

Statutory text:

Be it resolved by the Legislature of the state of Utah:

WHEREAS, the genius of the United States of America lies in the liberty of our people to govern ourselves at the most local level, in solving our unique problems, and in fostering prosperity through our unique endowment of human, capital, and natural resources;

WHEREAS, securing the local voice and liberty of the people through clear divisions of responsibility between state and national governments is the uniquely American structure of government known as federalism, as explained in Federalist 51, "the power surrendered by the people is ... divided between two distinct governments" – state and national;

WHEREAS, this overarching theory and structure of our constitutional form of government to protect the people's liberty is reiterated in the Tenth Amendment to the United States Constitution "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people";

WHEREAS, "Federalism is neither a partisan issue, nor is it an issue dividing liberals and conservatives," observed past Utah Governor Scott Matheson, "It's a philosophical concept of how the federal governmental system operates, an effort to determine the proper role of state and federal governments";

WHEREAS, James Madison, the primary author of the Constitution, spelled out these clear and certain constitutional divisions of responsibility most plainly in Federalist 45, saying the powers delegated to the national government are "few and defined," over primarily "external objects," and clarified that the powers reserved to the States concern "the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State," and are "numerous and indefinite." (Federalist 45);

Whereas, In Federalist 47, Madison warned the "accumulation of all powers, legislative, executive, and judiciary, in the same hands ... may justly be pronounced the very definition of tyranny", and the power delegated through the executive branch to unelected, unaccountable federal bureaucrats who make, enforce and adjudicate their

own rules, as if they were laws, fit the definition Madison described;

WHEREAS, "If no enumerated power authorizes Congress to pass a certain law, that law may not be enacted, even if it would not violate any of the express prohibitions in the Bill of Rights or elsewhere in the Constitution" (National Federation of Independent Businesses vs. Sebelius, 132 S. CA. 2566, 2577, (2012));

WHEREAS, absent a clear and certain division of responsibility between state and national governments, the structure of federalism is undermined and the resulting power vacuum is, by nature, filled by the government with the most accumulated power;

WHEREAS, throughout the 20th Century, regulations, laws, executive orders and court rulings emanating from the national government, met by the agreement, acquiescence, or inaction of the states, have blurred these divisions of responsibility and the resulting power vacuum has further distorted the constitutional divisions, separations and limits on the "few and defined" powers constitutionally delegated to the national government;

WHEREAS, the assumption of power that was never delegated to the federal government under the Constitution, undermines the constitutional architecture of federalism instituted to "secure to citizens the liberties that derive from the diffusion of sovereign power" (Bond v. United States, 564 U. S. 211, 221 (2011));

WHEREAS, any activity that undermines the core federalism structure of our government also erodes the voice and liberty of the people in determining the destiny, opportunity, creativity, and dynamism of their own lives and their unique communities and states – to the detriment of the nation as a whole;

WHEREAS, On October 26, 1987, President Ronald Reagan signed Executive Order 12612 on Federalism "to restore the division of governmental responsibilities between the national government and the States that was intended by the Framers of the Constitution and to ensure that the principles of federalism established by the Framers guide the Executive departments and agencies in the formulation and implementation of policies";

WHEREAS, United States Supreme Court Justice Anthony Kennedy ominously warned "The structure of our government is central to liberty, and when we destroy it, we place liberty at peril" (National Federation of Independent Businesses vs. Sebelius,

132 S. CA. 2566, 2676-77, (2012), Scalia, Thomas, Kennedy, and Alito, JJ., dissenting);

WHEREAS, President Donald J. Trump declared in his 2017 Inaugural Address, “we are not merely transferring power from one administration to another, or from one party to another -- but we are transferring power from Washington, D.C. and giving it back to you, the American People”;

WHEREAS, Rep. Jason Chaffetz, Chairman of the House Committee on Oversight and Government Reform, has reached out to state legislatures around the country to document their experiences with federal overreach and unfunded mandates with a view to restoring power to the states and to the people;

