

Cooperative Federalism In the Trump Administration

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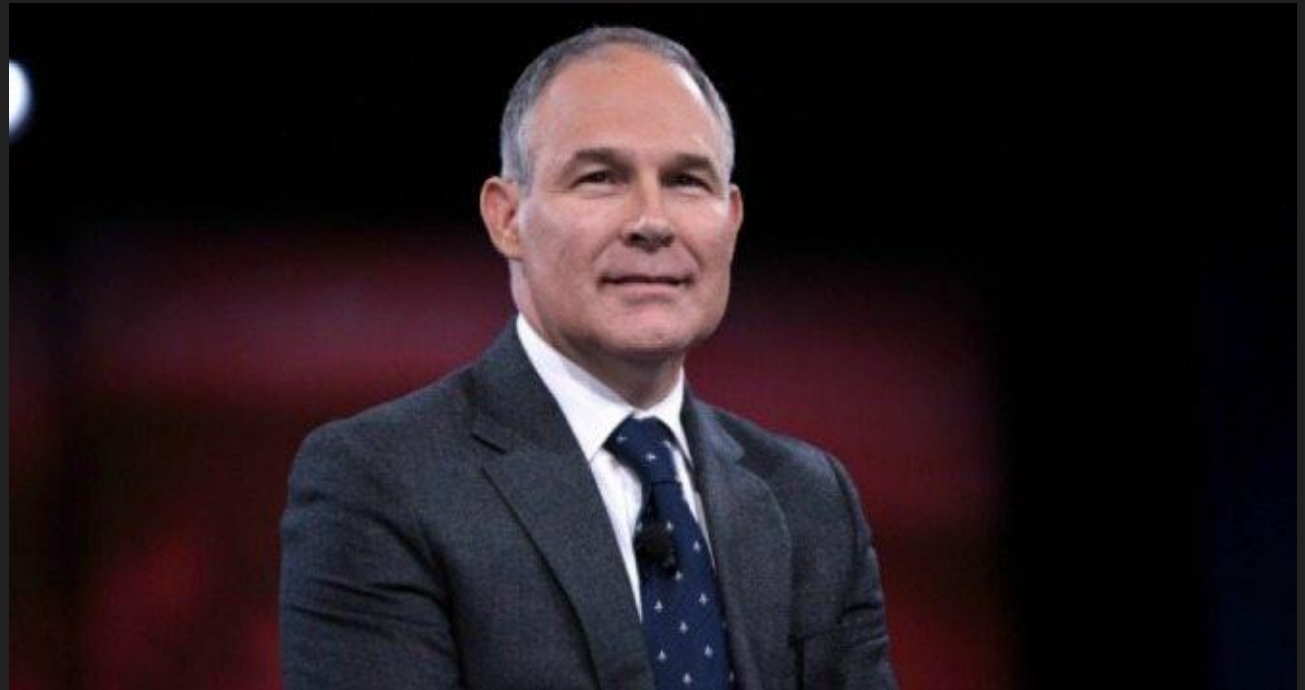
AAPCA  ASSOCIATION OF AIR POLLUTION CONTROL AGENCIES
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AAPCA
ASSOCIATION OF AIR
POLLUTION CONTROL AGENCIES



Scott Pruitt
Former Oklahoma AG &
Current EPA Administrator

“Cooperative federalism is key to maintaining clean air,” said EPA Administrator Scott Pruitt.



“What we see with the current EPA approach is almost an attitude that the states are a mere vessel of federal will....” --*Scott Pruitt, 2015*

“It’s a paternalism . . . to say: ‘We know best, you cannot take care of yourselves.’” --*Scott Pruitt, 2015*



Susan Bodine

Assistant Administrator for OECA



I appreciate that most of our environmental laws are built around the framework of cooperative federalism. Under cooperative federalism, states and the federal government have important and complementary roles in implementing federal environmental statutes.

Communication with state agencies is a critical part of cooperative federalism.

CAA Provisions re State Federal Relationship

The Congress finds ... that air pollution prevention and air pollution control at its source is ***the primary responsibility of States and local governments.***

Clean Air Act, 42 U.S.C. §7401(a)(3)

U.S. Supreme Court says:

The 1970 Clean Air Act establishes a “division of responsibilities” between the state and federal governments commonly known as “cooperative federalism.”

