Center for Practical Federalism

2023 FEDERALISM SCORECARD

Authors

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Introduction

There are many scorecards purporting to assess and rank places where people live. Some combine data to assess overall desirability—factors like cost of living, safety, job availability, and economic freedom. Others dwell on specific questions, like the best cities for tech workers, the best states for retirees, or the most dangerous countries for journalists. Most imply that, depending on what you want out of life, you're much better off in some places than others.

Our scorecard focuses on a specific set of locational qualities, in this case tied to federalism. But we make no claims about where readers should live, only that they should protect the places they love, wherever they may be. We offer specific recommendations about how to do that, given a hidden but growing danger to all American communities.

The Center for Practical Federalism is dedicated to helping state and community leaders resist federal government overreach that threatens constitutional boundaries and imperils citizen self-governance. While most of us have been taught that federal matters must be dealt with in Washington, D.C., it turns out that there are numerous actions those of us who don't live inside the Beltway can take to protect our communities from federal agencies that exceed their proper authority. Perhaps not surprisingly, many of these defenses concern subtle but frequently overlooked areas of administrative procedure and balance of powers within states.

Rather than a rank-ordering of "best" to "worst" states, therefore, our Federalism Scorecard is an index of vulnerability to federal pressure. Our goal is not to cast blame on any particular states, policymakers, or political parties. Instead we are sounding the alarm for every citizen who believes states and communities should govern themselves, and that this governing ought to be done primarily by elected representatives of the people. Our firm conviction is that self-governance through elected leaders is neither a conservative nor liberal principle, and certainly neither a Democratic nor Republican principle. It is, rather, an American principle.

With this in mind, we were gratified to discover, once we had collected data on numerous variables from every state, that vulnerability to undue federal influence appears to be a non-partisan matter. Among the ten states with the strongest federalism protections, five have Republican legislatures at the time of this report, four have Democratic legislatures, and one has a split chamber. Two of those states whose legislative majorities are from one party have governors from the other major party. Relative vulnerability to federal influence is dispersed across the U.S., among states large and small, "red" and "blue."

In other words, the institutions that protect democratic self-governance are non-partisan. They don't reflect preferences for more or less government, which is what conservatives and liberals typically argue about. Nor do they confer an advantage to candidates from one party versus another. Instead, they reflect the extent to which citizens empower their elected representatives, versus relinquishing their authority to internal and external bureaucracies. Our belief is that everyday Americans grasp this as a matter of fundamental justice. Political decisions should be made by the chosen representatives of We the People, not unaccountable, unelected officials.

Contents

This report contains numerical and visual scores reflecting vulnerability to federal influence in all 50 states. Below we also explain the variables and data we examined, how we gathered it, coding decisions, and several state-specific notes that we hope will be helpful to interested readers. We also offer model legislation for those interested in strengthening the capacity of their elected representatives to detect and resist undue federal agency influence over their states and communities.

The variables we examined fall into two categories of laws and practices: internal and external. All of them concern themselves with the balance of power between a citizenry's elected representatives and unelected agency officials.[1] The internal rules are those that govern a state's executive branch agencies, while the external rules affect the ability of federal agencies to influence state decision-making.

At first glance it's reasonable to ask why we include data on how well states maintain authority over *their* agencies in a scorecard that purports to gauge vulnerability to *federal* influence. The answer, which will not surprise anyone familiar with state–federal relations, is that federal agencies frequently work in cooperation with their state-agency counterparts. In some instances, as in for example the widespread, unauthorized accessing of state DMV records by federal law enforcement agencies, one might fairly conclude that the operative word is not *cooperation* but *collusion*. A state that does not afford its legislature adequate powers of oversight, investigation, and reversal of executive branch actions is therefore incapable of protecting its citizens from a key entry point for federal influence: its own state officials.

Least Vulnerable States		
1	Utah	74.16
2	Wisconsin	63.18
3	South Carolina	54.72
4	Nevada	52.44
5	Virginia	47.52

Most Vulnerable States		
46	Alabama	-3.68
47	Montana	-4.35
48	South Dakota	-4.91
49	Mississippi	-8.10
50	Alaska	-11.24

INTERNAL VARIABLES

● Unprotected Against Agency Influence ● Vulnerable ● Stronger-than-Average

	Oversight Committees	Judicial Non-Deference	Agency Lobbying Restricted	Legislative Regulatory Review	Independent Regulatory Review	Cost-Benefit Analysis of Regulations	Injunctive Relief for Citizens	Legislative Resources	Balanced Emergency Powers
Alabama	Unprotected	Unprotected	Unprotected	Unprotected	Vulnerable	Vulnerable	Unprotected	Unprotected	Vulnerable
Alaska	Unprotected	Vulnerable	Unprotected	Unprotected	Unprotected	Unprotected	Unprotected	Stronger	Stronger
Arizona	Unprotected	Stronger	Stronger	Unprotected	Stronger	Stronger	Unprotected	Vulnerable	Vulnerable
Arkansas	Unprotected	Vulnerable	Unprotected	Unprotected	Stronger	Stronger	Unprotected	Unprotected	Vulnerable
California	Vulnerable	Vulnerable	Unprotected	Unprotected	Vulnerable	Stronger	Unprotected	Stronger	Unprotected
Colorado	Unprotected	Unprotected	Unprotected	Unprotected	Stronger	Stronger	Unprotected	Stronger	Vulnerable
Connecticut	Unprotected	Unprotected	Unprotected	Unprotected	Stronger	Vulnerable	Unprotected	Vulnerable	Unprotected
Delaware	Vulnerable	Vulnerable	Unprotected	Unprotected	Unprotected	Unprotected	Unprotected	Unprotected	Unprotected
Florida	Vulnerable	Stronger	Unprotected	Stronger	Unprotected	Stronger	Unprotected	Vulnerable	Vulnerable
Georgia	Vulnerable	Vulnerable	Unprotected	Unprotected	Vulnerable	Vulnerable	Unprotected	Vulnerable	Stronger
Hawaii	Unprotected	Unprotected	Unprotected	Unprotected	Vulnerable	Unprotected	Unprotected	Vulnerable	Unprotected
Idaho	Vulnerable	Unprotected	Unprotected	Stronger	Unprotected	Stronger	Unprotected	Unprotected	Vulnerable
Illinois	Unprotected	Unprotected	Unprotected	Unprotected	Vulnerable	Vulnerable	Unprotected	Vulnerable	Unprotected
Indiana	Unprotected	Unprotected	Unprotected	Stronger	Unprotected	Unprotected	Unprotected	Vulnerable	Vulnerable
Iowa	Stronger	Vulnerable	Unprotected	Unprotected	Vulnerable	Stronger	Unprotected	Vulnerable	Vulnerable
Kansas	Unprotected	Vulnerable	Unprotected	Unprotected	Vulnerable	Stronger	Unprotected	Vulnerable	Stronger
Kentucky	Unprotected	Unprotected	Unprotected	Unprotected	Vulnerable	Stronger	Unprotected	Vulnerable	Vulnerable
Louisiana	Unprotected	Vulnerable	Stronger	Unprotected	Unprotected	Vulnerable	Unprotected	Vulnerable	Vulnerable
Maine	Vulnerable	Unprotected	Unprotected	Stronger	Unprotected	Stronger	Unprotected	Vulnerable	Vulnerable
Maryland	Unprotected	Vulnerable	Unprotected	Unprotected	Vulnerable	Stronger	Unprotected	Stronger	Vulnerable
Massachusetts	Unprotected	Vulnerable	Unprotected	Unprotected	Unprotected	Stronger	Unprotected	Vulnerable	Unprotected
Michigan	Stronger	Vulnerable	Unprotected	Unprotected	Vulnerable	Stronger	Unprotected	Vulnerable	Stronger
Minnesota	Unprotected	Unprotected	Unprotected	Unprotected	Stronger	Stronger	Unprotected	Stronger	Stronger
Mississippi	Unprotected	Vulnerable	Unprotected	Unprotected	Unprotected	Stronger	Unprotected	Vulnerable	Vulnerable
Missouri	Vulnerable	Vulnerable	Unprotected	Unprotected	Unprotected	Stronger	Unprotected	Unprotected	Unprotected

