



FEDERALISM IN THE TRUMP WHITE HOUSE

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Donald Trump's ascension to the White House just over one year ago marked a shift of partisan power in Washington, which led to a shift in policies towards federalism. Trump, as a candidate and as a president, has embraced decentralizing policies on several issues, calling for greater authority to be given to the states on issues such as health care and education, while denouncing state autonomy on issues including immigration, the environment, and marijuana legislation. Generally, however, Trump's presidency has inspired an upsurge in conversations around federalism. While federalism has long been popular among conservatives as a matter of principle, liberals have recently championed federalism as a practical tool and called upon states rights to combat policies they oppose on the federal level. For instance, conservative states have used federalism to create independent policies on issues like transgender bathroom access, unions, and immigration, while liberal states have called upon federalism to justify more aggressive policies towards protecting the environment and securing rights for illegal immigrants.¹ In this way, Trump's presidency marked a resurgence in federalism, both among conservative and liberal states, which has manifested in many policy issues, including marijuana, environmental, educational, health care, immigration, and tax policies.

In 2016, California, Maine, and Massachusetts were added to the list of states that have legalized marijuana for recreational use. California's Proposition 64 legalized recreational marijuana use for people over the age of 21 beginning in January 2018.² Legislators aimed to use the time between the passage of this bill in November 2016 and its start date of January 2018 to create a set of effective laws and regulations around the recreational use of marijuana. To this end, in June, legislators passed Senate Bill 94, known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act, which combined laws about medical use of marijuana with a newly created set of regulations around recreational use.³ Yet, by grouping the medicals laws with the newly cemented rules about recreational use, the laws around medical use changed, embracing the recreational laws for both medical and recreational use of marijuana.⁴ These rules, set by the Bureau of Medical Cannabis, the Department of Public Health, and the Department of Food and Agriculture, included provisions regarding fees, enforcement, license types, limits on THC, and testing of products from planting to sale.⁵ Most of these regulations began on January 1, 2018, but some of the rules have a six-month grace period, allowing those already selling marijuana to continue selling untested products until July 1.⁶

Similarly, Maine also legalized the use of recreational marijuana in November 2016 by a narrow margin of fewer than 4,000 votes.⁷ Legislation following up in Maine's legislature passed after Maine's governor Paul LePage, a Republican, openly spoke against the passage of this bill and even threatened to veto it.⁸ However, the bill passed with enough votes to ensure LePage could not veto the legislation.⁹ With this vote, adults aged 21 and older in Maine can possess 2.5 ounces of marijuana in nonpublic spaces.¹⁰ These purchases will have a 10% sales tax with 98% of the revenue from that tax going to a general fund.¹¹ As in California, retail sale of marijuana will not begin until February 2018 to give governmental agencies in Maine the time to write the regulations around marijuana.

Massachusetts joined Maine and California in legalizing marijuana in November 2016, although legalization will not take effect until July 2018.¹² The ballot measure was passed by Massachusetts voters with 54% of the vote.¹³ Massachusetts Governor Charlie Baker (R) subsequently signed a measure in July 2017 that began the process of legalizing marijuana.¹⁴ This legislation would establish a 20% sales tax on marijuana, which could generate up to \$83 million of tax revenue during its first year in implementation.¹⁵ Massachusetts is moving slowly to implement the law. Indeed, the state has done little more than create the Cannabis Control Commission, an independent agency that is drafting the rules for the new marijuana industry, and even this agency lacks adequate funding.¹⁶ Moreover, state officials have resisted the new legislation and individually cities have acted on their own to continue to prohibit marijuana use.¹⁷

Yet, while the states are taking action towards legalizing marijuana use, the Trump administration has taken a firm stance against the states' ability to legalize recreational marijuana use. In February, the White House called upon law enforcement officers to enforce federal marijuana laws even in states that have legalized use. Trump, himself, has gone back and forth on the issue, stating in June 2015 that legalizing recreational marijuana use was bad policy, while later suggesting that states should have the power to decide upon how to deal with marijuana. Attorney General Jeff Sessions is strongly opposed to

recreational marijuana use. He has argued that the Department of Justice should have more authority to regulate marijuana use and enforce federal marijuana legislation.¹⁸ Yet, while Sessions has made marijuana regulation a point of emphasis, it is less clear how large the impact of his policy leanings will be. Federal prosecutors bring in very few marijuana prosecutions, and their resources to change this are quite slim.¹⁹

Trump's presidency also marked a significant shift in the nation's policies towards the environment, including towards the Clean Power Plan. Trump campaigned on the idea of repealing the Clean Power Plan, and his administration has continued in that direction since taking office. EPA Administrator Scott Pruitt has taken concrete actions towards repealing the Clean Power Plan. On October 10, he issued a notice calling to repeal the Clean Power Plan, emphasizing his view that the regulation goes beyond the EPA's statutory authority.²⁰ The EPA Administrator has also noted that by repealing the Clean Power Plan, the agency will help develop national energy resources and reduce excessive regulations.²¹ Pruitt argued that repealing this rule "right[s] the wrongs of the Obama administration by cleaning the regulatory slate."²² The report includes an examination of Obama's cost-benefit analysis of the plan, as well as of the environmental, health, and economic effects of the repeal.²³ The report contends that the repeal could provide around \$33 billion of avoided compliance costs and demonstrates how Obama's cost-benefit analysis inaccurately chronicled the fiscal benefits of the bill.²⁴ Yet, there are many environmental advocacy groups and state attorneys general who have said that they will challenge the repeal on the grounds that states have a right to protect themselves from the threat of climate change.²⁵

