation of the coercive nature and unconstitutionality of NCLB, and will suggest an alternative model of federal public education legislation.

## CTE-Specific

### Non-Unique

#### Federal Funding for CTE is normal means – the Aff doesn’t disrupt the status quo

NCSL 13’ – (National Conference of State Legislatures, “The Federal Role in Career and Technical Education”, NCSL, 2013, http://www.ncsl.org/ncsl-in-dc/standing-committees/labor-and-economic-development/federal-role-in-career-and-technical-education.aspx//GHS-AK)

The Carl D. Perkins Vocational & Technical Education Act of 2006 provides appropriations to support a framework to better prepare secondary and post-secondary students for further education and employment by developing their academic and technical skills. Perkins funds are provided to the states, which in turn allocate funds by federal formula to secondary and post secondary institutions. States currently receive two grants - Basic State Grants and Tech Prep. States must distribute at least 85% of the Basic funds to local programs using either the needs-based formula included in the law or an alternative formula that targets resources to disadvantaged schools and students. States may reserve up to ten percent for leadership activities and five percent for administrative activities. While federal funds represent about 5% of aggregate expenditures for career and technical education, they are critical to maintaining service levels as states increasingly make use of this education platform. However, as with the federal contribution to K-12 education, it is vitally important that the federal role in career and technical education remain positive and supportive of state policies and not outgrow the size of the investment by burdening the system in a labyrinth of disjointed reporting requirements and accountability measures.

#### Obama proposed legislation for federal funding for CTE – non-uq the link

Simon 12’ - attended Temple University in Philadelphia, numerous journalism awards for her work in both television and radio, including the Gracie Allen Award (Stephanie, “Obama calls for focus on vocational training”, Reuters, 2/13/12, http://www.reuters.com/article/us-usa-budget-education-idUSTRE81C1Z620120213//GHS-AK)

President Barack Obama on Monday proposed substantial new spending on education with a $69.8 billion education budget heavily focused on boosting vocational training, both at the high-school and college level. Overall, Obama asked for an increase of 2.5 percent, or $1.7 billion, in discretionary spending on education as part of his fiscal 2013 budget proposal to Congress. The centerpiece of the education budget was an $8 billion Community College to Career Fund, which aims to train 2 million workers for jobs in fields such as high-tech manufacturing, clean energy and healthcare. The initiative would encourage partnerships between two-year colleges and local businesses to identify in-demand skills and develop courses that help build them. It would also finance online and in-person training for up to 600,000 aspiring entrepreneurs. The fund would require congressional approval, which is far from assured. In 2009, when Obama called for an aggressive $12 billion investment in community colleges Congress allocated just $2 billion. This time, Congressional Republicans vowed as soon as the budget was released to block big spending on new programs, calling for a focus on deficit reduction instead. All four Republicans vying to stand against Obama in the November presidential election have also demanded a much smaller role in education for the federal government. Several pricey initiatives in Obama's proposed budget were likely to be popular with middle-class voters. They included making permanent a tax credit that some 9 million taxpayers use to offset the cost of college tuition; scrapping a scheduled hike in interest rates on student loans; and increasing Pell Grants for low-income students attending college. Obama also repeated his call from the State of the Union address last month for colleges to present more transparent information about tuition costs, average student loan debt, graduation rates and how well graduates fare in the job market. Education Secretary Arne Duncan said the College to Career initiative relied on community colleges developing strong relationships with local employers, who could help design courses and degree programs to "train workers for skills that businesses are looking for right now." The businesses would also be expected to offer apprenticeships. Duncan cited as models community colleges in Nevada that are ramping up nursing programs to meet local demand and schools in Florida that cater to a growing fashion industry. "It's really important that this not be driven by us in Washington," but be based on local business needs, Duncan said. Federal job-training programs, however, don't always work as advertised. A federal audit released a few months ago found serious hitches in a Labor Department program to train workers for clean-energy jobs as part of the economic stimulus bill. The agency received $500 million to train 115,000 workers, but as of June 30, 2011, just 26,000 workers had completed training and only 8,000 of them had found work, according to the U.S. Office of Inspector General. A Labor Department spokeswoman said that the program had ramped up considerably in recent months. In primary and secondary schools, Obama is pushing to expand his signature Race to the Top initiative. The competitive grant program prods states to take dramatic steps such as wiping out traditional teacher tenure protections so that administrators have more flexibility to fire teachers who are performing poorly. The new budget called for pumping a further $850 million into Race to the Top. Some of that money would be set aside for individual school districts, rather than states. And some would be directed to programs that serve the nation's youngest students, by getting low-income and at-risk three- and four-year olds ready for kindergarten. Obama also asked Congress to direct $1.1 billion to improve vocational and technical education at the secondary-school level. He proposed spending a further $1 billion on high-school "career academies" that train future workers in industries such as health care or information technology.

### Non-Unique

#### The federal government has had a role in career and technical education

Robert Schwartz 16 - Senior Research Fellow at the Harvard Graduate School of Education(“Memo: Career and technical education”;12/13;https://www.brookings.edu/blog/brown-center-chalkboard/2016/12/13/memo-career-and-technical-education/)//pk

Federal support for vocational education (the prior term for CTE) is nearly 100 years old. The Vocational Education Act of 1917 (known as Smith-Hughes, for its legislative sponsors) predated the Elementary and Secondary Education Act by nearly 50 years and was the first major federal aid program for elementary or secondary education. Smith-Hughes provided matching funds to states to support separate vocational high schools or, more typically, vocational programs in comprehensive high schools. While the development of comprehensive high schools sprang from a democratizing impulse—the laudable desire to bring students with diverse interests and talents together under a single roof—one consequence of having a separate federal funding stream dedicated to vocational programs was to encourage high schools to create a separate track for vocational students, isolating them from students pursuing a more academic education. Since the passage of the Carl Perkins Vocational and Technical Education Act in 1984, federal support to the states has been slowly but steadily encouraging the states to move toward a broader conception of CTE. In its most recent reauthorization (2006) the Perkins Act not only underwent a name change, substituting “Career” for “Vocational,” but more substantively emphasized the integration of strong academic preparation with strong technical education. It emphasized the importance of focusing on programs that prepare students for careers in high-growth, high-demand fields, and on “programs of study” that span secondary and postsecondary education. Funding for the Perkins Act started at $950 million for FY 1985 (about $2.1 billion in 2016 constant dollars) and has not kept up with inflation. In FY 2000 it was $1.179 billion; in FY 2015, $1.125 billion. It is currently about $1.3 billion, against a roughly $32 billion federal appropriation for all other elementary and secondary education programs. Of the $33.3 billion appropriated in FY 2017 for elementary and secondary education, only $3.1 billion supported high schools. This suggests that despite its title, the “Elementary and Secondary Education Act” (ESEA) has in reality been the Elementary Education Act.

## Impact Answers

### 2AC: No leadership Impact

#### No U.S. leadership impact — benefits are empirically disproven.

White 16 — Hugh White, Professor of Strategic Studies at the Australian National University, former Intelligence Analyst with Australia’s Office of National Assessments and Senior Official with Australia’s Department of Defence, 2016 (“What’s So Great About American World Leadership?,” *The Atlantic*, November 23rd, Available Online at <https://www.theatlantic.com/international/archive/2016/11/trump-world-order-foreign-policy/508547/>, Accessed 02-19-2017)

So it appears the American electorate no longer accepts the American role in the world that policymakers have long taken for granted. And what if the electorate is right? Maybe the foreign-policy assumptions of the past few decades do need to be overhauled. The record, after all, is not very impressive. So far this century, America has failed to achieve most of the key national-security objectives it has set for itself. Does that sound harsh? Here is a list, in no particular order, of some key goals both the Bush and Obama administrations set for themselves in foreign policy: Prevent North Korea getting nuclear weapons; prevent Iran getting nuclear weapons and contain its growing influence in the Middle East; transform Iraq and Afghanistan into stable, progressive, pro-Western states, or at least leave them as minimally functioning countries; contain and eventually crush jihadist extremism; harness the Arab Spring to enhance U.S. influence in the Arab world; reconcile Russia to the U.S.-led order and resist its efforts to rebuild a sphere of influence in Eastern Europe; resist China’s challenge to the U.S.-led order in Asia; broker a durable settlement between Israel and the Palestinians; and prevent another 9/11 on U.S. soil. Of all these, the only clear success is the avoidance of another direct major attack on America itself. The nuclear deal with Iran may prove a partial success, but even there the best we can hope is that an Iranian nuclear capability has been deferred. All the rest have been total failures. And yet these are exactly the kind of goals that America should have been able to achieve if it was to fulfill the orthodox vision of its global leadership. That vision is, or has been, that America can and should create and uphold in every region of the world an international order which is based on American values and which supports America’s interests. And it should be able to do that without incurring the immense costs and risks it bore in the conflicts of the last century. It is a noble vision, and the world would be a better place if it was realized. But the record suggests it does not corresponded to reality. We’d better ask why.