INTERNAL VARIABLES

Unprotected Against Agency Influence · Vulnerable · Stronger-than-Average

State	Oversight Committees	Judicial Non-Deference	Agency Lobbying Restricted	Legislative Regulatory Review	Independent Regulatory Review	Cost-Benefit Analysis of Regulations	Injunctive Relief for Citizens	Legislative Resources	Balanced Emergency Powers
Montana	Unprotected	Vulnerable	Unprotected	Unprotected	Vulnerable	Unprotected	Unprotected	Vulnerable	Stronger-than-Average
Nebraska	Unprotected	Vulnerable	Unprotected	Unprotected	Unprotected	Vulnerable	Unprotected	Vulnerable	Unprotected
Nevada	Unprotected	Vulnerable	Unprotected	Stronger-than-Average	Vulnerable	Vulnerable	Unprotected	Stronger-than-Average	Vulnerable
New Hampshire	Unprotected	Vulnerable	Unprotected	Unprotected	Vulnerable	Stronger-than-Average	Unprotected	Unprotected	Stronger-than-Average
New Jersey	Vulnerable	Unprotected	Unprotected	Unprotected	Vulnerable	Stronger-than-Average	Unprotected	Stronger-than-Average	Vulnerable
New Mexico	Unprotected	Vulnerable	Unprotected	Unprotected	Vulnerable	Unprotected	Unprotected	Vulnerable	Vulnerable
New York	Vulnerable	Vulnerable	Unprotected	Unprotected	Vulnerable	Stronger-than-Average	Unprotected	Unprotected	Unprotected
North Carolina	Vulnerable	Vulnerable	Unprotected	Unprotected	Vulnerable	Vulnerable	Unprotected	Stronger-than-Average	Vulnerable
North Dakota	Unprotected	Vulnerable	Unprotected	Unprotected	Vulnerable	Stronger-than-Average	Unprotected	Stronger-than-Average	Unprotected
Ohio	Unprotected	Vulnerable	Unprotected	Unprotected	Vulnerable	Stronger-than-Average	Unprotected	Vulnerable	Vulnerable
Oklahoma	Unprotected	Vulnerable	Unprotected	Stronger-than-Average	Unprotected	Vulnerable	Unprotected	Unprotected	Unprotected
Oregon	Unprotected	Vulnerable	Unprotected	Unprotected	Unprotected	Stronger-than-Average	Unprotected	Stronger-than-Average	Unprotected
Pennsylvania	Vulnerable	Vulnerable	Unprotected	Unprotected	Vulnerable	Unprotected	Unprotected	Stronger-than-Average	Vulnerable
Rhode Island	Stronger-than-Average	Vulnerable	Unprotected	Unprotected	Stronger-than-Average	Stronger-than-Average	Unprotected	Unprotected	Vulnerable
South Carolina	Stronger-than-Average	Unprotected	Unprotected	Stronger-than-Average	Unprotected	Stronger-than-Average	Unprotected	Vulnerable	Stronger-than-Average
South Dakota	Unprotected	Vulnerable	Unprotected	Unprotected	Vulnerable	Vulnerable	Unprotected	Unprotected	Unprotected
Tennessee	Unprotected	Stronger-than-Average	Unprotected	Unprotected	Stronger-than-Average	Stronger-than-Average	Stronger-than-Average	Vulnerable	Unprotected
Texas	Unprotected	Vulnerable	Unprotected	Unprotected	Vulnerable	Stronger-than-Average	Unprotected	Vulnerable	Vulnerable
Utah	Unprotected	Vulnerable	Unprotected	Unprotected	Stronger-than-Average	Stronger-than-Average	Unprotected	Vulnerable	Stronger-than-Average
Vermont	Unprotected	Unprotected	Unprotected	Unprotected	Vulnerable	Stronger-than-Average	Unprotected	Vulnerable	Unprotected
Virginia	Unprotected	Vulnerable	Unprotected	Unprotected	Vulnerable	Stronger-than-Average	Unprotected	Vulnerable	Vulnerable
Washington	Unprotected	Vulnerable	Unprotected	Unprotected	Vulnerable	Unprotected	Unprotected	Vulnerable	Unprotected
West Virginia	Unprotected	Unprotected	Unprotected	Stronger-than-Average	Unprotected	Stronger-than-Average	Unprotected	Vulnerable	Unprotected
Wisconsin	Vulnerable	Stronger-than-Average	Unprotected	Stronger-than-Average	Vulnerable	Stronger-than-Average	Unprotected	Stronger-than-Average	Vulnerable
Wyoming	Unprotected	Vulnerable	Unprotected	Unprotected	Unprotected	Unprotected	Unprotected	Unprotected	Unprotected

