

March 7, 2025

Director Russell Vought
Office of Management and Budget
725 17th St., NW
Washington, DC 20503

Dear Director Vought,

The undersigned, representing a broad coalition of statewide officials, state lawmakers and state and national organizations committed to the principles of federalism, write to express our strong support for President Donald J. Trump's Executive Order *Unleashing Prosperity Through Deregulation*, signed on January 31, 2025. This Executive Order (EO) is a pivotal step toward reducing unnecessary regulatory burdens and promoting economic growth.

To maximize its impact, we urge the Office of Management and Budget (OMB) to strengthen the federalism review process as part of the EO's implementation.

The federalism review process was first formally established under President Ronald Reagan's Executive Order 12612 (1987), which required federal agencies to assess the impact of regulations on state governments to ensure that federal action did not undermine state sovereignty. In 1999, President Bill Clinton replaced Reagan's order with Executive Order 13132, shifting the federalism review process from a strong safeguard of state authority to a more procedural consultation framework. While the new order maintained the concept of federalism review, it weakened enforcement by removing explicit constraints on federal agencies, making it easier for them to override state objections. Without meaningful enforcement mechanisms, agencies have frequently bypassed substantive state consultation, leading to the imposition of top-down federal regulations that place unnecessary burdens on states and grow the federal government.

Executive Order 13132 is not the only safeguard ensuring that state voices are considered in the regulatory process. The Unfunded Mandates Reform Act requires agencies to assess the financial impact of federal mandates on state, local, and tribal governments, prepare cost estimates, and ensure meaningful consultation before imposing unfunded regulatory burdens. Executive Order 12866, "Regulatory Planning and Review," directs agencies to engage with state and local officials in the rulemaking process, assess cumulative regulatory impacts, and coordinate federal actions with existing programs. Similarly, Executive Order 12372, "Intergovernmental Review of Federal Programs," strengthens intergovernmental partnerships by requiring federal agencies to coordinate with state processes in reviewing financial assistance and regulatory programs. These statutory and executive directives ensure that federal agencies consider state priorities, preventing unnecessary regulatory burdens and reinforcing the balance of power envisioned in the Constitution.

Federalism: The Best Defense Against an Expansive Federal Government

The United States was founded on a system that divides power between national and state governments, ensuring that policies reflect local needs while preventing excessively centralized control. A strong federalism review in the regulatory process is critical for:

1. Preventing DC Regulatory Creep – Federal agencies frequently expand their scope of authority beyond legislative intent, regulating matters that are best handled at the state and local level.
2. Creating a Natural Check on Future Administrations – Protecting state and community authority makes it harder for future administrations to rapidly expand federal control. When state governments exercise more regulatory authority, they have institutional incentives to resist federal encroachment, reinforcing the constitutional balance.
3. Enhancing Fiscal Responsibility – Federal regulations often impose unfunded mandates on states, increasing costs without providing necessary resources. Stronger federalism oversight ensures that regulations account for the financial strain placed on state governments, reducing wasteful spending and bureaucratic bloat.
4. Encouraging State-Led Innovation – States are laboratories of democracy that can tailor policy solutions to their unique economic, geographic, and demographic circumstances. A reinforced federalism review would protect the ability of states to develop policies that work more efficiently and effectively than broad federal mandates.

Recent Biden-era regulations illustrate how mandated federalism review have become little more than an afterthought, leaving states to challenge sweeping federal mandates in court rather than engaging in a meaningful consultation process upfront.

- The Environmental Protection Agency’s (EPA) Waters of the United States (WOTUS) rule was a prime example of federal overreach, where the agency expanded jurisdiction over state-managed waters without clear statutory authority or a substantive federalism impact assessment. The Supreme Court’s *Sackett v. EPA* decision (2023) struck down the rule after 27 states challenged it, arguing that EPA failed to consider state authority and imposed unlawful regulatory burdens.¹
- The Department of Health and Human Services (HHS) issued a rule requiring states to cover gender-transition procedures under Medicaid, despite conflicting state laws. Fifteen states sued, arguing HHS failed to conduct a federalism review and coerced compliance by threatening federal funding. In July 2024, a federal court blocked the rule nationwide, finding HHS exceeded its authority and ignored state concerns.²
- The EPA’s New Source Performance Standards for Greenhouse Gas Emissions rule followed a similar pattern, imposing compliance costs on states without proper consultation. West Virginia and 26 other states sued, arguing EPA ignored state-led environmental programs and unlawfully forced a federal energy transition. In October

¹ *Sackett v. Env’tl. Prot. Agency*, 598 U.S. 651 (2023).

