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SUMMONING STATES:

A TEN-PART PLAN FOR THE SEVERAL STATES TO PROMOTE AMERICAN DEMOCRACY, PUBLIC HEALTH, AND PROSPERITY

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It is beyond question that the United States is in a moment of great peril, if not full-blown crisis. Our federal government is failing along countless dimensions. Already, the federal government's efforts (and non-efforts) have compromised our public health and welfare,¹ homeland and national security,² economic stability and global competitiveness,³ and basic political and civil

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¹ For example, the first major legislative enactment of President Trump's second term is the "One Big Beautiful Bill," which will impose drastic cuts to health care access, affecting millions of at-risk Americans. *See* Aliza Rosen, How New Federal Legislation Will Affect Health Care Costs and Access for Americans, Johns Hopkins Bloomberg School of Public Health (July 30, 2025), <https://publichealth.jhu.edu/2025/the-changes-coming-to-the-aca-medicaid-and-medicare> (previewing the bill's impact on Medicaid, Medicare, and the Affordable Care Act). The Congressional Budget Office has estimated that there will be over 10 million more people who are uninsured as a result of the bill's changes to Medicaid and the Affordable Care Act. Jared Ortaliza, et al., How Will the One Big Beautiful Bill Act Affect the ACA, Medicaid, and the Uninsured Rate?, KFF (June 18, 2025), <https://www.kff.org/affordable-care-act/how-will-the-2025-budget-reconciliation-affect-the-aca-medicaid-and-the-uninsured-rate/>. The bill will also make severe cuts to the Supplemental Nutrition Assistance Program, or SNAP. *See* Katie Bergh & Dottie Rosenbaum, Many Low-Income People Will Soon Begin to Lose Food Assistance Under Republican Megabill, Center on Budget and Policy Priorities (Sept. 10, 2025), https://www.cbpp.org/research/food-assistance/many-low-income-people-will-soon-begin-to-lose-food-assistance-under#_ftn1 (estimating that about "4 million people in a typical month will lose some or all of their SNAP food benefits" once the bill's SNAP cuts are fully implemented).

² *See*, e.g., Bill Chappell, "Heads are Exploding": How Security Experts See the Signal War-Plan Breach, NPR (Mar. 25, 2025), <https://www.npr.org/2025/03/25/nx-s1-5339753/signal-war-plan-breach-security-experts>; Robbie Gramer & Vera Bergengruen, Mass Recall of U.S. Ambassadors Leaves Unprecedented Global Vacancies, Wall Street Journal (Dec. 22, 2025), https://www.wsj.com/politics/policy/mass-recall-of-u-s-ambassadors-leaves-unprecedented-global-vacancies-b031a9ac?mod=politics_lead_pos5.

³ Trump's protectionist trade policies and attempted coercion of the Federal Reserve to lower interest rates have resulted in short-term market instability and could cause longer-term volatility. *See*, e.g., Rebecca Patterson & Ishaan Thakker, Trade, Tariffs, and Treasuries: The Hidden Cost of Trump's Protectionism, Council on Foreign Relations (Dec. 17, 2025), <https://www.cfr.org/article/trade-tariffs-and-treasuries-hidden-cost-trumps-protectionism>; Steve Kopack, The "Sell America" Market Returns After DOJ's Criminal Probe of the Fed Spooks Investors, NBC News (Jan. 12, 2026), <https://www.nbcnews.com/business/markets/trump-powell-fed-sell-america-market-rcna253593>. The administration's research funding cuts and limits on foreign students studying in the U.S. risk harming the nation's scientific and innovative leadership. *See* Erica Pandey, The Great Poaching: America's Brain Drain Begins, Axios (June 7, 2025), <https://www.axios.com/2025/06/07/us-science-brain-drain>.

rights.⁴ Over time, the federal government’s attacks on our bureaucratic institutions, federal workforce, open society, public and private infrastructure, health and education systems, and the mechanisms we rely on to confront climate change, natural disasters, and global threats will continue to cause tremendous and needless, sometimes gratuitous, suffering.⁵ Just as importantly, if not more so, these attacks will make it considerably harder for a democratic insurgence to gain traction, and for a political, legal, and civic renaissance to take root.⁶

Under such dire circumstances, states cannot “ride out” the federal storm. They need to step up—and to do so with creativity, dexterity, and cunning. What follows is a blueprint for states—blue, purple, and even red—to:

(1) fill the regulatory, welfare, and public safety gaps created by a federal government committed to disabling and weaponizing its fiscal and bureaucratic powers and resources; and

⁴ See, e.g., Molly Roberts, Comey, James, and “Animus Through a Megaphone”, Lawfare (Nov. 20, 2025), <https://www.lawfaremedia.org/article/comey-james-and-animus-through-a-megaphone> (contending that former FBI Director James Comey and New York Attorney General Letitia James can establish selective and/or vindictive prosecution by the Trump administration); Michael Casey, Federal Appeals Court Rules Trump Administration Can’t End Birthright Citizenship, Associated Press (Oct. 3, 2025), <https://apnews.com/article/birthright-citizenship-ruling-appeals-trump-immigration-70632486a2ae41f7c98d97b1f7399368>.

⁵ See Sam Goldfarb & David Uberti, Wall Street, Former Fed Officials Slam Powell Probe, Wall Street Journal (Jan. 12, 2026), https://www.wsj.com/finance/latest-threat-to-fed-chair-powell-rattles-markets-65f12af0?gaa_at=eafs&gaa_n=AWETsqdaxOyV-wDGubTwdevZez2kZ1ZLQaESuV2ezRrC0NzNWPvTw0jkmoU6eppdolo%3D&gaa_ts=6965834c&gaa_sig=-50WBCbnVE_ypfBJQya-RapvnRGslL1Ak4X-zcrUMCFIACcoltjMsN_w-PQvAHQklAb_CtC8Gfg0kQrSGS07zQ%3D%3D (documenting criticism of the Trump administration’s attacks on the Federal Reserve’s independence as a threat against the rule of law); Elain Kamarck, How Many People Can the Federal Government Lose Before It Crashes?, Brookings (Nov. 21, 2025), <https://www.brookings.edu/articles/how-many-people-can-the-federal-government-lose-before-it-crashes/> (analyzing the effects of the Trump administration’s federal downsizing efforts); Kaanita Iyer & Matt Stiles, Trump Tests the First Amendment: A Timeline, CNN (Dec. 18, 2025), <https://www.cnn.com/politics/free-speech-trump-timeline-vis> (noting the chilling effect of the Trump administration’s attack on the First Amendment); Ortaliza, et al., *supra* note 1 (noting that the Congressional Budget Office estimates the Trump administration’s policies will cause 16 million more people to be uninsured by 2034); Anemona Hartocollis, Michael C. Bender & Alan Blinder, Trump Offered Universities an Invitation for a Deal. Some See a Trap, N.Y. Times (Oct. 2, 2025), <https://www.nytimes.com/2025/10/02/us/trump-universities-compact-funding.html> (documenting the Trump administration’s threats against academic freedom); Maxine Joselow, E.P.A. to Stop Considering Lives When Setting Rules on Air Pollution, N.Y. Times (Jan. 12, 2026), <https://www.nytimes.com/2026/01/12/climate/trump-epa-air-pollution.html>; Gabrielle Canon, “The Perfect Storm”: Trump Has Left the US Less Prepared for Natural Disasters, Experts Say, The Guardian (Jan. 4, 2026), <https://www.theguardian.com/us-news/2026/jan/04/donald-trump-disaster-response-preparedness>.

⁶ See Frank Langfitt, Hundreds of Scholars Say U.S. is Swiftly Heading Toward Authoritarianism, NPR (Apr. 22, 2025), <https://www.npr.org/2025/04/22/nx-s1-5340753/trump-democracy-authoritarianism-competitive-survey-political-scientist>; Pew Research Center, Public Trust in Government: 1958–2025, Pew Research Center (Dec. 4, 2025), <https://www.pewresearch.org/politics/2025/12/04/public-trust-in-government-1958-2025/> (noting that Americans’ 17 percent trust that the federal government will do the right thing “is one of the lowest in nearly seven decades since the question was first asked by the National Election Study”).

(2) take the offensive, forcing the hyperaggressive feds (employing a “flood the zone” strategy to overwhelm states, municipalities, businesses, and universities⁷) to backpedal and start playing more defense.