EXTERNAL VARIABLES

🔴 Unprotected Against Agency Influence 🟡 Vulnerable 🟢 Stronger-than-Average

	Legislative Oversight of Grants	Legislative Intervention on Grants	Elected Executives Oversee Grants	Exemptions from Grant Oversight	Contigency Plans for Fund Loss	Account for Cost of Grants	Oversight of Clean Air Act SIPs	Oversight of Medicaid SIPs	Magnitude of Federal Lobbying by State Agencies	Revenue from Federal Agencies	AG Action Against Federal Overreach
Alabama	🔴	🔴	🔴	N/A	🟢	🔴	🔴	🔴	🔴	🔴	🟡
Alaska	🔴	🔴	🔴	N/A	🔴	🟢	🔴	🟡	🔴	🔴	🟡
Arizona	🔴	🔴	🔴	N/A	🔴	🟢	🟢	🔴	🔴	🔴	🔴
Arkansas	🔴	🔴	🔴	N/A	🔴	🔴	🟢	🟡	🟡	🔴	🟡
California	🔴	🔴	🔴	N/A	🔴	🔴	🔴	🔴	🔴	🟡	🟡
Colorado	🔴	🔴	🔴	N/A	🟢	🟢	🟡	🟡	🔴	🟡	🟡
Connecticut	🔴	🔴	🔴	N/A	🔴	🔴	🔴	🟡	🟢	🟡	🟡
Delaware	🔴	🟢	🔴	N/A	🔴	🟢	🟡	🔴	🔴	🟡	🔴
Florida	🔴	🔴	🟢	🔴	🟢	🔴	🔴	🟡	🔴	🟡	🔴
Georgia	🔴	🟢	🔴	🔴	🔴	🟢	🔴	🟡	🟡	🟡	🔴
Hawaii	🔴	🔴	🔴	N/A	🔴	🔴	🔴	🔴	🟡	🟢	🔴
Idaho	🔴	🔴	🔴	N/A	🔴	🔴	🟡	🔴	🟡	🔴	🔴
Illinois	🔴	🔴	🔴	N/A	🔴	🔴	🟡	🔴	🟢	🟡	🟡
Indiana	🔴	🔴	🔴	N/A	🔴	🟢	🔴	🔴	🟡	🔴	🔴
Iowa	🔴	🔴	🔴	N/A	🔴	🔴	🔴	🟡	🟡	🟡	🔴
Kansas	🔴	🔴	🔴	N/A	🔴	🔴	🔴	🔴	🟡	🟢	🟡
Kentucky	🟡	🔴	🔴	N/A	🔴	🟢	🟡	🟡	🟢	🔴	🟡
Louisiana	🔴	🔴	🔴	N/A	🔴	🔴	🟡	🟡	🔴	🔴	🟡
Maine	🔴	🔴	🔴	N/A	🟢	🔴	🟢	🔴	🟢	🔴	🟡
Maryland	🔴	🔴	🔴	N/A	🟢	🔴	🔴	🔴	🟢	🟡	🟡
Massachusetts	🔴	🔴	🔴	N/A	🟢	🔴	🔴	🟡	🟢	🟡	🟡
Michigan	🔴	🟢	🔴	🔴	🔴	🔴	🔴	🔴	🟡	🟡	🟡
Minnesota	🔴	🟢	🔴	N/A	🔴	🟢	🔴	🔴	🟡	🟡	🟡
Mississippi	🔴	🔴	🔴	N/A	🔴	🔴	🟡	🔴	🔴	🔴	🟡
Missouri	🔴	🟢	🔴	🔴	🔴	🟢	🟡	🟢	🟢	🔴	🟡

EXTERNAL VARIABLES

🔴 Unprotected Against Agency Influence 🟠 Vulnerable 🟢 Stronger-than-Average

Legislative Oversight of Grants	Legislative Intervention on Grants	Elected Executives Oversee Grants	Exemptions from Grant Oversight	Contigency Plans for Fund Loss	Account for Cost of Grants	Oversight of Clean Air Act SIPs	Oversight of Medicaid SIPs	Magnitude of Federal Lobbying by State Agencies	Revenue from Federal Agencies	AG Action Against Federal Overreach	
🔴	🔴	🔴	N/A	🔴	🔴	🔴	🟠	🟠	🔴	🟠	Montana
🔴	🔴	🔴	N/A	🔴	🔴	🔴	🟠	🟢	🟠	🟠	Nebraska
🔴	🔴	🔴	N/A	🔴	🟢	🟢	🟠	🔴	🟢	🟠	Nevada
🔴	🔴	🔴	N/A	🟢	🟢	🔴	🟢	🟢	🟠	🔴	New Hampshire
🔴	🔴	🔴	N/A	🔴	🔴	🟠	🔴	🟢	🟢	🟠	New Jersey
🔴	🔴	🔴	N/A	🔴	🟢	🔴	🔴	🔴	🟠	🟠	New Mexico
🔴	🔴	🔴	N/A	🟢	🟢	🔴	🟠	🟢	🟠	🔴	New York
🔴	🔴	🔴	N/A	🔴	🟢	🔴	🟠	🟠	🟠	🟠	North Carolina
🔴	🔴	🔴	N/A	🟢	🔴	🔴	🟠	🟠	🟠	🟠	North Dakota
🔴	🔴	🔴	N/A	🟢	🔴	🔴	🟢	🟠	🟢	🟠	Ohio
🔴	🔴	🔴	N/A	🔴	🔴	🔴	🟠	🟠	🟠	🔴	Oklahoma
🟢	🔴	🔴	🔴	🔴	🟢	🔴	🟠	🔴	🟠	🟠	Oregon
🔴	🔴	🔴	N/A	🔴	🔴	🔴	🔴	🟠	🟠	🔴	Pennsylvania
🔴	🔴	🔴	N/A	🔴	🔴	🟠	🟠	🟠	🔴	🟠	Rhode Island
🔴	🟢	🟢	🔴	🔴	🟢	🔴	🔴	🟠	🟠	🟠	South Carolina
🔴	🔴	🔴	N/A	🟢	🔴	🔴	🔴	🟠	🔴	🔴	South Dakota
🔴	🔴	🟢	N/A	🔴	🔴	🟠	🔴	🟢	🟠	🟠	Tennessee
🔴	🔴	🔴	N/A	🟢	🔴	🔴	🔴	🟠	🟠	🟠	Texas
🟠	🔴	🟢	🔴	🟢	🟢	🔴	🔴	🔴	🟢	🟠	Utah
🔴	🟢	🟢	N/A	🟢	🔴	🔴	🟠	🟠	🔴	🟠	Vermont
🔴	🔴	🔴	N/A	🟢	🟢	🟠	🔴	🟠	🟢	🟢	Virginia
🔴	🔴	🟢	N/A	🔴	🟢	🔴	🔴	🔴	🟢	🔴	Washington
🔴	🔴	🔴	N/A	🔴	🟢	🔴	🔴	🟠	🔴	🟠	West Virginia
🔴	🔴	🟢	🔴	🔴	🟢	🔴	🔴	🟢	🟢	🟠	Wisconsin
🔴	🔴	🟢	🔴	🔴	🟢	🟠	🟠	🟠	🔴	🔴	Wyoming

States Listed by Score

A higher score indicates less vulnerability to federal agency pressure and influence.

State	Score
Utah	74.16
Wisconsin	63.18
South Carolina	54.72
Nevada	52.44
Virginia	47.52
Florida	44.30
Oregon	42.97
Colorado	42.95
Minnesota	38.03
New Hampshire	35.31
Arizona	35.21
Tennessee	33.33
New York	33.23
Ohio	32.38
Missouri	30.24
North Carolina	29.76
Washington	29.47
Maine	26.88
Georgia	26.67
Delaware	25.09
Michigan	23.87
New Jersey	23.32
Rhode Island	22.88
Vermont	21.02
Arkansas	20.34
West Virginia	19.15
Kentucky	17.84
Wyoming	16.92
Massachusetts	16.48
Iowa	16.31
Maryland	13.89
North Dakota	13.85
Texas	13.47
Connecticut	13.38
Kansas	13.37
New Mexico	12.40
California	10.78
Oklahoma	10.69
Indiana	8.79
Idaho	5.49
Illinois	4.15
Pennsylvania	2.75
Nebraska	2.01
Hawaii	0.66
Louisiana	0.50
Alabama	-3.68
Montana	-4.35
South Dakota	-4.91
Mississippi	-8.10
Alaska	-11.24

States Listed Alphabetically

State	Score
Alabama	-3.68
Alaska	-11.24
Arizona	35.21
Arkansas	20.34
California	10.78
Colorado	42.95
Connecticut	13.38
Delaware	25.09
Florida	44.30
Georgia	26.67
Hawaii	0.66
Idaho	5.49
Illinois	4.15
Indiana	8.79
Iowa	16.31
Kansas	13.37
Kentucky	17.84
Louisiana	0.50
Maine	26.88
Maryland	13.89
Massachusetts	16.48
Michigan	23.87
Minnesota	38.03
Mississippi	-8.10
Missouri	30.24
Montana	-4.35
Nebraska	2.01
Nevada	52.44
New Hampshire	35.31
New Jersey	23.32
New Mexico	12.40
New York	33.23
North Carolina	29.76
North Dakota	13.85
Ohio	32.38
Oklahoma	10.69
Oregon	42.97
Pennsylvania	2.75
Rhode Island	22.88
South Carolina	54.72
South Dakota	-4.91
Tennessee	33.33
Texas	13.47
Utah	74.16
Vermont	21.02
Virginia	47.52
Washington	29.47
West Virginia	19.15
Wisconsin	63.18
Wyoming	16.92

Variables

What follows is a brief explanation of each variable in our Federalism Scorecard. Readers interested in data sources, weighting, and coding decisions can find those details in the appendix titled "Notes." We encourage readers knowledgeable about these policies to peruse the appendix, and to contact us with any questions, objections, or suggestions for improvement. We intend to regularly update this resource, and we know that we are certainly not immune to error.