² *Tennessee v. Becerra*, No. 1:24cv161 (S.D. Miss. July 3, 2024).

2024, the Supreme Court declined to stay the rule while the case was before the D.C. Circuit Court of Appeals, but noted the challengers had a strong likelihood of success.³

These examples underscore why a strong federalism review is not just a procedural formality but a necessary safeguard to prevent federal agencies from bypassing state authority. Without meaningful enforcement mechanisms, agencies will continue to treat federalism as an afterthought, forcing states into expensive and prolonged legal battles to protect their rightful regulatory authority.

Recommendations for Strengthening the Federalism Review Process

To enhance the effectiveness of the federalism review mandated by President Trump's EO, we propose the following actions:

1. **Mandate Comprehensive Federalism Impact Assessments** – Agencies should be required to conduct detailed federalism impact assessments for all regulations affecting state governance. This should include an assessment of how the proposed federal regulation affects relevant state and local authorities, a justification for why the regulation should be overseen by a federal agency rather than state authorities, and an economic analysis of how the regulation shifts costs to state and local governments.⁴
2. **Formalize State Consultation in the Rulemaking Process** – Agencies must engage in structured consultation with state officials before finalizing regulations. GAO reports have consistently shown that agencies lack standardized methods for involving states in regulatory decisions, leading to rules that fail to account for state-level expertise and realities.^{5, 6}
3. **Require Public Disclosure of Federalism Analysis** – Federal agencies should be required to publicly release their federalism assessments to demonstrate that their proposed actions do not unduly interfere with state authority. This would enhance transparency and allow states to challenge overreach before regulations take effect.⁷
4. **Institute a Federalism Training Program for Agencies** – A lack of federalism literacy among federal officials contributes to regulatory expansion. Agencies should train

³ *West Virginia v. EPA*, No. 24A95 (U.S. Oct. 16, 2024) (litigation pending in D.C. Circuit).

⁴ U.S. Government Accountability Office. *Implementation of Executive Order 12612 in the Rulemaking Process*. GAO/T-GGD-99-93, May 5, 1999. Available at: <https://www.gao.gov/assets/t-ggd-99-93.pdf>.

⁵ U.S. Government Accountability Office. *Federalism: Opportunities Exist to Improve Coordination and Consultation with State and Local Governments*. GAO-20-560, August 2020. Available at: <https://www.gao.gov/assets/gao-20-560.pdf>.

⁶ Administrative Conference of the United States. *Agency Procedures for Considering Preemption of State Law*. 2010. Available at: <https://www.acus.gov/document/agency-procedures-considering-preemption-state-law>.

⁷ U.S. Government Accountability Office. *Rulemaking: OMB's Role in Reviews of Agencies' Draft Rules and the Transparency of Those Reviews*. GAO-06-8, September 2005. Available at: <https://www.gao.gov/assets/gao-06-8.pdf>.

personnel on federalism principles and require annual compliance reports on how they uphold state authority.⁸

5. Designate a Federalism Review Function within OMB – A dedicated function within OMB should ensure agency compliance with federalism requirements. This function would complement OIRA’s cost-benefit analysis by ensuring that federalism concerns are fully considered in regulatory review, preventing rules that improperly preempt state authority.⁹

By reinforcing the federalism review process, the Office of Management and Budget can institutionalize protections against regulatory overreach and the unchecked expansion of federal authority. We urge OMB to issue detailed guidance to federal agencies, emphasizing the importance of federalism considerations in the regulatory process and ensuring agencies comply with President Trump’s EO requirements.

We stand ready to support OMB in implementing these reforms and look forward to working together to restore the proper balance of power, safeguard state authority, and promote economic prosperity by limiting federal intrusion into areas best governed by states.

Sincerely,

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⁸ U.S. Government Accountability Office. *Federalism: Opportunities Exist to Improve Coordination and Consultation with State and Local Governments*. GAO-20-560, August 2020. Available at: <https://www.gao.gov/assets/gao-20-560.pdf>.

⁹ *Ibid*

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