### 2AC: No leadership Impact

#### Trump’s dysfunctionality makes the impact inevitable.

Sokolsky and Miller 17 — Richard Sokolsky, Nonresident Senior Fellow in the Russia and Eurasia Program at the Carnegie Endowment for International Peace, former Member of the Secretary of State’s Policy Planning Office, holds an M.A. from the School of Advanced International Studies at Johns Hopkins University, and Aaron David Miller, Distinguished Scholar and Vice President for New Initiatives at the Woodrow Wilson International Center for Scholars, served in the U.S. Department of State for 24 years, holds a Ph.D. in American Diplomatic and Middle East History from the University of Michigan, 2017 (“Trump’s Foreign Policy: 100 Days of Global Bafflement,” *Politico*, April 24th, Available Online at <http://carnegieendowment.org/2017/04/24/trump-s-foreign-policy-100-days-of-global-bafflement-pub-68763>, Accessed 06-27-2017)

3. Trump’s Foreign Policy Process Is Deeply Dysfunctional. There have been times during the past 100 days when the administration looked like the gang who couldn’t shoot straight. Of course, all administrations suffer from infighting and turf wars, and new administrations always take some time to get their sea legs. But in the six administrations in which we worked, we have never seen a national security decision making process as dysfunctional as this one. What makes it so? First, there is the president’s heavy-handed and uncoordinated intervention in the policy making process. His off-hours twitter storms have left allies and friends uncertain and confused about U.S. policies and intentions. Being unpredictable can sometimes create leverage in a transaction, but when taken to an extreme, as has happened, it can also damage American credibility, leadership and influence. Second, there is the cacophony of voices—or in some cases no voices at all. On a number of issues, notably U.S. policy toward Syria, Israeli-Palestinian peace and North Korea, the president and his foreign policy team are not using the same set of talking points—as when U.S. Ambassador to the U.N. Nikki Haley declared that peace in Syria would require Assad’s departure while Tillerson stated that Assad’s fate was up to the Syrian people to decide. The mixed signals sow further confusion and doubt about who’s speaking for the administration on foreign policy. The failure so far of Tillerson and the State Department to effectively articulate and explain U.S. foreign policy is a particular problem, leaving foreign governments guessing about American plans. Third, effective policy coordination and execution has been MIA largely because almost none of the key policy positions at State or Defense has been filled. Without officials at the deputy, under secretary, assistant secretary, and deputy assistant secretary levels offering ideas, issuing strategic direction and policy guidance, the bureaucracy is left rudderless and U.S. embassies are left without instructions or guidance to explain American policy to the host government. Fourth, all administrations like to centralize control over sensitive foreign policy issues in the White House, but this typically occurs within a structured interagency decision-making process; ideas bubble up through the bureaucracy in the form of papers, meetings and more meetings. We have seen no evidence that such a process is in place on most issues; instead, there is an ad hoc and improvisational quality to many of Trump’s decisions. More importantly, the portfolios for many important foreign policy issues, such as China, Mexico and Middle East peace, have been handed to Jared Kushner, the president’s son-in-law, a foreign policy neophyte overloaded with responsibilities that no mortal can manage and lacking the government experience to work the system to see his preferences enacted. Kelly, Mattis, McMaster and Tillerson have had a modicum of success lately in bringing a semblance of order to an unruly process. But the administration still does not have the right people in the right positions and with the right process to consistently produce, articulate and implement coherent and sustainable policies. Over time, this situation may improve as the president begins to understand that people, process and experience matter, and that you can’t have an effective foreign policy without them. But we’re betting the current dysfunction isn’t going to disappear quickly. This will not be a linear process—there will be more zigs and zags because all too often Trump will continue to be Trump—impulsive, pugilistic and volatile.

### 1AR – No Leadership Impact

#### The world is too complex for U.S. management *even if* there’s “total focus” on foreign policy.

Richman 14 — Sheldon Richman, Vice President of the Future of Freedom Foundation, former senior editor at the Cato Institute and Institute for Humane Studies at George Mason University, holds a degree from Temple University, 2014 (“Best Thing to Do in Foreign Policy is Nothing,” *Reason*, July 25th, Available Online at <http://reason.com/archives/2014/07/25/best-thing-to-do-in-foreign-policy-is-no>, Accessed 08-25-2014)

The heartbreaking violence in the Middle East, Ukraine, and elsewhere carries many messages, but here's one Americans shouldn't miss: The United States — no matter who the president is — cannot manage world conflict. The corollary is that when a president tries to manage it, things will usually get worse. Foresight is always defective, and tragic unintended consequences will prevail. The foreign-policy "experts" in both major political parties, and the intelligentsia generally, think otherwise. No matter who holds power, we can expect the opposition to complain that the chief executive poorly anticipated and thus improperly responded to world events. If this charge weren't so ominous, it would be comical to hear Republicans berating Barack Obama for failing to be "proactive," for repeatedly being caught by surprise, and for not exerting "American leadership" to keep the world's hot spots under control and, most important, in harmony with "American interests." But contrary to what Republicans say (or what Democrats would say if a Republican were in power), the fault lies not in the president — at least not this fault — but in the mission itself: anticipating change and managing world conflict. No president can do that competently. Why not? Because the task is not doable, and danger lies in thinking it is. Moreover, the delusion that it is doable almost always makes situations worse than they otherwise would be — weapons proliferate, violence spreads, noncombatant casualties multiply — and all this creates enemies for the American people. Who thinks that's a good thing? I doubt the American people would if they understood what their so-called leaders — misleaders and misrepresentatives are better terms — are doing to them, not to mention what the "leaders" are doing to the hapless subject populations abroad that suffer because of U.S.-supported machinations. The world is complex. Specifically, individual societies are infinitely complex, historically, politically, and culturally, and thus beyond the full comprehension of any person or group. Even societies ruled and ostensibly planned by dictators have informal, hidden, and spontaneous aspects that no one can fully grasp, especially outsiders. Written laws are often irrelevant to the unwritten rules and customs actually governing a society. And each society consists of many moving parts (religious, ethnic, etc.) Anyone who still thinks a U.S. president with expert advisers can determine the opportune moment to send armed forces into a country to effect regime change — or to arm a presumed moderate opposition — and have everything come out as planned fails to grasp this and hasn't been paying attention for the last dozen years. The same goes for anyone who still believes America's latest brain trust can smoothly dictate political events in another country, say Ukraine, from behind the scenes with money funneled through innocent-sounding organizations like the National Endowment for Democracy. The problem with these grand plans is that there are human beings on the other end — people who have their own preferences about what should take place and who are likely to resent foreign or foreign-backed interference. Another stumbling block to presidential world-building is that historical regional powers — say, Russia or Iran — don't look kindly on the United States asserting its will in their neighborhoods, just as American presidents have not welcomed foreign influence in Latin America. To many people in the world, American exceptionalism means that the United States alone gets to regard every region as within its sphere of influence. Responses to American arrogance produce many of the "crises" that the chief executive will be accused of having failed to anticipate and preempt. But no one can hope to manage the world. The basic failure is the intervention itself. There will be crises enough without a U.S. president helping to create them. Afghanistan, Iraq, Syria, Libya, Palestine/Israel, Ukraine and so many more in the past are all variations on a theme. Ignorant intervention begets bad consequences — unintended or not — perhaps not for American politicians or those who peddle war materiel, but certainly for those who bear the brunt in the target countries and the Americans who kill, die, and pay the economic cost. Managing world conflict is beyond the power of any mortal. Don't demand that a president do it.

### 1AR – No Leadership Impact

#### No leadership impact — the U.S. is *not* indispensable.

Zenko 14 — Micah Zenko, Douglas Dillon Fellow with the Center for Preventive Action at the Council on Foreign Relations, former Research Assistant at the Belfer Center for Science and International Affairs at the Kennedy School of Government at Harvard University, former Researcher at the Brookings Institution, 2014 (“The Myth of the Indispensable Nation,” *Foreign Policy*, November 6th, Available Online at <http://foreignpolicy.com/2014/11/06/the-myth-of-the-indispensable-nation/>, Accessed 08-10-2015)

Indispensables also hold an unrealistic faith in the latent power of leadership that flows from suppose it indispensable-ness. During a House hearing in September, Gerald Feierstein, Principal Deputy Assistant Secretary of State for Near Eastern Affairs, declared: "When the United States stands up and demonstrates resolve and demonstrates a direction, the international community generally supports and falls into place behind." Really? This hypothesis would surprise anyone who tracks multilateral fora where U.S. officials state their policy positions and then repeatedly fail to compel other leaders to get in line — see, for example, the Climate Change Conference in Copenhagen in December 2009, and the WTO trade talks since the Doha Round opened in 2001. And if Feierstein is referring only to warfare, then why do so few countries with deployable military assets participate in U.S.-led campaigns in a meaningful way? The United States provided the majority of the actual combat forces and airpower in Iraq, Afghanistan, and Libya, and is doing so again in the air campaign to counter the Islamic State (IS). Most countries that could participate have either declined to do so, or are taking part by providing such limited and constrained capabilities that they are not significantly enhancing the coalition’s capabilities. In each of these military interventions, the United States decried unilateralism, attempted to form a large coalition, and then found itself paying most of the costs, dropping most of the bombs, sacrificing the most soldiers, and losing most of his credibility. Whether it is multilateral talks or military operations, other governments do not do as Washington demands because, quite simply, it is not in their national interests to do so. Moreover, the United States refuses to employ the political will or coercive leverage to force them to. The point being is that few, if any, substantive and enduring foreign-policy activities can be done unilaterally, and asserting one’s indispensability does nothing to alter others’ interests. It is often stated that countries in the Middle East or East Asia are looking for America "to lead," but they actually want U.S. leadership on their terms, and in support of their own narrow objectives. The moment that leadership conflicts with the visions and objectives those countries hold, they cease or severely limit their partnerships with the United States. Finally, the Indispensables belief that America’s role in the world is "absolutely necessary" in all areas is simply arrogant. It discounts the tremendous and essential contributions from non-U.S. countries, international non-governmental organizations, and civil society. This includes the 128 countries contributing 104,184 troops and police forces currently deployed in support of sixteen U.N. peacekeeping operations worldwide. The United States provides only 113 troops to U.N. peacekeeping operations, but, importantly, foots 27 percent of the bill and provides logistics support. Or, consider the billions of dollars from the Gates Foundation, Norwegian Refugee Council, Mercy Corps, International Red Cross and Red Crescent, and countless others, which improve the lives of the poorest and most in need. Each of these public health, humanitarian, and development organizations offer the deep pockets and political neutrality that allows them access to areas where the United States simply cannot or will not go. The reason that the United States is not the indispensable nation is simple: the human and financial costs, the tremendous risks, and degree of political commitment required to do so are thankfully lacking in Washington. Moreover, the structure and dynamics of the international system would reject or resist it, as it does in so many ways that frustrate the United States from achieving its foreign policy objectives. The United States can be truly indispensable in a few discrete domains, such as for military operations, which as pointed out above has proven disastrous recently. But overall there is no indispensable nation now, nor has there been in modern history. Indispensables may feel compelled to repeat this feel-good myth, but nobody should believe them.