Existence of legislative committees devoted to agency oversight: Every legislative committee can engage in some kind of oversight. Appropriations committees can direct funds toward or away from various agency activities. Committees devoted to natural resources, say, or transportation, can request information from relevant state agencies, and evaluate their performance. Unfortunately, such inquiries are rarer than they should be, insofar as many legislators believe that their chief responsibility is to pass laws, rather than to insure that laws are faithfully executed. Dedicated oversight committees, on the other hand, exist to hold investigatory hearings, report their findings, and make reform recommendations, where warranted, to the larger legislative body. They indicate a capacity to get down to the brass tacks of oversight.

Number of oversight committee hearings: While the existence of oversight committees speaks to capacity, it's a separate question whether such committees actually do their jobs. For this reason we also count how many hearings were held by oversight committees.

Limited judicial deference to agency decision-making: While the U.S. Supreme Court established precedents in past decades that gave federal agencies wide latitude to interpret and implement federal laws, many states place tighter restrictions on the ability of their executive branch agencies to decide for themselves what state laws mean. Some states have judicial precedent and practice that limit deference to agency interpretation, others have statutes restricting state court deference to agency interpretations, and a few have both.

Limits on the ability of state agencies to lobby: At present only two states curtail the ability of state agencies to lobby their legislature, and no state restricts the ability of state agencies to lobby federal agencies. While it's essential to maintain communication between legislators and officials tasked with implementing the laws, it's also important to restrain agency officials from pursuing their own agendas. Constraints on the ability of state agencies to lobby their own legislature are necessary in defense of federalism because federal agencies can quietly influence state agency officials through a variety of means, in effect making them their proxies in state capitols.

Legislative review required for significant regulations: Some states have laws that subject regulations with estimated costs above a certain level to review and approval by their legislature. Like rules that restrict the ability of agencies to interpret laws as they see fit, these strictures keep the actions of unelected officials under the control of elected leaders, which is especially important as federal agencies rely increasingly on subregulatory guidance sent directly to state agency officials as a means of attempting to sway state policies.

Independent regulatory review boards: While legislative review of regulations is a valuable and proper check on state agencies, this balance of power can be assisted by independent bodies tasked with ensuring that agencies are following state administrative procedures and otherwise complying with state laws. These boards often have, in contrast to legislatures, a greater ability to alter proposed regulations so that they come into compliance with the law, versus a more blunt-force (and therefore less likely to be deployed) effect of the legislative veto.

Regulations subjected to cost-benefit analysis: Cost-benefit analysis (CBA) is a proven rubric for assessing the merit of regulations, and it provides overseers—be they legislators, independent review boards, or others—a means of making objective judgments that are consistent across

issue and time. CBA requires agencies to justify the rules they want citizens to live by using a commonsense metric.

- ***Citizens engaged in CBA:*** While several states require CBA of regulations, some go further by making that analysis available in a format that's understandable to the public. Some go further still by giving citizens of their state the standing to bring legal action if they believe an agency has not properly applied CBA. All of this in our view creates important sunlight and counterbalance to agency actions that might otherwise persist in shadow.

- ***Injunctive relief for citizens against state agency actions:*** When state agencies initiate some kind of action that a citizen believes is illegal or unconstitutional, it can be difficult to get a hearing in court. Tennessee is the only state that guarantees every citizen affected by an agency's action the opportunity to seek an injunction until the legality of that action is determined.

- ***Legislative research and analytics resources:*** Legislative powers of oversight and regulatory review are more properly and thoroughly exercised when legislators have personnel and resources available to help them. Otherwise they run the risk of being overly dependent on the claims of agency officials and lobbyists.

- ***Balanced emergency powers:*** The COVID pandemic revealed the potential in many states for governors and even unelected officials to wield vast powers with little democratic accountability, and little counterbalance by elected legislators. What's more, many of those unilateral decisions were driven by the dictates of federal officials. In the wake of such abuses, many states revised their laws to ensure a proper balance of legislative and executive authority in the event of statewide emergencies, but others did little.

- ***Legislative approval required for federal grant acceptance:*** Because federal grants make up a rising portion of the average state's revenue, and federal officials frequently use those funds as leverage to elicit compliance with goals that are not always in the best interests of communities, it's imperative that a state's elected representatives maintain both visibility and authority over the commitments and unreimbursed costs that states take on when they accept a federal grant.

- ***Approval from elected executive branch officials required for federal grants:*** Federal agencies can craft consent procedures for grants which authorize unelected state officials to agree to the grant's conditions and hidden costs. It's important that states not only maintain legislative authority over those agreements, but that elected officials be similarly in the driver's seat on the executive branch side.

- ***No exemptions from federal grant approval processes:*** A number of states require some form of elected-official oversight of federal grants, but exempt certain state entities from that oversight. Entities frequently favored with such exemptions are state university systems, even though many public universities actively lobby federal agencies for rules and laws that conflict with the desires of a majority of their state's citizens, and happily accept grant strictures that further obstruct the authority of state legislators to govern what are taxpayer-supported, public institutions.

- ***State maintains a contingency plan for loss of federal funds:*** There is no guarantee that most federal grants will continue to flow to states, yet many states fail to maintain even rudimentary plans for minimizing harm and disruption in the event of a delay, reduction, or cessation of federal funds. Some even fail to track which programs at the state and community level are dependent on federal versus state/local revenues, meaning that they get blindsided in the event of funding reductions or delays. These accounting and planning failures leave them vulnerable not only to disruption, but to federal bullying. If you have no idea how you can get along without an agency's money, you're more inclined to do whatever its officials demand.

- ***State estimates the costs of receiving federal funds:*** Federal money isn't free; it generates unreimbursed costs, and increasingly federal agencies use the threat of its discontinuation to compel compliance with directives that bear little connection to the stated intent of the funds. Aside from these often subtle and hidden burdens, federal funds can evoke immediate financial costs in the form of audits, spending matches, partially-reimbursed personnel additions, maintenance-of-effort (MOE) requirements[2] that

forbid states from realizing efficiencies and savings, and other infrastructure and administrative costs not covered by the federal grant in question.[3] States that fully account for these costs are in a better position to judge whether accepting any particular grant is truly in the best interest of their citizens.

