

Commission on Federalism

Statutorily Established Standards For Evaluating Federal Law

November 6, 2014

63C-4a-304. Standard for evaluation of federal law.

- (1) The commission shall evaluate whether a federal law evaluated under Section 63C-4a-303 is authorized by:
 - (a) United States Constitution, Article I, Section 2, to provide for the decennial census;
 - (b) United States Constitution, Article I, Section 4, to override state laws regulating the times, places, and manner of congressional elections, other than the place of senatorial elections;
 - (c) United States Constitution, Article I, Section 7, to veto bills, orders, and resolutions by Congress;
 - (d) United States Constitution, Article I, Section 8, to:
 - (i) lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States, but all duties, imposts, and excises shall be uniform throughout the United States;
 - (ii) borrow money on the credit of the United States;
 - (iii) regulate commerce with foreign nations, among the several states, and with the Indian tribes;
 - (iv) establish a uniform rule of naturalization and uniform laws on the subject of bankruptcies throughout the United States;
 - (v) coin money, regulate the value of coin money and of foreign coin, and fix the standard of weights and measures;
 - (vi) provide for the punishment of counterfeiting the securities and current coin of the United States;
 - (vii) establish post offices and post roads;
 - (viii) promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;
 - (ix) constitute tribunals inferior to the supreme court;
 - (x) define and punish piracies and felonies committed on the high seas and offences against the law of nations;
 - (xi) declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

- (xii) raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;
- (xiii) provide and maintain a navy;
- (xiv) make rules for the government and regulation of the land and naval forces;
- (xv) provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions;
- (xvi) provide for organizing, arming, and disciplining the militia, and for governing the part of the militia that may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers and the authority of training the militia according to the discipline prescribed by Congress;
- (xvii) exercise exclusive legislation in all cases whatsoever, over such district, which may not exceed 10 miles square, as may, by cession of particular states and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the place shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings; or
- (xviii) make all laws which shall be necessary and proper for carrying into execution the powers listed in this section, and all other powers vested by the United States Constitution in the government of the United States, or in any department or officer of the United States;
- (e) United States Constitution, Article I, Section 9, to authorize a federal officer to receive benefits from a foreign nation;
- (f) United States Constitution, Article I, Section 10, to fix the pay of members of Congress and of federal officers;
- (g) United States Constitution, Article II, Section 1, to:
 - (i) set the time for choosing electors; or
 - (ii) establish who succeeded to the presidency after the vice president;
- (h) United States Constitution, Article II, Section 2, to:
 - (i) serve as Commander-in-Chief of the armed forces;
 - (ii) require the written opinions of executive officers;
 - (iii) grant reprieves and pardons;
 - (iv) make vacancy appointments;
 - (v) make treaties, subject to the advice and consent of the United States Senate;

- (vi) appoint foreign affairs officers subject to the advice and consent of the United States Senate;
- (vii) appoint domestic affairs officers subject either to the advice and consent of the United States Senate or pursuant to law;
- (viii) appoint judges subject to the advice and consent of the United States Senate; or
- (ix) authorize the president to fill designated inferior offices without senatorial consent;
- (i) United States Constitution, Article II, Section 3, to:
 - (i) receive representatives of foreign powers;
 - (ii) execute the laws;
 - (iii) commission United States officers;
 - (iv) give Congress information;
 - (v) make recommendations to Congress;
 - (vi) convene Congress on extraordinary occasions; or
 - (vii) adjourn Congress if it cannot agree on a time;
- (j) United States Constitution, Article III, Section 1, to:
 - (i) create exceptions to the supreme court's appellate jurisdiction;
 - (ii) fix the jurisdiction of federal courts inferior to the supreme court; or
 - (iii) declare the punishment for treason;
- (k) United States Constitution, Article IV, Section 1, to establish the rules by which the records and judgments of states are proved in other states;
- (l) United States Constitution, Article IV, Section 3, to:
 - (i) manage federal property;
 - (ii) dispose of federal property;
 - (iii) govern the federal territories; or
 - (iv) consent to admission of new states or the combination of existing states;
- (m) United States Constitution, Article IV, Section 4, to defend states from invasion, insurrection, and non-republican forms of government;
- (n) United States Constitution, Article V, Section 1, to propose constitutional amendments;
- (o) United States Constitution, Article VI, Section 1, to prescribe the oath for federal officers;
- (p) United States Constitution, Amendment XIII, to abolish slavery;
- (q) United States Constitution, Amendment XIV, to guard people from certain state abuses;

- (r) United States Constitution, Amendment XVI, to impose taxes on income from any source without having to apportion the total dollar amount of tax collected from each state according to each state's population in relation to the total national population;
 - (s) United States Constitution, Amendment XX, to revise the manner of presidential succession;
 - (t) United States Constitution, Amendment XV, XIX, XXIII, or XXIV, to extend and protect the right to vote; or
 - (u) United States Constitution, Amendment XVII, to grant a pay raise to a sitting Congress.
- (2) The commission shall evaluate whether a federal law evaluated under Section 63C-4a-303 violates the principle of federalism by:
- (a) affecting the distribution of power and responsibility among the state and national government;
 - (b) limiting the policymaking discretion of the state;
 - (c) impacting a power or a right reserved to the state or its citizens by the United States Constitution, Amendment IX or X; or
 - (d) impacting the sovereignty rights and interest of the state or a political subdivision to provide for the health, safety, and welfare and promote the prosperity of the state's or political subdivision's inhabitants.
- (3) In the evaluation of a federal law, the commission:
- (a) shall rely on:
 - (i) the text of the United States Constitution, as amended;
 - (ii) the meaning of the text of the United States Constitution, as amended, at the time of its drafting and ratification; and
 - (iii) a primary source document that is:
 - (A) directly relevant to the drafting, adoption, ratification, or initial implementation of the United States Constitution, as amended; or
 - (B) created by a person directly involved in the drafting, adoption, ratification, or initial implementation of the United States Constitution, as amended;
 - (b) may rely on other relevant sources, including federal court decisions; and
 - (c) is not bound by a holding by a federal court.