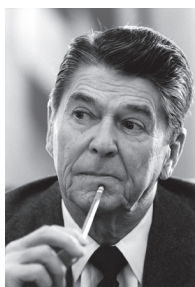


Appendix IX
Federalism



RONALD REAGAN

40th President of the United States: 1981-1989

Executive Order 12612 — Federalism

October 26, 1987

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to restore the division of governmental responsibilities between the national government and the States that was intended by the Framers of the Constitution and to ensure that the principles of federalism established by the Framers guide the Executive departments and agencies in the formulation and implementation of policies, it is hereby ordered as follows:

Section 1. Definitions. For purposes of this Order:

- (a) “Policies that have federalism implications” refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.
- (b) “State” or “States” refer to the States of the United States of America, individually or collectively, and, where relevant, to State governments, including units of local government and other political subdivisions established by the States.

Sec. 2. Fundamental Federalism Principles. In formulating and implementing policies that have federalism implications, Executive departments and agencies shall be guided by the following fundamental federalism principles:

- (a) Federalism is rooted in the knowledge that our political liberties are best assured by limiting the size and scope of the national government.
- (b) The people of the States created the national government when they delegated to it those enumerated governmental powers relating to matters beyond the competence of the individual States. All other sovereign powers, save those expressly prohibited the States by the Constitution, are reserved to the States or to the people.
- (c) The constitutional relationship among sovereign governments, State and national, is formalized in and protected by the Tenth Amendment to the Constitution.
- (d) The people of the States are free, subject only to restrictions in the Constitution itself or in constitutionally authorized Acts of Congress, to define the moral, political, and legal character of their lives.
- (e) In most areas of governmental concern, the States uniquely possess the constitutional authority, the resources, and the competence to discern the sentiments of the people and to govern accordingly.

In Thomas Jefferson’s words, the States are “the most competent administrations for our domestic concerns and the surest bulwarks against anti-republican tendencies.”

(f) The nature of our constitutional system encourages a healthy diversity in the public policies adopted by the people of the several States according to their own conditions, needs, and desires. In the search for enlightened public policy, individual States and communities are free to experiment with a variety of approaches to public issues.

(g) Acts of the national government—whether legislative, executive, or judicial in nature — that exceed the enumerated powers of that government under the Constitution violate the principle of federalism established by the Framers.

(h) Policies of the national government should recognize the responsibility of — and should encourage opportunities for — individuals, families, neighborhoods, local governments, and private associations to achieve their personal, social, and economic objectives through cooperative effort.

(i) In the absence of clear constitutional or statutory authority, the presumption of sovereignty should rest with the individual States. Uncertainties regarding the legitimate authority of the national government should be resolved against regulation at the national level.

Sec. 3. Federalism Policy-making Criteria. In addition to the fundamental federalism principles set forth in section 2, Executive departments and agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have federalism implications:

(a) There should be strict adherence to constitutional principles. Executive departments and agencies should closely examine the constitutional and statutory authority supporting any Federal action that would limit the Policy-making discretion of the States, and should carefully assess the necessity for such action. To the extent practicable, the States should be consulted before any such action is implemented. Executive Order No. 12372 (“Intergovernmental Review of Federal Programs”) remains in effect for the programs and activities to which it is applicable.

(b) Federal action limiting the Policy-making discretion of the States should be taken only where constitutional authority for the action is clear and certain and the national activity is necessitated by the presence of a problem of national scope. For the purposes of this Order:

(1) It is important to recognize the distinction between problems of national scope (which may justify Federal action) and problems that are merely common to the States (which will not justify Federal action because individual States, acting individually or together, can effectively deal with them).

(2) Constitutional authority for Federal action is clear and certain only when authority for the action may be found in a specific provision of the Constitution, there is no provision in the Constitution prohibiting Federal action, and the action does not encroach upon authority reserved to the States.

(c) With respect to national policies administered by the States, the national government should grant the States the maximum administrative discretion possible. Intrusive, Federal oversight of State administration is neither necessary nor desirable.

(d) When undertaking to formulate and implement policies that have federalism implications, Executive departments and agencies shall:

(1) Encourage States to develop their own policies to achieve program objectives and to work with appropriate officials in other States.

(2) Refrain, to the maximum extent possible, from establishing uniform, national standards for

programs and, when possible, defer to the States to establish standards.

(3) When national standards are required, consult with appropriate officials and organizations representing the States in developing those standards.

Sec. 4. Special Requirements for Preemption.

(a) To the extent permitted by law, Executive departments and agencies shall construe, in regulations and otherwise, a Federal statute to preempt State law only when the statute contains an express preemption provision or there is some other firm and palpable evidence compelling the conclusion that the Congress intended preemption of State law, or when the exercise of State authority directly conflicts with the exercise of Federal authority under the Federal statute.