■ ***Legislative approval required for high-cost State Implementation Plans:*** Some federal laws give states latitude to tailor them to particular state needs. States are asked in such instances to craft what's known as a State Implementation Plan (SIP) for approval by the federal agency overseeing the law. State agencies can change key elements of these SIPs without the agreement or knowledge of elected officials, and sometimes even with subsequent enforcement taken up by federal officials.[4] States which require that changes to key SIPs be subjected to legislative scrutiny help guard against such secretive lawmaking. In our scorecard we focus on two significant SIPs: those tied to the Clean Air Act, and administration of Medicaid.

■ ***Magnitude of federal lobbying by state agencies:*** A state's elected leaders are by definition the representatives of its citizens, yet state agencies spend millions lobbying federal agencies on all manner of legislation, spending, and rules governing the particulars of that spending.[5] This opens the door for unelected state officials to influence federal policy in ways that circumvent the intentions of citizens as expressed through their elected representatives.

■ ***Percent of state revenues from federal sources:*** The more dollars a state receives from federal agencies, the more vulnerable it is to agency demands. There are many reasons a state may receive an above-average percentage of its revenue from D.C., and many of those reasons are beyond a state's control. We incorporate this variable nonetheless, because it indicates a significant vulnerability to federal influence.

■ ***Attorney general lawsuits against federal overreach:*** Present and previous presidential administrations have offered numerous opportunities for each state's chief law enforcement officer to take legal action against federal agency intrusion on state and local self-government. A habit and practice of vigilance in this regard is a key defense against federal bullying.

Appendix: Notes

What follows are notes for each variable underlying the Federalism Scorecard as they pertain to data sources, the weights we assigned them, coding decisions, and other nuances that might be of interest to readers who want to understand how we arrived at the reported scores. As in every such project, there are always complexities and shades of gray with regard to information reliability and judgments about how facts translate into data.

Deciding whether a state truly has a contingency plan for loss of federal funding, for example, seems simple enough: *Do you have a plan or don't you*? In practice it becomes complicated quickly. Does the fact that a state's lobbyists monitor the likelihood of future funds count in its favor? What if it reports that it has built-in budget formulas to execute across-the-board cuts in the event of fund loss? Or what if its budget officials report that they will simply stop a federally funded program if the funds go away? Do they mean they'll kick out 60% of the residents in a veteran's home that's 60-percent funded by VA dollars? If a fire station that's been indirectly underwritten by federal funds has to cease operations, will they really just let the building fall into ruin?

Faced with the realities of disentangling commitments incurred by using federal money, one might be skeptical of a state's claim that it has a plan. Stray too far in the other direction, however, and you find yourself trying to sit in judgment on the capacities and intentions of thousands of people spread across 50 state capitals—a task just as fraught with potential error and bias.

What we're aiming for in our coding decisions, therefore, is *directional reliability*. A state that reports no contingency plan, for example, is probably more likely to bend over backwards to keep its federal funds flowing than a state which reports that it has *some* kind of plan, even if that plan has more holes than a slice of Swiss cheese. A state that has a judicial precedent of not deferring to agency interpretations of the law is likely to restrain its agencies better than a state with no such precedent, but not as well as a state that has both a precedent *and* a legislative statute forbidding such judicial deference to agencies. A state whose attorney general has sued federal agencies over encroachments on state authority three times in the past three years is probably more likely to oppose the next attempted encroachment than a state whose attorney general has never once sued in the past two presidential administrations. Our aim with scores is to capture both these individual directional differences, and their cumulative effect.

Our striving for directional reliability over pinpoint accuracy indicates how one should interpret a state's overall score. Is it the case that Connecticut, with a score of 13.38, is truly 67 percent percent more vulnerable to federal bullying than New York, with its score of 33.23? Probably not. But we can say with confidence that Connecticut has work to do if its leaders are serious about doing their jobs as the elected representatives of their citizens.

Similarly, while leaders in states at the top of the Federalism Scorecard have cause to be relieved that they have more tools with which to resist federal manipulation, a full toolshed isn't proof of good labor. The laws reflected in our Federalism Scorecard enable elected leaders to better protect their communities, but that protection still falls to the men and women who aspire to be leaders in their states. The chief lesson we hope elected officials and citizens alike take from these scores is that they embody a set of commonsense, non-partisan, democracy-affirming rules that any state can implement, but undergirding these will always be the necessity of vigilant, Constitution-respecting leadership.

Data Sources

Data on the existence of state legislative oversight committees was assembled from the legislative websites of each state, from which counts of committee hearings were also gathered.

Data on state judicial deference to agencies came from a state-by-state survey compiled in the *Mississippi Law Journal*, supplemented by state-specific inquiries where we had reason to believe the survey is outdated.[6]

The list of states that require legislative approval of regulations with estimated costs above some threshold came from the Foundation for Government Accountability, which maintains a REINS Act project, and the Cicero Institute, which has been building a comprehensive database of state administrative procedures. Cicero also generously provided access to and answered questions about its data regarding state judicial deference, regulatory review, and cost-benefit analysis procedures.

Evaluations of the quality and quantity of state legislative analytical capabilities came from a study commissioned by the Levin Center for Oversight and Democracy.[7]

Data on state emergency powers came from an annually updated database provided by the Maine Policy Center.

Data on state rules governing pursuit, acceptance, administration, and evaluation of federal grant funds comes primarily from a publicly available 2021 survey of state budget officials by Ballotpedia. Where these data were missing, or the answers provided by state officials questionable or inadequate, we examined state statutes and related documentation.

Information on laws governing State Implementation Plans (SIPs) tied to the Clean Air Act and Medicaid was drawn from state statutes, Implementation Plans, air quality authorities, and the U.S. Code of Federal Regulations.[8]

State agency per capita expenditures on federal lobbying came from Open Secrets and the U.S. Census.

Data used to calculate state revenue from federal grants came from the U.S. Census and White House Office of Management and Budget.

Counts of state AGs participating in a handful of selected lawsuits against both the Trump and Biden administrations for encroaching on state authority was assembled from national news sources.

Information about prohibition of state-agency lobbying (**Arizona** and **Louisiana**) and provision of injunctive relief for citizens (**Tennessee**) came to us from news accounts or personnel who authored and advanced them, and to the best of their knowledge and ours, no other states have equivalent provisions.

Notes on variables

The weighting explained below is intended to reflect our sense of which tool leaders could use most effectively, in the widest possible ways, to resist federal overreach. We want to emphasize, however, that states with leaders committed to oversight and in possession of just one tool (say, for example, solid rules requiring state agencies to estimate all non-reimbursable costs associated with federal grants) will do more to protect their state through its diligent and systematic use than leaders who have all the tools at their disposal, but who have never set foot in the toolshed.

Existence of legislative committees devoted to agency oversight

We coded a state as having an oversight committee if it had at least one committee tasked with oversight, and a broad enough mandate to potentially engage on whatever issues or concerns legislators may have. This means that we did not, therefore, count committees which arguably have some mandate for oversight, but whose range is narrow—audit committees, for example, or legislative oversight committees that focus on legislative functioning rather than executive branch oversight. States with an oversight committee in a single chamber of their legislatures received five points, while states with an oversight committee either in both chambers, or in one chamber supplemented by a joint-chamber committee, received ten points.

State-specific notes

- The **Massachusetts** legislature's Joint Committee on State Administration and Regulatory Oversight has

both a title and a description that suggest oversight. A perusal of their hearings indicates, however, that they are simply organized to discuss bills related to state contracts, regulation of lobbyists, etc., and not to conduct investigations, audits, or independent assessments of executive branch actions.