### 2AC: No Progressive Federalism Impact

#### Fair-weather federalism fails — it’s political opportunism without emotional force.

Hills 16 — Roderick M. Hills Jr., William T. Comfort, III Professor of Law at the New York University School of Law, earned a J.D. from Yale Law School and a B.A. in History from Yale University, 2016 (“Message to Trump-anxious decentralizers: Is your federalism insurance premium paid up?,” *PrawfsBlawg*, December 18th, Available Online at <http://prawfsblawg.blogs.com/prawfsblawg/2016/12/message-to-trump-anxious-decentralizers-is-your-federalism-insurance-premium-paid-up.html>, Accessed 07-09-2017, Lil\_Arj)

In a politico-legal ritual as timeless as the Gridiron Dinner, supporters of the Party that lost the Presidency are now discovering the virtues of federalism. Noah Feldman assures that "sanctuary cities" are safe from having their federal money yanked, because the Medicaid portion of NFIB v. Sebelius prohibits "coercive" conditions on federal grants. Jeff Rosen reminds us to take heart in Heather Gerken's "Progressive Federalism," in which national minorities can press ahead with state and local initiatives that would perish in a pigeonhole if suggested in the halls of Congress. The basic idea is that our constitution, with a small "c," contains norms about preserving decentralized political power that can serve as a firewall against Trump's excesses and foibles. Far be it for me, a certified fan of federalism and decentralization, to look a gift horse in the mouth. If Trump's victory spurs my colleagues to endorse an institutional arrangement the benefits of which are timeless, that is a silver lining to a calamity, even if one suspects that the endorsing of federalism is a little bit opportunistic. For the rhetoric of federalism to sound convincing, however, one needs to have paid up one's "federalism insurance premium." Otherwise, one's op-ed in favor of those labs o' democracy, those deciding dissenters, will sound (to quote Kurt Vonnegut) about as inspiring as the 1812 Overture played on a kazoo. What do I mean by "federalism insurance premium"? Think of a federal regime as an insurance policy, protecting the risk averse against loss of national power. When one's Party loses the commanding heights of the federal government, federalism insurance allows that Party to retreat into the provinces as a semi-loyal opposition, a shadow government waiting in the wings, advertising its virtues with Massachusetts Miracles and the Texas Way with Deregulated Housing and so forth.Like all insurance, however, the protection comes at a price: One must pay the "premium" of protecting subnational power when one controls the national government, tolerating subnational experiments that one regards as more Frankenstein than Brandeis. So here is my question to all those new friends of federalism: Is your federalism insurance premium paid up? For instance, when the Obama Administration was forcing colleges and universities to adhere to federal procedural standards for sexual assault hearings contained in its "Dear Colleague" letter, did you stand up for those subnational institutions' right to resist coercive Title IX conditions on federal money? No? Then do not be surprised if your pro-federalism rhetoric about the immunity of sanctuary cities to "coercive" conditions falls a little flat. We pay for constitutional insurance through self-control when we have power, not through rhetoric when we lose it. Through the exercise of self-control across different political regimes, each Party can slowly confer on institutional arrangements a permanence (sentimentalists would even say "sanctity") that survives change of regimes, sending a signal to their opponents that their self-control will be reciprocated when the tables are turned. The filibuster in the Senate is such a semi-permanent convention; Honored by both parties when the other was a minority who could use it to the incumbent Party's disadvantage, it has become entrenched by convention. Federalism, however, has never been favored by the Party in power long enough to make their pro-federalism protests convincing to their opponents (or even bystanders like myself) when they lose power. No one has paid their premium, so the insurance fund -- the emotional force of pro-federalism rhetoric -- is empty.

### 2AC: No Progressive Federalism Impact

#### Constraints solve Trump lash-out

Goldsmith 17 (Jack, Henry L. Shattuck Professor at Harvard Law School, a Senior Fellow at the Hoover Institution, and co-founder of Lawfare. He teaches and writes about national security law, presidential power, cyber security, international law, internet law, foreign relations law, and conflict of laws. He served as Assistant Attorney General at the Office of Legal Counsel from 2003-2004, and Special Counsel to the Department of Defense from 2002-2003. “Checks on Presidential Power Are Stronger Than You Think” 1-20-17 https://www.thecipherbrief.com/article/north-america/checks-presidential-power-are-stronger-you-think-1091)

TCB: Which are the most resilient currently existing checks on his power, and which need to be bolstered? JG: There are many, both inside and outside the Executive branch. On the inside, a bevy of lawyers, ethics monitors, inspectors general, and bureaucrats in the intelligence and defense communities have expertise, interests and values, and infighting skills that enable them to check and narrow the options for even the most aggressive presidents. On the outside, the press, which did such an extraordinary job of holding Bush, and to a lesser extent Obama, to account, is more motivated than ever to hold Trump accountable. The same goes for civil society groups like the ACLU, which have used lawsuits, reports, and Freedom of Information Act requests to expose government operations and misdeeds since 9/11, and whose coffers have ballooned since Trump’s election. Spurred on by the press and civil society, the judiciary, which often stood up to Bush, will stand up even more to Trump if he engages in excessive behavior. Finally, Congress has been more consequential in constraining the national security president since 9/11 than people realize. And as we have already seen in some pushback from Senators John McCain (R-AZ), Lindsey Graham (R-SC), and Rand Paul (R-KY), it will stand up to Trump on many issues, even though his party nominally controls Congress. None of these institutions are perfect. They are especially ill-suited to prevent the President from using military force as he sees fit, which is why the Obama Administration’s precedents in this context are so troubling. But the institutions do a much better job in other national security contexts than they have been given credit for, and they will be watching president Trump with a very skeptical eye and an array of powers to push back.

### 2AC: No Progressive Federalism Impact

#### Progressive federalism” undermines rights for people of color — Voter ID laws prove.

Charles and Fuentes-Rohwert 15 — Guy-Uriel E. Charles, Charles S. Rhyne Professor of Law Senior Associate Dean for Faculty & Research at Duke Law School, the founding director of the Duke Law Center on Law, Race and Politics, previously was the Russell M. and Elizabeth M. Bennett Professor of Law at the University of Minnesota Law School, received his JD from the University of Michigan Law School and clerked for The Honorable Damon J. Keith of the United States Court of Appeals for the Sixth Circuit, and Luis Fuentes-Rohwert, Professor of Law and Harry T. Ice Faculty Fellow at Maurer School of Law at Indiana University, earned a LL.M. from Georgetown University School of Law, a Ph.D., J.D. and B.A. from the University of Michigan, 2015 (“Race, Federalism, and Voting Rights,” *The University of Chicago Legal Forum* (2015 U. Chi. Legal F. 113), Available Online to Subscribing Institutions via Hein Online, Accessed 06-26-2017, p. 143-148, Lil\_Arj)

III. RACE AND FEDERALISM UP AND DOWN Return now to the empirical question about the utility of federalism that we left open in the last Part. In this Part we want to introduce a consideration that has not been central to the modern federalism debate: whether federalism enhances the liberty of people of color. Chief Justice Roberts's desire in Shelby [End Page 143] County to return the federalism balance to what it was not only prior to the intervention of the 1965 Voting Rights Act, but also prior to the Nineteenth Century and the Civil War Amendments, could be sensible under the right set of assumptions. One of the supposed great virtues of (our) federalism is that it enhances liberty because it facilitates the ability of national or ethnocultural minorities to rule by becoming local majorities. 1 4 1 From this perspective, defending federalism is defending the liberty of local minorities against national majorities. But the question that anti-nationalists, in particular the anti-nationalists on the Court, often fail to ask is, liberty for whom? The critical inquiry for modern proponents of federalism is whether federalism works for racial minorities in the way that federalist theorists purport. Put differently, states' rights theorists 1 42 never pause to ask whether the states are truly in competition with the federal government for protecting the rights of racial minorities. They never pause to ask whether federalism is good for people of color. Though past need not be prologue, the concept of states' rights has, to put the point mildly, a sordid past in American history. 1 4 3 Federalism has not generally been viewed as an institutional arrangement that enhances the liberty of racial minorities in the United States; in fact, it has been viewed as doing the opposite. 144 The way that racism has been deployed in the name of federalism is a problem for federalism's advocates. 14 5 Whether fair or not, states' rights in the United [End Page 144] States has generally been associated with racial inequality. 146 Conversely, federal power has generally been associated with racial equality.1 47 From the perspective of citizens of color, liberty has in fact been delivered not by federalism but by nationalism. 148 It thus would take a lot of chutzpah to curtail federal power, which is being deployed to protect liberty in an area where the states have engaged in notorious and rampant race discrimination, in the name of states' rights. But this is precisely what Chief Justice Roberts did in Shelby County. Central to the Chief Justice's argument in Shelby County for recalibrating the balance between state and federal power is the premise that the states are no longer engaging in systematic racial discrimination of the type that gave rise to the 1965 Act.1 49 This argument prompted a dissenting response from Justice Ginsburg, who maintained that the states might go back to their old ways and use proxies that either directly or indirectly minimize the political power of racial minorities or indirectly do so.o50 Additionally, Justice Ginsburg argued that in the last fifty years, if not since Reconstruction, the federal government has assumed the primary responsibility and has in fact done a better job of protecting the electoral rights of racial minorities. 151 Thus, as between the states and the federal government, the federal government is the less risky option, the safer bet. <<card continues>>