I: The Premises

First: The federal government has long been the primary architect and administrator of American welfare, regulatory, and security programs.⁸ It is now abdicating those core responsibilities by shuttering offices, firing employees, restricting funds, and terminating programs.⁹

Second: The federal government coordinates, finances, and imposes substantive conditions on a substantial number of responsibilities that are entrusted principally to state and local governments or civic institutions.¹⁰ The feds are now withholding funds and other resources, as a means of effectively canceling and unilaterally overriding commitments codified by law,¹¹ as a lever to force states, localities, and civic organization to bend to the will of the White House,¹² or both.

⁷ See Ivan Pereira, Trump, Echoing Project 2025, Using “Flood the Zone” Strategy to Push Agenda: Experts, ABC News (Apr. 29, 2025), <https://abcnews.go.com/Politics/trump-echoing-project-2025-flood-zone-strategy-push/story?id=121124118>. A “flood the zone” approach aims “to overwhelm” one’s opponents “with a blitz of activity.” Luke Broadwater, Trump’s “Flood the Zone” Strategy Leaves Opponents Gasping in Outrage, N.Y. Times (Jan. 28, 2025), <https://www.nytimes.com/2025/01/28/us/politics/trump-policy-blitz.html>.

⁸ Edward L. Rubin & Malcolm Feeley, Federalism: Some Notes on a National Neurosis, 41 UCLA L. Rev. 903, 908 (1994) (describing the comprehensive and largely successful campaigns to centralize and nationalize American public law notwithstanding historic and cultural commitments to decentralized, federalized power).

⁹ See, e.g., Minh Kim, Trump to Close Voice of America’s Overseas Offices and Radio Stations, N.Y. Times (Dec. 2, 2025), <https://www.nytimes.com/2025/12/02/us/politics/trump-voice-of-america-overseas-offices.html>; Emily Badger, Francesca Paris & Alicia Parlapiano, 220,000 Fewer Workers: How Trump’s Cuts Affected Every Federal Agency, N.Y. Times (Jan. 9, 2026), <https://www.nytimes.com/interactive/2026/01/09/upshot/trump-workforce-cuts-table.html>; Ashleigh Fields, Judge Halts Trump’s \$10 Billion Social Safety Net Funding Freeze, The Hill (Jan. 9, 2026), <https://thehill.com/regulation/court-battles/5682624-trump-funding-freeze-paused/>; Fatma Tanis & Leila Fadel, USAID Officially Shuts Down and Merges Remaining Operations with State Department, NPR (Jul 1, 2025), <https://www.npr.org/2025/07/01/nx-s1-5451372/usa-id-officially-shuts-down-and-merges-remaining-operations-with-state-department>.

¹⁰ See, e.g., Philip J. Weiser, Towards a Constitutional Architecture for Cooperative Federalism, 79 N.C. L. Rev. 663 (2001); Joseph F. Zimmerman, National-State Relations: Cooperative Federalism in the Twentieth Century, 31 J. Federalism 15 (2001).

¹¹ Adam Liptak, There Are Lessons from the Nixon Era in Trump’s Attempts to Freeze Spending, N.Y. Times (Oct. 19, 2025), <https://www.nytimes.com/2025/10/18/us/politics/trump-supreme-court-impoundment.html>.

¹² See, e.g., Blake Jones, Jeremy B. White & Nick Reisman, “Brace for Impact”: Trump Turns Fraud Into New Weapon Against Blue States, Politico (Jan. 12, 2026), <https://www.politico.com/news/2026/01/12/brace-for-impact-trump-turns-fraud-into-new-weapon-against-blue-states-00719401>; Chris Cameron, Trump Administration Freezes Food Stamps in Minnesota, N.Y. Times (Jan. 9, 2026), <https://www.nytimes.com/2026/01/09/us/politics/trump-minnesota-food-stamps-usda.html>; Brian Mann, Trump Freezes \$18 Billion in Funding for NYC, Home to Key Democratic Leaders, NPR (Oct. 1, 2025),

Third: The federal government co-opts some of the non-disabled parts of the national government, distorting or deranging missions in ways that are at best wasteful and far more likely destructive to public welfare, security, and democratic stability.¹³

Fourth: States are the other “sovereigns” in the American constitutional order, and they already have well-established and highly functional legal, administrative, and political systems.¹⁴ Separate from the federal government, states have their own legal, political, and moral imperatives (*and mandates*) to protect their citizens, regulatory infrastructure, civic institutions, and businesses. Given present circumstances, they need to step up.

Fifth: For most of the postwar period, the federal government guaranteed political and civil liberties and rights, promoted the public’s health and safety, and preempted or superseded efforts by states to curtail rights or dilute health and safety regulations.¹⁵ But, under President Joe Biden, the courts and Congress hamstrung the federal government, limiting its ability to assure the nation’s social and economic welfare and to safeguard constitutional and statutory rights.¹⁶ Now, under President Donald Trump, federal primacy constitutes a direct threat to the nation’s political, civic, personal, and

<https://www.npr.org/2025/10/01/nx-s1-5559386/trump-freezes-18-billion-in-funding-for-nyc-home-to-key-democratic-leaders>; Lisa Desjardins & Kyle Midura, How Federal Funding Cuts Have Hit Nonprofits and the Communities They Serve, PBS News (May 19, 2025), <https://www.pbs.org/newshour/show/how-federal-funding-cuts-have-hit-nonprofits-and-the-communities-they-serve>; Michael Williams, Mullin’s First Two Months at DHS: Deportations, Threats Against Sanctuary Cities—and a Lower Profile, CNN (May 25, 2026), <https://www.cnn.com/2026/05/25/politics/markwayne-mullin-dhs-deportations-immigration>; Chantelle Lee, What to Know about DHS’s Threat to Stop International Flight Processing at Sanctuary City Airports, Time (May 27, 2026), <https://time.com/article/2026/05/27/dhs-international-flight-processing-sanctuary-city-airports-mullin/>.

¹³ See Alan Feuer & Lily Boyce, How Trump is Using the Justice Department to Target His Enemies, N.Y. Times (Oct. 17, 2025), <https://www.nytimes.com/interactive/2025/10/07/us/politics/trump-enemies-justice-department-investigations.html>; J. David McSwane & Hannah Allam, Unfettered and Unaccountable: How Trump is Building a Violent, Shadowy Federal Police Force, ProPublica (Oct. 18, 2025), <https://www.propublica.org/article/trump-dhs-ice-secret-police-civil-rights-unaccountable>; Shawn McCreesh, The Kennedy Center Crackup, N.Y. Times (Nov. 7, 2025), <https://www.nytimes.com/2025/11/07/us/politics/the-kennedy-center-crackup.html>; Glenn Thrush, et al., Justice Dept. Sets Up \$1.8 Billion Fund that Could Funnel Money to Trump Allies, N.Y. Times (May 18, 2026), <https://www.nytimes.com/2026/05/18/us/politics/trump-irs-lawsuit.html>.

¹⁴ Jessica Bulman-Pozen & Miriam Seifter, The Democracy Principle in State Constitutions, 119 Mich. L. Rev. 859 (2021); Miriam Seifter, Gubernatorial Administration, 131 Harv. L. Rev. 483 (2017); see also Blake Emerson & Jon D. Michaels, Abandoning Presidential Administration, 68 UCLA L. Rev. 104 (2021) (underscoring role states can and should play in U.S. constitutional and regulatory governance).

¹⁵ See, e.g., Civil Rights Act of 1964, 78 Stat. 241; Voting Rights Act of 1965, 79 Stat. 437; Occupational Safety and Health Act of 1970, 84 Stat. 1590.

¹⁶ See Ala. Ass’n of Realtors v. Dep’t of Health & Hum. Servs., 141 S. Ct. 2485 (2021) (per curiam) (holding that the CDC lacked the authority to impose a nationwide eviction moratorium to combat COVID-19); West Virginia v. EPA, 597 U.S. 697 (2022) (interpreting the EPA’s authority to combat climate change under the Clean Air Act exceedingly narrowly); Anthony Zurcher, Filibuster: The Biggest Obstacle to Biden Getting His Way, BBC (Apr. 26, 2021), <https://www.bbc.com/news/world-us-canada-56893296>.

economic well-being.¹⁷ For these reasons and (a) regardless of one's normative priors about the proper allocation of federal-state power in a federal system and (b) notwithstanding historical associations linking muscular assertions of states' rights with viciously anti-democratic Jim Crow regimes,¹⁸ states in the present moment ought to be viewed as the most promising and legitimate bulwark of American democracy and the public's welfare.

