

THE  National Association of
NAFSL NEWSLETTER
Former State Legislators

Balanced Federalism ★ State Sovereignty ★ Representative Governance

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Welcome to the October edition of the NAFSL newsletter! In this month's issue, we will look at the repercussions of a vaccine mandate stemming from the national government and how it upends the already precipitously trampled constitutional provisions for balanced federalism, as well as a peculiar response from one state legislator that serves as a reminder of the risks taken on by the national government when it undermines state sovereignty.

Last month, President Biden announced a requirement that certain employers across the nation ensure that their workers are vaccinated or face a penalty from OSHA. This mandate would affect around 100 million workers, more than two-thirds of the U.S. workforce. Retrospectively, pushing forth this hefty initiative without first conferring with Congress has not only flouted the constitutional structures and procedures of governance at the national level, but also undermines the balance of federalism by transgressing the constitutionally defined boundaries that separate national and state powers.

Adopted to explicitly bar the national government from assuming additional powers not chartered by the constitution, the 10th amendment instead delegates such powers to the states and the citizenry. As Chief Justice John Marshall wrote in [Marbury v. Madison \(1803\)](#), "the powers of the national legislature are defined, and limited; and that those limits may not be mistaken or forgotten, the constitution is written." Clearly, the provision of regulating and providing healthcare is absent in the enumerated powers granted to the national government in the constitution. Hence, ruling over healthcare matters is a state power.

Advocates for nationally mandated vaccination will rush to point out that Supreme Court precedent originating from decisions in [Jacobson v. Massachusetts \(1905\)](#) and [Zucht v. King \(1922\)](#) legitimizes the decision to impose vaccines on Americans. What they ignore, however, is that these cases dealt not with vaccination matters at the national level, but rather with whether *States* had the authority, under the Tenth Amendment, to require vaccinations for their residents. Notwithstanding one's opinion on the issue of vaccinations, a vaccine mandate coming from the national government down to the states clearly violates the federalism defined by our Founders. In short, it is unconstitutional.

Our national government, faithfully entrusted with delineated powers and authority, risks losing credibility and running afoul of its intended purpose by imposing expectations and requirements that it lacks the authority to engender in the first place. Indeed, the national government's usurpation of reserved state powers is not absent of consequences. For example, a state legislator in New Hampshire has [filed a concurrent resolution](#) calling for the secession of their state from the Union. While a state declaring its independence may have constitutional challenges itself, this inflamed response, which

American federalism means "a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate State governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways." U.S. Supreme Court Justice Hugo L. Black

echoes the determination of many other state officials to take a stand and defend their states' granted sovereignty, serves as an indication of the adversarial relationship that is fostered between states and the national government when the latter oversteps the limits of its constitutionally granted authority.

At a time when the sovereignty of our states is routinely questioned and undermined, the National Association of Former State Legislators wishes to remind all state legislators who swore an oath to *uphold and defend* the United States Constitution of their responsibility to push back against attempts to corrupt *the Republic for which it stands*.

A handwritten signature in black ink, appearing to read "James Kallinger". The signature is fluid and cursive, with a large loop at the beginning and a long tail at the end.

James Kallinger, President
National Association of Former State Legislators

Other News:

Reminder, NAFSL will be at the [2021 NCSL Legislative Summit](#) at the Tampa Convention Center on Wednesday November 3 and Thursday November 4.

Stay tuned for our next **Issue Brief** to be published on November 1.

Check out this NAFSL story in a Vermont newspaper
[Former state lawmakers, unite! – Vermont Daily Chronicle](#)