### 2AC: No Progressive Federalism Impact

<<card continues>> For both Roberts and Ginsburg, the federalism question (that is, how much reserved powers do the states have or should the states have as against the federal government in the voting domain) is a function of a predictive judgment: whether the states are likely to engage in racial discrimination in voting as they did before or whether we have we moved well beyond that era. If we think the states are likely to backtrack, we ought to [End Page 145] favor the federal government; but if we think the states are reformed, we should return to them the reserved powers they presumably possessed at the Founding. Both justices used memorable analogies to make their respective points: Roberts that robust federal power is no longer necessary and Ginsburg that the states are likely to backtrack without federal supervision. 152 During the oral arguments in Northwest Austin, Roberts characterized the argument that it is the VRA that is keeping the states from engaging in racial discrimination in voting to be as compelling as the old story that an "elephant whistle" explains the absence of elephants. That is, he continued, "I have this whistle to keep away the elephants. You know, well, that's silly. Well, there are no elephants, so it must work." 15 3 In her Shelby County dissent, Ginsburg retorted by characterizing the argument that the coverage formula is no longer necessary because states are not currently engaged in racial discrimination as "like throwing away your umbrella in a rainstorm because you are not getting wet." 154 Roberts and Ginsburg are undoubtedly engaged in an important debate. But in one critical respect, the battle between Roberts and Ginsburg and the sides that they represent is beside the point, if the point is about federalism. The federalism question should not be whether the states will or will not engage in discrimination if federal supervision is removed. The federalism question ought to be whether the states will compete with the federal government for the allegiance of racial minorities. If one important and central argument in favor of federalism, and thus Shelby County, is that devolution of power enhances liberty by facilitating self-rule by national minorities or ethnocultural minorities, the question that Chief Justice Roberts and Justice Ginsburg should have been debating is whether removing central supervision will now better permit racial minorities-who are also ethnocultural minorities-to engage in self-rule. Instead of asking whether the states are widely or systematically discriminating against their citizens of color, the Court should have asked how well are the states [End Page 146] representing the interests of their citizens of color. What is the congruence between the policy preferences of citizens of color in Alabama, Texas, North Carolina, Georgia, etc., and the legislative outcome of their respective states? How well are these citizens represented by their states? This should be the question for federalism in this context. If one is inclined to be generous, one can view Chief Justice Roberts's opinion in Shelby County as deeply generative. Roberts wants a restart on race, history, and federalism. Recall here his point in Shelby County that history did not end in 1965.155 We have argued elsewhere Roberts used Shelby County to redeem the states.156 But the states are not all that Roberts wants to redeem; he also wants to redeem federalism from its sordid past, a laudable goal. The anti-nationalists aim to change the states' rights narrative so that the idea of states' rights is no longer synonymous with racial discrimination. Recall also Chief Justice Roberts's claim in Shelby County that the South has changed, or at the very least it does not differ much, if at all, from the North.157 The redemption of federalism is an intriguing and worthwhile project. It would be salutary and productive to get beyond the states' rights as racism meme. And it is not fair to federalism's advocates to constantly tar them with the putridity of the past. But redemption is not cheap. If federalism is to be redeemed, federalism must work for people of color as well. And if federalism is to "work" for people of color, it is not enough for proponents of federalism to show that the states will no longer engage in rampant racial discrimination. Our task here is to introduce a distinction between an argument for states' rights premised on the idea that the states (or many of them) are no longer engaging in racial discrimination and an argument for states' rights in which the states are actively representing the interests of their citizens of color. From our perspective, the argument for federalism cannot be premised on the idea that the states are no longer discriminating against racial minorities. It is not sufficient to simply say that the states are indifferent. The Court should not interpret the Constitution in a way that would disempower the [End Page 147] federal government, which is the governmental entity that best represents the interests of citizens of color, and leave citizens of color to the indifference of the states. <<card continues>>

### 2AC: No Progressive Federalism Impact

<<card continues>> Indifference is not an argument for federalism. Federalism promises better representation, at least as compared to representation from the center or as compared to a unitary system. Our point is that the promise of better representation or the promise of competition for representation ought to be extended to people of color.158 This is why the argument between Roberts and Ginsburg is beside the point. The states' side of federalism must do what federalism theory expects devolution and decentralization to do. Federalism must defend and protect racial representation. The states must rival the federal government for the affections of racial minorities. It is not enough that federalism is not bad for people of color; federalism must be good for people of color. This is the task of federalism.

### 1AR — Fair-weather Federalism Fails

#### Formal institutional restraints are key — Gerken’s federalism fails.

Hills 17 — Roderick M. Hills Jr., William T. Comfort, III Professor of Law at the New York University School of Law, earned a J.D. from Yale Law School and a B.A. in History from Yale University, 2017 ("A response to Heather Gerken: Why the politics of tolerant pluralism need the legal institutions of federalism," *PrawfsBlog*, January 3rd, Available Online at http://prawfsblawg.blogs.com/prawfsblawg/2017/01/a-response-to-heather-gerken-why-the-politics-of-tolerant-pluralism-need-the-legal-institutions-of-f.html#more, Accessed 07-09-2017, Lil\_Arj)

Heather Gerken has a characteristically thoughtful response to my post on the “federalism insurance premium.” Heather agrees with me that willingness of the party in power decentralize controversial issues is weakened by each side’s intolerance toward ideological disagreement. She also agrees that more tolerance would be a good thing: When Democrats hold the Presidency, they should allow Red states more latitude to adopt conservative policies, and vice versa. Heather disagrees with me, however, about whether constitutional conventions and institutions of federalism are relevant solutions to this problem. In her words, “… the give-and-take has more to do with politics than institutions. Put differently, it’s not federalism that matters here, but pluralism. And a pluralist system only flourishes when both sides are willing to live and let live…” The core of our disagreement is, in short, about whether and how legal institutions promote pluralist politics. After the jump, I will explain why I think that Heather is mistaken to contrast institutions and politics as if they are distinct mechanisms for promoting pluralism. As I have argued in yet another post, politics depends on – indeed, are defined by – legal institutions. Saying that achieving pluralism is rooted in politics, not institutions is like saying that scoring touchdowns is rooted in athletic ability, not the rules of football. Of course, the sort of athletic ability needed to score a touchdown depends on the rules of football. Likewise, the particular sort of politics needed to entrench a convention of decentralization depends on legal institutions. Even tolerant voters and politicians need some assurance that their tolerance will be reciprocated by their rivals before surrendering their cherished policy priorities for the sake of allowing the rivals to impose dissenting subnational policies. Without some credible commitment of reciprocity, such tolerance brands the politician who practices it as a chump, not a pluralist. Legal institutions allow such politicians to make such credible commitments such that they can be assured that their forbearing to centralize power when they control the presidency will later be rewarded by their rival's similar forbearance. To see this relationship between legal institutions and political pluralism, however, it helps to focus on a specific example. 1. Why is "tolerance" without institutions insufficient to protect pluralism? Consider, for example, the question of whether a university should be permitted to use a "clear and convincing evidence" standard to determine whether or not a constituent of the university (student, staff, faculty, etc.) committed sexual assault against another constituent. As I have argued elsewhere, whether or not Title IX requires a mere "preponderance of the evidence" ("POTE") standard to insure adequate protection from gender-based inequality is a tricky question. The Party in Power (call them "PIP") could "be tolerant" by acknowledging the uncertainty and let different public and private institutions make the call. This "tolerant" stance will bitterly disappoint the supporters of the PIP who ardently believe that POTE test is the statutorily required standard. Such supporters, however, might be mollified if they were assured that, by honoring a norm of decentralization, PIP would protect the supporters from having the POTE standard prohibited when the rival party comes to power. After all, the rival party might believe that POTE denies the accused of due process -- that only "clear and convincing evidence" ("CACE") would insure adequate protection against false positives. In order to prevent the very worst-case scenario, the PIP's supporters might grudgingly accept limits on their power to impose what they regard as the ideal rules. The problem, of course, is that there is no obvious mechanism by which the PIP can make an enforceable deal with the Party out of Power ("POOP") to insure that present forbearance will be reciprocated. Because the POOP cannot give assurance that they will reciprocate, the PIP's supporters rationally insist that the PIP go ahead and impose the PIP's ideal policy. <<card continues>>

### 1AR — Fair-weather Federalism Fails

<<card continues>> PIP would be rational to do so even if POOP's and PIP's supporters both were "tolerant and pluralist" -- that is, even if each side would prefer to forgo their own best-case scenarios in order to insure against the triumph of their opponent's best-case scenarios. Without legal institutions to enforce a deal, the two sides are trapped in a prisoner's dilemma from which their political good faith, their tolerance, their pluralistic character -- all the stuff that, I am guessing, Heather would classify as "politics" -- cannot save them. Heather argues that we suffer from too much polarization rather than bad institutions. "[T]he real problem," she notes, "is the underlying assumption that one’s opponent is closer to Frankenstein rather than to Brandeis." I suggest, however, that polarization should increase rather than decrease the willingness to cut deals with one's opponents in the name of tolerance. After all, if one's opponents' views are closer to one's own, then the prospect of being governed by their norms is not so terrible. It is precisely when we fear our opponents' values most intensely that we need to take out an insurance policy against being subject to those values. The Thirty Years' War was not settled by good character or pluralist politics: It was settled by good rules in the Treaty of Osnabruck that gave each side credible assurances that they would be protected from their rivals. Likewise, during intensely polarized periods of U.S. history, legalistic norms like the Missouri Compromise flourished precisely because high levels of distrust created incentives for each side to seek institutional protection from their rivals. (Barry Weingast argues that such institutional protections fell apart not because of polarization but because the parties tinkered with the rules, admitting California as a free state and thereby eliminating the enforcement mechanism that forced each side to stick with the deal). 2. How might legal institutions help us achieve the pluralism that we want? I heartily agree with Heather that, without a minimum amount of good will as lubricant, the gears of even the most sophisticated constitutional mechanism will lock up. I think, however, that we have not exhausted the benefits of good institutions that can help distrustful parties achieve the repose that both sides might really want. Consider, for instance, the possibility of taking issues off the national agenda more aggressively. Heather's "national federalism" depends on the idea that, by giving Congress plenary power to decide everything, the two political parties will have better incentives to "dissent by deciding," enlivening our political debate with subnational policies that they hope eventually to nationalize. (By scoring a hit Off-Broadway, as it were, the POOP can move their show to a Broadway Theater as a PIP). In Heather's world, every subnational government is a farm team for the Big League, so voters in every local election rationally think about the effects of their ballot on national issues. The problem with such a world is that, by raising the stakes of subnational politics, it destroys those politics for subnational government. David Schleicher has nicely explained how our subnational elections have been transformed into "second-order elections" in which voters vote on city council members, state legislators, and (to a lesser extent) mayors and governors solely based on their assessment of the national parties. As David notes, the cost is the destruction of subnational politics for subnational government. One solution to go back to your father's federalism -- i.e., that old-fashioned idea that certain issues should be presumptively walled off from national decision-making, if not with barbed wire fences and trenches, then at least with speed bumps that slow down national legislation and regulation. Require more rules to go through notice-and-comment rule-making. (Such a requirement would likely have stalled OCR's "Dear Colleague" letter on sexual assault). Invoke Pennhurst and anti-coercion norms to limit the degree to which new interpretations can be given to cross-cutting grant conditions like Title IX. Beef up anti-commandeering norms to protect sanctuary cities. Such doctrines provide political cover to PIPs against their own followers, allowing them to be tolerant and pluralistic to the other side by explaining to their impatient followers that certain centralizing policies will take too long to enact and are a waste of political capital. Such rules also provide reassurance to POOPs governing subnational jurisdictions who can thereupon relax the perpetual campaign at the subnational level to nationalize every local experiment and instead focus on subnational government. <<card continues>>

