

**Who is on First: State and Local Governments Out Front Making National Policy**  
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Since the 2016 presidential election, the American people and the world has been in a state of incredulosity as the governing of our country has challenged many of the core principles and values of the administrative state such as social equity, efficiency, effectiveness, responsiveness, accountability and integrity. One area that begs our attention is the relationship between the U.S. Federal and regional governments in terms of policymaking. During the Obama Administration, the working of federalism and intergovernmental relations became a part of the vernacular of everyday citizens as Congress and the states used the courts as a check on executive power and discretion. The Obama Administration battles resulted from a congressional imbalance of power. It was expected that with a republican president and republican led congress, the intergovernmental relations would become more cooperative and collaborative. Thus far, this expectation has not materialized. Goelzhauser and Rose (2017) contends that “The arrival of a new administration with radically different priorities foretells broad policy reversals in arenas such as health care, immigration, and the environment, with potentially important implications for federalism and intergovernmental relations.(p. 285)”. As predicted by these authors, the last 18 months has painted us a picture of the significance of the federalism institutional framework.

The contentious relationship between the US federal government and the states is nothing new. However, several trends in national policymaking that we should be paying attention to are:

- Increased importance of state attorney generals in national policymaking
- Increase use of partisan conflict through federalism institutional framework
- Increased use of a legal approach to address congressional and presidential inertia

The following discussion will shed light how these issues have manifested in terms of federalism and intergovernmental relations and the impact on the administrative state.

### **State Attorney Generals Making National Policy**

Partisan politics has rendered the national government impotent and non-productive in many respects. However, both republican and democratic states have begun to use this paralysis as an opportunity expand their 10<sup>th</sup> Amendment rights. Until the late 1990s, state attorney generals were non-partisan and non-adversarial. Fighting against a presidential administration is a new strategy (Friedman and Schwartz 2018). Both republican and democratic attorney generals are using their power to bring legal suits against the federal government to check administrative power on issues like immigration, healthcare, clean air, and DACA, family separation (Spakovsky, 2015; Goelzhauser & Rose 2017; Nolette, 2017; Savit, 2017; Johnson, 2018).

### **Partisan Conflict through Federalism Institutional Framework**

Leaders of both red and blue states are frustrated with Congress' inability to get legislation enacted that support their policy preferences. States are unifying around their policy preferences to challenge national policy or the absence of it. State governments are passing state level policies to fill a void in the national policy agenda or to force congress and/or the president to act on particular policy proposals (Bulman-Pozen, 2014; Bulman-Pozen, 2016; McGaughy, 2018). Republican led states have passed laws that limit collective bargaining rights of state employees, limit healthcare coverage, and loosened gun regulation (Goelzhauser & Rose, 2017). Democratic led states have passed legislation to legalize marijuana, place restrictions on the enforcement of immigration laws, and halt changes to emission control laws. State and local government democratic leaders have unified around using the legal system to protect its citizens

from unfair and unjust laws from the current presidential administration's as well as resisting implementation of such laws (Gerken, 2017).

### **Legal Approach to Policymaking**

States are also using the legal system to advance policy issues to the court. Lawsuits are being filed as test cases for judicial decision. States like Texas sues the federal government four to five of times per year because the political environment is supportive and they know they can win.(McGaughy, 2018). A number of hot button issues like same-sex marriage; and religious freedom to refuse to provide services to gay couples have been tested in the courts. California and New York is currently suing the federal government to prevent it from asking a question about citizenship on the upcoming 2020 census (Schmidt, 2018).

### **Conclusion**

Federalism was designed to provide checks and balances on unfettered power among the branches of government and between the federal government and the states. Minorities have generally favored a strong national government over state governments because of the injustices perpetrated by state governments. Presidentially sanctioned discriminatory practices have spilled over into some local government operations. The recent selection of a new Supreme Court Justice by the Trump administration, that if confirmed, will usher in an era of Republican control of all three branches of government with a potential long-term impact on policies for the next 40 years. Given that both republican-led and democratic-led governments are using their collective power and the legal system as a strategy to impact national policymaking, a deliberative discussion is needed to determine the impact of these emerging trends on future institutional arrangements, administrative structures and practices.

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