WHEREAS, in 2013, the Utah Legislature established the Utah Commission on Federalism (the Commission) to (i) assess overreaching federal actions, (ii) respond to actions through a measured dispute resolution process, (iii) coordinate with Utah’s congressional delegation and with other states; and (iv) report actions and results to the Legislature;

WHEREAS, at the request of Utah Senate President Wayne Niederhauser and Utah Speaker of the House Greg Hughes, the Commission convened public hearings throughout the 2017 legislative session to receive reports from the various Senate and House standing and appropriation committee chairs, state officials, staff and members of the public concerning federal actions that constitute examples of federal over-reach, erode the structural guarantees of federalism, or restrain the right and liberty our people to govern ourselves;

WHEREAS, a summary of the preliminary issues of federal overreach reported to the Commission follows:

Education

- Education is not a power delegated to the national government under the Constitution; it is reserved to the states.
- Abolish the U.S. Department of Education and block grant administration costs and federal appropriations to the state.
- Repeal the mandates of the Elementary and Secondary Education Act.
- Relax the overly restrictive interpretation of Title IX by the Department of Education’s Office of Civil Rights.

Public Lands and Natural Resources

- Recognize and abide by the comprehensive federal study and 1962 United States General Services Administration inventory of Jurisdiction Over Federal Areas Within the States, which concluded that the national government has no jurisdiction but merely a proprietorial interest over the vast majority of public lands within Utah.
- Recognize and abide by state jurisdiction over wildlife and wildlife management within the state.
- Perform and finalize the maintenance backlog in the national parks, national monuments, national forests, Congressionally-designated wilderness areas, and Congressionally-designated wilderness study areas.
- Mitigate catastrophic fire risk on national forests and rangelands.
- Acquire no new land within the state without the express consent of the state legislature (U.S. Constitution, Article I, Section 8, Cl. 17).
- As required by the Wild Free-Roaming Horses and Burros Act of 1971, "immediately remove excess animals from the range so as to achieve appropriate management levels" (AMLs) and ensure that AMLs are not exceeded going forward.
- Reinstate and maintain historic Animal Unit Months (AUMs) available for livestock grazing.
- Reinstate land use plans, policies, and practices that require public land management for multiple use and sustained yield consistent with local resource management plans.
- Restrict the Secretary of Interior's broad discretion over mineral, oil, and gas reservations, deferrals, and moratoriums.
- Revoke the secretarial "coal moratorium," which severely limits new coal leases on federal lands.
- Revoke the United States Fish and Wildlife Service sage-grouse land use plans in favor of Utah's sage-grouse management plan that allows the

animal's population to remain steady within the state.

- Amend the Antiquities Act, 54 U.S.C. § 320301 to require consent of the state legislature for any new national monument designation.
- Rescind/modify past designation of monuments in Utah in accordance with HCR11 and HCR12.
- Authorize and conduct a full Government Accounting Office (GAO) audit of all legal fee awards under the Equal Access to Justice Act (EAJA) and revise the Act to require full disclosure and transparency or terminate the act to end the abusive practice of public lands "management by litigation."
- Authorize and conduct a full GAO audit of the "sue and settle" court decisions that established new management criteria for public lands, and overrule all decisions lacking express ratification by Congress.
- Terminate the prosecution of the RS2477 road litigation and recognize state and county authority of RS2477 roads.
- Repay to the state the nearly \$1 million appropriated by the Legislature in 2013 to reopen the national parks and forever refrain from closing or withdrawing public lands without prior notice and express consent of the State Legislature.
- Repeal the Bureau of Land Management Planning 2.0 rule.

