



Written Statement of

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Chairman Bishop and members of the Speaker's Task Force on Intergovernmental Affairs, thank you for inviting me to testify today on behalf of the National Governors Association (NGA). I am Scott Pattison, and I serve as the NGA's Executive Director and Chief Executive Officer.

Established more than 100 years ago, the NGA is the bipartisan organization for the nation's governors. NGA assists governors on domestic policy and state management issues, and provides a forum for governors to speak with a unified voice to our federal partners in the Executive, Legislative, and Judicial branches.

NGA appreciates the invitation to serve as an Advisory Council member to this bipartisan task force.

Let me begin with several main points:

- Governors believe that a strong, cooperative relationship between the states and federal government is vital to best serve the interests of all citizens.
- Governors have innovative and creative ways to solve public policy problems and believe that federal officials should share information, listen to and engage Governors and their state officials. This is mutually beneficial for state governments as well as the federal government.
- Governors believe that federal action should be limited to those duties and powers delegated to the federal government under the Constitution. We favor the preservation of state sovereignty when our federal partners legislate or regulate activity in the states.
- Governors believe that federal preemption should be the exception, not the rule because it prevents healthy intergovernmental collaboration.

Federalism Anchors the History of the NGA

NGA's history intertwines with the history of intergovernmental relations and federalism. More than one hundred years ago, a former New York governor, President Theodore Roosevelt, convened an unprecedented assembly at the White House.

For two days in 1908, 34 state governors, four territorial governors, the District of Columbia commissioner, and the governor of Puerto Rico met with the President, Vice President, cabinet members, members of Congress, Supreme Court justices, and private sector leaders to discuss conservation. The President hosted this event because, as a former governor, he believed that the chief executive officers of the states would be

central to help advance conservation and natural resources policies throughout the growing United States.¹

President Roosevelt declared the conference a success, but the gathering did more than provide a powerful forum to discuss and consider conservation matters. The joint participation of governors with federal elected and appointed leaders represented something special. This event was one of the earliest top-down demonstrations of the importance of a strong intergovernmental partnership.

Attending governors believed that the interests of their states as well as the nation required greater communication and cooperation.² Missouri Governor Folk captured the significance of the White House gathering:

We [meet] here now as one large family...In looking at the map on the wall before us I have been impressed by the fact that the States in this Union are, after all, closely connected in blood and interest...What concerns one is the concern of all; the achievements of one are the glory of all.³

President Roosevelt's conference helped kindle the formation of a national association for governors. Governors convened the next year and, in 1912, they established a formal organization. With the exceptions of 1909 and 1917, the governors of the United States including its territories and commonwealths have met every year since that inaugural gathering.

The 1908 White House conference produced a policy declaration on conservation, but it also produced an historic benchmark on our nation's federalism timeline. I believe that the gathering also delivered a fundamental message that a healthy balance of power between the states and federal government is necessary to govern our large and diverse nation.

Federalism is a dynamic, not static doctrine. It recognizes that dual sovereignty governs our nation for which federal and state power derives from the people. In practice, however, the ebb and flow of power among those sovereigns during federalism's modern historical arc triggers the need for adjustments, where appropriate, to maintain optimum balance.

¹ A Legacy of Leadership: Governors and American History, ed. Clayton Brooks, at 1 (2008)

² Id.

³ *Proceedings of a Conference of Governors at the White House*, Washington, D.C., May 13-15, 1908, McGee et al., Washington, D.C., U.S. Government Printing Office (1909).

Principles for State-Federal Relations

To ensure the proper balance between state and federal action and to promote a strong and cooperative state-federal relationship, governors encourage federal officials to adhere to the following guidelines when developing laws and regulations.

- Federal action should be limited to situations in which constitutional authority for action is clear and certain.
- Federal action should be limited to problems that are truly national in scope.
- Federal action should be sensitive to each state's ability to bring a unique blend of resources and approaches to common problems.
- Unless the national interest is at risk, federal action should not preempt additional state action.

Regarding federal preemption, governors recognize the need for federal intervention should states fail to act collectively on issues of legitimate concern. Preemption of state laws, however, should be the exception rather than the rule. This is especially true in areas of primary state responsibility, including education, insurance regulation, criminal justice, preservation of the dual banking system, preservation of state securities regulation, and the management of state personnel programs.

Avoiding federal preemption of state laws and policies also extends to the judicial branch. Governors encourage the federal courts to restore the Tenth Amendment as a substantive limit on federal intrusion into areas of state and local concern, and place meaningful limits on the federal government's scope of authority under the Commerce Clause.

NGA also encourages this bipartisan task force to evaluate the history of federal-state program design, which has run the gamut for states and local governments from prescriptive to devolution. NGA encourages middle-ground partnerships, not these two extremes, and believes there are opportunities to improve collaboration and cooperation in program design. To provide maximum flexibility and opportunity for innovation, as well as foster administrative efficiency and cross-program coordination, federal-state program design should meet the following principles:

- States should be actively involved in a cooperative effort to develop policy and administrative procedures.
- The federal government should respect the authority of states to determine the allocation of administrative and financial responsibilities within states in accordance with state constitutions and statutes. Federal legislation should not encroach on this authority.
- Legislation should authorize and appropriate sufficient funds to meet identified program objectives.

- Federal assistance funds, including funds that will be passed through to local governments, should flow through states according to state laws and procedures.
- States should be given flexibility to transfer a limited amount of funds from one grant program to another, or to administer related grants in a coordinated manner.
- Federal funds should provide maximum state flexibility without specific set-asides.
- States should be given broad flexibility in establishing federally mandated advisory groups, including the ability to combine advisory groups for related programs.
- Governors should be given the authority to require coordination among state executive branch agencies, or between levels or units of government, as a condition of the allocation or pass-through of funds.
- Federal government monitoring should be outcome-oriented.
- Federal reporting requirements should be minimized.
- The federal government should not dictate state or local government organization.

Recommended Initial Actions

NGA applauds the creation of this bipartisan task force and will strive to be an active participant. Governors support a vibrant and strong partnership with Congress and the Administration to maintain and promote a balanced federal system.

We recommend the following specific actions for consideration by the Task Force:

- 1. The Task Force should work with state and local governments to ensure increased productive formal collaboration and engagement between the federal and state governments.**
- 2. The Task Force should consider sponsoring opportunities to educate all federal officials – both political and career staff – about the roles and operations of state and local government.**
 - For instance, the national organizations that represent state and local elected and appointed officials, collectively called the “Big Seven,” will host an informational briefing on July 11 here on Capitol Hill for congressional staff about the federal deduction for state and local taxes.
 - We encourage the Task Force to promote this opportunity to learn about state and local tax matters.

3. The Task Force should lead efforts to promote the doctrine of federalism as the foundation for our nation's intergovernmental relations.

- The risk to federalism from capture by party or personality decreases as its position as a doctrinal first principle increases. Building such a policy-legal-political culture requires an ongoing, long-term perspective, demands a critical mass of top-down and bottom-up leadership committed to support it, and begins only after a thorough evaluation that concludes this is the right course of action.

4. The Task Force should consider expanding its membership to include state and local elected and appointed officials.

- Please consider inviting state and local elected and appointed officials to serve with you on this task force. It would demonstrate that the levels of government can and should work together on matters of mutual interest.
- It also serves as an important reminder that elected officials at the federal, state, and local levels often represent shared constituencies.

NGA encourages the Task Force not to pass on important opportunities to go bold and help promote the intergovernmental partnership.

Thank you for the opportunity to testify. I would be happy to answer questions.

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