### 1AR — Fair-weather Federalism Fails

<<card continues>> (As an example, consider Governor Hickenlooper's focusing on purely subnational politics of regional transit without any agenda of nationalizing the result, building up trust through initiatives like Colorado's FasTracks regional light rail program). My point is not to attack Heather's "national federalism" but only to suggest that her brand of federalism, lacking formal legal institutions to constrain national power, might have consequences for the politics of pluralism. To the extent that our rules reward defection from decentralizing norms and dangle the brass ring of total national power before our subnational politicians, it should not be astonishing that they follow the incentives we give them. Even well-meaning pluralists will abandon self-restraint, after all, if their own restraint is never reciprocated. Rather than give up on the rules and hope for less polarization, it might be a good idea to think about ways in which our rules makes polarization a little more rewarding and self-restraint, a bit less attractive.

### 1AR — Constraints Solve

#### International checks reinforce domestic constraints

Burdette 3-1 (Zachary, National Security Intern at the Brookings Institution and M.A. candidate at Georgetown University's Security Studies Program concentrating in military operations. “America’s Counterterrorism Partners as a Check on Trump” 3-1-17 https://www.lawfareblog.com/americas-counterterrorism-partners-check-trump) President Trump has begun to shift U.S. counterterrorism policies toward an extreme paradigm that departs from both liberal and conservative orthodoxy. In his first weeks in office, Trump recast the enemy as radical Islam, reconsidered U.S. policy on black sites and torture, and instituted a travel ban covering seven Muslim-majority countries. The unifying logic of these approaches is one of defining Islam as the problem, unshackling humanitarian constraints, and adopting extreme tools to combat terrorism. In implementing this vision, Trump inherits an already formidable counterterrorism architecture and an expansive legal interpretation of executive war powers from the Obama administration. Ideally, the checks and balances of the U.S. political system will force moderation and curtail executive overreach. The national security bureaucracy, Congress, the courts, the press, and civil society are—individually and collectively—powerful impediments to illegal and extreme counterterrorism measures. While there are fierce debates over how effectively these domestic constraints have operated in the past, the early judicial challenges to Trump’s counterterrorism policies suggest that domestic institutions could place meaningful constraints on the new administration. International dynamics may reinforce these domestic checks and balances. U.S. allies and partners could leverage their continued cooperation on counterterrorism to pressure the Trump administration to exercise uncharacteristic self-restraint. In other words, the United States could soon face an uncomfortable dilemma: President Trump must either restrain his most hawkish impulses or his administration may find itself increasingly going it alone in the war on terror. The Trump administration may not be concerned about such a possibility, given the President’s dismissive attitude toward American allies throughout the campaign, but it should be. Allies provide important assets in international counterterrorism operations, many of which the U.S. intelligence community would be hard-pressed to replace. If partners believe the new administration’s counterterrorism policies are illegal or excessive, they will likely turn first to diplomatic condemnation to induce moderation. The collective voice of the international community shapes expectations about what is acceptable, which raises the political costs of crossing certain legal and political thresholds. Global outcry would lend weight and legitimacy to those inside the United States calling for restraint, serving as an external prompt to jumpstart dialogue and the internal processes of U.S. checks and balances. For example, international naming and shaming of the Obama administration helped end the U.S. practice of spying on the communications of certain allied heads of state. While the Trump administration may prove itself immune to such international condemnation, there is some cause for optimism. In addition to his uncompromising demand for unconditional praise, one of Trump’s few consistencies is his lack of principled commitment to any particular policy. He flip-flopped on proposed counterterrorism measures when domestic audiences criticized him during the campaign. A concerted, global effort may have a similar effect during his presidency, especially if it were combined with fawning praise for his leadership when he moderates.

### 1AR — Constraints Solve

#### Secretary of defense vetoes US lashout

Picht 16 James Picht, PhD, teaches economics and Russian at the Louisiana Scholars' College, Senior Editor for Communities Politics, CDN, 6/14/2016, “President Trump’s inability to accidentally start a nuclear war”, http://www.commdiginews.com/politics-2/president-trumps-inability-to-accidentally-start-a-nuclear-war-65654/

But we don’t want them used too easily. To set your mind at ease, there is no actual button on the president’s desk that can launch nuclear weapons. We need not worry that in a moment of inattention, the president will accidentally start a nuclear war. The system by which we launch nuclear weapons can’t be so easy that they can be launched by accident or on a whim. It can’t be so difficult that, when we detect Russian missiles flying at our cities and our military installations, the president can’t respond quickly and launch our own missiles before they’re reduced to radioactive slag. Those competing requirements mean that the system will be highly complex. It includes failsafes, backup systems, redundancies, and verification checks. When the order comes to launch the missiles, we want to be sure that it came from an authorized source that really, really meant it. The nuclear button isn’t real. There is a chain of command, and there are verification codes. The president can order the release of nuclear weapons, but the order must be confirmed by the secretary of defense. A “watch alert” is sent to the Joint Chiefs of Staff, and after the president reviews the war plans, an aid contacts the National Military Command Center. Trump seems lackadaisical about nuclear proliferation, speaking casually about the “inevitable” spread of nuclear weapons and the desirability of countries like Japan and Germany building nuclear arsenals of their own. His view of the subject seems predicated more on cost savings than on the history of nuclear non-proliferation or on national security concerns. That’s a real concern. Trump’s thin skin is not. The LBJ campaign’s infamous “daisy ad” against Barry Goldwater was demagoguery at its worst; it was intended to terrify voters and convince them that Goldwater might really launch an attack on the USSR. The evidence is that Trump is careless with his words, crude in his treatment of people he considers unimportant, and ignorant of foreign affairs. It is not that he is insane or looking forward to Armageddon. And unless he managed to fill the Department of Defense with lackeys who were as insane as he would have to be, he couldn’t start a nuclear war for no better reason than an offense to his very thin skin.

#### Pence has all the power – Trump is a puppet with no strings

Oh 16 – Writes for Mother Jones, managing editor of mother jones (INAE OH, “Donald Trump Reportedly Plans to Delegate All Domestic and Foreign Power to his VP”http://www.motherjones.com/politics/2016/07/donald-trump-mike-pence-running-mate-domestic-foreign-policy) RMT

A new report from the New York Times Magazine goes behind the scenes of the VP selection process and claims that Trump's first choice was his former rival, Ohio Gov. John Kasich. Perhaps more interestingly, the report sheds light on the unprecedented level of power Trump plans to delegate to his vice president if elected. According to the Times, Trump's son, Donald Trump Jr., was responsible for vetting the potential candidates. Here's a scene from one conservation he had with a Kasich adviser.Did he have any interest in being the most powerful vice president in history?When Kasich’s adviser asked how this would be the case, Donald Jr. explained that his father’s vice president would be in charge of domestic and foreign policy. Then what, the adviser asked, would Trump be in charge of? "Making America great again" was the casual reply.If true, this means that Trump doesn't plan on doing much governing at all. It may also reveal that he actually agrees with Hillary Clinton's claim that he is temperamentally unfit to become president of the United States. As for Kasich, he declined the offer and isn't even showing up to the Republican convention that's taking place in his home state.

### 1AR — Rights Turn

#### Skewed local elections undermine “progressive” federalism — Ferguson proves.

Jordan 15 — Samuel P. Jordan, Professor of Law and Associate Dean for Research and Faculty Development at Saint Louis University School of Law, 2015 (“Federalism, Democracy, and The Challenge of Federalism,” *Saint Louis University Law Journal* (59 St. Louis U. L.J. 1103), Available Online to Subscribing Institutions via Hein Online, Accessed 06-26-2017, p. 1111-1115, Lil\_Arj)

Now, let me to turn to what is perhaps the core argument put forward by Professor Gerken in her attempt to establish a detente. Contrary to what is often explicitly stated or assumed by proponents of nationalism, Professor Gerken presses the descriptive point that the devolution of power away from the federal government (or, the "center") does not always equate to a diminution of federal power or an erosion of federal interests.3 1 Instead, "devolution can further nationalist aims.' 32 Federalism can be a means to nationalist ends-thus, the nationalist school of federalism. The justifications for this claim are numerous and are recounted eloquently in Professor Gerken's Article.33 For present purposes, I want to emphasize one: the "discursive benefits of structure." 34 The core idea is that decentralized locations of power can provide additional points of contact at which citizens can engage with the government, and that those multiple points of contact can, in Cristina Rodriguez's phrase, "simultaneously shape political consensus and channel ideological diversity." 35 Some of what we have seen in response to the events of Ferguson may be viewed through this lens. State and local structures have certainly served as sites of contestation and pluralist competition, and they have arguably facilitated interactions and conversation that may not have occurred through federal channels alone. That said, there is a dimension to the Ferguson experience that is deeply at odds with the descriptive account. As part of the "discursive benefits of structure," Professor Gerken posits that federalism can benefit racial minorities and dissenters by providing them with localized opportunities to "turn the tables" and wield the power of the majority.36 This is [End Page 1111] an account that runs counter to the traditional narrative of the nationalists that casts federalism as a threat to minority rights.37 It is an account that preferences insider status and the ability to exercise real power (even if subject to override) over tokenism that allows minorities to always be present but never to rule. 38 And it is an account that sets up structure as a companion to rights in the quest to further the federal project of protecting and empowering minorities. 39 One might expect that St. Louis County would be Exhibit A for this vision of decentralization as empowerment. St. Louis County is characterized by a highly fractured set of governance sites.40 And unlike in the federal context, where redistricting can distort the effects of shifts in residential patterns, the electoral boundaries for municipalities are (relatively) fixed. Thus, if residential patterns shift, electoral power should shift with it. The structure of St. Louis County government therefore seems well-suited to produce plentiful opportunities for minorities to be cast in the role of insider, to protect themselves through politics rather than through courts, and to build loyalty and promote civic identity. And yet the experience in Ferguson does not bear that out. At the time of the Michael Brown shooting, roughly two-thirds of Ferguson's residents were African American. 4 1 But the mayor of Ferguson was white, five of six City Council members were white, the police force was overwhelmingly white, and six of seven members of the school board (which also includes parts of nearby Florissant) were white.42 [End Page 1112] Much of the concern recently expressed by residents of Ferguson relates to their feeling that their government-their municipal government-is not responsive to their needs or respectful of their rights.43 And the actions taken in response to the events there have largely been the actions of outsiders. Rather than being in the position of a minority who feels oppressed by the tyranny of the majority, what has been expressed by residents of Ferguson are the frustrations of a majority who feels oppressed by the tyranny of the minority. Why has this occurred? Part of the story may be the relatively rapid changes in demographics in the area. <<card continues>>