Health and Human Services

- Restore state regulatory control over the payment and delivery of health care.
- Reform Medicaid to either eliminate the need for upfront federal approval of state innovations that could lead to better health outcomes and improved system performance, or simplify and accelerate the approval process.
- Expand the ability of states to easily tailor Medicaid benefits and eligibility to fit within state budget constraints.
- Medicaid federal participation rate formulas should not be biased against states with high performing, low-cost health care systems, and rates

- should reflect the healthcare needs of states with diverse populations.
- Amend federal laws that limit state access to data.
 - Health care information sharing restrictions under 42 CFR should be aligned with the Health Insurance Portability and Accountability Act of 1996 to eliminate unnecessary barriers to telemedicine and other healthcare reforms, while retaining adequate privacy safeguards for patients and providers.
 - States should be allowed to engage in credible, institution based research on the medical use of cannabis.
 - States should be empowered to address the opioid addiction crisis in their borders, including the revision of US Department of Health and Human Services regulations that prohibit certified outpatient methadone-based opioid treatment programs from reporting methadone use to state-run prescription drug monitoring programs.
 - Addressing the federal financing of child welfare remains an essential priority.
 - Restore the social services block grant that supports state and county human services.

Transportation

- Expand two limited nationwide waivers to Buy America requirements for certain commercially available off-the-shelf items.
- Fully consolidate federal highway funding categories into a single block grant to states.
- Rescind duplicitous and overly burdensome rules and regulations, such as:
 - guidance issued by the Federal Highway Administration that prohibits issuance of a Record of Decision under the National Environmental Policy Act until the project sponsor has fully identified project funding;
 - current rules for performance measures regarding greenhouse gas emissions to establish certain national performance management

measures;

- restore regulatory authority to “grandfather” highway and transit projects that previously demonstrated air conformity.
- amend Sec. 319 of the Clean Air Act, 42 USC 7619(b) to include “stagnation of air masses or meteorological inversions” as an exceptional event for air quality monitoring purposes; and
- work with the Federal Transit Administration, the Federal Highway Administration, and the Federal Aviation Administration to develop the "one National Environmental Policy Act (NEPA)" platform. This would reduce inconsistency in interpretations of federal environmental law.

Local Government

- The Federal Government has no Constitutional authority for welfare services (i.e. food stamps, child care, job training, healthcare, social security, etc.)
- The states should only send enough money, from its citizen’s taxes, to support constitutionally-authorized federal functions.
- The federal government should avoid split-funding methods of financing – it invites too much unaccountability on how the money is spent.
- The federal government should list all its liabilities on its balance sheet.
- The federal government has no authority to direct employers what to pay their employees. Eliminate the Davis-Bacon Act.
- The federal government should not dictate how a state should run its business. The Disadvantaged Business Enterprise (DBE) is biased and discriminatory, and unfairly advantages minorities, perpetually, disrupting the free market.
- Remove constraints that prevent local government from having appropriate flexibility to address the housing needs of individuals within their communities.
- Remove restrictions that interfere with local government flexibility to accommodate geographic differences when dealing with storm water and

waste water management.

- Avoid empowering new or existing federal agencies to regulate in areas that are traditionally areas of state responsibility and in which states are capable of functioning, such as elections (example: the Elections Assistance Commission, originally established to assist states to comply with the Help America Vote Act, should not become a regulatory body in the area of elections).

Law Enforcement

- The general power of governing, or the “police power,” is “possessed by the States but not by the Federal Government.” See, e.g., *NFIB v. Sebelius*, (2012) and *United States v. Morrison*, 529 U. S. 598–619 (2000)
- Recognize and abide by state jurisdiction related to road closures, patrols, search and rescue operations, and on enforcement activities not specifically under federal jurisdiction (See reference to Jurisdiction Over Federal Areas Within the States under Natural Resources above).
- Recognize and abide by the sheriff’s authority as the chief law enforcement officer in a county.
- Recognize and abide by the Utah Division of Wildlife Resources scope of authority on wildlife and hunting enforcement and protection of various game animals, fowl, or fish.
- Work with states to clarify state vs. federal share in federal asset seizures.
- Encourage reduction and consolidation of federal law enforcement agencies to become more comparable and compatible with states.
- Pass and sign the Regulatory Agency De-militarization (RAD) Act, which stems the trend of federal regulatory agencies developing SWAT-like teams

Revenue and Taxation

- Enact legislation to solve the remote sales tax issue.
- Maintain the tax-exempt status of municipal bonds.
- Eliminate restrictions that prevent state legislatures from governing the sharing of state income tax return data.

