HOT TOPIC: Federalism

Seeking A More Perfect Union

Federalism Frustrations
What Was Old Is New Again

Battle Lands In the West

Federalism 101

"State-based innovation, unfortunately, is being impacted increasingly by a growing web of federal policies and regulations."

Alaska Sen. Gary Stevens, 2013 CSG Chair

PLUS: The 2013 Class of CSG Henry Toll Fellows
Check Out

CSG’S BUSINESS INCENTIVES REPORT

Don’t be Left in the Dark

Each year, states spend billions of dollars on tax and financial incentives with the hope of spurring job growth, but state policymakers don’t always have an accurate accounting of the most basic of information about their state’s incentive programs—the cost.

Learn more about trends in the use of business incentives by states and key recommendations for state officials in CSG’s new publication, “Chairman’s Report: State Business Incentives.”

Visit www.csg.org/businessincentives for more information.

“While we take business incentives into consideration when making location or expansion decisions and we need to leverage those existing incentives to remain competitive, there are a lot of other factors that go into the decision-making process.”

—Daniel B. Garry, public affairs manager for 3M

“By no means do we expect to find a magic bullet, but we all want to go home motivated to find new ways to foster economic growth.”

—New Jersey Assemblyman Reed Gusciora

“It’s crucial that we work together to find solutions so that we can remain competitive in the global economy.”


WWW.CSG.ORG/BUSINESSINCENTIVES
ON THE COVER
Alaska Sen. Gary Stevens, the 2013 chair of The Council of State Governments, said the goal of the CSG Focus on Federalism Task Force is to provide an open forum for members to discuss the federal-state relationship.

Photo by Clark James Milhale

NOVEMBER/DECEMBER 2013

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Washington Rep. Sharon Wylie has seen the inside of legislative chambers in two states; she served previously in the Oregon House of Representatives.
The past year wasn’t a good year for government in the eyes of many Americans. The year began with the bruises of the 2012 elections still fresh and the strains of a slow economic recovery showing. Polarization and gridlock continued to prompt paralysis in Washington, D.C., and the government shutdown and botched rollout of the Affordable Care Act’s website only exacerbated the feelings of an exasperated citizenry.

Political parties and institutions reached new lows in public approval ratings. Solutions that require compromise were elusive and legislation to deal with education, energy, transportation and immigration languished. Even the farm bill, usually a vehicle for bipartisan cooperation, got mired in the muck. Budget brinkmanship continues to be the new normal in D.C. as we careen from one manufactured fiscal crisis to another.

While much of the country’s attention was focused on the lack of progress in D.C., the leaders in state capitols were effectively navigating the complexities of the challenges they face and forging innovative solutions. State legislatures are places where governing is still possible. Real solutions are forged by leaders who are finding ways to work together.

Frankly, while the dysfunction of Congress is deplorable, it has created opportunities for the states to innovate. Perhaps the best we can hope for is a federal government willing to give states the freedom and flexibility to test new solutions and thereby fulfill the states’ valued role as true laboratories of democracy.

In this issue of Capitol Ideas, we focus on many facets of federalism. The United States of America was created by the states, with limited powers conferred on the central government by the states. This design is rare among nations and reflects Americans’ traditional distrust of a strong central government. Over the years the reach of the federal government has expanded considerably and the role of the states has been diminished. The states are wise to appropriately reassert their position of primacy in our system of government. Those who believe the best way to address a problem is always a nationalized solution are overlooking one of America’s greatest strengths—the states.

States don’t need more unfunded mandates and one-size-fits-all solutions from the national government. States need to be left to do what they do best—craft custom solutions to the problems as they exist in each state.

CSG has been a valuable tool for creating multistate solutions and sharing best practices among the states. States don’t benefit when their federal partner is unpredictable, unresponsive, arrogant or misguided. States do benefit when the federal government respects their proper role in developing and administering public policy and affords them the flexibility to do just that.

Our founders didn’t design our institutions of government to allow for quick action. Checks and balances, separation of powers, individual liberties and protections for minority views are all part of the labyrinth of constitutional provisions, laws and rules that conspire to slow things down. Yet for all of these speed bumps, our system of government has endured, but for our system to work for the common good, we need servant leaders whose allegiances are properly placed and whose priorities are appropriately focused. Real leaders work together to get things done. To govern successfully, our nation’s elected officials and citizens alike must renew a commitment to make the institutions of government work.

The Council of State Governments has advocated for the states and served as a voice for state leaders for eight decades. Today’s state leaders know the importance of making government work and they turn to CSG to achieve that goal.

I commend our leaders, 2013 CSG National Chair Alaska State Sen. Gary Stevens and 2014 CSG National Chair Tennessee Senate Majority Leader Mark Norris for making a focus on federalism a key part of their two-year leadership agenda. I hope the information shared in this issue helps better educate state leaders on the concepts of federalism and the opportunities all state leaders have to serve as ambassadors for the states. Federalism compels us to appreciate and respect the role of each state. It celebrates the ingenuity and innovation of each state and in federalism we find the true secret of a strong nation. We hope you will join us in this important work.

David Adkins
“States and the federal government are **inseparable partners** in creating a strong economic future for our country.”

— Delaware Gov. Jack Markell and Oklahoma Gov. Mary Fallin, in an essay for *Roll Call* in February 2013. Markell is past chair and Fallin is the current chair of the National Governors Association.

“In the search for **enlightened public policy**, individual States and communities are free to **experiment** with a variety of approaches to public issues.”

— President Ronald Reagan, in executive order 12512 in October 1987.

“At a time when **Washington can’t or won’t act**, states are stepping up and launching ambitious, sophisticated **new experiments**.”

— Mark Muro, policy director for the Brookings metropolitan policy program, in a January 2013, Stateline.org article about New York’s establishment of NY Green Bank to spur renewable energy investments.

“(States) are the **ordinary governments** of the country; the federal government is its **instrument** only for particular purposes.”

— President Woodrow Wilson, in *Constitutional Government in the United States.*

“The **allocation of powers** in our federal system preserves the integrity, dignity, and residual **sovereignty of the States**.”

— Justice Anthony Kennedy, delivering the opinion of the Supreme Court in *Bond v. United States,* in June 2011. The ruling points out that federalism has more than one dynamic and the federal balance should ensure states function as political entities in their own right.

“(T)he States can best govern our **home concerns** and the general government our **foreign ones**.”

— Thomas Jefferson, in a letter to Judge William Johnson in 1823, as quoted in *We Still Hold These Truths.*
MOOSE ON THE LOOSE
Connecticut is warning its residents to stay away from wild moose after a series of recent sightings, The Day, a daily newspaper in eastern Connecticut, reported Sept. 24. The state’s Department of Energy and Environment alerted the public that while moose are usually shy creatures, they can behave unpredictably when in populated areas. Experts estimate the moose population in Connecticut is between 100 and 150 animals.

VETERANS AID FUND
Gov. Jack Markell in September signed a bill creating the Delaware Veterans Trust Fund, The News Journal of Dover reported. The fund will provide financial assistance and grants to veterans to cover medical bills, home repairs, transportation and education expenses. The fund was started with $25,000 in one-time state funding and has been added to a list of programs that can receive contributions from personal income tax filings.

WIND POWER
Major utility companies in Massachusetts are turning to wind power as a cost-effective source of electricity. The state Department of Public Utilities announced three utility companies have entered into long-term contracts to purchase wind-generated electricity at costs lower than more conventional forms of power, The Boston Globe reported. The projects are expected to be operational between 2014 and 2016.

BUSINESS TAX INCENTIVES
Two streamlined state incentive programs in New Jersey will offer millions of dollars in tax breaks to businesses and developers that create and maintain jobs in the state, The Record of Woodland Park, N.J., reported. A new state law, the Economic Opportunity Act, dismantled three previous incentive programs and streamlined them into two new ones—Grow New Jersey and Economic Redevelopment and Growth.

TEACHER STANDARDS
Aspiring teachers in New York will face higher standards when applying to the state’s teacher education program at the State University of New York, The Times Union of Albany reported. New state standards for admission to the teacher and principal preparation programs will require a minimum 3.0 grade point average and higher scores on the Graduate Record Examination. The new standards are part of Gov. Andrew Cuomo’s state education reform initiative.

VERMONT LOW-INCOME STUDENTS GET FREE BREAKFAST, LUNCH UNDER NEW PROGRAM
Vermont has launched a program to provide free breakfast and lunch to low-income students. It’s the first state to offer both meals at no charge to students who meet the federal threshold for free or reduced-price meals, according to Stateline.org.

Under the National School Lunch Program, children whose families earn less than 185 percent of the federal poverty level are eligible for reduced-price meals, while those whose families earn less than 130 percent are eligible for free meals.

The state has provided free breakfasts to students qualifying for reduced-price meals since 2008, but the new law allows those students also to have lunch at no cost. Last year, around 31,000 Vermont students were eligible for free meals, with about 6,000 more eligible for reduced-price meals.

The new program, to be funded by the state’s general fund, is expected to cost the state approximately $400,000 per year.

In Vermont, officials hope the new program will help to alleviate hunger among students and reduce the levels of behavioral, emotional and academic problems associated with childhood hunger.

“We all know that hungry children can’t learn,” Gov. Peter Shumlin said at a recent visit to an elementary school in Barre, Vt. “I am very proud that Vermont is the first state to ensure that all children have access to good food, so that they can focus on their education without worrying whether they will be hungry.”

Colorado and Texas recently passed laws to provide free breakfast to all students in schools where a certain percentage of students are eligible for free or reduced-price lunch.
**Virginia Named Best State for Business**

Virginia recently was named the “Best State for Business” by *Forbes* magazine. The state moved up one spot from last year’s rankings. The last time the state garnered the top spot was in 2009. Virginia received high marks as a result of the state’s enterprising business policies and solid incentive offerings. *Forbes* cited the Mercatus Center in saying Virginia’s tort structure is ideal for businesses. Virginia is one of 24 right-to-work states, with only 4.4 percent of its workers in unions, according to *Forbes*.

The commonwealth also has been recognized for its flexible incentive programs and diverse economy. Virginia’s $446 billion economy was somewhat more stable than other states during the Great Recession as a result of spending by the federal government and the state’s diverse economy with assets in bioscience, logistics, manufacturing and tech.

In fact, tech companies have increasingly converged on Virginia as they seek to capitalize on the largest high-tech labor force in the nation, according to TechAmerica Foundation’s annual Cyberstates report. Recently, Amazon.com brought around 2,000 jobs to the state to staff two distribution centers and its cloud computing business, Amazon Web Services. Microsoft invested $1 billion to establish a data center in southern Virginia. With more than 30 companies with sales greater than $3 billion headquartered in Virginia, the state is seventh in terms of aggregation of large companies in the U.S., according to *Forbes*.

The criteria for *Forbes*’ Best States rankings include 35 data points related to business costs, labor supply, regulatory environment, current economic climate, growth prospects and quality of life. Business costs, which include labor, energy and taxes, are weighted the most heavily.

Virginia is the only state to rank in the top five in four areas.

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**The South**

**ALABAMA CONSTITUTION**  
Efforts to rewrite the Alabama Constitution, which is the longest in the country, have been growing in the past decade. In 2011, the Alabama Legislature created the Constitutional Revision Commission to review and rewrite the entire 1901 constitution, according to The Anniston Star. Advocates for more local control of regulations had hoped for a revision that afforded local governments more authority, but in the end, the articles outlining these powers remained mostly unchanged.

**UNEMPLOYMENT DEBT**  
In 2012, North Carolina owed the federal government $2.5 billion for loans taken to pay state unemployment benefits during the Great Recession, the *Winston-Salem Journal* reported. In response, the legislature took strong measures to cut that debt on a strict schedule, equally increasing taxes on employers and decreasing benefits for the unemployed. Former House Speaker Pro Tem Dale Folwell was recently appointed to lead the state’s Division of Employment Security and is charged with implementing the policies.

**SCHOOL TEST SCORES**  
Last year, Kentucky, one of the first states to adopt the common core state standards in reading and math, began testing its students using the new standards. New statewide data on student test results indicate the commonwealth’s high school students increased their average score by almost 10 percent, the *Lexington Herald-Leader* reported. Kentucky’s Performance Rating for Educational Progress, or K-PREP, measures schools not only on academics, but also on student progress, specific socioeconomic and ethnic population’s performance, and college and career readiness.