II: The Plan

What follows is a ten-part plan for states to expand their capacity, offsetting and counteracting federal acts of corruption, incompetence, cruelty, and sabotage. States must focus on preserving public health and welfare, stabilizing democratic institutions, and compelling the White House (which, since January 20, 2025, has had all the forward momentum) to start playing defense.¹⁹

A. Band Together

First things first. The chief problems with expecting states to assume significant (and heretofore federally entrusted) responsibilities are that it's too expensive and burdensome for the likes of Rhode Island, New Mexico, or Oregon to shoulder so much on their own. The populations and economies of those states—and also Colorado's, Michigan's, and Pennsylvania's for that matter—are too small and insufficiently diversified. We've long and quite sensibly sought to achieve economies

¹⁷ See *supra* notes and accompanying text.

¹⁸ E.g., Declaration of Constitutional Principles (The Southern Manifesto) (Mar. 12, 1956), available at <https://open.clemson.edu/cgi/viewcontent.cgi?article=2379&context=strom>; Akhil Reed Amar, The Bill of Rights as a Constitution, 100 Yale L.J. 1131, 1136 (1991). See also Paul Finkelman, States' Rights, Southern Hypocrisy, and the Crisis of the Union, 45 Akron L. Rev. 449 (2012) (rejecting Southern confederates' arguments that states' rights was the primary reason for secession).

¹⁹ For present purposes, I presume that readers are abreast of current events and have a working knowledge of what services and goods the federal government is no longer supporting, if not affirmatively subverting. They include emergency management, public health, primary, secondary, and university education (and scientific research), the regulation of workplaces, products, the environment, financial firms, and criminal investigations into public corruption. See *supra* notes and accompanying text.

The chief challenges with burdening states with responsibility for offsetting the federal government's shortfalls are three-fold: preemption, coordination, and costs. The law of *preemption* is, to be sure, very context specific, but artful jurisdictions that exercise care in the design and administration of programs can avoid or parry legal challenges. Particularly helpful in this moment is the fact that, under present conditions—wherein, again, the federal government is explicitly, even conspicuously, abandoning its statutory obligations—courts are less likely to find instances of conflict preemption.

My attention, though, is taken up with the latter two obstacles—*coordination* and *costs*. Whereas preemption is something that judges, legislators, and regulators must think about all the time (and thus there is a vast and extant literature scholars and policymakers may consult), the need for states to step up, stand in for, and in some cases supplant the federal government is certainly unusual and thus warrants special attention.

of scale and enhance risk-pooling by centralizing at the federal level many of the country's most important regulatory and welfare programs.²⁰

On paper, given the technological ease with which Americans can and do connect with one another and given the overwhelming economic benefits of a fully integrated political economy, centralization makes more sense than ever. But, in practice, it isn't working well anymore. Most apparently, it places responsibility in the hands of a corrupt and vindictive presidential administration.²¹ But even before Trump regained the presidency, acute polarization, hyperpartisanship, and surges in political sabotage and violence made it near impossible to govern nationally.²² Democrats and Republicans have been unable to find sufficient common ground with their counterparts from red states. That means we can't agree on national legislative and funding strategies vis-à-vis climate change, civil rights, voting, LGBTQ+ rights, labor, science, and education policy, and public health.

Compounding those already steep challenges is a Supreme Court that, for some time now, has been curtailing the federal government's legislative and regulatory reach.²³ The Court's campaign against the modern welfare state provides sufficient and independent reasons (apart from the Trump presidency) to search out alternatives to the federal administration of American health, safety, and welfare programs.

Those of us primed to think of American federalism in binary terms—either individual states acting alone or all of us functioning as a collective, national whole²⁴—may understandably lament that we're damned either way. Fortunately, though, there is a middle-ground option built into the very same Constitution many are quick to rail against.²⁵

States that have a good deal in common with one another—culturally, geographically, demographically, and economically—can join forces, share resources, govern jointly, and thereby

²⁰ See, e.g., David Rosner & Gerald Markowitz, A Short History of Occupational Safety and Health in the United States, 110 Am. J. Pub. Health 622 (2020).

²¹ See *supra* note and accompanying text.

²² See Alex Tausanovitch & Sam Berger, The Impact of the Filibuster on Federal Policymaking, Center for American Progress (Dec. 5, 2019), <https://www.americanprogress.org/article/impact-filibuster-federal-policymaking/>; Jennifer Dresden & Lilliana Mason, Assessing the Effect of Political Violence on American Democracy, SNF Agora Institute at Johns Hopkins (Nov. 7, 2023), <https://snfagora.jhu.edu/resources/assessing-the-effect-of-political-violence-on-american-democracy/>.

²³ See *supra* note 16 and accompanying text.

²⁴ For a discussion of what the Supreme Court famously referred to as “Our Federalism” in *Younger v. Harris*, 401 U.S. 37, 44 (1971), see Rubin & Feeley, *supra* note, at 906-09; see also Ernest Young, Federalism as a Constitutional Principle, 83 U. Cin. L. Rev. 1057 (2014).

²⁵ Of late, leading academics have argued we need a new constitution. See, e.g., Erwin Chemerinsky, No Democracy Lasts Forever: How the Constitution Threatens the United States (2024); Sanford Levinson, Our Undemocratic Constitution: Where the Constitution Goes Wrong (And How We the People Can Correct It) (2006).

attain the resiliency, economies of scale, and attractiveness to businesses and investors that none of them (functioning alone) could hope to realize. They can do so via interstate compacts and agreements.²⁶

Such compacts can be focused on, among other things, *public-health* initiatives. Regulations can be developed and standardized across several states; and resources can be pooled to invest in research and public outreach and to purchase and distribute medical countermeasures such as stores of vaccines, respirators, and high-priced prescription drugs. *Higher education* would be another obvious choice, particularly as federal funding dries up and state universities are forced to cut back on the breadth of curricular and degree offerings.²⁷ So long as states are siloed, each one has to (inefficiently) maintain a number of programs that provide little, if any, economic return on investment.²⁸ But under an interstate arrangement, such programs can be distributed across a range of member states, lowering each state's expenditures while still serving the same, if not greater, numbers of students. In this scenario, programs threatened with termination get a reprieve, and residents from any of the member states may be able to secure in-state benefits (preferred admissions and/or reduced tuition) when applying to those "shared" degree programs.

Compacting into clusters is legally straightforward. Interstate compacting is guaranteed by the Constitution.²⁹ All that is required to formalize a compact is the consent of Congress. Given the polarization described above, consent is far from assured. As it happens, interstate arrangements of the sort I'm describing aren't likely to meet the Supreme Court's exacting definition of a compact and thus could be construed as just an agreement.³⁰ This is good news insofar as it means that partnering states are free to combine, pool, and share decisionmaking authority and resources as they see fit.³¹

While broad policies would likely need to be set by a new interstate governance body³²—think, for example, of the Port Authority of New York and New Jersey—it doesn't follow that member

²⁶ Jon D. Michaels & M. Emme Tyler, Just-Right Government, 98 Ind. L. Rev. 863 (2023); Jon D. Michaels, Regionalism as Resilience in Pushback: How States Can Protect Liberty and Equality (Erwin Chemerinsky & Aziz Huq, eds.) (New Press, forthcoming 2026).

²⁷ Josh Moody, December Cuts Close Out Brutal Year for Sector, Inside Higher Ed (Jan. 6, 2026), <https://www.insidehighered.com/news/business/cost-cutting/2026/01/06/december-cuts-close-out-brutal-year-sector>; Fiona Riley, Top Research Universities Hit Hard by Trump Assault on Funding, Foreign Students, Forbes (Aug. 14, 2025), <https://www.forbes.com/sites/fionariley/2025/08/14/25-grad-schools-taking-a-huge-financial-hit-from-trump/>.

²⁸ Needless to say, any evaluation of academic programs requires considerably more nuance than is represented in the corresponding text.

²⁹ U.S. Const. Art. I, sec. 10, cl. 3.