- **Nevada's** Joint Interim Standing Committee on Government Affairs has a description that bespeaks oversight, but scrutiny of its hearings agendas, materials, and EOY 2022 report indicate that it largely considers reports and research from agencies and third parties about their own functioning (which is uncritical), and has no track record of recommending reforms.

Number of oversight committee hearings

For hearing counts we relied on materials available on state legislature's websites and, where details were absent, we searched for evidence of hearings in Google's News search, supplemented by outreach to relevant legislative staff. We average the number of hearings over 2021–22 legislative sessions, for which a state can receive 1–10 points, with states that held an average of 1–5 hearings receiving one point, and states that conducted an average of 50 or more receiving 10 points. State legislatures with oversight committees in both houses therefore have an advantage in scoring overs states with oversight in only one chamber.

State-specific notes

- In the event that **Nebraska** establishes an oversight committee, we'll modify our methodology in order not to penalize them for having a unicameral legislature.
- The **North Carolina** legislature established an oversight committee that began operation in its 2023 session, so its rating on this variable will improve in our 2024 Federalism Scorecard.

Limited judicial deference to agency decision-making

States that limit judicial deference both to agency interpretations of the law (*Chevron*-style deference) and to agency interpretations of their own rules (*Auer*-style deference), and which do so via judicial precedent coupled with legislated statutes, received 10 points. States that limit both types of deference by judicial precedent alone receive seven points. States that only partially limit deference to agency interpretations receive three points.

We based our assessments, as noted above, chiefly on a survey of state statutes and judicial precedents published in a 2020 *Mississippi Law Review* article, supplemented by research into specific state statutes and judicial opinions. As the state-specific note immediately below demonstrates, reasonable people can disagree about the precise extent to which a state's courts truly engage in *de novo* review of agency rulemaking, versus exercising some kind of deference, whether explicit or implicit. With that in mind we welcome challenges by informed readers to any of the scores assigned to states on this variable.

State-specific notes

- Regarding **Texas**, according to a comprehensive review of state deference practices, "Texas has announced a de novo review standard, but upon closer examination, it is clear that it is yet another Hybrid-type state that defers to agency interpretations in certain situations."[9]

Limits on the ability of state agencies to lobby

States with this protection in place received 10 points. In future releases of our Federalism Scorecard, we'll award significant additional points to any state that curtails the ability of state agencies to lobby federal agencies. We anticipate that substantive variations in laws aimed at this end could necessitate gradations in scoring.

Legislative review required for significant regulations

States with statutes mandating legislative review of regulations above a cost threshold received 10 points. Three states (**Florida**, **West Virginia,** and **Wisconsin)** passed "Regulations from the Executive in Need of Scrutiny" (REINS) Acts in recent years; the first two of these in addition to prior statutes mandating legislative review of regulations. We believe having both pieces of legislation more firmly enshrines this practice, and so Florida and West Virginia received 15 points rather than 10.

Independent regulatory review boards

States with regulatory review boards possessing significant authority to require agency compliance with state administrative laws, and to modify regulations, received

10 points, while states whose review boards have limited authority or purview received two points.

Regulations subjected to cost-benefit analysis
States receive one point if CBA is applied to rules before they can be implemented, and one point if rules are required to undergo CBA for renewal.

State-specific notes

- Montana's governor issued a red tape reduction executive order in 2021, but in our view this does not carry sufficient weight, relative to statutes mandating CBA, to warrant points in the scorecard.

Citizens engaged in cost-benefit analysis
States receive one point if the results of CBA analysis applied to regulations are publicly available, transparent, and data-driven. They receive an additional point if citizens have a right to challenge analyses they believe to be inadequate or errant.

Injunctive relief for citizens against state agency actions
The state (**Tennessee**) with this protection in place received 5 points.

Legislative research and analytics resources
States evaluated by the Levin Center for Oversight and Democracy to have "limited" or "minimal" analytic capacity attached to their legislatures received no points. States evaluated to have "moderate" capacity received two points, while states judged to have "high" capacity received three points.

Balanced emergency powers
We relied on the Maine Policy Institute's scorecard of emergency powers, which focuses on institutional factors like the extent of legislative involvement in determining emergencies and its authority in related decisions, and the power of governors to unilaterally alter laws. The scorecard provides a range from 0–100 (a higher score indicates greater democratic control over emergency powers; a lower score indicates power concentrated in the hands of governors and/or unelected officials). To construct our variable, we took each states deviation from 50, and multiplied by 0.1. For example, the state with the greatest legislative authority over emergency powers, **South Carolina**, has a score of 83 in Maine Policy Institute's 2022 scorecard—33 points above 50, which when multiplied by 0.1 yields 3.3 points on its overall Federalism Score.

We note that this data source doesn't capture significant emergency powers possessed by other state officials, for example their public health authorities, which means a state may do well on this metric, and yet still have unelected authorities exercising outsized powers.

Legislative approval required for federal grant acceptance
While it's common for state laws to require that state agencies submit spending plans for federal funds to the legislature as part of their overall budget proposals, this is not equivalent to a requirement that legislators approve federal grants before they are sought, nor even that they be apprised of the specifics of federal grant awards and afforded an opportunity to intervene before final acceptance. Legislative budget processes that require proof of federal funds before authorizing agencies to spend those funds are not processes that promote scrutiny, they are accounting guidelines.

In order to be coded as maintaining legislative authority over federal grant acceptance, a state's laws must require legislative approval either before a grant is applied for, or before it is accepted. Only one state (**Oregon**) clearly requires the former for all federal grant applications. Two others (**Kentucky** and **Utah**) limit such approval to certain kinds of federal funding. A state whose legislature maintains total authority over federal grant applications receives 25 points on the Federalism Scorecard, while states that water down this oversight receive a smaller number of points.

A handful of states don't give their legislatures authority over federal grant applications, but they do require that specific members of their legislatures be notified of impending awards after state agencies have applied for those grants, and give them a number of days in which to investigate and veto those awards. The state of **Georgia**, for example, requires a presentation to legislative leaders of information including the intended use of new federal grant funds, the timeframe for use, and estimates of fiscal and other impacts. We gave such states 10 points.

Some legislatures have procedures for approving federal grants when they are out of session which come closer to actual scrutiny and permission than their ordinary processes. We elected not to give points to these states, because unlike states which systematically subject federal grants to a legislative veto, these states only do so when federal dollars happen not to align with the state budget cycle.

Some state budget officials noted in the Ballotpedia survey that their legislators have the authority to craft legislation aimed at stopping the acceptance and expenditure of federal funds, but in our view this is not evidence of oversight, it's merely an observation that legislators are empowered to introduce bills.

Other states require agencies to place federal grant information in an online portal or other central information source (see, for example, the portal required by the state of **Missouri**), which legislators could presumably peruse if they had an interest, but the agencies are not required to place specific cost and regulatory content before legislative leaders and staff, with a time lag allowing for intervention. In our judgment such transparency is laudable compared to no reporting at all, but it does not indicate active legislative oversight of federal grant acceptance.