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**VOCATIONAL REHABILITATION**  
The Tennessee Department of Human Services in September announced an expansion of the client pool eligible for services. Since 2001, Tennessee has categorized people with disabilities based on a four-tier system. In 2012, the state began serving people designated as the second-highest priority. The department on Oct. 1 expanded its vocational rehabilitation services to those in the third-highest priority category, expanding coverage to 1,000 people on the waiting list.

To learn more about these and other developments in the Southern Region, visit: capitolideas.csg.org and www.slcatlanta.org.
SAVING FOR THE FUTURE
North Dakota is saving a portion of its energy tax revenues for future needs, Stateline.org reported in August. The Legacy Fund has exceeded expectations in the two years since it was established: it’s grown to $1.3 billion as of August. Beginning June 2017, state lawmakers will be able to begin spending funds from the account for programs such as education.

HEROIN EPIDEMIC
State officials in Wisconsin hope a new campaign will help reduce heroin use. The Appleton Post-Crescent reported that heroin overdose deaths in the state rose 50 percent last year to 199. State officials say the increase in the drug’s use can be linked to its spread from inner cities to more suburban and rural areas. The public awareness campaign, called The Fly Effect, will include posters, a website, a television spot, radio ads and YouTube videos.

RIGHT-TO-WORK
The fate of Indiana’s right-to-work law likely will be decided by the state Supreme Court after a state judge ruled the law unconstitutional. According to The Indianapolis Star, a Lake Superior Court judge ruled the law violates a provision in the state constitution banning the delivery of services “without just compensation.” Opponents argue the provision cited in the ruling applies only to individuals, not to corporate bodies such as unions. The state attorney general’s office has indicated it will pursue an appeal with the state Supreme Court.

UNCLAIMED PROPERTY
The Nebraska State Treasurer’s office will make automated robocalls to alert residents of unclaimed property, The Lincoln Journal-Star reported in September. The treasurer’s office holds $125 million in unclaimed property for more than 350,000 current and former state residents and their heirs. The prerecorded messages will notify individuals of unclaimed property in their names, as well as provide information on how to file claims with the office’s Unclaimed Property Division.

PAPERWORK REDUCTIONS
Michigan state officials have pledged to reduce the number of forms businesses are required to complete for the state by half. The Detroit Free Press in September reported the Department of Licensing and Regulatory Affairs plans to reduce paperwork and implement other aspects of the Reinventing Performance in Michigan initiative, a multiagency effort to make Michigan a top-10 business-friendly state. The initiative aims to achieve such other goals as a 50 percent improvement in customer response time.

To learn more about these and other developments in the Midwestern Region, visit: capitolideas.csg.org and www.csgmidwest.org.
California Workers to Get Higher Wages

Hourly California workers will be earning more money thanks to a new law that will raise the state’s minimum wage to $10 an hour by 2016. The Los Angeles Times in September reported that Assembly Bill 10, signed into law Sept. 25 by Gov. Jerry Brown, will increase wages in two phases; the first phase would increase the current minimum wage of $8 an hour to $9 on July 1, 2014, followed by another hike to $10 on Jan. 1, 2016.

Brown said he hoped the bill would help narrow the gap between the rich and poor. “Our society over the last 30 years … has experienced a growing gap between those who do work at the bottom and those who occupy the commanding heights of the economy,” said Brown. “The minimum wage will set the floor as the ceiling keeps getting further and further apart.”

While the law has been welcomed by low-wage workers in the state, California’s business community has voiced its opposition. A coalition of businesses, including the California Restaurants Association and the California Chamber of Commerce, argue that small businesses cannot withstand the wage hike without resorting to passing along price increases to customers, cutting worker hours or laying off some employees.

Some business owners also fear the increase in the minimum wage will lead to requests for pay increases by employees who currently make more than the minimum wage. According to Sunder Ramani, general manager of Westwind Properties, a real estate firm in Burbank, with an increase in the minimum wage “there is a natural push to pull all wages higher.”

Economist Chris Thornberg of Beacon Economics said the new law is not likely to have an enormous impact in either direction, but rather is more likely to have a small, positive effect. “You would be hard pressed to find the negative impact,” he said of the wage increase.

CLEAN AIR REGULATIONS
Alaska is proposing new rules to help clean up the heavily polluted air in the Fairbanks North Star Borough, which was deemed out of compliance with the Clean Air Act. The proposed regulations, if adopted, would place additional restrictions on the area’s winter-long burn ban, clarify a rule that would allow the state to prohibit the use of wood-fired heating devices, clarify the types of solid fuels that could be burned and establish particulate emission limits for new wood-fired devices, according to Alaska Dispatch.

POSTSECONDARY EDUCATION
Idaho state education officials hope new data on students following high school graduation will help them figure out why more students do not pursue postsecondary education, the Idaho State Journal reported in September. Only about 48 percent of Idaho high school graduates enroll in higher education, one of the lowest college enrollment rates in the country. State officials expect 60 percent of jobs in the state will require a postsecondary degree within five years.

RECREATIONAL MARIJUANA
Colorado is the first state to adopt final rules for recreational marijuana businesses. The regulations were released in September, The Denver Post reported, and cover such issues as pot shop licensing and inventory tracking, marijuana packaging and advertising. The state began accepting applications to open recreational marijuana stores Oct. 1; the first stores are anticipated to open Jan. 1, 2014.

TRAINING THE UNEMPLOYED
Hawaii received funding from the U.S. Department of Labor and Industrial Relations to provide training to the long-term unemployed, according to the Honolulu Star-Advertiser. The funding, part of the Workforce Investment Act Adults and Dislocated Worker training program, will support on-the-job training, registered apprenticeship programs and other training initiatives that link unemployed workers with employers.

ENVIRONMENTAL INCIDENTS
A new searchable database allows Utah residents to track environmental incidents like chemical spills as well as response efforts. According to the Salt Lake Tribune, the database, developed by the Utah Division of Environmental Response and Remediation, provides information on the details and impacts of an incident, materials spilled, the agency charged with oversight of an incident and response efforts. Local health departments charged with overseeing the response to environmental incidents are able to update cleanup progress within the database.
GOVERNMENTS SHOULD BE COLLECTIVE FORCE FOR GOOD

Federalism—the principle delineating the respective powers of our central government and those of the states—is an important foundation of American democracy. While constitutional theorists debate the statutory implications of federalism in a legal arena, the decisions of our national and state officeholders are the application of these separate powers—though often overlapping goals—as manifested in Washington, D.C., and across our nation.

My own public service in Rhode Island—a path from City Hall in Warwick to the United States Senate to the State House in Providence—has exposed me to the synergies and inevitable balancing act among policymakers at each level of government. Whether representing Rhode Island in the U.S. Senate or as its governor today, government has always represented our aspirations as a people—a collective united force for good.

To me, an ideal vision of federalism is a harmonious partnership between a forward-thinking, stable federal government and “the laboratories of democracy,” as U.S. Supreme Court Justice Louis Brandeis characterized the states in 1932, that are the building blocks of political consensus and effective national public policy.

As a U.S. senator, serving the best interests of the people of Rhode Island frequently overlapped with an important function of the office as a shield against the overreach of the “imperial presidency” about which pre-eminent U.S. historian and presidential speechwriter Arthur Schlesinger Jr. famously wrote. Two examples that resonate most deeply are the votes I cast against military action in Iraq and later against then-United Nations nominee John Bolton.

In each case, President Bush seemed to get his way. By a wide margin, Congress authorized the war in Iraq. And though Bolton’s nomination did not win a majority vote within the Senate Foreign Relations Committee, the presidential recess appointment loophole enabled the administration to push Bolton into the post. In sum, my Senate tenure was marked less by a concern of states breaching federal dictates than by the reality of an unchecked executive that preyed on the emotions of fear and anger to increase its power.

The governor’s office has offered a different lens into the concept of federalism. Federal support has been essential to Rhode Island’s economic recovery as well as to ongoing work to protect our people and our environment. Unlike my rockier relationship with the executive branch while in the Senate, as governor, the states quickly became integral to the centerpiece of President Obama’s legislative agenda—the expansion of affordable health care that promises to improve our long-term fiscal health. In turn, Rhode Island’s Affordable Care Act-funded health exchange has been an example of successful federal-state collaboration.

There are still bound to be differences of opinion. In a meeting with governors, then-Secretary of Defense Robert Gates insisted that we were each the commanders of our respective National Guards. I asked if that meant I could bring our troops back home as an opponent of continued U.S. military operation in the Middle East; the answer was an emphatic “no.” In another—more successful—instance of state autonomy, we in Rhode Island stood our ground in opposition to the death penalty when a federal case could have initiated capital punishment.

In the wake of the recent U.S. government shutdown, it is important to remember that government—federal and state—helps safeguard our freedoms as a people. I was among a number of Congressional officials who voted against the Bush-era tax cuts for high-income earners. But when the tallies were counted and the Bush administration was victorious, the dissenting voters—myself included—did not vow to close the government.

From the Senate to the governor’s office, I believe in a very basic truth in American democracy: There will always be healthy argument about political choices and the delegation of powers, but a bureaucratic stalemate is never an excuse to impair a working government of, by and for the people.
The 10th Amendment to the U.S. Constitution was ratified as part of the Bill of Rights on Dec. 15, 1791. It set the parameters for states’ rights on issues not specifically granted to the federal government. States are flexing their federalism muscle in areas such as health care and federal lands. The states’ relationship with the federal government, however, has changed as they become more dependent on federal funding for things such as education, roads and public safety. The Council of State Governments has launched a two-year effort to explore options to repair relationships between state and federal governments. The CSG Focus on Federalism Task Force held its first meeting at the CSG 2013 National Conference in September. The exploration of the state-federal relationship is the latest in a long line of efforts by states to understand and enhance their involvement in that relationship.
Seeking ‘A More Perfect Union’
Federal-State Relationship Strained and It Could Get Worse
by Jennifer Ginn

The situation is bad between federal and state governments and it doesn’t look like it’s going to get better anytime soon. The Council of State Governments’ Focus on Federalism Task Force conducted its first meeting in September at CSG’s 2013 National Conference with a hearing focused on how intergovernmental relations have gotten so bad and what can be done about it. The task force is a two-year effort of CSG to “explore options for repairing the relationships between state and federal governments,” said Alaska Sen. Gary Stevens, CSG’s 2013 chair.

“State-based innovation, unfortunately, is being impacted increasingly and seriously by a growing web of federal policies and regulations,” Stevens said. “Our goal with this initiative is not to advocate for something predetermined. … Instead, we want CSG to serve as an open forum. It will be member driven; we want to learn from the experts.”

How We Got Here
John Kincaid, a professor of government and public service and director of the Meyner Center for the Study of State and Local Government at Lafayette College in Pennsylvania, said state and federal governments coexisted peacefully without much interaction for much of the

“I think until we solve that polarization problem, it’s going to be very difficult to solve the federalism issue.”

—John Kincaid, director, Meyner Center for the Study of State and Local Government, Lafayette College

Wedge Issues a Problem
Former Maryland Gov. Parris Glendening, CSG’s 2002 chair, said Washington must get away from using issues such as immigration and the Affordable Care Act as a wedge to widen the gulf between the parties. He spoke during the 2013 CSG National Conference in Kansas City, Mo. Glendening said the country needs a more civil, bipartisan dialogue about how to solve the challenges it faces.

Photo by David Eulitt
nation’s history. The federal government began getting more involved on the state level following the Great Depression and all of the social welfare programs created to combat it in the 1930s.

“We had the rise of social welfare as a federal responsibility as reflected in the Social Security Act of 1935,” said Kincaid, “which still remains the fundamental social welfare law in our country. … There were relatively few intrusions into the prerogatives of state and local governments, so most activities of the New Deal had the strong support of the states and the local governments.”

With the civil rights movement in the 1960s, the shift to coercive government began. Pre-emption began to increase dramatically, more federal aid began to be earmarked for specific programs, more criminal offenses began to be federalized, and both funded and unfunded mandates took root.