³⁰ *Virginia v. Tennessee*, 148 U.S. 503 (1893); *New York v. O'Neill*, 359 U.S. 1, 6 (1959); Michael S. Greve, Compacts, Cartels, and Congressional Consent, 68 Missouri L. Rev. 285 (2003).

³¹ Michaels & Tyler, *supra* note.

states would have to invest in layers upon layers of new bureaucracy. Most of the day-to-day administration could and should be routed through already-existing state and county-level bureaucracies. The big costs to be incurred would be programmatic, as the states would have to find a way to pay for all the programs that the feds have newly abandoned or distorted.³³

Already, we're seeing some nascent interstate collaborations, notably (and predictably) along the northeast corridor and pacific coast.³⁴

B. Starve Washington

The bulk of our income taxes goes to the federal government. That's sensible, efficient, and in many respects *fair* under ordinary times. Now, though, given what the feds are doing with the revenue they collect and disperse, we're underwriting the incapacitation and/or anti-democratic cooptation of our public institutions.³⁵

With so much money going from individuals and businesses to the federal fisc, there's little the states (or, preferably, clusters of states³⁶) can do in terms of additional revenue raising. They must, therefore, find ways to siphon off money otherwise destined to be sent to Washington. Two approaches come to mind.

First, *states should embrace anti-tax politics, at least vis-à-vis federal taxes*. By and large, it is the representatives from blue states who support greater federal spending, while red state representatives tend to be opposed. Liberals and progressives have long found the anti- (federal) tax sentiments voiced by red state officials especially galling given that the federal government collects a disproportionate amount of taxes from blue state residents and businesses and redistributes the revenue to red states.³⁷ As Paul Krugman has noted, “there is a consistent pattern in which

³² U.S. Steel v. Multistate Tax Comm’n, 434 U.S. 452, 471–72 (1978) (explaining that the establishment on an “ongoing [multistate] administrative body do[es] not, standing alone, present significant potential for conflict” with federal powers and prerogatives).

³³ See Aziz Z. Huq & Jon D. Michaels, As Feds Abdicate Responsibilities, States Should Band Together, L.A. Times (June 9, 2025), <https://www.latimes.com/opinion/story/2025-06-09/state-coalitions-federal>. Because of the economies of scale, regional governance would keep those costs lower than they would be were each state shouldering its own burden. But, even then, the costs remain substantial.

³⁴ E.g., Joseph Goldstein, New York and Other States Form Health Bloc as Answer to Trump’s Policies, N.Y. Times (Sept. 18, 2025), https://www.nytimes.com/2025/09/18/nyregion/northeast-public-health-collaborative-trump.html?unlocked_article_code=1.m08.d2I5.69wDrgi2ISEP&smid=url-share; Josh Michaud & Jennifer Kates, States are Forming “Health Alliances.” Can They Make a Difference for Public Policy, KFF (Oct. 16, 2025), <https://www.kff.org/other-health/states-are-forming-health-alliances-can-they-make-a-difference-for-public-health-policy/>.

³⁵ See *supra* note 13 and accompanying text

³⁶ I will refer principally to “states” rather than “clusters of states.” But, in most cases and for the reasons presented in Section II.A, it should be presumed that clusters of states would be the preferable way to proceed.

conservative states that preach the importance of self-reliance are in fact heavily subsidized by liberal states.”³⁸

Blue states probably should have already been reassessing their reflexive support for (relatively high) federal taxes, particularly as the federal government has for some time been unable to support broad welfare and regulatory goals. (Again, during the Biden presidency, the courts and Congress blocked so much of what the administration sought to accomplish.) Today, the White House seems, as described above, fully committed to subverting federal programs and initiatives and to choking off federal funding to universities and school districts, public-health clinics, and the like. Under such conditions, continuing to support tax transfers to Washington—and, by extension, to the red states most supportive of the Trump presidency—seems even more shortsighted, if not completely foolish.

It therefore goes without saying that, despite considerable criticism among liberals and progressives, Democratic legislators should fully embrace SALT exemptions.³⁹ Their focus on class-based inequities (insofar as the exemptions favor the wealthy) is understandable but perhaps misplaced given what I’d suggest is an overriding imperative to limit the outflow of funds from blue state taxpayers to the federal treasury.⁴⁰

Second, and relatedly, states should be creative in keeping taxpayer money otherwise earmarked for Washington closer to home—that is, withheld (via existing tax exemptions) from the federal government and put to use locally. For years, government agencies at every level have set up nonprofit foundations that solicit and receive tax-deductible private donations. Such outfits augment what local school districts can provide through public funds, help spruce up municipal parks (e.g., the Central Park Conservancy and the Los Angeles Parks Foundation), and supplement whatever congressional appropriations are routed to, among others, the National Park Service, the Center for Disease Control, the National Institutes of Health, and the military service academies.⁴¹ By

³⁷ Ben Blatt, Do Californians Really Pay Trump’s Bills? N.Y. Times (Jun. 12, 2025), <https://www.nytimes.com/2025/06/12/upshot/trump-california-donor-states.html>; Jeffrey Sonnenfeld & Stephen Henriques, What Republicans Don’t Want to Say: Blue States are the ones Bailing Out Red States, Time (Feb. 14, 2025), <https://time.com/7222411/blue-states-are-bailing-out-red-states/>.

³⁸ Paul Krugman, Kentucky on My Mind, N.Y. Times (Dec. 14, 2021), <https://messaging-custom-newsletters.nytimes.com/dynamic/render?isViewInBrowser=true&productCode=PK&uri=nyt%3A%2F%2Fnewsletter%2F8b31f08c-1b11-5367-a7a5-2033c3a34faa>; see also Jon D. Michaels & David L. Noll, Vigilante Nation: How State-Sponsored Terror Threatens Our Democracy 226–27 (2024).

³⁹ Jeanne Sahadi, Who Will—and Won’t—Benefit from the Bigger SALT Deduction, CNN (Jul. 11, 2025), <https://www.cnn.com/2025/07/11/business/state-local-tax-deduction-who-benefits>

⁴⁰ See Jon D. Michaels, Why Trump’s Budget Bill is Getting Resistance from Republicans, Bos. Globe (May 23, 2025), <https://www.bostonglobe.com/2025/05/23/opinion/trump-budget-republican-resistance/>.

⁴¹ See Kevin R. Kosar, The Quasi Government: Hybrid Organizations with Both Government and Private Sector Legal Characteristics, Cong. Res. Serv. (Jun. 22, 2011), <https://sgp.fas.org/crs/misc/RL30533.pdf>; Jon D. Michaels, We the Shareholders: Government Market Participation in the Postliberal U.S. Political Economy, 120 Colum. L. Rev. 465 (2020); see also Felicity Barringer, The Grand Canyon, Coca-Cola and the Ban on Plastic Bottles that Didn’t Happen, NBC News (Nov. 10, 2011), <https://www.nbcnews.com/id/wbna45236230>.

establishing more of these organizations that supplement the work of state agencies (and even the multistate bodies described in Section II.A)—and perhaps even offering some state tax rebates to more fully subsidize those who contribute to state-adjacent foundations⁴²—states can serve the dual purpose of shortchanging an increasingly weaponized federal treasury and bolster their own, and sorely needed, fiscal war chests.

C. Deficit Spend

Most states are bound by constitutional or statutory requirements to balance their annual budgets. This means they can't easily deficit spend during times of crisis.⁴³ So long as the United States is a trusted, high-functioning government, states can turn to the federal government for at least some forms of assistance during periods in which state spending needs exceed revenue. When, as now, the federal government cannot be relied upon even to **grant emergency relief on a nonpartisan basis**,⁴⁴ those states whose laws (and even constitutions) can be relatively easily revised ought to do so—and commit to deficit spending for the next few years. (To allay concerns that powers granted during times of emergency are rarely scaled back after a crisis abates, legislators may stipulate that any law suspending balanced budget requirements be temporary—and attach a sunset provision to that effect.⁴⁵)

The fact that states haven't been running deficits means that they can start borrowing from a position of fiscal strength, and there is thus ample room for states to ramp up their spending. Of course, no state wants to spend the next couple of decades servicing debt. But the alternative—an unstable, increasingly illiberal democracy, a debased economy, a compromised environment, a fearful marketplace wherein would-be consumers and employees withdraw as they're unable to discern the safety of products or workplaces, and impoverished systems of public education and infrastructure—will be far more burdensome for states, their residents, and anyone seeking to do business there.