### 1AR — Rights Turn

<<card continues>> In 1990, Ferguson was seventy-four percent white; in 2000, it was fifty-two percent black; and in 2010, that new black majority had risen to sixty-seven percent.44 Because elections are occasional events, it may take time for electoral outcomes to catch up to the reality on the ground. More importantly, however, this is a story of turnout. Like many municipalities across the country, Ferguson holds municipal elections in odd-numbered years, and it holds them in April rather than November.45 One result of this scheduling is to substantially reduce voter turnout.4 6 Consider: in the 2012 general election, voter turnout in Ferguson was somewhere around fifty-four percent, but in the 2013 municipalities election a few months later, turnout was a relatively paltry 11.7%.47 This alone might be cause for some concern. Even more concerning is the fact that this reduction is far from uniform. Although Missouri does not track the race of voters, fairly sophisticated modeling suggests that the turnout among black and white voters was almost identical in the general election-fifty-five percent for whites and [End Page 1113] fifty-four percent for blacks. 48 In the municipal election, on the other hand, turnout was both much lower and dramatically skewed-seventeen percent for whites and only six percent for blacks.49 This three-to-one difference in turnout is enough to overcome the two-to-one difference in overall population, meaning that whites constituted the majority of voters in the municipal elections.50 There are a number of potential explanations for this discrepancy in turnout. First, the rapid shift in demographics in Ferguson is reflected in the average age of the white and black population. The white population is older, and older citizens tend to vote more regularly. 51 Patricia Bynes, the Democratic committeewoman for Ferguson, and others have also pointed to the transience of the minority population in Ferguson as an explanation for why blacks may be less inclined to participate in local elections. 52 This explanation is roughly consonant with William Fischel's "homevoter hypothesis," which posits that homeowners are more likely to vote than renters in local elections because they are more invested in the community. 53 If homeownership is not evenly distributed across races-and it is not in Ferguson or many other places 54—[End Page 1114] then this hypothesis has implications for the demographics of who actually votes in local elections relative to the voting population.55 Ultimately, this mismatch between demographics and electoral outcomes poses a challenge to the "discursive benefits of structure." Indeed, one prominent defender of localism has worried openly that Ferguson suggests the "problem of promoting the power of racial minorities through local autonomy ... seems to face some intractable obstacles. '56 More worrying still is that these obstacles are not unique to Ferguson, but are instead created by voting behavior and our democratic process.57 The response to these obstacles may simply be to say that they have little to do with a theory of federalism. After all, politics will always be imperfect, and yet we still have to come up with a workable system. By calling attention to them, perhaps I am just casting myself in the role of Mary Hume by claiming "almost perfect ... but not quite." 58 But many of these problems are unique to local elections, or are at least exacerbated by local elections. As a result, I worry that they pose a particular challenge to the claim that we may use decentralization as a mechanism to produce structural benefits for minorities. Professor Gerken's argument ultimately is that we need federalism to secure "a well-functioning democracy." 59 But the experience of Ferguson suggests that it may be equally true that we need democracy to secure a well-functioning federalism.

### 1AR — Rights Turn

#### Federalism encourages civil rights abuses — federal regulation solves.

Nivola 17 — Pietro S. Nivola, Vice President and Director of Governance Studies at The Brookings Institution, former Associate Professor of Political Science at the University of Vermont, former Lecturer in the Department of Government at Harvard University, holds a Ph.D. from Harvard University, 2017 (“Respublica Complicata: An Essay in Memory of Martha A. Derthick (1933–2015),” *Publius*—The Journal of Federalism, March, Available Online at <https://academic.oup.com/publius/article/doi/10.1093/publius/pjw035/3063255/Respublica-Complicata-An-Essay-in-Memory-of-Martha>, Accessed 06-26-2017, Lil\_Arj)

Securing Rights and Other Essentials A state-by-state approach has also too often fallen short in upholding civil rights, ensuring a sound social safety net, and regulating health hazards that cross state lines. Historically, because defaulting to it could beget local abuses, inertia, and freeloading, a strictly state-based agenda would eventually give way to a logical corrective: less federalism. By 1964, a national Civil Rights Act ultimately had to be summoned to meet the resistance of states in the south that were enforcing racial apartheid far into the twentieth century. The New Deal was invoked in large part because most states had been unable to rescue their impoverished inhabitants from the Great Depression. The nation’s Clean Air and Clean Water Acts might have been less necessary if the states, acting independently, had managed to curb extensive pollution that moved past their respective borders. Unless otherwise encouraged, a community whose contaminated air or water flows downstream to other places has little incentive to stop the cross-border spillover for their sake. Derthick would be the first to recognize that such shortcomings of local control stem not infrequently from a basic difficulty Madison had identified in Federalist No. 10: a propensity of small polities to be captured by entrenched interests. Would a one-company town crack down on a factory that happens to be not only a wide-ranging polluter but also the local economy’s mainstay? Prior to, say, 1954, were recalcitrant state governors and legislatures, left to themselves, prepared spontaneously to desegregate schools? Even now, can individual states and localities, which must compete for investment (hence keep progressive tax rates in check) and avoid degenerating to welfare magnets, be especially eager to redistribute wealth to needy households? (Peterson 1995, 19, 27–30). In no small degree, performing roles like these has posed a challenge for society’s subnational governments if left entirely to their own devices. The remedy, of course, has been for the central government to add inducements and regulations aimed at overcoming the local derelictions.

### 2AC: No Environment Impact

#### Federalism isn’t key — States will fill in anyways.

Waters ‘17

Hannah Waters is an associate editor at Audubon.org. Audubon is a non-profit environmental organization dedicated to conservation. Audubon is one of the oldest of such organizations in the world and uses science, education and grassroots advocacy to advance its conservation mission - “U.S. Exit from Paris Climate Agreement Sets America on Lonely, Misbegotten Path” – Audubon - June 01, 2017 - #CutWithKirby - http://www.audubon.org/news/us-exit-paris-climate-agreement-sets-america-lonely-misbegotten-path

Those actions don’t make the U.S. climate movement hopeless; it just means that the onus to reduce U.S. emissions will fall on citizens, states, and local governments without help from the federal government. Already around the country, states and cities are setting their own carbon emissions goals and passing laws to meet them. After Trump's address, 61 U.S. mayors made a promise to uphold the goals laid out by the Paris Agreement, while the governors of Washington, New York, and California announced a new climate alliance. California is leading the effort in other ways, too: Yesterday its State Senate passed a bill to produce all of its energy from renewable or zero-carbon sources by 2045. Twenty-eight other states plus Washington, D.C. have set similar renewable energy standards. Many corporations have followed by setting their own reduced emissions targets. All of these efforts ensure a U.S. market for renewable energy sources, which are already thriving. Solar and wind prices are falling fast, and last year the number of solar installations doubled compared to the year before. Even though Trump is having the nation exit the Paris Agreement, the American people and local governments can still make a difference and help the countries that remain commited to the pact curb global emissions. If the international community holds it together and millions of U.S. residents commit to climate action locally, Trump may end up being a catalyst for the climate action that he so decries as unfair to American interests.

#### Federalism exacerbates environmental destruction and warming — causes a race to the bottom.

Beasley 17 — Ally Beasley, a Junior Editor on the Michigan Journal of Environmental & Administrative Law, earned a MPH in Public Health from the University of California, Berkeley, and a B.S. in Zoology Biomedical Science from the University of Oklahoma, 2017 ("The Challenges of Federalism in Environmental Regulations: Scott Pruitt and the EPA," *Michigan Journal of Environmental & Administrative Law* Online, June 15th, Available Online at http://www.mjeal-online.org/the-challenges-of-federalism-in-environmental-regulations-scott-pruitt-and-the-epa/, Accessed 07-10-2017, Lil\_Arj)

On February 17, 2017 Congress confirmed former Oklahoma Attorney General Scott Pruitt, an outspoken critic of “federal overreach”[1] as the new Administrator of the U.S. Environmental Protection Agency.[2] The subsequent release of his close ties to major agricultural and oil and gas industry stakeholders[3], put the influence of extractive industries on environmental decision-making in the national spotlight. Does Pruitt’s problematic history in Oklahoma and determination to fight “federal overreach” indicate a grim future for the EPA? Pruitt’s legacy in Oklahoma and statements about his future plans do not bode well for an EPA whose mission is to “protect human health and the environment.”[4] First, his demonstrated collusion with the oil and gas industry as Oklahoma Attorney General is not likely to subside when he is acting as Administrator of the EPA. At the time of this writing, additional information is still emerging regarding the full nature and extent of these industry ties.[5] Second, and relatedly, Pruitt’s dedication to a concept of federalism that prioritizes the interests of extractive industries in the name of “state sovereignty”[6] is not compatible with leading a federal agency in combating environmental problems such as climate change and pollution that transcend geopolitical boundaries. Pruitt’s biography page on the EPA website emphasizes his zeal for minimizing federal regulations.[7] The bio states, “he is recognized as a national leader in the cause to restore the proper balance between the states and federal government, and he established Oklahoma’s first federalism unit to combat unwarranted regulation and overreach by the federal government.”[8] The Oklahoma Attorney General’s Office describes the “federalism unit” as “dedicated to representing the interests of the state and challenging the federal government when it has overreached its authority and encroached on the state’s ability to craft its own solutions…”[9] <<card continues>>