“The contemporary period has also been characterized by what I call the dismantling of intergovernmental institutions,” Kincaid said. “OMB (the federal Office of Management and Budget) no longer has an intergovernmental office. The House and Senate in Congress used to have intergovernmental committees. The Advisory Committee on Intergovernmental Relations was defunded in 1996. So the institutions established to promote intergovernmental cooperation have disappeared.”

This disengagement of the federal government from state and local governments, coupled with growing partisan rhetoric, has left the country in a state where only 19 percent of people trust the federal government and 46 percent of Americans believe the federal government poses an immediate threat to their rights and freedoms, Kincaid said.

“Those are very frightening figures if you think about it,” he said. “That is an astounding result. It reflects the sharp polarization and some serious problems in our political system that clearly need to be addressed.”

**States Growing**


“Last year, I guess, the highlights of (federal) legislative action were authorizing some post offices and some commemorative resolutions,” Douglas said. “They haven’t passed a budget in quite a long time. So the states are where it’s at. That’s where the action ought to be, especially at this time in our national history.”

States still are the laboratories of democracy, Douglas said, but it’s getting harder for state policymakers to get the authority from the federal government to try new things.

“In the Medicaid area, the largest grant relationship between the feds and the states, the increased use of waivers allows more state experimentation and flexibility,” he said. “But it’s a very onerous process and a number of us have talked to (U.S. Department of Health and Human Services) Secretary (Kathleen) Sebelius and asked if the states are granted a similar type of waiver, why does each one have to go through this cumbersome process to do it. Why not make it into the Medicaid program overall?”

Douglas said regulations are a growing concern for him.

“The amount of regulatory activity … has declined a little bit lately in a way that concerns me,” he said. “There’s a lot of what we call agency guidance that’s replacing the formal rulemaking process. In state government, we call it a desk drawer regulation, where there isn’t the kind of transparency and openness, public participation. … (It’s) just kind of quiet advice from an agency on what to do and how to react to a requirement.

“I think we need to insist on the kind of openness that the formal rulemaking process requires.”

**It’s Worse than It Looks**

One thing the Federalism Task Force members learned at their first hearing is the atmosphere in Washington, D.C., is probably even worse than they thought.
“It’s poison in Washington, you see,” said Michael Bird, former senior federal affairs counsel for the National Conference of State Legislatures. “The partisanship is so intense and so high and it unfortunately ... is trickling down, so you really have a barrier to addressing some of the things we’ve been talking about. ... Every now and then, something slips through, but for the most part, the poison actually prohibits them (Congress) from actually doing their responsibilities. They really can’t do their job.”

The deference Congress used to show to governors and state legislators is long gone, said Bird.

“Special interest issues and campaign financing are all tied together,” he said. “Even in some offices of members of Congress — some of whom have served in state legislatures or as governors or as local officials at one time — they see you as a special interest, no different than anyone who’s representing the private sector or a moneyed interest of some type. That’s another hurdle that has to be addressed.”

Former Maryland Gov. Parris Glendening, CSG’s 2002 chair, said Washington must get away from using issues such as immigration and the Affordable Care Act as a wedge to widen the gulf between the parties.

“First is the need to return to a more civil, bipartisan dialogue about how to solve the challenges facing this country,” Glendening said. “We all know the vitriolic rhetoric of the past several years and we anticipate with dread the tone of the debate of the next several years as we go into handling the fiscal crisis, the sequester, implementation of taxes, deficit cuts, debt ceiling.

“These hot button issues have become sources of increasing the temperature of the rhetoric. I will not rehash how we got to this low level of discourse or who is to blame,” he said. “It is clear, however, that it is time for everyone to calm down and focus on doable solutions.”

What are the Solutions?

Kincaid said re-establishing some of the now-defunct intergovernmental groups is a key to restoring a more thoughtful and effective relationship among the federal and
state governments.

“I think they (intergovernmental groups) would be of assistance. The question is whether there would be the political will to do that,” he said, “because those institutions are very much dependent on sort of a bipartisan attitude. Whether we can institutionalize that today, I think, is a difficult question. At a minimum, it would be worth trying to get both houses of Congress to restore intergovernmental entities reflecting both parties that is focused specifically on these issues.

“I think it’s worth looking at insisting that the White House have some kind of intergovernmental office that is more than just political, but also has a policy role.”

Kincaid noted that such an office would fit particularly well within the Office of Management and Budget and should be tasked with “looking very carefully into the impact of federal policies on state and local governments, particularly the regulatory side.”

Bird said all the groups representing state and local governments should work together to try to force the federal government to take a new look at intergovernmental relationships.

“I think elected officials have got to demand more from an incoming administration,” Bird said. “You’ve got to ask much more than, ‘Hey, I’d really like to be invited to the White House Christmas party.’

“I think the Big 7 has very low expectations of Washington, D.C., and you need to heighten them. They expect too little of what comes out of any administration or Congress.”

But how likely is the federal government to change? Speakers at the Federalism Task Force hearing did not seem optimistic.

“I think the major problem is the polarization of the political system in Washington,” said Kincaid, “where ideology is the most important thing on both sides of the aisle. … I think until we solve that polarization problem, it’s going to be very difficult to solve the federalism issue.”

Bird agreed.

“The partisan rhetoric, we can order it to be toned down, we can beg for it to be toned down,” Bird said. “But we’ll make no progress until it is. I’m an optimistic guy and I don’t see things changing in any great way.”

Learn more about CSG’s Focus on Federalism Task Force at www.csg.org/federalism.
It’s easy for today’s state leaders to be lured into thinking that the state-federal relationship is at its lowest point ever—beyond repair due to unfunded and underfunded mandates, seemingly capricious regulations and infinite bureaucracy—and that no darker days have occurred.

But what state leaders must understand, placing it into perspective, is that these sentiments are not new and the concerns shared by many state leaders today echo those voiced by CSG’s founders in the early 1930s and throughout the past 80 years of American democracy.

Relationship Problems

Writing in 1959 for CSG, noted political scientist and frequent CSG contributor Frederick L. Zimmerman said, “A considerable portion of the history of the American government is the story of the problem of intergovernmental relations—both as among its component jurisdictions and as between those units and the central government.

“While adoption of the Constitution marked transition to a closer union, that instrument provided little machinery for intergovernmental communications and collaboration. At times, lack of established channels of communication made it more difficult for the federal government to collaborate with a state than with a foreign nation.”

Even the language used by state leaders when addressing landmark federal legislation is relatively familiar.

“A significant problem could develop when federal laws make state expenditure mandatory for certain programs—mandatory in the sense that states would be threatened with the loss of other federal funds devoted to programs to which the people were accustomed unless they complied with certain rules.”

That’s not language addressing recent changes to America’s health care laws, but rather Missouri Gov. Warren C. Hearnes commenting on the launch of Medicaid during CSG’s annual meeting in 1966. Not coincidentally, during this same meeting, the CSG Executive Committee endorsed the idea of a new office in Washington, D.C., to monitor federal affairs and advocate for specific policy positions on behalf of the states—recognition of the stronger voice states would need in our nation’s capital.

Federal Overreach

Looking back a bit further at the state-federal relationship, CSG Executive Director Frank Bane, speaking to the CSG Executive Committee in 1943, said, “It has been repeatedly demonstrated that the organization and establishment of large agencies with thousands of employees scattered throughout the country, duplicating in many instances governmental agencies already in existence is unnecessary, undesirable, and almost always detrimental to the fullest use of our facilities.”

Bane’s comments came amidst what the states considered to be significant federal overreach during the Second World War. For instance, the states objected strenuously to—and ultimately derailed—plans to federalize state unemployment compensation systems, federalize regulation of motor transport and fix the salary of state officials. Even during the seemingly unifying years of World War II, the states and federal government were not in lock step.

Such frustrations continued once the war was over, even as states were in the enviable position of having widespread budget surpluses. But the war had taken its toll on manufacturing, manpower shortages and an increased expectation of public services.

Writing in his annual report to the CSG Executive Committee in 1947, Bane noted that states sought innovative ways to bolster revenue, but “most of the states found productive sources almost always used by, and in many instances pre-empted by, the federal government.”

Bane continued that this conversation on taxation—in particular conflicting and overlapping taxes at the local, state and federal levels—if left unchecked ran the risk of destroying our federal system of government and turning the states into “mere administrative units of an overall central discretionary government.”

Similar Points 1973, 2013

Advancing a quarter century to 1973, the condition of the state-federal relationship had not markedly improved and CSG Executive Director Brevard Crihfield shared several points for consideration with the CSG membership on state-federal relations, including:

- A just and equitable sharing of intergovernmental authority and responsibility in the American federal system is essential and can be achieved.
- The federal government cannot be successful if it grows ever larger, ever more burdensome and ever more strangled in red tape.
- Before we can effectively decentralize the federal power mass, there is need to rationalize it, integrate it and bring it under control.
- Having accomplished this, we can then turn to the real job of building delivery services through the respective governmental levels best suited to perform.
- Let’s face it, some public functions will realistically position at the federal level.
- Let’s also face it, the formidable national tax and money machine must continue as a vehicle for federal aid—but aid not based on outdated categorical grants that stultify initiative and hamper innovation.
- Congress and future administrations must learn the facts of life concerning state budgetary and appropriations processes.
- Let’s not let recent clashes between state and federal officials disenchant the states and the Congress with the concept of federal revenue sharing, block grants, ecletic decentralization and other devices to get the job done better at reasonable cost.
- It takes years of grinding effort to get this done.

Such ideas are not terribly dissimilar from CSG’s recently adopted Statement of Principles on Federalism (http://www.csg.org/programs/federalismprinciples.aspx).
No Simpler Time

David McCullough, the noted author and historian put this into context as he spoke to state leaders during CSG’s 2013 National Conference in Kansas City. He cautioned state policymakers to not think of today’s challenges as the hardest of all time.

“I think we need to recall for our own benefit that times past were never simpler. That you hear people off-and-on on television, these wizards say ‘you have to understand, that was a simpler time.’ There was no simpler time … ever.”

Medicaid is becoming one of the biggest federalism issues in the states today. Kathy Chambers, top right, an organizer with Clergy for Justice, and a group of faith leaders in April prepared to distribute baskets of loaves and paper fish to the offices of each Tennessee lawmaker and the governor to urge them to accept federal Medicaid expansion money. The groups said the loaves and fish are symbolic of the story of Jesus feeding the multitude, and that the Republican governor can use the money to ensure thousands have health insurance. Mississippi Sen. Chris McDaniel, right, in June showed his opposition to the amendment for Medicaid expansion supported by Sen. David Blount at the podium, as the Republican-controlled Senate debated a Medicaid funding bill at the Capitol in Jackson. The amendment was defeated.
What has happened to federalism over the past few decades?

“For nearly 75 years the influence of states has eroded. This is a result of federal expansionism and a collective state apathy among state leaders in defending their constitutional role as a counterbalance to federal power.”

Why does the state-federal relationship matter?

“The Constitution of the United States contemplated that state governments would provide a check and balance to federal power. The consequence of states’ failure to address certain problems, their willingness to be co-opted with federal money on other matters and a general ineffectiveness in challenging federal expansion has produced a federal government that is out of control financially and creating great inefficiency through continual attempts to micromanage functions that belong at the local level. This has contributed substantially to a cynicism and lack of confidence in government generally.”

In an ideal world, how would the principles of federalism operate in today’s United States?

“We need a strong national government. However, things would work better if the federal government would limit the things it tries to do. Ideally the federal government would concentrate on the enumerated roles only a national government can accomplish. I’m referring to things like national defense, foreign policy, economic policy, interstate commerce and civil rights. In its interactions on matters where federal and state roles overlap, the federal government would be about establishing national objectives and policies, operating in a less prescriptive matter—allowing the laboratories of democracy to do their magic.”

Why is it important to return more power to state and local governments?

“In most cases, the best government is within driving distance. For the most part, people have more confidence in their state government. State governments are more efficient and accountable. States have to balance their budget.”

What will it take to restore the ideals of federalism?

“Only through state activism and a cooperative Supreme Court will the federal and state imbalance be remedied. Water will run uphill before the Congress voluntarily gives up power. In the mid-1990s, states worked together in offering Congress solutions to a welfare system out of control. A Republican Congress and President Clinton, a former Democrat governor who understood the role of states, enacted reforms that dramatically improved the program and reduced its cost. There was a grand bargain. More state flexibility was granted in exchange for states agreeing to accept less money. It has worked.”

