

Expanding the Role of States

The Trump Administration is evaluating how best to transfer back to the states powers that have been usurped by the federal government since the New Deal, including an ever greater role planned for the states in public education, health care, public safety, land management, and pollution control. There is in the President's intended devolution of power to the states an opportunity for reduction in federal spending and in state burdens. There is also an opportunity for the Trump Administration to evaluate every unfunded federal mandate imposed on the states and eliminate all which are redundant of state functions or interfere with state-tailored means to address the underlying issues, which means are likely to be less costly and more effective. This devolution of power signals a return to dual federalism, including less federal paternalism and more state-centric solutions to the peculiar problems of each state's citizens.

During the Reagan Administration, President Reagan issued Executive Order 12291 and Congress passed the State and Local Cost Estimate Act of 1981. Those measures were designed to quantify the cost to the states of unfunded federal mandates. Hundreds of pieces of federal legislation contain unfunded mandates, including prominently the No Child Left Behind Act, Medicaid, the Americans with Disabilities Act, the Clean Water Act, the Clean Air Act, the Safe Drinking Act, the Wilderness Act, and the Endangered Species Act. No one knows for sure the total cost to the states of the mandates now imposed nationwide but they are likely in the tens of billions of dollars.

The order of federal business since the New Deal has been to remove discretion from the states by imposing federal fiats of one kind or another, frequently without funding support. Those legislative commands either compel the states to undertake initiatives at state expense to receive other

federal benefits or compel the states to act without any financial help. Over the last thirty years traditional state functions in education, health and welfare, and criminal justice have been usurped by the federal government, leaving much of the cost of compliance on the states.

As was apparent at the recent National Governors' Conference, a majority of Governors view the mandates as overwhelming, rendering the states increasingly mere functionaries of the federal government, and denying the states discretionary funds sufficient to implement their own tailored plans at less cost.

The great deregulation initiative commenced on February 24 with President Trump's Executive Order on Enforcing the Regulatory Reform Agenda should be followed by an additional Executive Order to require a review with the aid of the states' Attorneys General of all unfunded federal mandates. That order should anticipate a move by the Administration to alleviate the states of the mandates.

First, all unfunded mandates which are redundant of state functions should be identified as appropriate for repeal. Second, all anachronistic unfunded mandates and those which impose costs that exceed benefits should also be up for termination. Third, all mandates in areas that could more appropriately be addressed by state and local officials should likewise be slated for elimination.

Then, with the mandates identified that are in need of elimination and the support of a majority of the nation's Governors, the Trump Administration's allies in Congress should introduce legislation to eliminate the unfunded mandates. The reduction in cost burdens pm the states combined with the greater freedom the states will acquire to address issues of education, health care, public safety, land management, and pollution will lead to less costly and more efficient government overall, as well as to a revitalization of the dual federalist constitutional system intended by the

Founding Fathers.