D. Raising Revenue through Market Participation

In this constitutionally and fiscally challenged moment, the most resilient states will be the most entrepreneurial. They'll find more and varied ways to raise revenue. Here I suggest greater government market participation.

⁴² See David Siders, "This is Further Proof of President Trump's War on California," Politico (Jan. 5, 2018), <https://www.politico.com/story/2018/01/05/california-democrats-trump-punishment-326376>.

⁴³ See Kim Rueben, et al., Budget Processes and the Great Recession, Urban Institute (Oct. 2018), https://taxpolicycenter.org/sites/default/files/publication/155886/budget_processes_and_the_great_recession.pdf.

⁴⁴ Rob Bonta, Attorney General Bonta Challenges Withholding of Disaster Relief, Transportation Funding (Mar. 4, 2026), <https://oag.ca.gov/news/press-releases/attorney-general-bonta-challenges-withholding-disaster-relief-transportation>.

⁴⁵ Cf. Bruce Ackerman, Before the Next Attack: Preserving Civil Liberties in an Age of Terrorism 80–83 (2006). See generally Antonios Kouroutakis, The Constitutional Value of Sunset Clauses (2016).

In liberal democracies, the government and market sectors are understood to be distinct and somewhat adversarial. Within this paradigm, market actors seek to maximize profits while government considers broader welfarist concerns, stepping in when the pursuit of profit-maximization results in unacceptable levels of labor, consumer, or environmental exploitation. The reality in the United States is more complicated.⁴⁶

Government units don't just regulate markets but also participate in them, buying, leasing, and selling goods and services. In many of those contexts, the business proposition for the government isn't necessarily profits. Government market participation may be an easier way to advance various welfarist aims than via traditional "command-and-control" regulation. (One example, among many, is state-owned package stores that sell beer and alcohol in a highly regulated fashion consistent with reducing addiction, overconsumption, and any deleterious downstream effects on neighborhoods surfeited by privately owned liquor stores. Another may be the use of procurement contracts to reward or freeze out certain firms based on their commitments to civil rights or other public values.)

Government market participation wherein the state provides certain goods or services in underserved communities and/or at below-market prices may be an easier way to reduce poverty, promote certain types of consumption, and increase competition/bring down prices than through tax reform, expanding means-tested cash assistance, and imposing various requirements on business owners.⁴⁷ Consider, for instance, proposals to create public banks (to reach underserved communities)⁴⁸ and for states to manufacture and distribute high-priced medicines such as insulin.⁴⁹

In other contexts, government may pursue something akin to profit maximization. There is reason to oppose those who advocate running government "like a business."⁵⁰ And there is reason to question the decisions of states and counties that are (a) auctioning off special hunting licenses for those willing and able to pay hundreds of thousands of dollars;⁵¹ and (b) renting out cells in "VIP"

⁴⁶ Michaels, Shareholders, *supra* note; Jon D. Michaels, Government Market Participation as Conflicted Government, in *Administrative Law from the Inside Out: Essays on Themes in the Work of Jerry L. Mashaw*, at 451 (Nicholas Parrillo, ed.) (2017).

⁴⁷ Jon D. Michaels, Sovereigns, Shopkeepers, and the Separation of Powers, 166 U. Pa. L. Rev. 861 (2018).

⁴⁸ Mehrsa Baradaran, It's Time for Postal Banking, 127 Harv. L. Rev. F. 165 (2014); Danyelle Solomon, et al., Creating a Postal Banking System Would Help Address Structural Inequality, Ctr. Am. Progress (Oct. 2020), <https://www.americanprogress.org/wp-content/uploads/sites/2/2020/10/Postal-BankingOct3020.pdf>.

⁴⁹ Judy Lin & Elizabeth Aguilera, Gov. Newsom to Propose that California Manufacture its own Generic Drugs, Cal. Matters (Jan. 20, 2020), <https://calmatters.org/health/2020/01/gavin-newsom-to-propose-california-manufacture-state-generic-drugs/>; Jon D. Michaels, Solve the Insulin Problem by Getting Government into the Business, Los Angeles Times (Aug. 8, 2022), <https://www.latimes.com/opinion/story/2022-08-08/insulin-prices-production-california-newsom-senate-blockage>.

⁵⁰ Jon D. Michaels, Running Government Like a Business... *Then and Now*, 128 Harv. L. Rev. 1152 (2015).

⁵¹ John Branch, The Ultimate Pursuit in Hunting: Sheep, N.Y. Times (Feb. 16, 2017), <https://www.nytimes.com/2017/02/16/sports/bighorn-sheep-hunting.html>.

sections of jails to those willing and able to pay the premium to upgrade out of the general prison population.⁵²

But given the broader, urgent constitutional crisis we’re facing, seeking out and expanding opportunities for states and clusters of state to engage in revenue-raising government market participation may well be a priority. Where one draws the line between savvy self-help efforts and cringey commodification is tough. Certainly, auctioning off privileged access to government decisionmakers is beyond the pale. Prison labor—already widely used—may, in theory, be ennobling and skill-building but, in practice, tends to be abusive.⁵³ Still, states and counties can do a good deal on the margins to raise revenue by putting to productive use scarce or underutilized resources, as a private firm surely would.

So, for instance, they might more aggressively rent out venues—great halls, libraries, schools, museums, etc.—for private evening and weekend events; cordon off spaces at beaches and parks for those who pay a premium in advance to reserve seaside lounge chairs and umbrellas, boat launches and grilling stations, etc.; and, as many jurisdictions are already doing, convert HOV highway lanes into surge-pricing “express” lanes, wherein access is restricted to those who pay extra.⁵⁴

Governments might also sell research and regulatory services to other jurisdictions. As discussed, with the feds abdicating so many responsibilities, responsible states will have no choice but to fill the void. Among states that band together, they collectively contribute resources and personnel for the administration of various programs with the understanding that data, strategic and legal advice, and investigatory and enforcement resources attendant to those shared programs will then be made available to all the member states. States that decline to participate may nonetheless want to piggyback off the investments of the “resistance” states. It’ll be up to the resistance states to freely share, to deny such requests, or to sell or barter over those services, thereby further offsetting the costs of developing and administering various programs. (Counties regularly sell certain services to

⁵² Kim Shayo Buchanan, It Could Happen to “You”: Pay-to-Stay Jail Upgrades, 106 Mich. L. Rev. First Impressions 60, 61–62 (2007), https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1134&context=mlr_fi; Jennifer Steinhauer, For \$82 a Day, Booking a Cell in a 5-Star Jail, N.Y. Times (Apr. 29, 2007), <https://www.nytimes.com/2007/04/29/us/29jail.html>.

⁵³ See Samantha Lim, California’s Reliance on Incarcerated Firefighters Sparks Debate Over Low Pay and Dangerous Work, KQED (Jan. 12, 2025), <https://www.kqed.org/news/12021720/californias-reliance-on-incarcerated-firefighters-sparks-debate-over-low-pay-and-dangerous-work>. There is a detailed newspaper article (somewhere) about how terribly California treats its wildfire fighters who are inmates... both in terms of pay and in terms of arrangements prohibiting them from ever becoming California firefighters even after they’ve completed their sentences.

⁵⁴ Baruch Feigenbaum, From Failure to Success: Converting High Occupancy Vehicle Lanes to High Occupancy Toll Lanes/Express Toll Lanes, Reason (Jul. 2022), <https://reason.org/wp-content/uploads/convert-hov-lanes-to-hot-lanes-express-lanes.pdf>; Andria Simmons, Ask Not for Whom the Road Tolls; It Tolls for Thee, Atl. J-Constitution (Jul. 25, 2015), <https://www.ajc.com/news/local/ask-not-for-whom-the-road-tolls-tolls-for-thee/vHScapPM9l99bgDQZONKmM/>.

neighboring jurisdictions, often in contexts where those neighboring jurisdictions are relatively modest in size or wealth and thus cannot feasibly finance parallel programs.⁵⁵)

E. Strategic Partnerships with Entrepreneurs

Not unrelated, now that the federal government is choking off research support to major universities around the nation, states will be expected to pick up larger portions of the bills.⁵⁶ After all, research support to in-state universities is important for the local economy, for the many residents and firms whose children and employees attend in-state schools, and for the long-term reputation of those schools (ensuring they attract talent and funds going forward).