How difficult would that effort be?

“This is hard. If it was easy, it would have happened already. There is an inherent understanding among state leaders that the federal government is out of control. However, it’s hard for states to coalesce working from 50 state capitols in a way that competes with 535 people working in the same building. The most important asset states have is the distrust people feel intuitively for the federal government. However, to unleash that, states have to propose solutions to the problems people care about.”
Mike Leavitt, the chairman of Leavitt Partners, served as governor of Utah from 1993 to 2003, then served as administrator of the Environmental Protection Agency and secretary of the U.S. Department of Health and Human Services during the George W. Bush administration. He’s seen the principles of federalism from both the state and federal perspective.

One of the biggest issues that seems to emerge when talking about the state-federal dynamic is the polarization in our political system. What is your take on that?

“Politics will always play in the relationship between the states and federal government. Governors and state legislators need to pay less attention to their partisan flags and more attention to state/federal politics. States share a common interest in this struggle and too often, state leaders neglect their role as a state constitutional leader and act like supplicants to the federal government. Likewise, state government organizations need to pay more attention to federalism.”

How has the state-federal relationship changed since you were governor of Utah?

“Sitting on both sides of the state/federal table left me with a real appreciation for the importance both play. One only need look at the numbers related to total state and federal budgets to understand that the federal government just continues to become more powerful. I believe health care and homeland security are the two most significant categories of state eroding influence. In both cases, the federal government has used its capacity to tax and incur massive debt to entice states into giving up power. There are entire categories of state functions that legislatures depend almost completely on federal appropriations to fund. The consequence is that through it, the sign on their doors may say ‘state government,’ but they operate like branch offices of the federal government.”

If you could have been involved in the effort, how would you shape health care reform that takes into consideration the individuality of each state’s circumstances?

“It is difficult to answer such a question in limited words. However, as a start, I would encourage federal legislation that established a national expectation each state would develop a plan to assure that within a specific time limit, every citizen can buy an affordable health insurance policy. I would allow states great flexibility and provide them with a series of tools. … States would be given the capacity and tools required to completely redesign the Medicaid system. Perhaps most importantly, I would use all the tools at my disposal to hasten the transition away from fee-for-service payment within health care and encourage the marketplace to adopt risk-based payment systems where incentives between patients, payers and providers are aligned.”

The EPA recently issued new regulations limiting the greenhouse gas emissions for new power plants. Do you see any legal challenges arising from industry or states?

“The EPA has assumed the posture that as long as their party controls the White House and one chamber of the Congress, that they are free to interpret the limits of our power in the most aggressive way possible—and who’s going to challenge us? Setting aside for a moment the question of global warming to focus just on the governance issues involved, states and industry should and will challenge this action. This is a classic example of how the federal government usurps power of states.”

Read the full interview with Mike Leavitt at capitolideas.csg.org.
The drafters of the U.S. Constitution established the world's first federal system by delegating specific powers to Congress in Article 1, Section 8 reserving unspecified powers to the states and empowering Congress and state legislatures to employ concurrent powers, including taxation. The drafters decided it would be undesirable to have a strict division of regulatory powers and authorized Congress to remove state regulatory powers in response to new developments without a constitutional amendment(s). The 13th, 14th, 15th, 19th, 24th and 26th amendments to the Constitution delegated additional pre-emption powers to Congress.

Congressional pre-emption—or nullification—refers to a statute removing regulatory powers from state and local governments. A pre-emption act can range in length from less than one page to hundreds of pages and may be simple or exceptionally complex. Congress in recent decades included one or more pre-emption statutes in omnibus budget reconciliation acts and appropriations acts that are hundreds of pages in length, as well as in other pre-emption acts. As a result, the total number of pre-emption acts is higher than the total number of individual pre-emption bills signed into law by presidents. The amount of regulatory authority removed from states in a field by a pre-emption act ranges from little to all.

BY JOSEPH F. ZIMMERMAN
Professor, Rockefeller College of Public Affairs and Policy, State University of New York

PRIMER ON PRE-EMPTION

The subject matter of pre-emption acts has changed over the years. Nineteenth century acts focused principally on bankruptcy, civil rights, false claims and interstate commerce. The early decades of the 20th century witnessed super-session acts relating to bankruptcy, firearms, health, interstate commerce, labor relations, safety, securities and transportation.


CONGRESSIONAL POWERS »
Congress lacks authority to directly pre-empt the vast array of powers the states possess to deliver services to their residents unless the services are provided in a discriminatory manner. Congress, however, influences the provision of services by means of conditions attached to grants-in-aid.

Congress also has employed its pre-emption powers since 1978 to nearly completely deregulate the banking, communications, energy and transportation industries, while simultaneously increasing the regulation of state and local governments as polities.

A pre-emption statute may contain a mandate requiring states to initiate a specified action and/or a restraint forbidding states to initiate an action, such as dumping sewage sludge in oceans. State government officers often object to mandates and restraints because of their associated costs.

SUBJECT MATTER »
The subject matter of pre-emption acts has changed over the years. Nineteenth century acts focused principally on bankruptcy, civil rights, false claims and interstate commerce. The early decades of the 20th century witnessed super-session acts relating to bankruptcy, firearms, health, interstate commerce, labor relations, safety, securities and transportation.

**PRE-EMPTION AND NULLIFICATION | hot topic**

**TYPES OF PRE-EMPTION**

The complexity of pre-emption is revealed by classifying its various types:

01 Partial pre-emption removing only part of the powers of states in a regulatory field (Commodities Futures Act of 2000).

02 Complete pre-emption removing from states all regulatory powers in a given field (Patent Act of 1790).

03 Minimum standards pre-emption requiring states to establish minimum regulatory standards in a regulatory field or lose all regulatory powers in the field (Air Quality Act of 1967).

04 Maximum standards pre-emption placing caps on the stringency of state regulations (Gramm-Leach-Bliley Financial Modernization Act of 1999).

05 Procedural pre-emption specifying the appeals procedure (Gramm-Leach-Bliley Financial Modernization Act of 1999).

06 Contingent pre-emption removing regulatory powers from a state only if a specified condition(s) exists within the state (Voting Rights Act of 1965).

07 Complete pre-emption providing for a limited regulatory authority turn-back to states (United States Grain Standards Act of 1968).

08 Complete pre-emption authorizing cooperative state enforcement (Consumer Credit Reporting Reform Act of 1996).

09 Complete pre-emption exempting from pre-emption a state whose legislature enacts a specified uniform state law (Electronic Signatures Act of 2000).

10 Complete pre-emption allowing states to enact only a regulatory standard identical to the federal standard (Health and Safety Act of 1986).

**PRE-EMPTION PACE**

Congress first exercised its pre-emption powers by enacting the Copyright Act of 1790 and the Patent Act of 1790 completely removing these powers from the states. The pace of enactment of pre-emption statutes initially was slow, with only 29 such statutes enacted by the end of the 19th century.

The enactment pace began to increase in the 1960s with 47 enactments and reached a peak of 160 enactments from 2000 to 2009. As of Sept. 17, 2013, there were 702 separate pre-emption statutes. Only two such statutes were enacted in 2013 as the result of divided political party control of the two houses of Congress. Congress can devolve any of its delegated powers to states, except coinage, as illustrated by the McCarran-Ferguson Act of 1945 devolving power to states to regulate the insurance industry.

**‘LAW OF THE LAND’**

Article VI of the United States Constitution stipulates all laws enacted by Congress and treaties entered into by the United States with foreign nations are “the supreme law of the land.” Conflict pre-emption refers to a conflict between a state statute and a congressional act or a treaty. Not all conflicting state laws are invalid. The U.S. Supreme Court on a number of occasions opined a conflict between a state statute and a congressional statute is not of sufficient magnitude to trigger “the supreme law of the land” clause.

It is not uncommon for an author to cite the clause and the interstate commerce clause as authority for Congress to pre-empt state laws. A pre-emption statute, however, also may be based upon the power of Congress to regulate bankruptcies, copyrights, naturalization, patents and taxation. Congress amended a number of complete pre-emption statutes, such as ones pertaining to grain standards and railroad safety, in recognition of the fact states can play important roles in administering the statutes.

**STATE OPPOSITION**

State officials do not always oppose a pre-emption bill introduced in Congress, and on occasion urge Congress to enact a pre-emption statute because interstate cooperation is unable to solve a major problem.

The National Governors Association in 1980-81, for example, urged Congress to establish national standards for truck weights and lengths. State government officials also were unable to solve the problem created by commercial vehicle drivers who, holding operator licenses issued by several sister states, continue to drive with a license issued by one state after a license suspension or revocation by another state for a serious motor vehicle violation. State officials supported enactment of the Commercial Motor Vehicle Safety Act of 1986 authorizing states to continue to issue commercial driver’s licenses and making possession or more than one such license a federal crime.

**STATE POWERS**

The number of pre-emption statutes enacted during a given time period is not an accurate measure of the amount and the importance of regulatory powers removed from state governments. States retain significant regulatory powers and, since 1965, have been exercising them more broadly and frequently in response to congressional enactment of five minimum standards pre-emption acts.

Changes in the global economy, inventions and technological innovations, and lobbying by business, civil rights, environmental, telecommunications and other interest groups will result in Congress continuously pre-empting—completely or partially—the regulatory powers of state and local governments unless state legislatures initiate additional actions to harmonize their regulatory laws and implement administrative rules and regulations. Harmonization can be achieved by enactment of reciprocity statutes, uniform state laws and interstate compacts that create a commission with regulatory powers.

**PRE-EMPTING PRE-EMPTION**

PHOENIX—Gun rights supporters stood outside the Capitol in January during a Guns Across America rally. Arizona is one of several states that have adopted laws prohibiting enforcement of federal gun statutes. Congress has passed a number of pre-emption acts related to firearms in the early 20th century.

© AP Photo/Matt York
A MARRIAGE OF MONEY
Understanding the Interrelationship of Federal and State Government Finances

The relationship between federal and state finances is complex, not well understood and vital to almost every aspect of Americans’ lives. Federal and state tax dollars jointly support schools, roads, health care, public safety and other key programs. This partnership, however, is under pressure from the enormous fiscal challenges of the past several years and the ongoing fiscal uncertainty at the federal level. An informed conversation using real data on the state impact of federal policies could help policymakers make the tough choices required to put all levels of government on a path to fiscal stability.

A dialogue is critical because federal and state finances are closely intertwined. Federal grants for health care, education, transportation and other programs make up roughly a third of state budgets, ranging from 24 percent in Alaska to 49 percent in Mississippi in 2011, the last year for which complete data are available.

Beyond that, total federal spending levels in states—on grants, contracts, salaries and direct payments to individuals for programs such as Social Security—are significant relative to the states’ overall economies, equivalent to between 12 percent of state gross domestic product in Delaware to 36 percent of state GDP in New Mexico, in 2010. In addition, many state-level fiscal policies piggyback on federal policies. Thirty-seven states, for example, use a federal definition of income to calculate state income taxes. This means federal spending and tax code changes affect state economies and budgets, which states try to anticipate and prepare for.

The multiple and varied links between federal and state finances mean the ongoing federal budget stalemate creates uncertainty at all levels of government. Even though the Budget Control Act of 2011 put in place mechanisms to reduce the federal deficit through the 2021 fiscal year, until Congress agrees on a full-year budget for 2014, it is unclear which programs will be cut to achieve the required savings.

Disagreements over federal budgets are nothing new. Congress has not enacted a budget by the start of the fiscal year since 1997. But this year, uncertainty about the federal budget has reached a new level. Prior to implementation of the sequester in March, federal agencies and states received little guidance on how the cuts would be made, making it hard for them to plan. Indeed, the Office of Management and Budget did not finish issuing official guidance on sequester implementation until after the sequester took effect. For certain programs, such as the U.S. Forest Service’s Secure Rural Schools payments, federal funding was distributed to the states before the sequester, and the Forest Service...
subsequently told states to return a portion of that funding. For the 2014 fiscal year, the story has not changed. Congress once again could not agree on an overall spending plan through the regular appropriations process. Indeed, uncertainty ratcheted higher during the government shutdown. As of mid-October, it remained unclear when the shutdown would end and whether funds would be provided on a temporary or full-year basis. States may not know what level of federal funding to expect until well into their budget year.

