

Governor Gary R. Herbert  
House Committee on Oversight and Government Reform  
Speaker's Task Force on Intergovernmental Affairs  
"Federalism Implications of Treating States as Stakeholders"  
Feb. 27, 2018

Chairman Gowdy, Chairman Bishop, Ranking Member Cummings, and members of the Committee and the Speaker's Task Force, thank you for inviting me here today. I have been speaking for many years about the importance of federalism—what some describe as the vertical separation of powers between states and the federal government—and to me this hearing is a sign of progress.

Often when we talk about federalism we focus on its constitutional foundation. That's important, but there is a very practical reason for federalism: *to create better policy!* As Justice Brandeis said, states are the “laboratories of democracy.” We've tried a wide variety of approaches to solving specific problems and developed expertise across the spectrum of public policy. When our political culture mistakenly presumes that the greatest expertise resides in *federal* agencies, Americans miss out on the lessons already learned by states. Today I'd like to suggest several federal laws that need to change to respect this separation of powers and facilitate better policy-making.

But first, I should point out that laws and rules are poor substitutes for cultural norms, and what we really need is a *cultural* change within the federal government. Congress and federal agencies must stop viewing state input as merely a box-checking exercise rather than a genuine attempt to learn from us.

Some infractions of federalism are process problems. The U.S. Code is littered with suggestions that federal agencies consult with states as simply one among many stakeholders. For example, the Water Resources Development Act suggests that the “Secretary may consult with key stakeholders, including State, county, and city governments . . .” Similar language is found in the National Historic

Preservation Act, the Energy Policy Act, and many more. As the title of today's hearing implies, *states are not stakeholders*! We are sovereign governments, partners who should be involved at the beginning of and throughout the policy-making process. The boiler-plate language of these laws should be amended to reflect that reality.

In the same vein, the National Environmental Policy Act (NEPA) requires a federal agency to work with states to develop various alternatives in an Environmental Impact Statement, but also allows the agency to ultimately ignore that input.

Sometimes the NEPA process feels like little more than an exercise in generating high quality paper work. The law should be amended to give states not just a voice, but a *vote* in the selection of a NEPA alternative, a change that would make federal land management in the west far more democratic and responsive to voters.

States should also have a more substantive role in execution. The Endangered Species Act authorizes the U.S. Fish and Wildlife Service to write management plans, designate critical habitat, and impose land use restrictions. This doesn't make sense. Utah's Division of Wildlife Resources is staffed with some of the best biologists in the field who have a profound knowledge of Utah's ecology and wildlife. There is no good reason states shouldn't take the lead in species recovery.

I don't want to leave you with a completely negative picture. We are currently enjoying a season of good relationships with many federal agencies, many of whom are trying to push decision-making down to the states. That is refreshing, though it illustrates what I said earlier about the importance of a *culture* of cooperation with states. Good cooperation shouldn't depend on a particular official or administration; it should be simply the way things are always done, regardless of who is currently in power.

Let me end by again emphasizing that federalism is not simply an academic concept but a better way to set policy. I appreciate your interest in removing some

of these barriers to cooperation and ultimately helping us improve the lives of the people you and I serve.

Thank you, and I look forward to your questions.

## Governor Gary R. Herbert



Governor Gary Richard Herbert has led Utah's recovery from the Great Recession to a position of national economic prominence. His unwavering focus on economic development includes attracting businesses and investment to the state while helping homegrown businesses flourish.

The governor is focused on four cornerstones to strengthen Utah's economy: education, jobs, energy, and self-determination. As a result, Utah has become a premier destination for business, jobs, and an unsurpassed quality of life.

As Utah's 17th governor, he took the oath of office on August 11, 2009. Prior to becoming the state's chief executive, Governor Herbert served as lieutenant governor for five years. He is the past chair of the Western Governors Association and National Governors Association.

Governor Herbert and his wife, Jeanette, are the proud parents of six children and 16 grandchildren.