In the face of the Trump's administration's rolling back of climate regulations, individual states have taken action to aggressively combat climate change. In October, after Trump announced that he was going to withdraw the United States from the 2015 Paris climate agreement, governors from California, Washington, and New York formed the U.S. Climate Alliance, which sought to advance their alternative environmental agenda against rollbacks at the federal level.²⁶ This Alliance now includes 14 states and

Puerto Rico.²⁷ Similarly, Virginia Governor Terry McAuliffe responded to Trump's action by calling upon Virginia state officials to create a cap-and-trade program for the state's power sector;²⁸ California has committed to generating 50% of all electricity from renewable energy, as well as reduce its greenhouse gas emissions to 40% below levels from 1990, by 2030.²⁹

On education reform, Trump's secretary of education, Betsy DeVos, has declared that she aims to eliminate the Common Core program.³⁰ To this end, she has endorsed the Every Student Succeeds Act (ESSA), a law that adjusts No Child Left Behind, and claimed that this act supersedes Common Core and lets states decide upon their own educational standards.³¹ The ESSA was signed into law by Pres-

Trump and Republicans in Congress have taken considerable action on healthcare since Trump's inauguration. Trump has been adamantly opposed to the Affordable Care Act since his campaign.³⁷ Throughout his campaign, he emphasized that he would support prompt repeal of the Affordable Care Act as soon as he entered office, but since his ascension to the presidency, he has moved back on this promise to now explain that he might only amend the legislation. In January of 2017, Speaker Paul Ryan announced that Republicans would repeal and replace parts of Obamacare by the spring, and in March, the House released its first attempt at a repeal with their American Health Care Act.³⁸ Yet, by the end of the month, Ryan pulled the bill from the House floor, as it lacked support from both liberals and conser-

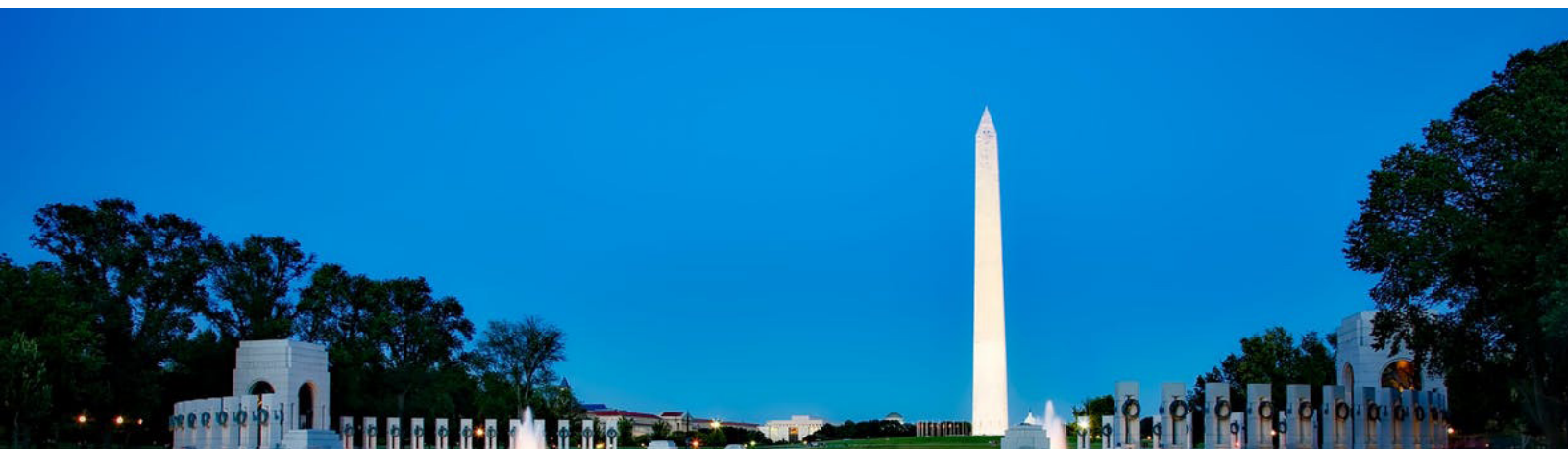


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ident Barack Obama in 2015 and only bars the education secretary from incentivizing states from embracing a specific set of standards, disallowing DeVos from pushing states towards or away from Common Core.³² Trump himself rejected Common Core by stating in April, "I like the fact of getting rid of Common Core. Common Core to me, we have to end it...We have to bring education local."³³ Yet, even with Trump and his administration firmly set against Common Core, there has been little concrete action toward eliminating the standards.³⁴ According to the National Conference of State Legislatures, there are still 39 states actively using Common Core standards or a revised version of those standards.³⁵ Moreover, the Common Core Standards were created by a coalition of state governors and state commissioners of education, not as national legislation, thus many argue that the federal government should not be able to eliminate it.³⁶