This leaves most states in a bind because their own fiscal years started July 1. Unlike the federal government, states have to balance their budgets every year. They’ve already made difficult choices in balancing revenue and spending priorities. If the federal funding they expect falls short, states will need to make another round of tough decisions. As one state budget director put it, the ongoing uncertainty at the federal level leaves states flying blind when it comes to managing their current-year budgets and making plans for the next fiscal year.

All of this uncertainty comes as states and their local governments are especially vulnerable to changes in federal spending. State revenues have been slow to recover from the Great Recession of 2007-09. And, although states are replenishing their rainy day funds, on average they are still well below their peak in 2006. Local governments are also feeling fiscal pressures, as property taxes and state aid dropped simultaneously in 2010, for the first time since 1980, and remain below prerecession levels.

During this period of fragile economic recovery and heightened federal budget uncertainty, a dialogue between the federal government and states is needed to help promote fiscal stability at both levels of government. In the past, there were formalized intergovernmental conversations through a federal advisory committee, agency offices and congressional committees—all of which helped inform federal-state relations on an ongoing basis. These have mostly been disbanded or diverted to other responsibilities.

Recent history suggests that a formal process for a dialogue can be helpful during periods of uncertainty. The federal government coordinated with the states to respond to the perceived threat of Y2K computer problems at the end of the 20th century and to implement the American Recovery and Reinvestment Act of 2009. There are also coordination mechanisms in place for disaster response such as that used in the aftermath of Hurricane Sandy in 2012. But those coordination efforts were project-focused and of limited duration.

Going forward, state and federal officials need to come to a neutral table equipped with information on how federal policies affect state budgets and economies, and how state and federal policies could be better coordinated to achieve mutual goals.

Our current fiscal and economic challenges shine a spotlight on the federal-state relationship in ways that could lead to innovation and improvement. Pew seeks to provide clear analyses of the federal-state fiscal relationship to promote informed decision-making on the federal budget and tax policy that takes the impact on all levels of government into account and supports long-term fiscal stability. [4]
During and after the recession, states became much more reliant on the federal government to fund programs, primarily due to an influx of money from the American Recovery and Reinvestment Act, while simultaneously experiencing faltering tax collections. The percentage of state revenues coming from the federal government has dropped slightly since hitting a peak in 2010, but as the slow economic recovery continues, the overall trend remains the same—an increasing portion of state revenues and expenditures comes from the federal government.

Federal grants to states in 2011 made up more than a third—34.7 percent—of state government general revenue, down slightly from 35.5 percent in 2010, but up from 30.4 percent in 2009. In 2011, the largest and fastest growing category of direct revenue from the federal government was public welfare, which includes Medicaid. This category alone totaled $332.6 billion or 58 percent of grants to states and grew 5.3 percent from 2010 to 2011, the most recent data available. For comparison, federal education grant spending to states totaled $104.6 billion in 2011 and decreased 0.9 percent over 2010.
Federal grants provided $1 of every $3 in state revenues in 2011.

Per cent of state expenditures from federal funds, 2010

Massachusetts 10.7%

Federal Funds, State Benefits
Kinston, N.C.—Former North Carolina Gov. Bev Perdue joined dignitaries during the dedication ceremony for the State Veterans Home in December 2012. About two-thirds of the cost for the home and another 100-bed facility in Swannanoa came from the 2009 American Recovery and Reinvestment Act. The home is a concrete example of the interrelationship of state and federal funding.

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Among the benefits:

» Government inefficiency is lower and output per worker is significantly higher in federal governments than in dictatorships or even in unitary democracies.

» Democratic participation and the likelihood of an orderly transition between governments are both higher in federal governments, particularly so as an improvement over unitary dictatorships.

» Economic property rights and political and civil rights are higher too in federal democracies.

"By each of our value measures federal governance appears to deliver on its promised federal outcome," he wrote. "Even on those dimensions where federal governance is typically thought to be counterproductive—educational opportunities, health outcomes, and economic opportunities as measured by income equality—federal democracies do best on average.”

It is one of the happy accidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory, and try novel social and economic experiments without risk to the rest of the country.”

—Justice Louis Brandeis, in his dissenting opinion in New State Ice Co. v. Liebmann in 1932
NEW LAWS CHALLENGING FEDERAL, STATE GOVERNMENTS

States and even local governments are passing or attempting to pass legislation either challenging federal laws or attempting to redraw the states themselves. In addition to bills aimed at nullifying federal marijuana laws and the Affordable Care Act, here are some laws that have been passed or introduced recently.

**Arizona:** Senate Concurrent Resolution 1016, which will be on the 2014 ballot, would allow the governor, the legislature or voters to refuse to use state resources or personnel on any federal law or action they deem to be unconstitutional.

**California:** Supervisors in one northern California county voted in September to break away from the state.

**Colorado:** Eight northern counties are pushing to form a new state of Northern Colorado and secede from the rest of Colorado.

**Maryland:** The Western Maryland Initiative is a new effort to break off five western counties to form its own state government.

**Missouri:** Gov. Jay Nixon in July vetoed a bill that would have prevented the state from enforcing federal gun laws.

**Wyoming:** House Bill 104, called the Firearms Protection Act, passed the House in February. It would have made it illegal for state police officers to enforce specific federal gun legislation passed after Jan. 1, 2013.

**Federal government:** Even Congress is getting in on the act. One version of the Farm Bill working its way through Congress would nullify state laws that impose additional standards on agricultural products shipped in from another state.

**GOING OUT ON THEIR OWN**

Holly Jacobs, right, Mark Jacobs and Richard Elam, left, all from Macon, Mo., right, hold signs and flags at a rally on the south lawn of the Missouri State Capital in Jefferson City, Mo., in September to override Gov. Jay Nixon’s veto of a bill that attempted to nullify certain federal gun laws. Top right is the town of Yreka, where the Siskiyou County Board of Supervisors voted 4-1 Sept. 3, 2013, in favor of separating from the state. The vote appears mostly symbolic since secession would require approval from the state legislature and Congress, but supporters say it would restore local control over decision-making. They want other rural counties in northern California and southern Oregon to join them in the creation of a new state called the State of Jefferson.
The U.S. Supreme Court decision to uphold the Patient Protection and Affordable Care Act will have some impact on federal-state relations. It’ll just take some time to see what that impact is.

“Ask me in a hundred years,” Lisa Soronen, executive director of the State and Local Legal Center, said during a panel discussion on federalism during CSG’s 2013 National Conference in Kansas City, Mo., in September.

The decision on the Affordable Care Act was a little different than the Court’s other decisions on pre-emption in the last term. Of the five cases the Supreme Court heard on pre-emption, Soronen said, three were decided against the states. “Pre-emption didn’t fare all that well.”

In the Affordable Care Act case, the Court upheld Congress’ individual mandate, but as a tax. In fact, five justices found the insurance mandate was not constitutional under the Commerce Clause, a bedrock principle of federalism. But Soronen downplayed the significance of the decision on federalism.

“There are just not that many things that are like health care,” she said. In fact, Soronen said in three other blockbuster cases—the federal Defense of Marriage Act, Arizona immigration law and the Shelby County, Ala., voting rights act case—states won major victories on federalism arguments.

The Court ruled, however, that states must be allowed to choose whether to expand their Medicaid programs to new categories of eligible enrollees. The Court found the threat to defund states’ existing programs was too coercive.

Now, the health care reform ball is in the states’ court.

‘Amazing Deal’

U.S. Department of Health and Human Services Secretary Kathleen Sebelius knows what she would do if she was still governor of Kansas.

“I can tell you if the deal that currently is on the table for states around the country to expand Medicaid mostly on the federal dime was offered to me, … I would have jumped at the offer,” she said. “The offer of 100 percent funding for the first three years and a gradual reduction where the state government never pays more than 10 percent over a decade is a pretty amazing and unique federal deal.”

Matt Salo, executive director of the National Association of Medicaid Directors, said one major concern from states was this: “What if Congress reneges on the funding and leaves the states holding the bag?”

Sebelius recognizes that is a concern.

“I hear that every day from various governors,” she said.

But, she said, states would face no penalty if they decided to drop the expansion. Some states included language in the legislation that, if the federal formula changes, they would leave the expansion.

“I think that is a totally reasonable precedent to set,” Sebelius said.

The Yes and No of Expansion

Salo said money is a huge factor in the expansion decisions by many states. Some states, he said, have wanted to cover more of their uninsured population. Under the Affordable Care Act, it now will cost them much less to do so. Their attitude, he said, is this: “Now you are giving us more money—great.”

In some cases, the federal money will replace state and county health expenditures, an added bonus, he said.

While money is also a factor for those states that are not expanding Medicaid, Salo said, many states said no for two reasons—politics and ideology.

“Clearly there are a number of states where the governor or legislature has run what is essentially a political campaign against the Affordable Care Act,” Salo told CSG. “They fear political backlash. They can’t reverse their positions. They believe to do so would end their political careers with a far right challenge.”

Salo said the ideological challenge in some states is the primary factor. One solution is to “expand but add more personal responsibility,” such as the Pennsylvania proposal where enrollees must be actively searching for a job. Michigan’s proposal includes a lifetime limit on eligibility. Other states have taken up proposals for drug testing enrollees.

Another solution is to make Medicaid look like the private insurance market, not an entitlement program. Salo said Arkansas is the prime example of this approach.

“They came into the breach with a third way,” he said.
Now Iowa and Indiana also are looking to private market solutions. Other states—including Florida, New Hampshire, North Carolina and Virginia—are moving to reform what they characterize as a broken Medicaid system before moving into expansion.

While the federal money tempts some states, other state leaders are mounting a principled opposition, refusing to be complicit with the federal funding and deficit problems, Salo said.

He said it is significant that a number of states are working on their own approaches to health care reform and addressing high rates of uninsured people—finding “something other than Obamacare or the highway.”

The Arkansas Solution

Just days before the Oct. 1 opening date for its state-run insurance exchange, Arkansas Gov. Mike Beebe received a call from Sebelius approving the innovative state plan to use Medicaid expansion funds to provide premium assistance to low-income individuals to purchase private insurance through the exchange.

Rep. John Burris, chair of the Arkansas House Public Health, Labor and Welfare Committee, laid out the history of the Arkansas Health Care Independence Act of 2013 at the CSG West annual meeting in August. He called it the legislature’s “policy alternative to the Patient Protection and Affordable Care Act’s one-size-fits-all, state-based method of expanding the Medicaid program.”

Instead of perpetuating a broken model of Medicaid that shifts costs to private insurance premiums, Burris said, the Arkansas law would mitigate the cost-shift by adding more individuals to the private market. The larger private market would determine fair provider rates. In addition, Burris said using the private option would avoid the administrative overhead and government agency growth of growing Medicaid.

According to Burris, the law will transition existing Medicaid and state children’s health insurance program populations from Medicaid to the private option in 2015. The law also calls for health savings accounts and creative cost sharing plans, encouraging personal responsibility of individuals dependent upon government assistance.

In a Sept. 28, interview with the Columbia, Mo., Daily Tribune, Burris characterized his state’s action as making the best of a problematic federal-state partnership.

“I just think if we’re ever going to be serious about entitlement reform, this is a key first step,” he said. “The many, many bad consequences of the (Affordable Care Act) gave Arkansas the opportunity to try and manage those consequences to make them as least harmful as possible.”

Beebe also addressed the federal-state partnership in a press release after the federal government approved the Arkansas private option. He said Sebelius’ blessing of the plan gives the state flexibility to make it a reality.

“(N)ow we will focus on getting this insurance to the Arkansans who need it to lead healthier, more productive lives,” he said.
The oil boom in North Dakota has filled some state leaders with envy. It’s not just because North Dakota has the lowest unemployment rate in the country at 3 percent. Or that its state budget never really took a big hit from the Great Recession.

Part of the reason, especially for some lawmakers in Western states, is that they, too, could be reaping similar benefits from the new drilling techniques that have positioned North Dakota as the nation’s second-highest oil-producing state.