Surely, the states should do what they can to maintain the strength of their schools; and, undoubtedly, prominent alumni and business executives who recruit heavily from state universities will insist upon it. But given that the states lack the resources of the federal government—and now may find themselves in a stronger bargaining position vis-à-vis researchers who are otherwise certain to lose their graduate students and labs, etc.—governors and legislators may demand higher returns on their “investments.” For instance, under most university agreements, intellectual property rights are shared.⁵⁷ Perhaps, at least in the short term and given that everyone needs to sacrifice some amidst a bona fide crisis, the states should demand a greater percentage.

The states can do a lot, too, to facilitate research that pays relatively fast dividends, prioritizing applied rather than basic research, providing incentives to (and even starting their own funds to directly invest in⁵⁸) start-ups incubated at state universities, matching private grants obtained by scholars and state schools and labs, and granting government procurement preferences to start-up companies incubated at state universities.

⁵⁵ Nathan Falk, *Contract Cities: An Alternative Model*, Rose Institute of State and Local Government (Oct. 11, 2011), <https://roseinstitute.org/contract-cities-an-alternative-model/>. See generally John D. Donohue, *The Privatization Decision* (1989).

⁵⁶ Even if, as is happening, some efforts have succeeded in forcing the federal government to reinstate already appropriated or agreed-to funds, see, for instance, Eric He, *Judge Orders Trump Administration to Restore More than \$500 million in Research Funds to UCLA*, Politico (Sept. 22, 2025), <https://www.politico.com/news/2025/09/22/judge-orders-trump-administration-to-restore-more-than-500-million-in-ucla-cuts-00573975>, litigation of that sort is a short-term salve. There is little reason to assume future rounds of appropriations will include generous support for colleges and universities.

⁵⁷ See, e.g., University of California Office of the President, *Patent Rights, Agreements and Releases*, University of California Office of the President, <https://www.ucop.edu/innovation-transfer-operations/innovation/training-and-education/agreements-releases.html>.

⁵⁸ Dane Alivarius, *Government as Venture Capitalist: Worth the Investment*, Harv. Bus. Sch. (Nov. 8, 2024), <https://www.hbs.edu/bigs/government-venture-capital>; Andrew S. Mara, *Maximizing the Returns of Government Venture Capital Programs*, 71 Defense Horizons 1 (Jan. 2011), <https://ndupress.ndu.edu/Portals/68/Documents/defensehorizon/DH-71.pdf?ver=2014-03-06-114913-797>; Jon D. Michaels, *The (Willingly) Fettered Executive*, 97 Va. L. Rev. 801 (2011).

Last, states should look seriously at the various government-commercial partnerships that the federal government have been undertaking of late and see if there are options and opportunities to explore such arrangements, again for the good of state coffers and in-state businesses. The states of course don't have the resources that the federal government enjoys. Nor do they have leverage over transnational commerce that the federal government possess (and the Trump administration has exploited in a manner that hasn't been attempted or embraced since the establishment of the postwar liberal economic order). But the states do have something that may be quite attractive to those businesses uneasy about partnering with the Trump administration: credible anti-corruption commitments.

Consider what the federal government has been doing of late and whether there are realistic analogs that states and clusters of states may pursue.

ALEX

Economists and lawyers may critique these and other suggestions as ill-advised, short-sighted, corruption-inviting, and market-distorting. Under normal, stable conditions, such critiques would surely carry the day. But, again, normalcy and stability continue to elude us and, to assure critics worried that emergency measures will end up being permanent, here too state officials can include sunset provisions (ensuring that new programs automatically terminate in, say, four or five years).

F. Lock in/Lure talent

There has been a mass exodus of highly skilled and thoughtful public servants from the federal government. Among pressure campaigns to force out tens of thousands of workers, terminations of a similar number, and irreconcilable political or policy differences leading still others to quit, the ranks of the federal workforce are thinning out.⁵⁹ Many more talented federal employees might strongly prefer to leave; yet, they remain in their current posts, no doubt fearing, with justification, that the employment market for former federal bureaucrats isn't very inviting.

States should take advantage of this situation by ramping up recruitment efforts. States will need expanded workforces anyway to support the new responsibilities that they're endeavoring to

⁵⁹ Courtney Rozen, US Federal Workforce Drops to Lowest Level in at Least a Decade, Reuters (Jan. 8, 2026), <https://www.reuters.com/world/us/us-federal-workforce-drops-lowest-level-least-decade-2026-01-08/>; see also Emily Bazelon & Rachel Poser, The Unraveling of the Justice Department, N.Y. Times (Nov. 16, 2025), <https://www.nytimes.com/interactive/2025/11/16/magazine/trump-justice-department-staff-attorneys.html> (noting that thousands of career Justice Department attorneys have resigned since the beginning of the second Trump administration).

undertake,⁶⁰ and they can benefit especially from experienced federal civil servants who’ve worked on precisely the programs that the states must now try to replicate at the sub-federal level.⁶¹

There is another reason to recruit. States that provide attractive off-ramps for those seeking to leave federal employment can weaken the president’s ability to carry out particularly pernicious policies. Consider, for instance, ICE raids. It’s one thing to go after gangsters and drug runners, as many assumed Trump would do. It’s quite another to raid the parking lots of Home Depot stores, lie in wait as immigrants take their children to school, arrive at their mandatory check-in appointments in government buildings, or seek emergency hospital care.⁶² If the events in Los Angeles in June 2025 and in Minneapolis and Portland in January 2026 are any indication, the work of federal agents is destructive not only to hardworking individuals, families, and communities but also to the agents themselves, many of whom—when forced to target hardworking parents and then fight off protesters—may well question whether *this* is what they “signed up for.”⁶³ Consider, too, top-notch Justice Department lawyers who’ve worked to prosecute public corruption cases and who now must

⁶⁰ Jared Brey, States See Workforce Opportunity in Federal Layoffs, *Governing* (Mar. 13, 2025), <https://www.governing.com/workforce/states-see-workforce-opportunity-in-federal-layoffs>

⁶¹ Some states have been quite active. See, e.g., Praveena Somasundaram, States Rush to Hire Federal Workers Out of Work After DOGE Cuts, *Wash. Post* (Mar. 30, 2025), <https://www.washingtonpost.com/nation/2025/03/30/state-governments-hiring-doge-cuts/>; Farida Jhabvala Romera, Federal Workers are Being Fired by the Thousands. California Wants to Hire Them, *KQED* (Apr. 4, 2025), <https://www.kqed.org/news/12034478/federal-workers-fired-thousands-california-wants-hire-them>

⁶² See Jesus Jiménez & Orlando Mayorquín, After a Lull, Agents Conduct a Big Immigration Raid in L.A., *N.Y. Times* (Aug. 6, 2025), <https://www.nytimes.com/2025/08/06/us/los-angeles-immigration-raid.html>; Madeleine Ngo, ICE Arrests Disrupt Schools, Prompting Fear Among Families, *N.Y. Times* (Dec. 17, 2025), <https://www.nytimes.com/2025/12/17/us/politics/ice-arrests-schools.html>; Alexandra Villarreal, US Immigrants Detained at Mandatory Check-Ins and Court Hearings, *The Guardian* (Feb. 18, 2025), <https://www.theguardian.com/us-news/2025/feb/18/trump-immigration-dragnet>; Ana B. Ibarra & Kristen Hwang, ICE is Suddenly Showing Up in California Hospitals. Workers Want More Guidance on What to Do, *CalMatters* (Aug. 26, 2025), <https://calmatters.org/health/2025/08/immigration-hospitals-workers-fear/>.