State-specific notes

- **Kentucky** requires legislative approval only for federal grants that entail state matching-fund requirements, so they received five points instead of 25.
- **Utah** exempts various federal grants from legislative approval based on size and type, and in some cases exempts them even from reporting maintenance-of-effort (MOE) requirements that illuminate some of their true cost to the state. On the plus side, however, they subject all federal grants to annual review, contrasted with other states that review only new proposed grants. For these reasons we gave **Utah** 15 points instead of 25.
- **Washington** gives its legislators veto power only over federal grants that state agencies procure outside the normal budgeting process, so it received two points rather than the 10 points that other states received for complete legislative veto power over federal grants.

Approval from elected executive branch officials required for federal grants

Many states empower various unelected agency officials to apply for, accept the conditions of, and include federal funds in their budgets. Other states give agencies the same latitude to pursue federal funds, but require them to provide central budget authorities with basic information, and in some cases even to seek permission from those authorities before accepting funds. These authorities report up through a hierarchy that ultimate falls under the purview of an elected official, usually within the executive branch.[10] Even where such a budget authority actually controls agency applications for and/or acceptances of federal grants, however, we do not code that state as having elected executive-branch oversight of federal funding processes unless its law clearly stipulates that agencies must receive permission from the governor or some other official elected by the citizens of the state before it accepts federal funds.

State-specific notes

- The Treasurer of **Maine** is empowered to accept federal grants, and is appointed by the legislature, but we did not judge this to be sufficiently answerable to voters to count as a state where elected executive branch officials oversee federal grant applications.[11]
- Some **New York** statutes *indicate* gubernatorial approval is required for certain federal grant applications, but no statute clearly establishes this oversight function, nor did the state's budget officials indicate that such is the case in their survey responses.
- **Washington** requires state agencies to seek explicit permission from the governor only for federal grants that they procure outside the normal budgeting process, so it received two points rather than the 10 points that states with fuller elected executive oversight of federal grants received.

No exemptions from federal grant approval processes

Many states exempt certain public entities—chiefly among these state universities—from the auditing, reporting, and accountability standards to which other taxpayer-funded entities are held. For our coding on this variable, we focused solely on states which afford their legislatures

and/or elected executive-branch officials some oversight of federal grant applications and acceptances, and examined which of these exempt some state institutions from that oversight. In instances (nearly all), where we found such exemptions, we deducted three points from the state's score.

State-specific notes

- **Kentucky** appears to exempt its state universities from federal grant oversight by dint of defining them as municipalities, but since we only gave a small amount of points to the state for its very limited federal grant oversight overall, we saw no need to deduct further points.

State maintains a contingency plan for loss of federal funds

Many state budget personnel indicated in the Ballotpedia survey that they would take some vague or unspecified steps in the event of federal fund loss, but these are statements about likely *reactions*, not indications of a forward-looking plan. Ideally states would direct key personnel to develop and report to the legislature their plans for prioritizing and reducing activities in the event federal grant funds are reduced (as in **Utah**), and specify that any hires based on federal funds are temporary (as in **Maine**).

We gave states credit for nearly any indication of forward thinking, however. **Ohio**, for example, gives agency leaders statutory authority to furlough employees paid by federal funds in the event of fund reduction, while **New York** assigns personnel to monitor the politics and trends tied to key federal grants. Even when a state budget official reports, as in **South Dakota**, that the plan is simply to cut spending and rely on state reserves, we gave them credit for having a plan. Referring back to our goal of directional reliability, we believe a state that makes some effort at preparing for federal fund reduction is less vulnerable to agency manipulation than states which don't even contemplate fund reductions. In future releases of the Federalism Scorecard, however, we are likely to look for evidence of stronger planning. In the present scorecard, states which showed any evidence of contingency planning received 10 points.

State-specific notes

- **Arizona**: The state's Ballotpedia survey response affirmed the value of planning, but gave no specifics. Nothing in Arizona statutes requires contingency planning, the governor's Office of Strategic Planning & Budgeting offers no guidance on planning for federal fund reductions, none of its fiscal notes for the past three years have mentioned the possibility of fund reductions, nor did its most recently available report on federal funds.
- **Idaho**: Its budget official claims in the Ballotpedia survey that "Each agency has a plan to specifically deal with losses in its federal funds." Scrutiny of four-year strategic plans for its Departments of Administration, Financial Management, Finance, Education, and Health & Welfare, however, revealed no such plans, though a few acknowledged their dependence on continued federal funding.
- **Indiana** responded in a 2016 survey that its agencies must submit "a block grant contingency plan every year." Its State Budget Agency doesn't attempt to estimate federal grant trends in its forecasting reports, underlying data, or methodology, however, and the chapter in the *Uniform Compliance Manual* provided by the State Board of Accounts to state agencies, entitled "Federal Financial Assistance," says nothing about preparing for federal grant reductions.
- **North Carolina** asserts that its Office of State Budget and Management "collects and periodically updates agency specific contingency plans for how to operate in the event of a loss of federal funds." The Office's strategic planning template, guide to strategic planning, and an accompanying presentation to agencies on how to do strategic planning all fail to mention federal funds, however. Perhaps unsurprisingly, strategic plans by the Office of State Budget & Management, the Office of State Controller, and Departments of State Treasurer, State Administration, and Revenue all fail to mention federal revenue.

State estimates the costs of receiving federal funds

A federal grant can entail numerous long-term, unreimbursed costs, like land acquisition and insurance, building maintenance and security, auditing, personnel,

pensions, and matching-fund and maintenance-of-effort (MOE) requirements. No state shows signs of systematically estimating all of these costs before accepting federal grants. Our coding on this factor was somewhat lenient, affording states credit so long as they indicate that they scrutinize at least some unreimbursed costs (like matching-fund and MOE requirements) before accepting grants. The timing of when such costs are considered was thus a key factor differentiating whether a state received points in the scorecard. While many state budget officials indicated via survey that they account for matching funds and MOEs, most of them mean simply that these costs are factored into an agency's budget. Accepting federal grants with such requirements essentially requires that those costs be baked into subsequent budgets, or else the federal funds are withdrawn, so budgeting them indicates nothing about whether they were evaluated before a state agreed to take the funds. We gave 15 points on this variable, but only to states that evidenced some pre-acceptance consideration of unreimbursed costs.

Some state budget officials claimed that they estimate the costs of federal funds, and pointed to statutes or rules directing them to fully account for reimbursable expenses in order to maximize federal dollars received. We are focused here on the additional unreimbursed costs to a state, however, i.e., the expenses a state incurs in order to receive the seemingly "free" money.

Other officials answered this question with specifics about how their states assess the costs of unfunded federal mandates, a term that in the field of intergovernmental relations refers to requirements that states establish, for example, clean air standards, or that they make facilities accessible to the disabled. This is a separate matter than estimating the costs of accepting federal grants, about which states have a choice.

Finally, a handful of respondents indicated that they examine costs from federal grants on an ad hoc basis. We did not deem this a systematic and reliable enough approach to give them points in the scorecard, especially because what they invariably describe is *post hoc* analysis, ie, assessing the costs of grant implementation well after the grants have been accepted.

In future editions of this scorecard we'd like to assess not simply whether a state requires a listing of unreimbursed grant-related costs before acceptance, but whether such costs are truly weighed in the balance by decision-makers before agreeing to accept federal dollars.