“The Institute for Energy Research says there’s more than $150 trillion in mineral value locked up in federally controlled land,” said Utah Rep. Ken Ivory. “That’s nine times our debt locked up … just sitting there.”

In fact, the institute estimates the Green River Formation in Colorado, Utah and Wyoming contains 982 billion barrels of oil shale, which could be extracted using hydraulic fracturing.

Ivory and other Western lawmakers would like to see the ability to extract that and other minerals grow, and they’d like for their states to benefit. That’s one reason behind a renewed push for states to gain title and control of the federal lands in the West.

Utah, along with New Mexico, Arizona, Idaho and Wyoming, all have passed bills or resolutions challenging federal ownership of land within their boundaries over the past few years.

Martin Nie, a professor of natural resources policy at the University of Montana and self-professed champion of federal land management, said this latest effort is part of a long-running controversy. He views the effort as a continuation of the Sagebrush Rebellion that began in the late 1970s when Western states challenged the notion of federal ownership.

“In a way, it’s kind of a flare-up of this long-simmering debate,” Nie said.

Ivory and others see it differently and believe all they’re asking is the same thing the federal government has given to states in other parts of the country—title to land as laid out in their statehood enabling acts.

Ivory points to maps that illustrate the vast acreage controlled by the federal government in the West—66 percent of Utah and 81 percent of Nevada is federal land—and the relatively small percentage of federal land in Eastern states, which ranges from 0.3 percent in Connecticut and Iowa to 13.4 percent in New Hampshire.

“Why the difference?” he asks.

**Federal Lands**

The federal government owns about 28 percent of the 2.27 billion acres in the United States, according to a 2012 report the Federation of American Scientists prepared for Congress. Four federal agencies—the Forest Service, National Park Service, Bureau of Land Management and the Department of the Interior—administer 609 million acres, primarily in the West and Alaska.

Nie, who testified before the Montana legislature when it discussed the possibility of a takeover of federal lands in the state, said states have legitimate concerns about the way federal agencies are managing the lands. In Montana, for instance, one of the driving factors is frustration with the BLM and the Forest Service over fire management issues, Nie said.

“Of course, there are plenty of problems on federal lands and each one of those deserves a careful study or thoughtful approach, but they’re not going to be solved by conveying federal lands to the states,” Nie said.

He points to the benefits these federal lands bring to Western states.

In fact, a report by Headwaters Economics, “West is Best: How Public Lands in the West Create a Competitive Economic Advantage,” says many nonmetro counties in Western states are leveraging the presence of public land to attract growing industries with high-paying jobs.

The report shows a loss of more than 33,000 jobs in manufacturing from 2001 to 2010 in those areas, but an increase of more than 78,700 health care and social assistance jobs in that same time frame. The Western population more than doubled from 1970 to 2010, from nearly 34 million people to more than 70 million people.

A 2012 poll published in The Hill Congress blog found that nine in 10 Westerners agreed public lands are an essential part of their state’s economy. Those public lands include state and national parks, forests, monuments and wildlife areas, which 87 percent of all people, and 96 percent of Westerners, in the poll said are an essential part of their state’s quality of life.

But Ivory said the efforts of Western states to take over the federal public lands don’t...
include national parks, national monuments and congressionally designated wilderness. It only includes the BLM and Forest Service lands.

**Energy Resources**

Ivory envisions states operating those lands for multiple uses—drilling for oil and harvesting timber, as well as recreation, hunting, fishing and grazing. While much of the land currently is used for those purposes, Ivory believes the states could manage it much better.

He points to school trust lands, managed by the states, that generate $32 an acre for public education in Western states. Citing a 1996 study by Intertech Services Corporation prepared for a Nevada county, Ivory said an acre of public land under state management yields an average of $6.29 per acre, while an acre of federally managed public land loses $1.86 an acre.

In addition, Ivory said because of permitting over the past 10 years, energy production on state and private land is up 27 percent, while it’s down 15 percent on federal land, where most of the resources lie.

Ivory contends states could use the money generated from those energy resources.

“It really is the only solution big enough to better fund education, better care for the lands, protect access,” said Ivory.

Nie said the purposes of school trust land versus the BLM and Forest Service lands are distinctly different. He understands the concerns of states regarding the funding they get from payment in lieu of taxes—or PILT.

The federal government transferred nearly $3 billion from federal land payments, which include oil and gas leasing revenue, to the states in 2012. Nie said. But there is a question as to whether Congress will reauthorize the PILT and secure schools program that Western states depend on.

**Prospects for Change**

Nie believes the current debate will end up like many before—with the federal government maintaining control of the public lands to which it now holds title, mainly because the arguments are much the same as before.

Ivory, however, is confident the Western states are making headway. He believes it’s a true federalism issue that seems to be gaining traction across the country. South Carolina, for one, recently passed a resolution supporting the efforts in the West. While he’s researching the legal arguments, Ivory knows he also needs to make a political argument to gain support from other states.

“When you think of federalism, the states are only an effective check on the federal government as a team,” he said. “This notion of property and the right and control of property and self-governance is starting to rally states and communities and groups together as probably one of the best working examples of federalism, where we start to build that team to become a check.”
The legislative and executive branches have been in a longstanding gridlock, making it difficult to assess their standing on federalism.

But the U.S. Supreme Court has made its standing clear. The last two Supreme Court terms have produced four blockbuster decisions. All four of these cases have one thing in common—federalism.

In the Affordable Care Act case, the Court concluded the individual mandate violates the Commerce Clause but held the mandate is constitutional as a tax. In the Arizona case, the Court held that federal law pre-empts three provisions of the state’s immigration law but not the most controversial provision—“show me your papers.”

In one of the same-sex marriage cases last term, the Court held that section 3 of the Defense of Marriage Act, which defined marriage as only between a man and a woman for federal law purposes, is unconstitutional. Justice Anthony Kennedy’s majority opinion reasoned that the federal government has always deferred to the states on the issue of marriage.

In the Voting Rights Act case, the Court relied on the “fundamental principle of equal sovereignty” among the states to strike down the law’s coverage formula, which defined the states that had to seek federal preclearance for changes to election requirements.

Federalism has fared very well in these four decisions. All four cases had at least a partially good outcome from a separation of powers perspective.

This term, the Court will take up a number of cases involving controversial issues affecting the states. Two of these issues—religion and abortion—haven’t been tackled
much by the Roberts-led court. Both involve First Amendment challenges to a state law or a local policy.

First Amendment

Town of Greece v. Galloway might redefine the Court’s approach to legislative prayer practices.

In the 1983 case, Marsh v. Chambers, the Court held that a state legislature could, without violating the First Amendment, hire a chaplain to deliver a prayer at the beginning of its sessions as long as the practice was not “exploited to proselytize or advance any one, or to disparage any other, faith or belief.”

The official policy in the Town of Greece, N.Y., allows any person of any or no denomination to deliver an invocation at the beginning of town board meetings, and the town does not approve or even examine the prayer in advance. In practice, all but four invocations have been led by Christians.

The Court will review a “totality of the circumstances” test used by the Second Circuit to declare the town’s practice an unconstitutional violation of the Establishment Clause and revisit its holding in Marsh for the first time in three decades. If the Court holds that the Town of Greece’s prayer policy is unconstitutional, state legislatures may have to change their prayer policies and practices.

In McCullen v. Coakley, the Court will examine the constitutionality of a Massachusetts law that creates a 35-foot “buffer zone” around reproductive health care facilities into which demonstrators are not allowed to enter. Two other states have adopted similar statutes.

A 2008 case, Hill v. Colorado, upheld a similar law against a First Amendment challenge because it addressed a legitimate state concern for the safety and privacy of individuals using the facilities, was content-neutral in that it applied to all demonstrators equally regardless of viewpoint, and regulated the time, place and manner of speech without foreclosing or unduly burdening the right of demonstrators to communicate their message.

A broad ruling striking down a Massachusetts statute could have sweeping consequences beyond this particular context, as state governments are continually challenged to strike a balance between free speech rights and the duty to protect their residents from harassment at clinics, funerals, political events and other locations. The State and Local Legal Center will file an amicus brief in this case.

Affirmative Action

The Roberts-led court has tackled another controversial subject coming up this term—affirmative action—more than once.

Schuette v. Coalition to Defend Affirmative Action is more significant than previous affirmative action cases for federalism purposes because it involves a challenge to a state constitutional amendment.

The Court will consider the constitutionality of a 2006 Michigan state constitutional amendment that prevents the state and its universities from giving preferential treatment to any individual or group on the basis of race, relevant here in the university admissions context.

Unlike last term’s Fisher v. University of Texas at Austin, which deferred a ruling on the constitutionality of an affirmative action program, Schuette asks the Court to determine whether banning affirmative action altogether violates the 14th Amendment’s Equal Protection Clause.

As in Fisher, Justice Elena Kagan has recused herself from the case, leaving eight justices to consider the issues and making a broad pro-affirmative action ruling unlikely.

EPA Regulations

While Environmental Protection Agency v. EME Homer City Generation involves a significant number of states suing each other, federalism is at the heart of one of the questions the Court will decide. This case focuses on the scope of the EPA’s authority to regulate states contributing to air pollution in other states downwind.

Under the Clean Air Act, the EPA sets air quality standards and the states create state implementation plans to achieve them. The EPA may impose its own federal implementation plan only if a state fails to submit or fails to correct a state plan rejected by the federal government.

If the Court does not dismiss the case for a lack of federal jurisdiction, it will decide whether a federal implementation plan may be implemented based on a state’s failure to submit an adequate state implementation plan before the EPA had defined downwind pollution reduction targets, and whether the Clean Air Act permits the EPA to define a state’s contribution to pollution downwind in terms of cost-effective pollution controls or solely in terms of the physical amount of pollution.

So far the Supreme Court hasn’t accepted a federalism blockbuster for its current term. The combination of cases the Court has accepted, however, should create sufficient intrigue for anyone interested in federalism.
WHAT IS ONE OF THE BIGGEST ISSUES YOUR STATE IS HAVING WITH THE FEDERAL GOVERNMENT?

MEDICAID

“The biggest federalism issue facing my state, certainly one of the biggest federalism issues, relates to the Affordable Care Act. … I think as state policymakers, we need to keep our focus on where we can make a difference. Medicaid expansion is very controversial, needless to say, but I think we have to remember Medicaid is a program managed by the states. If Medicaid expansion is going to be where we end up, then as a state policymaker I’d like to take a proactive approach and try to find ways to innovate through Medicaid, make Medicaid better, frankly.”

JEFF THOMPSON
Idaho Representative

FEDERAL LANDS

“Federal lands—three-quarters of the state of Idaho, most of the state, is in the ownership of the federal government. We, as well as a lot of states, several states in the Western part of the United States, are drafting legislation and building a coalition to work toward the federal government turning those federal lands back to the states. … States can manage them in more efficient process and the state can participate in more of the revenue being generated from those lands and therefore meaning more education dollars in the actual states.”
WHAT IS ONE OF THE BIGGEST ISSUES YOUR STATE IS HAVING WITH THE FEDERAL GOVERNMENT?

TRANSPORTATION FINANCING

“For Illinois, I think one of the biggest federalism issues we face with regard to transportation is primarily transportation funding. These are projects that take years to develop, require years of planning, and yet it seems the federal government approaches it in two- or three-month continuing resolutions. It’s almost impossible for us to look down the road and see what resources are going to be available so we can start making projects come to fruition. That’s been, I think, a very difficult challenge for our Department of Transportation and for our legislature to try to address that.”

SARA GELSER
Oregon Representative

EDUCATION

“We are one of the states that has received a waiver from No Child Left Behind because we want to change the way we do testing in our state. Instead of looking at where a student is relative to a cut score, we want to see how students are doing year over year. . . . At the same time, we are faced with the loss of our waiver because of concerns about using test scores and payment systems for teachers as a condition of that waiver. The difficulty of having that mandate from the federal government is it doesn’t really give us the room we need to do it the Oregon way.”

SARA GELSER
Oregon Representative

GUN LEGISLATION

“We passed a bill that prohibits federal enforcement of gun laws within the state of Kansas provided the firearm was made within the borders of the state of Kansas and does not go outside the state of Kansas. . . . I think the underlying purpose of that legislation was to test federalism. Do states have the ability to control their own firearms or are we subject to the federal regulations? There are currently a couple of cases pending on this particular issue at the federal level. We believe the federal government will probably bring suit on this law now as well.”