⁶³ Blue states are moving in the converse direction. Chris Stein, Democrats in Four States Seek to Bar ICE Employees from Future Civil Service Jobs, *Guardian* (Feb. 26, 2026), <https://www.theguardian.com/us-news/2026/feb/26/democrats-bar-ice-employees-civil-service-jobs>. For instance, one proposal put forward in California disqualifies anyone who participated in immigration enforcement after January 20, 2025. SB 938 (May 22, 2026), https://calmatters.digitaldemocracy.org/bills/ca_202520260sb938 While the anger is, perhaps, understandable, it strikes me as unjust to assume the average federal agent has the financial flexibility (and good health, given the importance of employer-provided health insurance) to drop everything and leave what many anticipated would be a career-long job the minute Donald Trump returned to the Oval Office. Perhaps too many were hoping Trump, known for his bluster, might not follow through, let alone follow through as aggressively and indiscriminately as he has—or that their continued presence could better ensure that the government live up to its ethical and legal obligations. Obviously any optimize proved to be misplaced, but it’s far from certain that every line officer should have known on January 20 precisely what would transpire.

decide whether to accept reassignment to, among other things, investigate those whom the president deems a political opponent or else leave federal employ.⁶⁴

Obviously, not all federal employee's skills or experiences line up perfectly with the tasks needed by municipal, state, or multistate governing bodies. But a concerted effort should be made to recruit highly capable civil servants who remain committed to advancing the public welfare.

There is another important pool of talent whom states should be targeting. At a time when reduced federal support for higher education translates into either more expensive/barebones college experiences or an obligation on the part of the states to offset the federal shortfalls, states committed to maintaining high-quality and affordable college and graduate-school experiences can and should condition substantial support on students agreeing to work in some public capacity when they've completed their education. Such entailments have long accompanied support for medical students⁶⁵ and, of course, for students who matriculate in the national service academies.⁶⁶ It behooves states (already subsidizing many students) to impose similar entailments. Perhaps it would make sense for states to create a civilian version of ROTC, in which students receive scholarships or tuition discounts, receive specialized training during summer break, and, upon graduation, begin mandatory stints in state or local government.⁶⁷

G. Compete Aggressively against Laggard/Free-Rider States

Typically, financial constraints or family and community obligations explain why there isn't more "voting with one's feet"⁶⁸ in the United States. Those are powerful reasons, and they still hold. But there's a third reason. For decades, the federal welfare state and federal civil rights protections were sufficiently comprehensive (and engendered *enough* standardization across the United States) that

⁶⁴ Carrie Johnson, Unease Grows at the Justice Department as Trump's Threats Get Even More Blunt, NPR (Sept. 22, 2025), <https://www.npr.org/2025/09/22/nx-s1-5550132/trump-justice-department-comey-letitia-james-virginia>.

⁶⁵ See, e.g., L.A. Care Health Plan, L.A. Care Awards Eight Full-Ride Medical School Scholarships at White Coat Ceremony to Future Physicians Committed at Bridging Gaps in Underserved Communities, L.A. Care (Aug. 5, 2025), <https://www.lacare.org/news/news-releases/la-care-awards-eight-full-ride-medical-school-scholarships-white-coat-ceremony>; NYC Health + Hospitals, NYC Health + Hospitals and St. George's University Award \$1.8 Million in City Doctors Scholarship to 12 NYC Medical Students, NYC Health + Hospitals (July 12, 2019), <https://www.nychealthandhospitals.org/pressrelease/nyc-health-hospitals-st-georges-university-award-1-8m-in-citydoctors-scholarship/>.

⁶⁶ See, e.g., United States Military Academy West Point, Tuition & Service Commitment, <https://www.westpoint.edu/admissions/tuition-and-service-commitment> (noting that West Point graduates "serve as officers in the U.S. Army for a minimum of five years on active duty (full-time) and an additional three years in the reserve component (part time)").

⁶⁷ There are, to be sure, long-term benefits associated with folding more young adults into government service. Among them, closer ties to and greater familiarity with one's government may make it significantly more difficult for individuals to demonize government, believe and amplify conspiracy theories about government, and vote to defund public institutions. Cf. Jon D. Michaels, *Constitutional Coup* 209–12 (2017).

⁶⁸ See Ilya Somin, *Free to Move: Foot Voting, Migration, and Political Freedom* (2020).

whatever policy variations existed from state-to-state weren't large or compelling enough to motivate families and firms to move in sizeable numbers.

That last reason no longer holds. As discussed, over the past few years, the federal courts have scaled back federal regulatory power, thereby limiting Washington's capacity to assure broad protections no matter where Americans live, work, or run a business. The courts have also retrenched constitutional and statutory civil rights and civil liberties, a change which has led to wider interstate variation on such things as reproductive and voting rights.⁶⁹ And, now, with intense and ever-increasing political polarization between red and blue states (limiting Congress's ability to create new programs—not to mention fund and/or update existing ones) and the Trump administration's continued sabotage of any number of federal responsibilities, state-to-state differences are sure to widen.

Given the new reality, one might expect families and firms that prize democratic and economic stabilization to gravitate to entrepreneurial and proactive "resistance" states. Still, financial hurdles remain, particularly since the "resistance" states are apt to have higher costs of living (both because of state services provided and because they are popular jurisdictions). States and, preferably, clusters of resistance states should thus take steps to make it easier for those who are dissatisfied with their home state's deeply entrenched political leadership to relocate.⁷⁰

Conceding that state treasuries are tight to begin with, jurisdictions have to be strategic in how they structure and award relocation incentives. In this particularly challenging climate, three constituencies to target would be talented out-of-state students (extending the above-described civilian ROTC program for high-achieving out-of-state applicants willing to commit to staying and working in-state), high-skilled workers, and business owners and entrepreneurs who promise to create a certain number of jobs. Their productivity and contributions to the state may also make it easier for the state to begin subsidizing others who seek refuge.

Resistance states can go one step further. They can (and likely already will) enforce strong labor, civil rights, and environmental standards. Consistent with the recent Supreme Court case, *National Pork Producers Council v. Ross*, those states with particular market power, for instance California or New York, may also consider restricting commerce with out-of-state firms that don't meet those standards.⁷¹ This more aggressive, adversarial posture will (a) accelerate migration to resistance states

⁶⁹ Ella Brockway, "A Jackie Robinson Moment:" Jeffries Echoes NAACP Calls for College Sports Boycott over Voting Rights, *Guardian* (May 20, 2026), <https://www.theguardian.com/sport/2026/may/20/hakeem-jeffries-naacp-college-sports-boycott>; Khaleda Rahman, Red State Colleges Face an Abortion Headache, *Newsweek* (Dec. 12, 2023), <https://www.newsweek.com/red-state-colleges-abortion-1851670>;

⁷⁰ See Albert O. Hirschman, *Exit, Voice, and Loyalty* (1970). State officials should, of course, think seriously about ways to make their jurisdictions more affordable. See, e.g., Ezra Klein & Derek Thompson *Abundance* (2025); David Schelicher & Nicholas Bagley, *The State Capacity Crisis*, 66 B.C. L. Rev. 2301 (2025).

⁷¹ See *National Pork Producers Council v. Ross*, 598 U.S. 356 (2023); Michaels & Noll, *supra* note at 223–25.

among those who can move and (b) pressure the laggard states to act more like resistance states (lest their businesses are shut out of major markets). Pressuring the laggard states is, of course, ideal—for it would conserve resistance state resources and engender a de facto expansion of the coalition of states committed to democratic and economic stabilization.

H. Place Resources Beyond the Federal Government's Reach

Even highly dexterous and fiscally flush states can't fully insulate their institutions, citizens, and firms from a presidential administration that acts recklessly, vindictively, and repressively. Knowing this, states should consider a range of measures that place resources beyond the federal government's reach. Here are three such measures:

First, the federal government's drastic cuts to research grants, its visa cancellations, travel bans, and other immigration crackdowns, and its efforts to politicize research, curricula offerings, and admissions policies are forcing talented international scholars, researchers, and certainly students to seek opportunities elsewhere.⁷² Some American scholars and students are likewise looking beyond the United States.⁷³ Given this brain drain (and given, too, the slashed research budgets for those academics who stay), private funding from the philanthropic and business communities may follow the talent overseas.⁷⁴ States should endeavor to recruit and retain wary persons—and provide assurances to wary donors—by adding satellite campuses in nearby nations that can house those productive scholars and students understood, through no fault of their own, to be ineligible to work or study in the United States. States should also expand and formalize partnerships with foreign universities that enable researchers and students to remain affiliated with American universities (through joint academic appointments or joint enrollment). State and private universities already boast satellite campuses in Canada and Latin America, the United Kingdom, the Middle East, Singapore, and elsewhere. They also have strong partnerships with universities around the globe. Now is the time to expand upon and fortify those arrangements.