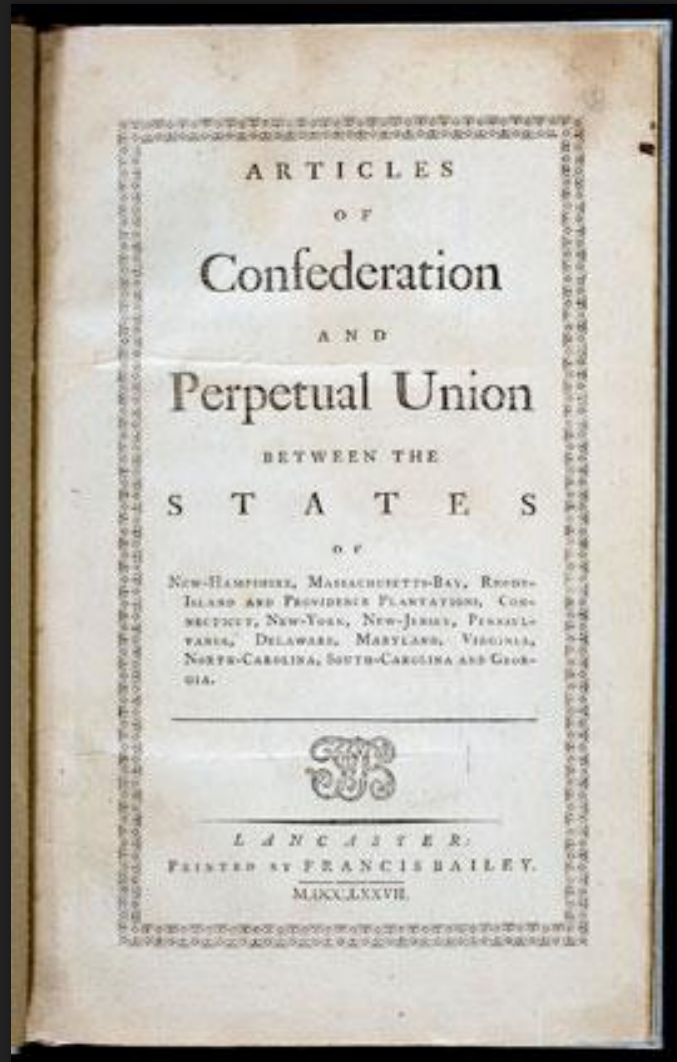
Train v. Natural Resources Defense Council, Inc., 421 US 60 (Supreme Court 1975)



**Cooperative
Federalism?**

**Federalism?
Confederalism?
Federalist Society?
Dual Federalism?**

Before “Cooperative Federalism”



- 11-15-77 sent to the 13 states for ratification
- Limited central government
- Preserved independence and sovereignty of states
- "The . . . States . . . enter into a ***firm league of friendship*** with each other, for their common defense, the security of their liberties, and their mutual and general welfare"



*This Constitution,
and the Laws of the United States
... shall be the supreme Law of the Land ...
any Thing in the Constitution or Laws of any
State to the Contrary notwithstanding.
(Article 6, Sec. 2)*

ons, the accused shall enjoy the right of a speedy and public trial, by an impartial jury of the vic-
en committed, which district shall have been previously ascertained by lot or drawing, where the value in controversy shall exceed twenty dollars, and to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the aid of counsel for his defence.
If he is unable to employ counsel, and he desires the aid of counsel, one shall be appointed for him at public exp-
se, where the value in controversy shall exceed twenty dollars, and no person shall be otherwise re-exami-
ned, or subjected to any other trial without the aid of counsel, if he desires his counsel, and he shall not be

Bill of Rights

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Congress OF THE United States
 begun and held at the City of New York, on
 Wednesday, the fourth of March, one thousand seven hundred and eighty nine

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 powers, that further declaratory and restrictive clauses should be added: And as
 sufficient ends of its institution:
 ed, by the SENATE and HOUSE of REPRESENTATIVES of the UNITED STATES
 following Articles be proposed to the Legislatures of the several States
 three fourths of the said Legislatures, to be valid to all intents and purposes
 in to, and Amendment of the Constitution of the United States
 Article of the Original Constitution.
 the proportion shall be so regulated
 every forty thousand persons
 by Congress, that

[illegible]

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Conventions of a number of the
of its powers, that further declaratory and
the beneficent ends of its institution:
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That the following Articles be proposed to the Leg
Articles, when ratified by three fourths of the said Legislatures, t
Articles in addition to, and Amendment of the Constitution, there
e several States, pursuant to the fifth Article of the Original Constitution.
After the first enumeration required by the first Article of the Constitution, there s
number shall amount to one hundred, after which, the proportion shall be so regul
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after which, the proportion shall be so regulated by Congress, that t
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Amendment X.

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.