JAY EMLER
Kansas Senator
2012 CSG Chair

ELAINE NEKRITZ
Illinois Representative
Acknowledge the Past, but Look to the Future

LOOK AT THE POSITIVES.
Kincaid said while the term federalism may be looked upon with disdain in politics these days, it’s a form of government that can be very equal. “You have self-rule in the sense that each state governs itself,” he said. “The federal government has its own sphere of authority. At the same time, the two have to work together. … Ideally, you’re looking for a balance of power between the federal government and the states whereby neither one dominates the other.”

UNDERSTAND THE HISTORY.
Kincaid said the U.S. has had dual federalism for most of its history, where the federal and state governments don’t work together much. In the 1930s, it changed to cooperative federalism, where states and the federal government worked more closely together to combat the Great Depression. With the rise of the Civil Rights movement, environmental awareness and Supreme Court rulings that weakened the old party system in the ‘60s, the balance of power began shifting. “I would term it as the rise of coercive federalism, in which the federal government has definitely become top dog in the system,” Kincaid said. “It’s conditions attached to federal aid, pre-emptions to state power, mandates on the states. In terms of making policy, the federal government predominates.” But, Kincaid said, he believes there are ways states can have more influence over the federal government.

MAKE YOUR VOICE HEARD.
Kincaid believes state leaders must strive to be involved. “Have more input into federal policymaking in the first place,” Kincaid said. Think about how “to have more voice before the federal government enacts major legislation like the Affordable Care Act.” While states had some input into health care reform, Kincaid said Congress and the president drove the debate. States also can influence environmental legislation, he said, but it will take an effort to “put more pressure on … members of Congress to have the state point of view reflected in Congressional deliberations.”

PRESS FOR FLEXIBILITY.
Kincaid said legislators can press state program administrators, whether it’s in things like education or Medicaid, to push for more flexibility in how the state implements those programs. “We’re seeing the federal government willing to do that, I think, a bit more,” he said. “Although the states have to comply with the federal government, it’s much more amenable to finding ways to adapt to state and local circumstances.”

LOOK FOR AREAS ON INNOVATION.
Another way states can regain some lost power is to find emerging trends where the law is not yet written, Kincaid said. “Think about emerging issues, like autonomous automobiles, they’re coming down the pike,” Kincaid said. “Ten, 20 years from now, maybe most cars on the highway will be driven by computers. This is an area where the states—and I think they are beginning to legislate in this area—can lead the way in appropriate legislation.” Those state bills, he said, come with the hope that any federal legislation would complement rather than contradict state legislation; it also could reduce the need for federal legislation, he said.
The Council of State Governments was formed in 1933 to offer states a way to share capitol ideas. CSG’s 2013 Chair Gary Stevens, an Alaska state senator, says CSG has never been a stronger or more relevant organization. CSG continues to fulfill its mission, to champion excellence in state governments to advance the common good. One way is through the CSG Henry Toll Fellows program. Learn how the 2013 Toll Fellows view leadership and get a take from the Marshall Foundation on what it takes to be a good leader.
This year, The Council of State Governments celebrates its 80th anniversary as a force for positive change. CSG has never been stronger or more relevant as an organization. Throughout our history, we have reflected the priorities of our members as we use our resources to focus on critical issues facing the states. I am very proud of all CSG does to build stronger states and to help state leaders successfully navigate the complex challenges we face.

Our mission is simple, to champion excellence in state governments to advance the common good. During my years as the national chair, I have enjoyed sharing the CSG story with our members throughout the nation. I consistently hear the refrain, “I didn’t know CSG did that!” With that in mind, let me share a few of the reasons all of us can be proud of CSG.

» The CSG Justice Center makes a big impact in helping states invest resources more wisely and achieve better results in public safety and criminal justice. The growth of our Justice Center demonstrates the strong appeal of research based, data driven decision-making in our state capitols.

» The CSG National Center for Interstate Compacts is finding new ways to craft cost-effective, multistate solutions.

» CSG publications, from The Book of the States to this award-winning magazine, Capitol Ideas, inform and inspire leaders in the states.

» The development of leadership skills remains an important focus of CSG’s work at both the regional and national level. We created more programming this year to bring leadership training directly to the state capitols.

» CSG’s online resources continue to expand and the CSG Knowledge Center has become a go-to resource for best practices and solid data.

» Our new policy academy series is bringing state leaders together around vital issues and providing valuable opportunities for issue leaders to share their success stories.
The organizations that affiliate with CSG also bring strength and expertise to the CSG family and allow all of our component parts to operate much more cost-effectively.

Our presence in Washington, D.C., has advanced the interests of states as we have advocated for legislation such as the Marketplace Fairness Act, sought to protect the tax-exempt status of municipal bonds and spearheaded the effort to secure funds to support state export promotion.

We also play a vital role in advocating for the states through the State and Local Legal Center, which provides a much-needed voice for the states in the federal courts.

CSG’s greatest strength is our four strong regional organizations. The activities and publications of our regional organizations are an invaluable source of information and the regional annual meetings are a great opportunity to learn from each other and forge strong friendships.

The partnership of many private-sector sponsors and associates helps to fund and expand our impact with state leaders. I am grateful for all the ways they invest in our programming.

This issue of Capitol Ideas focuses on federalism. That focus reflects my interest in making federalism a priority during my chairmanship. Over the two years of this biennium—including my chairmanship and next year during the chairmanship of Tennessee Senate Majority Leader Mark Norris, CSG will pursue a Focus on Federalism.

The purpose of this effort will be to examine remedies to both the perceived and actual imbalance of power between states and the federal government, with particular attention paid to fiscal federalism—or the implications of federal deficit reduction on the states.

According to the federal Office of Management and Budget, unfunded mandates and regulations cost states, cities and the general public between $44 billion and $62 billion each year.

In the face of federal deficit reduction, it will be vital for states to have maximum flexibility in meeting the needs of their citizens, which is why we will carefully study the cost of federal mandates, regulatory action and pre-emption on the states. CSG’s work will aim to develop a framework to review and react to adverse policies adopted or under consideration at the federal level, including coercive, unfunded and underfunded mandates or overreaching pre-emptions.

Although this is a two-year focus, we plan to build a sustainable organizational emphasis on federalism to support this work at CSG in the years ahead. We look forward to building partnerships with others interested in advancing the proper role of the states in our federal system of government.

This work is not intended to focus on issues that divide us or that have strong partisan overtones. In keeping with CSG’s traditions, we will pursue this effort with a strict non-partisan point of view and involve all three branches of government in the deliberations.

That’s not to say we will shy away from having real discussions about the many complex facets of federalism—but it is to say we will convene this work in ways that advance understanding and bring state leaders together.

The 10th Amendment may be centuries old, but vigilance is still required today if we are to protect the spirit and intent of that amendment and respect the proper role of the states in our system of government.

The states remain our nation’s greatest hope for creating public policy solutions tailored to the needs of each state and region. Through CSG, we can work to forge multistate solutions that do not require federal oversight, mandates or pre-emptions. When states are free to innovate, are given flexibility to pursue customized solutions and are accountable to their own citizens, not agencies in D.C., good things happen for each state and our nation.

It has been my honor to serve as a leader of CSG’s national organization. I appreciate all of the ways in which state leaders support and sustain its work. Without the efforts of many, CSG would not be positioned to champion the cause of the states and empower all state leaders to achieve excellence. It is because of the dedicated state leaders that lead, participate in and support CSG that the organization remains a viable and essential tool for the states.

I have enjoyed the many friendships I have forged during my involvement and I look forward to many more years of helping CSG continue to make a difference for all of us. I invite all state officials to actively join CSG in the work of building a better nation.

CSG isn’t an organization separate from the states; it is where the states come together.
Each year, the **Henry Toll Fellowship Program**, named in honor of CSG’s founder, Henry Wolcott Toll, brings together a group of rising state leaders in Lexington, Ky., for an intense week of leadership training. Participants are encouraged to both evaluate and adapt the way they interact with the world around them—beyond titles, politics and party lines. Designed to help state officials from all three branches take an introspective look at how they view themselves as public servants, colleagues and community members, the program provides a unique experience unlike any other in the country.
Members of the 2013 CSG Toll Fellowship Class by Region; members listed by order in photo.

CSG EAST

Front Row
José Negrón-Fernández, Secretary, Puerto Rico Department of Correction and Rehabilitation
Pamela DeLissio, Pennsylvania Representative

Second Row
Marc Pacheco, Massachusetts Senator
Meaghan Brennan, Director, Budget Development, Planning and Administration Delaware Office of Management and Budget
Alyson Richards, Director of Special Projects and Intergovernmental Affairs, Office of the Vermont Governor

James Albis, Connecticut Representative
Sharon Carson, New Hampshire Senator
Teresa Younger, Executive Director, Connecticut Permanent Commission on the Status of Women
Sean Finnigan, Chief of Staff, Delaware House Majority Caucus
Steve Shurtleff, New Hampshire House Majority Leader
Bryan Townsend, Delaware Senator

CSG SOUTH

First Row
Will Longwitz, Mississippi Senator
Karen Camper, Tennessee House Democratic Floor Leader
Heather Dawes Fiztenhagen, Florida Representative
Bill Sample, Arkansas Senator
Manju Ganeriwala, Virginia State Treasurer
Sannie Overly, Kentucky House Majority Caucus Chair

Second Row
Stephen Goss, Judge, Superior Courts of Georgia, Dougherty Judicial Circuit
Steven Teske, Chief Judge, Georgia Juvenile Court of Clayton County
Jann Hoke, Director, West Virginia Equal Employment Opportunity Office, Office of the Governor
Doug Overbey, Tennessee Senator
Jay Neal, Georgia Representative
Whitney Westerfield, Kentucky Senator

Third Row
Philip Cavanagh, Michigan Representative
Rena Moran, Minnesota Representative
Scot Kelsh, North Dakota Representative
Andrew Gerlach, Cabinet Secretary, South Dakota Department of Revenue

Fourth Row
Grant Barry Anderson, Associate Justice, Minnesota Supreme Court
Philip Boots, Indiana Senator
James Holden, Chief Deputy & General Counsel, Office of the Indiana State Treasurer

CSG MIDWEST

First Row
Valdenia Winn, Kansas Representative
Dan Lederman, South Dakota Senate Majority Whip

Second Row
Tim Mapes, Chief of Staff, Office of the Illinois Speaker
Mary Elizabeth Gill, Judge, Franklin County Court of Common Pleas, Ohio Domestic Relations Division and Juvenile Branch
Katrina Shankland, Wisconsin Representative

Third Row
Philip Cavanagh, Michigan Representative
Rena Moran, Minnesota Representative
Scot Kelsh, North Dakota Representative
Andrew Gerlach, Cabinet Secretary, South Dakota Department of Revenue

Fourth Row
Grant Barry Anderson, Associate Justice, Minnesota Supreme Court
Philip Boots, Indiana Senator
James Holden, Chief Deputy & General Counsel, Office of the Indiana State Treasurer

CSG WEST

First Row
Georgene Louis, New Mexico Representative
Mary Throne, Wyoming House Minority Floor Leader
Linda Newell, Colorado Senator
Sharon Wylie, Washington Representative
Mo Denis, Nevada Senate Majority Leader

Second Row
Tick Segerblom, Nevada Senator
Nan Waller, Presiding Judge, Multnomah County Circuit Court, Oregon Judicial Department
H. Brent Hill, Idaho Senate President Pro Tempore
Brian Ebbert, Assistant Chief Clerk/Parliamentarian, Office of the Chief Clerk, California State Assembly

Third Row
Lance Pruitt, Alaska House Majority Leader
Isaac Choy, Hawaii Representative
Jeffrey Thompson, Idaho Representative
Favorite Leadership Quotes

James Albis, Connecticut Representative
“Leadership and learning are indispensable to each other.” —John F. Kennedy

Sharon Carson, New Hampshire Senator
“There are three essentials to leadership: humility, clarity and courage.” —Fuchan Yuan

Steve Shurtleff, New Hampshire House Majority Leader
“It is amazing what you can accomplish if you do not care who gets the credit.” —Harry S. Truman

Heather Dawes Fitzenhagen, Florida Representative
“The first responsibility of a leader is to define reality. The last is to say thank you. In between, the leader is a servant.” —Max DePree

Mary Elizabeth Gill, Judge, Franklin County Court of Common Pleas, Ohio Domestic Relations Division and Juvenile Branch
“Obstacles are those frightful things you see when you take your eyes off the goal.” —Henry Ford

Steven Teske, Chief Judge, Georgia Juvenile Court of Clayton County
“A genuine leader is not a searcher for consensus but a molder of consensus.” —Martin Luther King, Jr.