State-specific notes

- **Florida** has a statute aimed at estimating costs in order to maximize federal reimbursements, but there is no indication that unreimbursed costs are systematically factored into decisions about applying for and accepting grants. A search of Florida's Executive Office of the Governor website, and related state budgeting resource websites, shows no evidence of guidance for agencies to account for costs before accepting grants.
- In its response to the Ballotpedia survey, **Kansas** mentions a 2015 audit of state costs for using federal funds. This is no longer available on the Kansas Legislative Division of Post Audit, though it can be located in the Kansas Government Information Library. Given that Kansas state agencies have discretion to seek grants on their own, there's no indication the state systematically factors unreimbursed cost estimates into grant acceptance decisions. It's worth noting in this regard as well that the Division of Budget's 2024 instructions to agencies on how to present budgets to legislature has a little guidance on presenting MOE requirements, etc., but again, there are no considerations of such costs required before a grant is accepted by the agency.
- **Louisiana**'s survey response indicated that state agencies list unreimbursed grant-related costs in their budgets, but the most recent itemized state budget shows no evidence of this.

Legislative approval required for high-cost State Implementation Plans

States that require legislative approval before Clean Air Act SIPs can be altered received 10 points on the Scorecard. States that afford their legislatures the opportunity to scrutinize and reverse SIP amendments received five points. Regarding Medicaid, states received two points if SIP amendments are reviewed by legislatures, but legislative approval is not a precondition for changes. States received five points if legislative approval is required for SIP

amendments, and five points if approval is required before the state seeks a federal waiver, for a total of 10 possible points.

Magnitude of federal lobbying by state agencies

We gathered data on federal lobbying conducted by each state's agencies, universities, and municipalities, and expressed this in per capita terms. We then multiplied this figure by five and subtracted the total from each state's Federalism Score. For example, towns, counties, and universities in **New Mexico** spent $1.1 million on federal lobbying in 2022, which amounts to $0.52 per New Mexican. Multiplying this by five means the state lost 2.6 points on the Federalism Scorecard.

There is no hard science behind a factor of five, and readers are welcome to substitute a greater or lower factor based on their assumptions about the relative risk of allowing state entities to influence federal policy without state legislative approval or even awareness.

State-specific notes:

Alaska is an outlier, in that its agencies, universities, and local governments spent over $2 per capita on federal lobbying in 2022 (entities in the next closest state, **Mississippi**, spent 84 cents per capita, while the median for all states was 28 cents). This caused a 10-point reduction in Alaska's score, which lands it in the bottom five states on our Federalism Scorecard.

Percent of state revenues from federal sources

We subtracted the percentage of each state's 2022 revenue attributable to federal funds from the median state's federal revenue in 1990. Our reasoning for using 1990 as a baseline is that several trends which combined to undermine the ability and will of Congress to restrain federal agencies began to take hold around that time. A Congress that does not oversee agencies, combined with expanding agency dominance of state budgets, is a recipe for destruction of American self-government.

Because federal funds as a share of total revenue has increased for every state since 1990, all the resulting numbers were negative. Adding them to the states' federalism scores therefore decreased each—in some cases by quite a bit. **Alaska**, for example, which is the only state whose 2022 federal funds amounted to over half its budget, lost 32 points, sending it into the negative. **Louisiana**, **Montana**, and **South Dakota** took the next largest hits.

Attorney general lawsuits against federal overreach

Because state attorney general action against federal agencies tracks very closely with partisanship (i.e., Democratic AGs tend to only sue Republican presidential administrations, and vice versa), we identified a handful of instances during the Trump presidency when federal actions arguably intruded on state autonomy, and a handful of similar instances thus far into the Biden presidency. Our goal was to control for partisanship so that AGs from both parties had an equal chance to defend their states against federal overreach without having to evince the (unfortunately) extraordinary courage of defying their own party leaders. The instances we chose were:

Under Trump

- Reduction by Environmental Protection Agency of states' authority to determine water quality standards
- Reduction by National Highway Traffic Safety Administration of states' authority to set auto emissions standards

Under Biden

- The Department of Homeland Security policy of releasing illegal migrants into states' borders without their consent
- Threats by U.S. Department of Agriculture to reduce school lunch funding unless schools adopt the administration's preferred gender-identity policies

Endnotes

1 A theme in this report will be the imperative of checking bureaucratic authority. This is not to suggest that bureaucracies are inherently bad, or their staffs ill-intended. The history of modern bureaucracy shows that without adequate transparency and oversight by elected representatives of the people, combined with well-tended boundaries on authority, bureaucracies tend to expand their powers, and to exercise those powers capriciously, quite often while the people doing so imagine that they are pursuing the good in an orderly manner.

2 This detailed analysis by a former Kansas State Budget Director of how MOEs function to undermine state priorities, including the massive accrued unfunded pension cost of state employees hired by federal dollars, is instructive.

3 See, for example, the James Madison Institute's analysis of costs to the state of Florida for receiving federal funds towards education, veterans' healthcare, and other services. In addition to considerable unreimbursed costs, there have been numerous instances where federal agencies promised a certain level of funding in return for the state's participation, only to deliver far lower actual funding, causing turmoil in the state's budget.

4 The Environmental Protection Agency, for example, makes clear that it reserves the power to enforce state rules once a SIP is established: "SIPs are generally enforced by the state. However, the EPA is authorized to take enforcement action against violators for federally-approved SIPs."

5 Consider, for example, how the American Association of State Colleges and Universities urged (in a posting subsequently taken down, but available via the Internet Archive Wayback Machine) its members to advocate attaching MOEs to federal university funds, as a means of preventing state legislatures not only from reducing state taxpayer funding, but from making "insufficient increases" in those funds.

6 A working paper by Jonathan Riches was also very instructive in our research.

7 The Center's full report is worth reading, and we considered using more of its data to flesh out our variables tied to the existence of legislative oversight, but our sense was that much of the Levin Center's interest is in the (highly valuable) area of insuring good governance, proper contract performance by state vendors, and so on, whereas our interest is specifically in the ability of legislatures to counter agency overreach, and in particular points of collusion between federal and state agencies. What's more, the state-by-state, investigator-dependent assessments conducted by Levin left us without confidence in their reliability as relative assessments of state competence. While the nuance and detail in their reports is highly impressive, in other words, we judged it largely unsuitable for a scorecard.

8 While a bit dated, this article in the *William and Mary Environmental Law and Policy Review* provides a helpful framing of the complexities in this area.

9 Luke Phillips, "Chevron in the States? Not So Much," *Mississippi Law Review* 89:2, p. 358. See also R.R. Comm'n of Tex. v. Tex. Citizens for a Safe Future & Clean Water, 336 S.W.3d 619, 625 (Tex. 2011). For a differing point of view from the Texas Attorney General, see Ken Paxton, Opinion No. KP-0115, October 3, 2016. Readers who side with Attorney General Paxton's point of view that "…the Texas Supreme Court…rarely defers to agencies" should add four points to Texas's score in this report, which would serve to shift it in the rankings from 33rd to 28th.

10 Sometimes the budgeting authority resides in the legislative branch, but the same reasoning we apply in this section to executive branch budget authorities applies to budgeting offices in the legislative branch.

11 A reasonable counterargument would be that state legislators are in a better position to hold such an appointed official accountable to the interests of their constituents than are the constituents themselves in a direct election. Readers who hold this point of view can add 10 points to Maine's score, which would shift its rank from 19th to 10th.

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