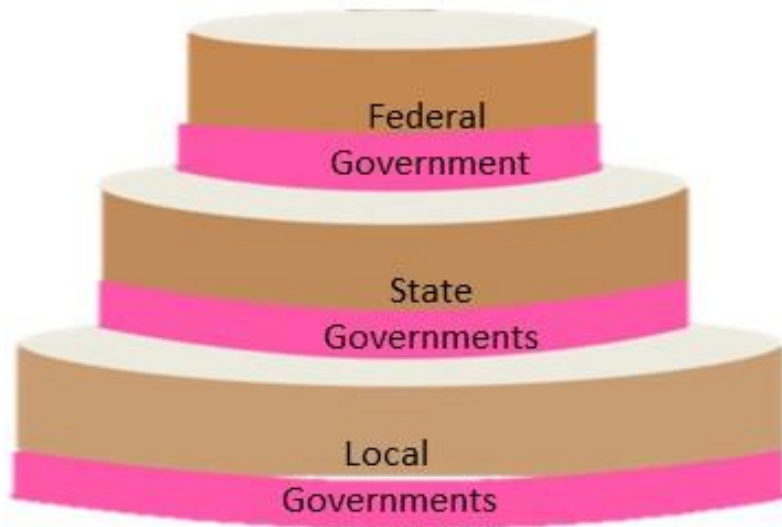
The Kentucky Resolution of 1798

States' Resolutions of 1798

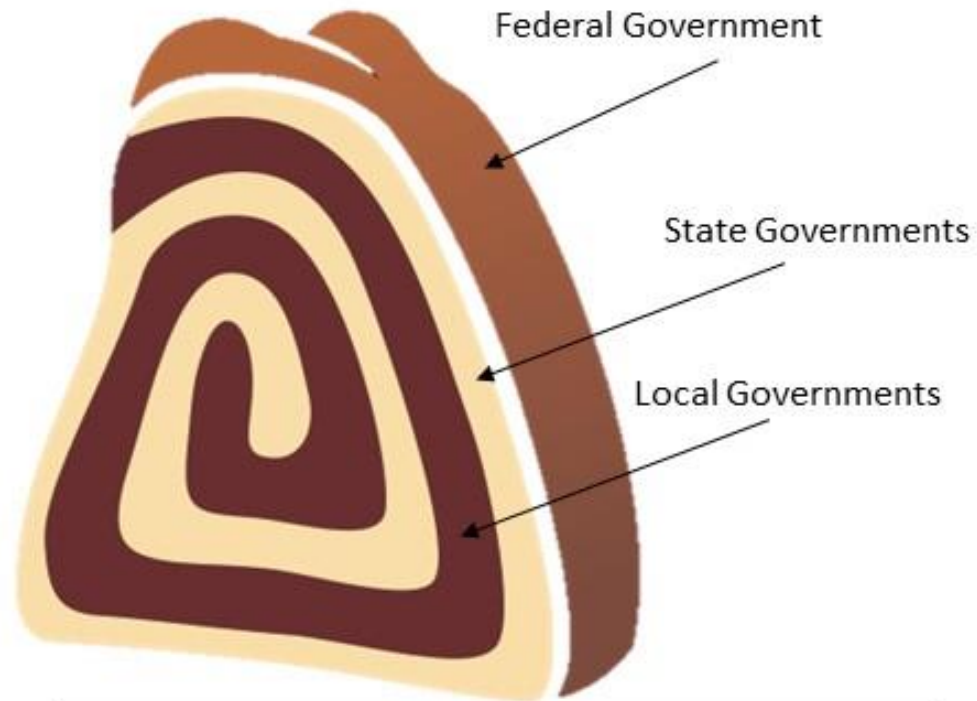
Resolved,

That the several States . . . of America, are *not united on the principle of unlimited submission* to their general government...and that *whenever the general government assumes undelegated powers, its acts are unauthoritative, void, and of no force...*that the government created by this compact was not made the exclusive or final judge of the extent of the powers delegated to itself; since that would have made its discretion, and not the Constitution, the measure of its powers....

inter-Governmental Relationships



“Layer Cake” Federalism
based on delineated and
clearly separate
levels of authority



“Marble Cake” Federalism
based on cooperation and intermixing of powers
and responsibilities between national, state and
local levels of authority



Environmental
Council of
States

June 2017

Cooperative
Federalism 2.0

“A
Recalibration”
of the Federal-
State
Relationship

Examples - FIPs

Clean Air Act FIPs promulgated by EPA

During George H.W. Bush, Bill Clinton and George W.
Bush = 5

During Barack Obama + 50

Examples – Sue and Settle

Between 2009 and 2012, EPA chose not to defend itself in over 60 lawsuits from special interest advocacy groups. These cases resulted in settlement agreements and EPA publishing more than 100 new regulations - including the Clean Power Plan.

Examples – Sue and Settle

“The days of regulation through litigation are over,” – EPA Administrator Scott Pruitt.

But Note – Challenges from Citizens

Among others, a petition submitted by Sierra Club seeking an objection by EPA to the significant Title V permit modification, Permit No. 561209 (hereafter “Proposed Permit”), proposed by the Tennessee Department of Environment and Conservation (“TDEC”) for Tennessee Valley Authority’s Gallatin Fossil Plant (“Gallatin”).

The background consists of a teal upper section and a dark gray lower section, separated by a jagged horizontal line.

EPA News Release 12/22/2017

“EPA Advances Cooperative Federalism
Through Designation Process for Sulfur Dioxide
and Ozone Standards”

Questions ?

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