### 2AC: No Environment Impact

<<card continues>> One need only look to environmental and public health disasters such as Love Canal[10] and Valley of the Drums[11], which prompted the enactment of CERCLA (aka the Superfund act) in 1980, for reminders of the potentially dire consequences of leaving environmental regulation to the states. Then again, Pruitt has espoused skepticism about anthropogenic climate change, including during his confirmation hearing, in which he acknowledged that “human activity contributes to [climate change] in “some manner” but questioned the conclusiveness of the science on the need to implement mitigation and adaptation measures and curtail greenhouse gas emissions.[12] Most recently, he has expressed doubt that Carbon Dioxide is a major contributor to climate change.[13] Accordingly, some states might actually be better equipped to combat these pressing environmental issues than the federal government under the current administration. Overall, however, the highly variable and uneven nature of states’ willingness to prioritize protection of public health and the environment both illustrates and exacerbates the problem with Pruitt at the helm of the EPA. Oklahoma provides a case study for these problems. The oil and gas industries have long been an integral and controversial segment of Oklahoma’s economy. A short drive through downtown Oklahoma City reveals several buildings, office parks, and sports arenas bearing the names of prominent energy companies such as Devon and Chesapeake.[14] As of 2016, Oklahoma ranked 5th in the nation in crude oil and total energy production,[15] and 3rd in the nation for natural gas production,[16] producing about 1/10th of the nation’s natural gas.[17] It also ranked 17th in CO2 emissions as of 2014,[18] despite ranking 28th in population and 35th in population density.[19] However, jobs and environmental protection are not and do not need to be diametrically opposed. For one, renewable energy can be a promising option for energy-producing states like Oklahoma, which already contributes considerably to wind-energy production and has the potential to supply wind power to about 10% of the nation.[20] That said, certain existing industry practices with detrimental effects on the environment and public health can and should be curtailed. For example, several Oklahoma citizens, academics, and environmental groups have expressed concern over the effects of hydraulic fracturing (fracking) on drinking water and seismic activity in the state.[21] In a November 2016 letter, EPA Region 6 leaders expressed concern that Oklahoma was not doing enough to address these issue.[22] Despite Pruitt’s assurance that fracking is “nothing new” and Oklahoma has had a “robust regulatory scheme” since the 1940s,[23] the number of earthquakes registering over a 3.0 has increased over tenfold since 2010, with a dramatic jump from a range of 35-67 in 2010-2012 to 110 in 2013 and a range of 579 to a high of 903 in 2014-2016.[24] The Oklahoma Geological Survey consensus is that these quakes cannot be attributed entirely to “natural causes”[25] and the quakes have already caused considerable damage in parts of the state, particularly in tribal communities. The Pawnee Nation recently sued several oil companies for wastewater injection activity near the epicenter of a damaging 5.8 earthquake last fall.[26] Additionally, despite the skepticism and outright denial of anthropogenic climate change by Pruitt and by Oklahoma senators such as Jim Inhofe[27], Oklahoma is already seeing detrimental effects of climate change[28]. Increased drought, heat, and extreme weather events such as the tornadoes and severe storms for which Oklahoma is already infamous will continue to threaten public health and agricultural production.[29] Despite these scientifically valid concerns, Pruitt has continued to place industry interests above public health and environmental protection in Oklahoma. He has sued the Environmental Protection Agency of which he is now in charge of 14 times, and in 13 of those suits, stakeholders from regulated industries (primarily agriculture/factory farms and energy) were parties.[30] In these suits, Pruitt and his industry allies and fellow state Attorney Generals tied to extractive industries challenged the EPA’s cross-state pollution rule,[31] limits on mercury that would save tens of thousands of lives,[32] the Clean Power Plan (multiple times)[33] and even the Clean Water Rule (aka the Waters of the United States Rule, expanding federal jurisdiction over certain surface waters to combat pollution),[34] despite his espoused commitment to preserving clean water. The legal hook for Pruitt in most of these cases rested on assertions that the EPA was overstepping its authority and unduly intruding on state sovereignty, although in many instances, he also mentioned what he saw as unnecessarily burdensome costs to industry imposed by EPA regulations.[35] In many of these cases, such as the 2013 opposition to the Clean Air Rule, the Courts didn’t buy appellants’ arguments about federal overreach.[36] While some states may indeed be well-equipped to tackle challenges such as climate change and pollution, and states are already charged with several aspects of environmental protection under the current EPA structure, Oklahoma illustrates that leaving environmental protection solely to the states could leave states with heavy ties to extractive industries unprotected or even encourage a “race to the bottom” to attract ostensibly lucrative polluting industries to states with lax environmental standards.[37] <<card continues>>

### 2AC: No Environment Impact

<<card continues>> Pruitt’s plans for the EPA are not yet set in stone, and not all of them may come to fruition. However, his industry ties and recent statements he has made about climate change are cause for concern. In statements to CNBC just last week[38] Pruitt expressed that he does not believe that Carbon Dioxide is a primary contributor to global warming, despite scientific consensus to the contrary.[39] If his attitudes towards the role of the federal government in regulating polluting industries and his statements about climate change are indicative of the EPA’s future under his auspices, he may attempt to delay the development of new rules and standards (including elements of the Clean Power Plan, which, as mentioned previously, he repeatedly challenged while Oklahoma Attorney General), scale back enforcement of environmental regulations, place more industry-friendly voices on his scientific advisory boards, and attempt to shrink the EPA’s budget. Recent news reports indicate that the EPA’s budget could be cut by as much as 25%, severely diminishing not only capacity at federal headquarters, but also in the regional offices that play a more direct role in assisting states with their own environmental regulatory efforts.[40] In a recent speech to EPA employees, Pruitt emphasized the importance of states and his concept of federalism, and, in a telling omission, listed the “stakeholders” with whom he was committed to working: “industry, farmers, ranchers, and business owners” but not community groups (particularly those in overburdened or under-resourced communities), concerned citizens, scientists, health organizations, or environmental groups.[41] Given the lengthy process by which EPA promulgates new rules and re-writes old ones,[42] and the opportunity for groups to sue the EPA when it fails to enforce its own statutes,[43] it seems likely that Pruitt’s EPA will scale back environmental regulation through inaction, deference to industry and “state sovereignty,” and budget cuts rather than overt re-writing of the law. With issues such as climate change, however, the nation and the planet cannot afford stagnation. Global average CO2 levels already appear to have permanently surpassed the symbolic threshold of 400 parts per million (ppm), significantly reducing the chances of curtailing global temperature rise beyond the 2° Celsius goal reached in the Paris Agreement,[44] an critical international climate agreement that Pruitt has called “a bad deal.”[45] An issue so urgent, with causes and effects that do not obey state or national borders, cannot be left solely to the states.

### 2AC: No Environment Impact

#### No impact for a century — IPCC agrees.

Ridley 15 — Matt Ridley, Fellow of the Royal Society of Literature and of the Academy of Medical Sciences, Foreign Honorary Member of the American Academy of Arts and Sciences, Conservative Member of the House of Lords (UK), Author of several popular science books including *The Rational Optimist: How Prosperity Evolves* and *The Evolution of Everything: How Ideas Emerge*, former Science Editor at *The Economist*, former Visiting Professor at Cold Spring Harbor Laboratory in New York, holds a D.Phil. in Zoology from Magdalen College, Oxford, 2015 (“Climate Change Will Not Be Dangerous for a Long Time,” *Scientific American*, November 27th, Available Online at http://www.scientificamerican.com/article/climate-change-will-not-be-dangerous-for-a-long-time/, Accessed 07-17-2016)

The climate change debate has been polarized into a simple dichotomy. Either global warming is “real, man-made and dangerous,” as Pres. Barack Obama thinks, or it’s a “hoax,” as Oklahoma Sen. James Inhofe thinks. But there is a third possibility: that it is real, man-made and not dangerous, at least not for a long time. This “lukewarm” option has been boosted by recent climate research, and if it is right, current policies may do more harm than good. For example, the Food and Agriculture Organization of the United Nations and other bodies agree that the rush to grow biofuels, justified as a decarbonization measure, has raised food prices and contributed to rainforest destruction. Since 2013 aid agencies such as the U.S. Overseas Private Investment Corporation, the World Bank and the European Investment Bank have restricted funding for building fossil-fuel plants in Asia and Africa; that has slowed progress in bringing electricity to the one billion people who live without it and the four million who die each year from the effects of cooking over wood fires. In 1990 the Intergovernmental Panel on Climate Change (IPCC) was predicting that if emissions rose in a “business as usual” way, which they have done, then global average temperature would rise at the rate of about 0.3 degree Celsius per decade (with an uncertainty range of 0.2 to 0.5 degree C per decade). In the 25 years since, temperature has risen at about 0.1 to 0.2 degree C per decade, depending on whether surface or satellite data is used. The IPCC, in its most recent assessment report, lowered its near-term forecast for the global mean surface temperature over the period 2016 to 2035 to just 0.3 to 0.7 degree C above the 1986–2005 level. That is a warming of 0.1 to 0.2 degree C per decade, in all scenarios, including the high-emissions ones. At the same time, new studies of climate sensitivity—the amount of warming expected for a doubling of carbon dioxide levels from 0.03 to 0.06 percent in the atmosphere—have suggested that most models are too sensitive. The average sensitivity of the 108 model runs considered by the IPCC is 3.2 degrees C. As Pat Michaels, a climatologist and self-described global warming skeptic at the Cato Institute testified to Congress in July, certain studies of sensitivity published since 2011 find an average sensitivity of 2 degrees C. Such lower sensitivity does not contradict greenhouse-effect physics. The theory of dangerous climate change is based not just on carbon dioxide warming but on positive and negative feedback effects from water vapor and phenomena such as clouds and airborne aerosols from coal burning. Doubling carbon dioxide levels, alone, should produce just over 1 degree C of warming. These feedback effects have been poorly estimated, and almost certainly overestimated, in the models. The last IPCC report also included a table debunking many worries about “tipping points” to abrupt climate change. For example, it says a sudden methane release from the ocean, or a slowdown of the Gulf Stream, are “very unlikely” and that a collapse of the West Antarctic or Greenland ice sheets during this century is “exceptionally unlikely.” If sensitivity is low and climate change continues at the same rate as it has over the past 50 years, then dangerous warming—usually defined as starting at 2 degrees C above preindustrial levels—is about a century away. So we do not need to rush into subsidizing inefficient and land-hungry technologies, such as wind and solar or risk depriving poor people access to the beneficial effects of cheap electricity via fossil fuels.

