

HB209: Federalism Commission Amendments

Why is HB209 needed?

The healthy allocation and balance of powers between the national government and the states, produced by the unique structure of our government, “is central to liberty. When we destroy it, we place liberty at peril.”¹ However, the federal government now asserts control over virtually every aspect of life, business and government in Utah. States are responsible for restoring and maintaining this balance of power. HB209 provides a systematic process for the legislature to lead the State (and other states) in accomplishing our expressed priority of resisting federal overreach. Congressman Stewart called for “extreme federalism.” The Utah Way is systematic and functional federalism.

What does HB209 do?

- **Restore and maintain governing balance.**
 - Systematically and non-politically assess the balance of power between the national government and the states.
 - Systematically determine federal actions that undermine this balance.
 - Recommend actions the State can take to restore and maintain governing balance.
 - Systematically follow through on actions to restore and maintain governing balance.

- **Reduce State dependence** on “unsustainable” federal funds with federal strings.]
 - Federal Fund Reserve Account to prepare for the federal “rainy day.”
 - Federalism review and recommendations to Executive Appropriations Committee regarding strings and red tape associated with federal grants.

- **Empower State attorneys** to restore and maintain governing balance by providing ongoing continuing legal education the balance of governing powers and the “independent powers” and duty of the State to restore and maintain this balance.

¹ Justice Anthony Kennedy dissenting opinion, *NFIB v. Sebelius*, 567 U.S. 519 (2012).

Federalism Fundamentals

"This division of sovereignty was **unprecedented in theory or practice**. In a day when it is fashionable to assume that the [federal] government has the power and means to right every wrong, we should remember that the U.S. Constitution limits the national government to the exercise of powers expressly granted to it. **The Tenth Amendment provides: 'The powers not delegated to the United States by the Constitution, nor prohibited to it by the States, are reserved to the States respectively or to the people.'**" Dallin H. Oaks, "The Divinely Inspired Constitution," Ensign, February 1992, 68–74.

"This separation of the two spheres is one of the Constitution's **structural protections of liberty**. ... **a healthy balance of power** between the States and the Federal Government will reduce the risk of tyranny and abuse from either front." Printz v. United States, 521 U.S. 898 (1997).

"**This balance** between the national and state governments **ought to be dwelt on with peculiar attention**, as it is of the **utmost importance**. It forms a **double security to the people**. Alexander Hamilton, New York Ratifying Convention, 1788.

"**The independent power of the States** also serves as a **check on the power of the Federal Government**: 'By denying any one government complete jurisdiction over all the concerns of public life, federalism **protects the liberty of the individual** from arbitrary power.'" Bond v. United States, (2011)." NFIB v. Sebelius, 567 U.S. 519 (2012).

"... the constitution divides authority **between federal and state governments for the protection of individuals**. State sovereignty is not just an end in itself: 'rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power.'... **a healthy balance of power between the states and the federal government** will reduce the risk of tyranny and abuse from either front.'" New York v. U.S., 505 U.S. 144, 181-82 (1992).

"**In the compound republic of America, the power surrendered by the people is first divided between two distinct governments**, and then the portion allotted to each subdivided among distinct and separate departments. Hence **a double security arises to the rights of the people**. The different governments will control each other, at the same time that each will be controlled by itself." James Madison, Federalist 51, 1788.

"[T]he State Legislatures will jealously and closely watch the operations of this Government, and be able to **resist with more effect every assumption of power, than any other power on earth can do**; and the greatest opponents to a Federal Government admit the State Legislatures to be **sure guardians of the people's liberty**." James Madison, Introduction of the Bill of Rights, The Annals of Congress, House of Representatives, First Congress, 1st Session, 448-460, 1789.

"Vigilantly patrolling the boundaries makes it more likely the boundaries will be honored." Rep. Brian King.