vatives.³⁹ In April, the House Freedom Caucus endorsed a new bill, which let states opt out of certain insurance regulations, which narrowly passed the House in May but was not voted upon in the Senate due to insufficient support.⁴⁰ In June and July, a new bill was written, the Better Care Reconciliation Act, but after several senators announced that they would not support the bill, Mitch McConnell announced that the Senate would vote on repealing ObamaCare only, even without a replacement, which failed.⁴¹ In September, Senator Lindsey Graham and Bill Cassidy proposed a healthcare bill aimed at repealing the Affordable Care Act (ACA) and presenting an alternative focusing on state autonomy.⁴² This alternative sought to move a significant amount of federal money from states who had expanded Medicaid to those who had refused to expand, in effect shifting money from Democratic states to Republican ones (or undoing the initial shift to Democratic states that oc-

curred with the Medicaid expansion).⁴³ According to a study performed by Avalere, a healthcare consulting company, “The proposed legislation would repeal the ACA’s Medicaid expansion, premium tax credits, cost sharing reduction (CSR) payments, individual and employer mandates, and the Basic Health Program (BHP),” while providing states “with block grants to fund health insurance coverage in their state,”⁴⁴ and consequently more flexibility. According to this study, this bill would “significantly reduce funding to states over the long term, particularly for states that have already expanded Medicaid,” as states would have less funding for lower and middle-income people.⁴⁵ Moreover, the federal money given to states would not only be reduced from their current levels, but they also would not be based upon the actual costs or enrollments in individual states.⁴⁶ Indeed, some states could have seen a 25% reduction or more of federal funding under the Graham-Cassidy bill.⁴⁷ In the end, however, Senate Republicans decided to withdraw this health care bill, as they did not have enough votes to pass the bill.⁴⁸ Having failed

jurisdictions” from receiving federal grants and increased these jurisdictions’ ability to be sued by victims of illegal immigrants. Kate’s Law, named after Kate Steinle who was shot by an illegal immigrant released under sanctuary jurisdiction regulations in San Francisco, increased prison sentences for illegal immigrants who were deported back to their home countries and then returned to the United States and committed another crime.⁵¹ President Trump strongly supported both pieces of legislation.⁵² In November, in response to a lawsuit by San Francisco and Santa Clara County, a federal court issued an injunction that effectively blocked Trump’s executive order by claiming that Trump’s actions was an overreach of executive power.⁵³ Federal District Judge William Orrick III deemed Trump’s order unconstitutional on the ground that it violated the fifth and tenth amendment, and was also an overreach of executive power, as Congress has spending power, not the President.⁵⁴ On the other hand, recently 11 states backed Trump’s initial executive order about sanctuary cities by encouraging a federal



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to secure legislative repeal of the ACA, Trump in October ordered an executive order on health care that eliminated some basic benefit requirements from the Affordable Care Act.

On immigration, Trump has reversed many of Obama’s policies and has taken a firm stance against “sanctuary jurisdictions.” Immediately after taking office, Trump issued an executive order aimed at eliminating sanctuary jurisdictions and stripping these places of their federal funding.⁴⁹ Since that time, he has continued to take aim at cities and states that have created sanctuary policies. In June, the House of Representatives passed two bills based around immigration, the No Sanctuary for Criminals Act and Kate’s Law.⁵⁰ The No Sanctuary for Criminals Act blocked “sanctuary

appeals court to reinforce the order.⁵⁵

Finally, in December, President Trump and the Republican-led Congress signed into law a tax reform bill that significantly altered previous tax law, including capping the state and local tax deduction.⁵⁶ The state and local tax deduction, otherwise known as SALT, consists of two deductions that subsidize high state taxes: one for state and local property taxes and one for either state income taxes or state sales taxes.⁵⁷ Thus, this deduction more significantly affects high income earners in richer states with higher income and property taxes, like California and New York.⁵⁸ The new tax reform caps the amount that can be deducted at \$10,000, which is significantly less than many residents pay in states with higher tax rates.⁵⁹ For instance,

in California, one-third of residents deduct \$22,000 from their taxes under SALT, and similarly, residents of New York and New Jersey would be greatly affected by the change in the deduction.⁶⁰ These states, predominantly Democratically-led states, are considering ways to circumvent this change, even considering legal challenges to the tax plan.⁶¹ The Democratic governors of New Jersey, Connecticut, and New York

have all announced that they plan to file a lawsuit against the federal tax plan on the grounds that this plan will disproportionately affect their states for political reasons.⁶² While California has not announced whether it plans to sue the federal government for this plan, state senators have proposed legislation that would effectively attempt to mitigate the state and local tax provision's effect on Californians.⁶³ ■

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