### 1AR — Federalism Isn’t Key

#### Paris withdraw has spurred States to compensate for Federal inaction.

Uren ‘17

Adam Uren – Senior Producer, Go Media and 2014 winner of the Online Journalist of the Year as awarded by The Association of British Insurers Financial Media Awards - “4 reasons why the U.S. leaving Paris climate deal might not be the end of the world” – Go MN - June 5, 2017 - #CutWithKirby - <http://www.gomn.com/news/4-reasons-u-s-leaving-paris-climate-deal-might-not-end-world/>

 As we say above, the Paris Agreement was a series of voluntary commitments to reducing emissions, but now that the U.S. is no Longer pursuing these emissions targets at the federal Level, it doesn't stop governments from doing so at the state and local level. In the wake of Trump's decision, the states of California, Washington and New York formed a coalition committed to upholding the Paris accord, which has since been joined by 10 more states (including Minnesota). Between them, more than 30 percent of U.S. carbon emissions come from these states. In Minnesota, although he said the decision to withdraw was "damaging," gov. Mark Dayton said his state would continue to pursue its aggressive strategy to reduce carbon and other greenhouse gas emissions. A similar coalition has been springing up at city-level as well, with St. Paul Mayor Chris Coleman and Minneapolis Mayor Betsy Hodges among the mayors of 82 cities that as of Friday had pledged to uphold the spirit of the Paris Agreement. The White House is actively encouraging this, with spokesman Sean Spicer saying on Friday, according to the Malt online: "We believe in states' rights and so, if a locality, municipality or a state wants to enact a policy that their voters, or their citizens believe in, then that's what they should do."

### 1AR — Federalism Causes Warming

#### Their author concludes federal action is key — they can’t solve.

Burtraw 17 — Dallas Burtraw, Darius Gaskins Senior Fellow with the nonpartisan think tank Resources for the Future, served on the National Academy of Sciences Board on Environmental Studies and Toxicology and on the U.S. Environmental Protection Agency’s Advisory Council on Clean Air Compliance Analysis, served on California’s Economic and Allocation Advisory Committee advising the governor’s office and the Air Resources Board on implementation of the state’s climate law, earned a PhD in economics from the University of Michigan, an MPP in public policy from the University of Michigan, and a BS in community economic development from University of California at Davis, 2017 (“States Could Take Lead On Environmental Regulation Under Trump,” *NPR*, January 18th, Available Online at <http://www.npr.org/2017/01/18/510472419/states-could-take-lead-on-environmental-regulation-under-trump>, Accessed 07-10-2017)

But the problems cannot ultimately be solved without some sort of federal involvement. The states can go so far, but they cannot really leverage the kind of actions that's necessary, especially on climate, at the international level. That requires a role for the federal government to coordinate and compel international partners to do their part.

### 1AR — No Warming Impact

#### Climate change is not catastrophic — their impacts exaggerate.

Tol 14 — Richard Tol, Professor of Economics at the University of Sussex, Professor of the Economics of Climate Change at the Vrije Universiteit Amsterdam, Member of the Academia Europaea—a European non-governmental scientific association, served as Coordinating Lead Author for the IPCC *Fifth Assessment Report Working Group II: Impacts, Adaptation and Vulnerability*, holds a Ph.D. in Economics and an M.Sc. in Econometrics and Operations Research from the VU University Amsterdam, 2014 (“Bogus prophecies of doom will not fix the climate,” *Financial Times*, March 31st, Available Online at <https://next.ft.com/content/e8d011fa-b8b5-11e3-835e-00144feabdc0>, Accessed 07-15-2016)

Humans are a tough and adaptable species. People live on the equator and in the Arctic, in the desert and in the rainforest. We survived the ice ages with primitive technologies. The idea that climate change poses an existential threat to humankind is laughable. Climate change will have consequences, of course. Since different plants and animals thrive in different climates, it will affect natural ecosystems and agriculture. Warmer and wetter weather will advance the spread of tropical diseases. Seas will rise, putting pressure on all that lives on the coast. These impacts sound alarming but they need to be put in perspective before we draw conclusions about policy. According to Monday’s report by the Intergovernmental Panel on Climate Change, a further warming of 2C could cause losses equivalent to 0.2-2 per cent of world gross domestic product. On current trends, that level of warming would happen some time in the second half of the 21st century. In other words, half a century of climate change is about as bad as losing one year of economic growth. Since the start of the crisis in the eurozone, the income of the average Greek has fallen more than 20 per cent. Climate change is not, then, the biggest problem facing humankind. It is not even its biggest environmental problem. The World Health Organisation estimates that about 7m [million] people are now dying each year as a result of air pollution. Even on the most pessimistic estimates, climate change is not expected to cause loss of life on that scale for another 100 years.

### 1AR — No Warming Impact

#### No catastrophic impact — they overestimate the predictive power of models.

Ridley 15 — Matt Ridley, Fellow of the Royal Society of Literature and of the Academy of Medical Sciences, Foreign Honorary Member of the American Academy of Arts and Sciences, Conservative Member of the House of Lords (UK), Author of several popular science books including *The Rational Optimist: How Prosperity Evolves* and *The Evolution of Everything: How Ideas Emerge*, former Science Editor at *The Economist*, former Visiting Professor at Cold Spring Harbor Laboratory in New York, holds a D.Phil. in Zoology from Magdalen College, Oxford, 2015 (“My Life As A Climate Lukewarmer,” *Times* (UK), January 19th, Available Online at <http://www.rationaloptimist.com/blog/my-life-as-a-climate-lukewarmer.aspx>, Accessed 07-16-2016)

I was not always a lukewarmer. When I first started writing about the threat of global warming more than 26 years ago, as science editor of The Economist, I thought it was a genuinely dangerous threat. Like, for instance, Margaret Thatcher, I accepted the predictions being made at the time that we would see warming of a third or a half a degree (Centigrade) a decade, perhaps more, and that this would have devastating consequences. Gradually, however, I changed my mind. The failure of the atmosphere to warm anywhere near as rapidly as predicted was a big reason: there has been less than half a degree of global warming in four decades — and it has slowed down, not speeded up. Increases in malaria, refugees, heatwaves, storms, droughts and floods have not materialised to anything like the predicted extent, if at all. Sea level has risen but at a very slow rate — about a foot per century. Also, I soon realised that all the mathematical models predicting rapid warming assume big amplifying feedbacks in the atmosphere, mainly from water vapour; carbon dioxide is merely the primer, responsible for about a third of the predicted warming. When this penny dropped, so did my confidence in predictions of future alarm: the amplifiers are highly uncertain. Another thing that gave me pause was that I went back and looked at the history of past predictions of ecological apocalypse from my youth – population explosion, oil exhaustion, elephant extinction, rainforest loss, acid rain, the ozone layer, desertification, nuclear winter, the running out of resources, pandemics, falling sperm counts, cancerous pesticide pollution and so forth. There was a consistent pattern of exaggeration, followed by damp squibs: in not a single case was the problem as bad as had been widely predicted by leading scientists. That does not make every new prediction of apocalypse necessarily wrong, of course, but it should encourage scepticism. What sealed my apostasy from climate alarm was the extraordinary history of the famous “hockey stick” graph, which purported to show that today’s temperatures were higher and changing faster than at any time in the past thousand years. That graph genuinely shocked me when I first saw it and, briefly in the early 2000s, it persuaded me to abandon my growing doubts about dangerous climate change and return to the “alarmed” camp. Then I began to read the work of two Canadian researchers, Steve McIntyre and Ross McKitrick. They and others have shown, as confirmed by the National Academy of Sciences in the United States, that the hockey stick graph, and others like it, are heavily reliant on dubious sets of tree rings and use inappropriate statistical filters that exaggerate any 20th-century upturns. What shocked me more was the scientific establishment’s reaction to this: it tried to pretend that nothing was wrong. And then a flood of emails was leaked in 2009 showing some climate scientists apparently scheming to withhold data, prevent papers being published, get journal editors sacked and evade freedom-of-information requests, much as sceptics had been alleging. That was when I began to re-examine everything I had been told about climate change and, the more I looked, the flakier the prediction of rapid warming seemed. I am especially unimpressed by the claim that a prediction of rapid and dangerous warming is “settled science”, as firm as evolution or gravity. How could it be? It is a prediction! No prediction, let alone in a multi-causal, chaotic and poorly understood system like the global climate, should ever be treated as gospel. With the exception of eclipses, there is virtually nothing scientists can say with certainty about the future. It is absurd to argue that one cannot disagree with a forecast. Is the Bank of England’s inflation forecast infallible?

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#### Our impact defense is consistent with the scientific consensus.

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Incidentally, my current view is still consistent with the “consensus” among scientists, as represented by the reports of the Intergovernmental Panel on Climate Change. The consensus is that climate change is happening, not that it is going to be dangerous. The latest IPCC report gives a range of estimates of future warming, from harmless to terrifying. My best guess would be about one degree of warming during this century, which is well within the IPCC’s range of possible outcomes. Yet most politicians go straight to the top of the IPCC’s range and call climate change things like “perhaps the world’s most fearsome weapon of mass destruction” (John Kerry), requiring the expenditure of trillions of dollars. I think that is verging on grotesque in a world full of war, hunger, disease and poverty. It also means that environmental efforts get diverted from more urgent priorities, like habitat loss and invasive species.