(b) Where a Federal statute does not preempt State law (as addressed in subsection (a) of this section), Executive departments and agencies shall construe any authorization in the statute for the issuance of regulations as authorizing preemption of State law by rule-making only when the statute expressly authorizes issuance of pre-emptive regulations or there is some other firm and palpable evidence compelling the conclusion that the Congress intended to delegate to the department or agency the authority to issue regulations preempting State law.

(c) Any regulatory preemption of State law shall be restricted to the minimum level necessary to achieve the objectives of the statute pursuant to which the regulations are promulgated.

(d) As soon as an Executive department or agency foresees the possibility of a conflict between State law and Federally protected interests within its area of regulatory responsibility, the department or agency shall consult, to the extent practicable, with appropriate officials and organizations representing the States in an effort to avoid such a conflict.

(e) When an Executive department or agency proposes to act through adjudication or rule-making to preempt State law, the department or agency shall provide all affected States notice and an opportunity for appropriate participation in the proceedings.

Sec. 5. Special Requirements for Legislative Proposals. Executive departments and agencies shall not submit to the Congress legislation that would:

(a) Directly regulate the States in ways that would interfere with functions essential to the States' separate and independent existence or operate to directly displace the States' freedom to structure integral operations in areas of traditional governmental functions;

(b) Attach to Federal grants conditions that are not directly related to the purpose of the grant; or

(c) Preempt State law, unless preemption is consistent with the fundamental federalism principles set forth in section 2, and unless a clearly legitimate national purpose, consistent with the federalism Policy-making criteria set forth in section 3, cannot otherwise be met.

Sec. 6. Agency Implementation.

(a) The head of each Executive department and agency shall designate an official to be responsible for ensuring the implementation of this Order.

(b) In addition to whatever other actions the designated official may take to ensure implementation of this Order, the designated official shall determine which proposed policies have sufficient federalism implications to warrant the preparation of a Federalism Assessment. With respect to each such policy for which an affirmative determination is made, a Federalism Assessment, as described in subsection (c) of this section, shall be prepared. The department or agency head shall consider any such Assessment in all decisions involved in promulgating and implementing the policy.

(c) Each Federalism Assessment shall accompany any submission concerning the policy that is made to the Office of Management and Budget pursuant to Executive Order No. 12291 or OMB Circular No. A19, and shall:

- (1) Contain the designated official's certification that the policy has been assessed in light of the principles, criteria, and requirements stated in sections 2 through 5 of this Order;
- (2) Identify any provision or element of the policy that is inconsistent with the principles, criteria, and requirements stated in sections 2 through 5 of this Order;
- (3) Identify the extent to which the policy imposes additional costs or burdens on the States, including the likely source of funding for the States and the ability of the States to fulfill the purposes of the policy; and
- (4) Identify the extent to which the policy would affect the States' ability to discharge traditional State governmental functions, or other aspects of State sovereignty.

Sec. 7. Government-wide Federalism Coordination and Review.

(a) In implementing Executive Order Nos. 12291 and 12498 and OMB Circular No. A-19, the Office of Management and Budget, to the extent permitted by law and consistent with the provisions of those authorities, shall take action to ensure that the policies of the Executive departments and agencies are consistent with the principles, criteria, and requirements stated in sections 2 through 5 of this Order.

(b) In submissions to the Office of Management and Budget pursuant to Executive Order No. 12291 and OMB Circular No. A19, Executive departments and agencies shall identify proposed regulatory and statutory provisions that have significant federalism implications and shall address any substantial federalism concerns. Where the departments or agencies deem it appropriate, substantial federalism concerns should also be addressed in notices of proposed rulemaking and messages transmitting legislative proposals to the Congress.

Sec. 8. Judicial Review. This Order is intended only to improve the internal management of the Executive branch, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

RONALD REAGAN

The White House,

October 26, 1987.

[Filed with the Office of the Federal Register, 4:33 p.m., October 28, 1987]

Note: The Executive order was released by the Office of the Press Secretary on October 28.

Citation: Ronald Reagan: "Executive Order 12612 - Federalism," October 26, 1987. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. <http://www.presidency.ucsb.edu/ws/?pid=33607>.