- Fully fund federal mandates or release states from compliance.
- Recognize all unreported liabilities in the federal financial statements and formally include all of obligations in national debt computations

WHEREAS, the rise of the national administrative state has returned American government and society to precisely the sort of consolidated or absolute power that the U.S. Constitution was designed to prevent.

WHEREAS, the increasing national debt poses a danger to individual states and the principles of federalism;

WHEREAS, the Commission engaged Utah Valley University's Center for Constitutional Studies to produce a federalism curriculum presented by a national assembly of constitutional experts, including George Washington School of Law Professor, Jonathan Turley; and

WHEREAS, Turley warned of the consequences of federal overreach, "People have become reliant on the federal government. The result is that federalism seems like a quaint concept. What's dangerous about that is it's a protection of individual liberty. The degree to which people become passive about the increasing power of the federal government, they can watch the greatest protection of their individual liberty simply dissipate":

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah [governor concurring] echoes the warning of Justice Anthony Kennedy that the increasing assumption and centralization of power to the national government is destroying the federalism structure of our government and placing the liberty of our people "at peril."

BE IT FURTHER RESOLVED, that the Legislature of the state of Utah [gov concurring] calls on President Donald J. Trump to reenact Executive Order 12612 with additional provisions sufficient to ensure and enforce compliance with the order.

BE IT FURTHER RESOLVED, that the Legislature of the state of Utah [gov concurring] calls upon President Donald J. Trump to create a national commission on Federalism, comprised of representatives of the 50 states chosen by the state legislature and representatives of the federal government.

BE IT FURTHER RESOLVED, that the Legislature of the state of Utah [gov concurring] urges Congress to pass and strictly adhere to the Enumerated Powers Act, which would require any bill introduced in the U.S. Congress to specify the constitutional authority under which the bill would be enacted.

BE IT FURTHER RESOLVED, that the Legislature of the state of Utah [gov concurring] urges Congress to direct the Government Accountability Office to conduct an audit of federal programs, rules, regulations, and laws that encroach upon the constitutional sovereignty of the individual states.

BE IT FURTHER RESOLVED, that the Legislature of the state of Utah [gov concurring] calls upon Congress to pass, and the President to sign, the Regulations from the Executive In Need of Scrutiny (REINS) Act, as the first step to restrict administrative agencies from exercising the Article I powers of Congress and the Article III powers of the Judiciary.

BE IT FURTHER RESOLVED, that the Legislature of the state of Utah [gov concurring] recognizes that the increasing federal debt and unfunded obligations directly imperil the states and our citizens and urges Congress to pass the Intergenerational Financial Obligations Reform Act (Inform Act), which would require the federal government to conduct fiscal gap accounting and generational accounting on an annual basis.

BE IT FURTHER RESOLVED, that the Legislature of the state of Utah [gov concurring] demands that all branches of the federal government refrain from any action which limits the policymaking discretion of the States without clear and express constitutional authority for the action, and that any such activity must be necessitated by the presence of a problem of national scope, as defined in Executive Order 12612.

BE IT FURTHER RESOLVED, that the Legislature of the state of Utah [gov concurring] invites and encourages the legislatures of all other states to join with the Utah Legislature in documenting the issues of federal overreach and of actions to be taken by the national government to restore the divisions and limits on federal power to restore the vibrancy of American federalism for the protection of our people's liberty.

BE IT FURTHER RESOLVED that the Legislature of the state of Utah recognizes that the restoration of our federalism structure will require extensive cooperation

between and among the 50 states and with our federal counterparts, and calls upon all state and national government leaders to engage toward achieving a new nationwide consensus for decentralizing political power in the United States.

BE IT FURTHER RESOLVED that the Legislature of the state of Utah views a restoration of American federalism and decentralization of power and authority from the national government to states, local communities, neighborhoods, families, and individual citizens beginning with the actions enumerated in this resolution as essential to the structural protection of the liberties of our people.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the President of the United States, the Majority Leader of the United States Senate, the Speaker of the United States House of Representatives, the governor of each state outside of Utah, the Senate President or President pro tem and the Speaker of the House of each state legislature outside of Utah, and to the members of Utah's congressional delegation.