Leadership Advice

“You can’t lead without first listening.”
—Grant Barry Anderson, Associate Justice, Minnesota Supreme Court

“Bringing out the best in others; being secure enough to invite input and to utilize an inclusive decision-making process.”
—Pamela DeLissio, Pennsylvania Representative

“A leader must be honest, confident, committed, courageous, creative, and be able to maintain a positive attitude and develop a consensus.”
—Manju Ganeriwala, Virginia State Treasurer

“Be authentic.”
—Linda Newell, Colorado Senator

“The ability to empathize with another person can make a good leader into a great leader.”
—Jann Hoke, Director, West Virginia Equal Employment Opportunity Office, Office of the Governor

“Be still and observe.”
—Isaac Choy, Hawaii Representative

“The key to effective leadership is putting people first.”
—Jeffrey Thompson, Idaho Representative

“Effective leadership requires a balance between empathy and strength.”
—Alyson Richards, Director of Special Projects and Intergovernmental Affairs, Office of the Vermont Governor
“The modesty to listen, and the courage to act.”
—Bryan Townsend, Delaware Senator

“The key to effective leadership is collaboration and listening. Despite what some politicians would like to think, we don’t know it all and we learn new things every day.”
—Dan Lederman, South Dakota Senate Majority Whip

“Finding ways to bring out the best in individuals, and looking for ways all parties can win.”
—Will Longwitz, Mississippi Senator

“Knowing who you are, what you value and what your strengths are and weakness are essential to identifying what you want, how to get there, and how to build and bring people along.”
—Teresa Younger, Executive Director, Connecticut Permanent Commission on the Status of Women

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2014 Applications Now Open!
Applications for the 2014 Henry Toll Fellowship Program are now open online at www.csg.org/tollfellows and will remain open through midnight, May 2, 2014. The program will take place at the Hyatt Regency in Lexington, Ky., Sept. 5–10.

Selection for the CSG Toll Fellow Program is highly competitive. Participants are chosen from all applications received during the 2014 application period. Selection of candidates is made by a panel of nine to 13 Toll Fellowship Program Alumni. Each year only 48 participants are selected—12 from each CSG region.

Participants selected for the program will be announced in early June 2014.

For complete details, visit www.csg.org/tollfellows.
Questions? Contact Kelley Arnold at (800) 800-1910 or tolls@csg.org.

Watch the Toll Fellows take on leadership at www.csg.org/tollfellows.
Public officials at all levels need a type of courage that’s not often taught. They are expected to develop a bold vision for strategic change and to produce results that address the demands and expectations of multiple, often conflicting constituencies. Many are given this responsibility early in their careers. They must have or develop the courage to lead in this complex and constantly changing landscape.

One exemplar of the courage to lead is George C. Marshall. In a long, productive career of public service, Marshall solved some of the biggest, most complicated problems the world had seen.

During nearly 50 years as a career military officer and as a civilian leader, Marshall was a tireless and selfless public servant who was able to find innovative solutions for huge problems. He became Army chief of staff during World War II and later served as secretary of state and secretary of defense. He won the Nobel Peace Prize for establishing the Marshall Plan to save postwar Europe.

Marshall was well known for his ability to take charge, take action, take risks, resist bad ideas, encourage challenges from subordinates, confront authority, and propose bold thinking and action. His candor, commitment and character were hallmarks of his courageous leadership.

How did Marshall—and how do other exceptional public leaders—achieve such success and rise to ever-greater positions of responsibility?


In addressing the dire postwar conditions in Europe, Marshall proposed a bold concept when he unveiled his ideas for the Marshall Plan. He was deliberate in addressing the concerns of many stakeholders. Yet the genius of the Marshall Plan speech that laid out a solution for the economic and psychological problems of western Europe was that it included principles, but avoided specificity.

For instance, Marshall made no mention of dollar amounts of required aid or countries by name to receive that aid. Marshall knew being too specific in his address at Harvard might have divided people in Europe and at home, Newell noted.

“He’s very deliberate and strategic. He wants European buy-in and cooperation among the nations of western Europe,” Newell said.

Marshall also challenged war-weary Americans to sacrifice once again. “He was asking something of the American people, but nothing more than he had asked of himself during his career,” Newell said.

Central to his ability to propose the Marshall Plan and see it enacted was Marshall’s reputation for honesty and candor, his commitment to facing tough problems head on, his capacity for hard work, his eye for detail, his optimism and his selfless service.

After his public life ended, he still served the nation. On June 2, 1953, he entered Westminster Abbey as head of the U.S. delegation to the coronation of Queen Elizabeth II. The crowd stood in tribute. Marshall asked for whom they were standing. “You,” came the reply. That Marshall seemed surprised is evidence of the humility of his character. Six months later, he received the Nobel Peace Prize.

“Leaders today need more than leadership skills. They need statesmanship in service to a transcendent purpose,” Newell said.

Marshall was a model of the exercise of statesmanship. He worked tirelessly on passage of the Marshall Plan legislation with President Harry Truman’s political opponents during
1948, a presidential election year. He launched a public speaking campaign to promote the Marshall Plan and he insisted that Europeans take the lead. He urged Americans to understand the postwar mix of poverty, disease and despair in Europe and to rise above their own needs after nearly two decades of depression at home and war abroad to the majestic heights of helping people they did not know.

The Marshall Plan was not his name for it. Marshall would not have done that. But Truman insisted.

“General, I want the plan to go down in history with your name on it. And don’t give me any argument,” the president told Marshall.

In support of his country, George Catlett Marshall did not oppose the idea because he never refused an order from his president. It was just one more example of the selfless, courageous civil servant that was at the core of who he was.
SLC Awards Recognize Kentucky, Virginia Programs

A panel of government policy experts selected Kentucky’s Vet Connect program and Virginia’s Administrative Segregation Step Down Program as the winners of the 2013 SLC State Transformation in Action Recognition—or STAR—program. The STAR program of the Southern Legislative Conference identifies and promotes state government solutions to regional problems, focusing on innovations that are creative, effective, impactful and transferable.

The programs were selected as SLC STAR programs during the 67th Annual Meeting of the Southern Legislative Conference, held in Mobile, Ala., in July.

Ashwood Receives 2013 Lacy E. Suter Distinguished Service Award

Albert Ashwood, director of the Oklahoma Department of Emergency Management, was named the 2013 recipient of the Lacy E. Suter Distinguished Service Award. The National Emergency Management Association, or NEMA, presents the award each year to an individual who has made outstanding contributions to emergency management over a career.

Ashwood was appointed director of the Oklahoma Department of Emergency Management in August 1997 and is the longest-tenured state emergency management director in the nation. Ashwood served as NEMA president in 2006-07. NEMA presented the Lacy E. Suter award to Ashwood during its 2013 Annual Emergency Management Policy & Leadership Forum in Anchorage, Alaska.

Hogan to Lead MIC3

The Interstate Commission on Educational Opportunity for Military Children has selected Brigadier General Stephen Hogan as the new executive director.

Hogan comes to the commission with a background that reflects the mission of the organization. He is a 30-year veteran of the United States Army, serving in an active component and Army Reserve; he is still a member of the Kentucky National Guard.


National Forum Focuses on Recidivism, Employment

The U.S. Department of Labor Employment and Training Administration, the U.S. Department of Justice’s Bureau of Justice Assistance, The Council of State Governments Justice Center and the Annie E. Casey Foundation in September hosted a national forum that brought together leaders from the fields of criminal justice and workforce development to share perspectives on integrating cross-system strategies to support people returning to their communities after incarceration.

U.S. Secretary of Labor Tom Perez provided introductory remarks and speakers discussed the implications of the framework featured in the recently released white paper Integrated Reentry and Employment Strategies: Reducing Recidivism and Promoting Job Readiness.

For more on the forum, white paper and project, visit csgjusticecenter.org/reentry/the-reentry-and-employment-project.
Montana Hosts CSG West’s Legislative Service Agency/Research Directors Committee

Nonpartisan legislative staff leaders from the Western region participated in both management training and sharing of best legislative management practices during CSG West’s Legislative Service Agency/Research Directors Committee meeting in Montana in September. They learned strategies for managing stress in today’s legislative environment, reviewed public opinion trends shaping the West and discussed how to build better relationships within state capitols.

Members also participated in panels on legislative management, intergenerational challenges, transparency versus confidentiality, technology advances, dealing with partisan gridlock and legislative structures.

2014 NAST Officers Selected

Treasurers elected the 2014 slate of officers during the National Association of State Treasurers meeting in October. Utah Treasurer Richard Ellis will serve as president. Other officers will be: Tennessee Treasurer David Lillard Jr., senior vice president; Washington Treasurer James McIntire, secretary-treasurer; Vermont Treasurer Beth Pearce, Eastern Region vice president; Oklahoma Treasurer Ken Miller, Southern Region vice president; South Dakota Treasurer Richard Santgast, Midwestern Region vice president; and Wyoming Treasurer Mark Gordon, Western Region vice president.

Virginia State Treasurer Manju Granthwaal will serve as NAST president until her term expires in December, at which point she will serve on the NAST Executive Committee as immediate past president.

NAST Recognizes Four Treasurers

The National Association of State Treasurers recognized four individuals with national awards during its meeting in October. The recipients were chosen by their peers to receive the recognition during the 2013 NAST Annual Conference.

Tennessee Treasurer David Lillard Jr. received the 2013 Jesse Unruh Award, which is named in honor of a founding member of NAST and former California state treasurer. The award recognizes an active treasurer’s outstanding service to the association, the profession and his or her state.

Former Virginia Treasurer Mary Morris, current treasurer of the College Savings Plans Network, received the Luville Maurice Award, which is presented to a former treasurer in recognition of outstanding service to the profession and the association.

Vermont State Treasurer Beth Pearce and New Mexico State Treasurer James Lewis each received the 2013 Harlan Boyd—Edward T. Allen Distinguished Service Award, which is presented to dedicated public servants whose outstanding career in government has provided a respected voice for NAST at all levels of state government.

BLC Meets in El Paso

Attendees at the XXVII Border Legislative Conference in El Paso, Texas, in September discussed cross-border transportation infrastructure, border master plans and the effects of climate change on the region’s agriculture and water supplies.

Congressman Beto O’Rourke and El Paso Mayor Oscar Leeser welcomed the group to Texas.

Chihuahua Diputado Gabriel Flores Viramontes was recognized for his service as the 2013 BLC chair. California Sen. Lou Correa will serve as 2014 chair; Mexico legislators elected Diputada Imelda Alejandro of Nuevo Leon as vice chair.

The XXVIII BLC will convene in Nuevo Leon in 2014. For more information, visit www.borderlegislators.org or contact the CSG West office at (916) 553-1423.
SHARON WYLIE
Serving in her Second State Legislature

Most people know state legislatures across the country have their own quirks and methods of operations. Washington state Rep. Sharon Wylie, a 2013 CSG Toll Fellow, has seen those differences up close. She has represented the Vancouver area of Washington since 2011 when a vacancy arose, but spent much of the 1990s representing the Gresham area of Oregon, just across the Columbia River. Both are Western states with an eastern/western, urban/rural split with mountains in the middle. But the state income and sales tax systems are mirror opposites and the party affiliation models are different. The one thing that the two states—and the other 48—share is the ability to make a difference. “We all want to have meaning and significance in the world and this is the way to do that,” Wylie said. “It’s incredibly energizing to wrap your brain around big problems and to understand them and learn things you didn’t know before and work with people you wouldn’t otherwise encounter.”
SAVE THE DATE!

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