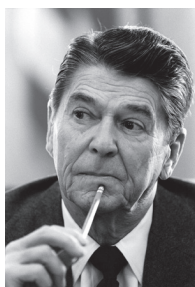
The Status of Federalism in America

The Report of the Working Group
on Federalism of the
Domestic Policy Council

November 1986



To see the report go to: www.theccwr.org/ReaganResolve/FederalismReport.pdf



RONALD REAGAN

40th President of the United States: 1981-1989

Remarks to State and Local Republican Officials on Federalism and Aid to the Nicaraguan Democratic Resistance

March 22, 1988

Well, ladies and gentlemen, President Owens, thank you all very much. It's good to have you all here in Washington. As you may have noticed, Washington, DC, isn't like other cities. Harry Truman, a man famous for saying exactly what he meant in a very few words well chosen, once said of Washington, it's the kind of city that if you want a friend you should find a dog. [Laughter] Well, that isn't true today, at least. I've counted on your friendship and support going on 8 years now. Eight years we've hung tough and hung together, often against seemingly overwhelming odds. Anybody who has come up through elected politics as a Republican knows how important that solidarity is.

It's like a story our first Republican President, Abraham Lincoln, once told when he found out all but one of his Cabinet officers ranged against him on an important issue. His story was about a man who fell sound asleep during a revival meeting and didn't hear when the minister said, "All of you who are on the side of the Lord, stand up." Of course, everyone stood up immediately, except for this one man, who was still asleep. But the preacher was only getting started and bellowed out, "All of you who are on the side of the devil, stand up." Well, at that the man woke up and standing as straight as he could said, "I didn't exactly understand the question, parson, but I'll stand by you to the end. It does seem we're in a hopeless minority." [Laughter] Well, as Republicans, you may be in a minority in terms of numbers at this year's meeting of the National League of Cities, but always remember, the ideals and beliefs that you stand for are the majority beliefs in this United States of America. On everything from education to crime, federalism to welfare reform, to keeping the American economy a growth and opportunity economy, the people of this country agree with you.

Now, I know you've heard from Beryl Sprinkel [Chairman of the Council of Economic Advisers] here, and from Senator Baker [Chief of Staff to the President] and Frank Donatelli [Assistant to the President for Political and Intergovernmental Affairs], so I'll try to keep this brief. As Henry the Eighth said to each of his 6 wives, "I won't keep you long." [Laughter] But there are so many issues before us that I want to cover.

The first is federalism. I remember how the pundits snickered at that idea at first. But those of us who have actually served at the State and local level know it's not in Washington but in the States, the cities, and communities of this country where the real work gets done. And we know from experience that the 10 most frightening words in the English language are, "I'm from the Federal Government, and I'm here to help." [Laughter] Well, federalism has become the wave of the future. Just last October, I signed Executive Order 12612. Everything in this town has a number attached to it — usually a large one. But this order is a breakthrough. We took a lesson from the environmental movement, and now when any agency in the executive branch takes an action that significantly affects State or local governments, it has to prepare a federalism impact statement, which only seems proper to me. The Federalist system given us by our Founding Fathers is a precious natural resource, and every bit as much as our environment, it should be cherished and protected.

Now it's time for Congress to join us and pass a truth-in-spending initiative that requires that all legislation include a financial impact statement, detailing the measure's likely economic effects upon the private sector

and State and local governments. Last month I sent to the Congress the Truth in Federal Spending Act of 1988. I hope you'll join with me and urge the Congress to promptly enact this legislation. We see the momentum of federalism in the move in States across our country to reform welfare. In my State of the Union Address, I said that some years ago the Federal Government declared a War on Poverty and poverty won. Instead of providing a ladder out of poverty, welfare became a net of dependency that held millions back. Instead of hope, we've too often bred despair and futility.

It's time, as I said to Congress, for the Federal Government to show a little humility, to let a thousand sparks of genius in the States and communities around this country catch fire and become guiding lights. You know, on the subject of federalism, I remember back when I was Governor; we had something that was a bit more common back then — campus protests. And one thing the protesters would often chant was that we should give power back to the people. I guess they didn't realize how closely I was listening. [Laughter]

...

Well, I've spoken for long enough. I'm reminded of the quip that Henry Clay once made when one of his antagonists in the Senate, in the middle of a dull and lengthy speech, turned to him and said, "You, sir, speak for the present generation. I speak for posterity." Clay interrupted him and said, "Yes, and you seem resolved to keep on speaking till the arrival of your audience." [Laughter] Well, I won't do that today. I've said enough. Thank you all very much. God bless you all.

Note: The President spoke at 11:47 a.m. in Room 450 of the Old Executive Office Building. In his opening remarks, he referred to Donna Owens, president of the National Conference of Republican Mayors and Municipal Elected Officials.

Citation: Ronald Reagan: "Remarks to State and Local Republican Officials on Federalism and Aid to the Nicaraguan Democratic Resistance," March 22, 1988. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. <http://www.presidency.ucsb.edu/ws/?pid=35584>.

President Reagan's complete speech is included on pages 7-10 of Appendix IX: www.theccwr.org/ReaganResolve/Appendix9.pdf