⁷² See David M. Lodge, From Brain Gain to Brain Drain: The Cost of Undermining U.S. Higher Education, Cornell Atkinson Center for Sustainability (June 24, 2025), <https://atkinson.cornell.edu/blog/from-brain-gain-to-brain-drain-the-cost-of-undermining-u-s-higher-education/>; Kathryn Palmer, Fewer International Students Came to the U.S. This Fall, Inside Higher Ed (Nov. 17, 2025), <https://www.insidehighered.com/news/global/international-students-us/2025/11/17/fewer-international-students-came-us-fall>.

⁷³ Marci Shore, Timothy Snyder & Jason Stanley, We Study Fascism, and We're Leaving the U.S., N.Y. Times (May 14, 2025), <https://www.nytimes.com/2025/05/14/opinion/yale-canada-fascism.html>; Johanna Alonso, They Want to Leave the U.S. Is a Master's Their Ticket Out?, Inside Higher Ed (July 7, 2025), <https://www.insidehighered.com/news/global/study-abroad/2025/07/07/prospective-emigrants-look-higher-education-leave-us>.

⁷⁴ Danielle McLean, Will Higher Education Researchers Leave for Opportunities Abroad?, Higher Ed Dive (Jan. 5, 2026), <https://www.highereddive.com/news/higher-education-researchers-us-recruited-internationally/808597/>.

Second, as evidence mounts that certain medicines and medical treatments may not be available—or covered by insurance—in the United States for much longer,⁷⁵ states should plan ahead and arrange with facilities in Canada and Mexico to support Americans seeking vaccines, abortions, gender-affirming care, and the like. Already, blue states have some experience with this phenomenon, expanding supports for red state citizens who need, principally, reproductive services.⁷⁶ One may hope that states never need to refer their residents to pharmacies and clinics in Vancouver, Toronto, or Juarez. But, particularly in light of the abortion bottlenecks⁷⁷ experienced after the Supreme Court decided the *Dobbs* case⁷⁸ (not to mention a measles epidemic or another pandemic), advanced planning is essential.

Third, in June 2025, Trump federalized the California national guard over the vehement opposition of Governor Gavin Newsom.⁷⁹ The president then followed suit in Illinois and Oregon.⁸⁰ Though legal challenges have succeeded in some jurisdictions,⁸¹ states should expect that the White House may intensify or broaden its efforts. They should thus be ready to seize the initiative—and, by doing so, be well-positioned to control the personnel and shape the agenda (before the feds get the chance to do the same).⁸² Consider the following: Had Newsom used his authority to mobilize national guard units—and had he deployed them in the field, *albeit in a purely supportive rather than adversarial capacity*—it would have been considerably more difficult for the president to claim that state officials weren't taking the immigration-related clashes in Los Angeles seriously, let alone that the

⁷⁵ Allison McCann & Amy Schoenfeld Walker, Tracking Abortion Laws Across the Country, N.Y. Times (Jan. 6, 2026), <https://www.nytimes.com/interactive/2024/us/abortion-laws-roe-v-wade.html>; Lindsey Dawson & Scott Hulver, New Trump Administration Proposals Would Further Limit Gender Affirming Care for Young People by Restricting Providers and Reducing Coverage, KFF (Dec. 22, 2025), <https://www.kff.org/lgbtq/new-trump-administration-proposals-would-further-limit-gender-affirming-care-for-young-people-by-restricting-providers-and-reducing-coverage/>.

⁷⁶ Michaels & Noll, *supra* note , at 227.

⁷⁷ Alyssa Goldberg, People are Flocking Out-of-State for Abortion Care. Clinics are Fighting to Keep Up, USA Today (Mar. 5, 2025), <https://www.usatoday.com/story/life/health-wellness/2025/03/05/abortion-clinic-fund-travel-sustainability/80697629007/>; Nadine El-Bawab, et al., Delayed and Denied: Women Pushed to Death's Door for Abortion Care in Post-Roe America, ABC News (Dec. 14, 2023), <https://abcnews.go.com/US/delayed-denied-women-pushed-deaths-door-abortion-care/story?id=105563255>.

⁷⁸ *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022).

⁷⁹ Laurel Rosenhall, Appeals Court Orders End to Trump's Command of California National Guard, N.Y. Times (Dec. 31, 2025), <https://www.nytimes.com/2025/12/31/us/trump-national-guard-california-newsom.html>.

⁸⁰ Julie Bosman & Eric Schmitt, Trump Administration Will Deploy 100 National Guard Troops to Illinois, N.Y. Times (Sept. 29, 2025), <https://www.nytimes.com/2025/09/29/us/trump-national-guard-chicago.html>; Anna Griffin, Guard Troops Were Sent to Portland, Ore., Despite a Court-Ordered Halt, N.Y. Times (Oct. 29, 2025), <https://www.nytimes.com/2025/10/29/us/politics/national-guard-portland-trump.html>.

⁸¹ Tyler Pager, Trump Abandons Efforts to Deploy National Guard to 3 Major Cities, N.Y. Times (Dec. 31, 2025), <https://www.nytimes.com/2025/12/31/us/politics/trump-national-guard.html>.

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civilian authorities in California had lost control. More broadly, it would have been more difficult, politically as well as legally, for the president to wrest control of already mobilized national guard units from a governor taking matters very seriously than for a president to summon those units from their barracks. To be sure, governors should be loath to call up their guard units. But if doing so preempts the feds from commandeering those units (and pitting them against the people), then mobilizing may well prove the far lesser of two evils.⁸³

I. Swing for the Fences

The second Trump administration has been, so far at least, effective in large part because the president and his surrogates in and around government don't care about defying norms, generating outrage, and eliciting strongly negative reactions in Congress, the courts, and the media. They just push forward.

Those alarmed by the successes of the Trump presidency have struggled to formulate a response. One cannot in good conscience mirror the tactics of a reckless, corrupt, imperious would-be autocrat. But holding fast to how law and politics were practiced during times of great stability seems increasingly untenable.

For this reason, states should consider taking some chances. They should direct their policy and legal teams to push initiatives that will undoubtedly frustrate economists and lawyers, justifying the investment of resources and political capital on three grounds.

First, bold actions will force the federal government to go to court to stop the states. This role reversal will put the White House, the courts, the markets, and the American people on notice that the states can play rough, too—and possibly generate more enthusiasm and support for state-level resistance politics.⁸⁴

Second, the courts may take a more capacious view of state power than they have in the past. Like everyone and everything else, courts are trying to find their footing in a time of constitutional crisis—and they may well be more receptive to states pushing the outer bounds of their legal authorities under any number of theories including that the federal government has ceded its dominant position across a range of policy domains or that maintaining a healthy separation of powers (and preserving limited, accountable government) requires a recalibration of federalism doctrines.⁸⁵

Third, new and bold ideas are generative. Even if the first few rounds of brash ideas are mostly duds, there's a decent chance that the mere proffering of those ideas will encourage more

⁸³ A case could be made, too, to disband those units or furlough personnel during this period of protracted federal-state conflict.

⁸⁴ See, e.g., Douglas NeJaime, *Winning through Losing*, 96 Iowa L. Rev. 941 (2011).

⁸⁵ I explored such possibilities in related contexts. See Jon D. Michaels, *Of Constitutional Custodians and Regulatory Rivals: An Account of the Old and New Separation of Powers*, 91 NYU L. Rev. 227, 273-79 (2016); Jon D. Michaels, *From De-Escalation to Defiance: Judges Must Confront Trump's Constitutional Overreach*, *Bos. Globe* (Apr. 3, 2025), <https://www.bostonglobe.com/2025/04/03/opinion/trump-judges-constitutional-confrontation/>; see generally Jon D. Michaels, *Baller Judges*, 2020 Wisc. L. Rev. 411.

creative, inventive brainstorming that, in time, results in the production of stronger, more legally defensible, and politically palatable proposals.⁸⁶

J. Hunker Down

States need to concentrate on the moment. They don't have the luxury of doing much more than stabilization initiatives. Successfully implement those, make them operationally and fiscally sustainable, and then—and only then—move on. In fact, as stated from the outset, it's quite probable that no state, on its own, could possibly meet that baseline objective.

The particular issues and concerns that must be sidelined in the near-term will, of course, vary by state and region. And the decisions officials make will, undoubtedly, be frustrating and alienating; they run the further risk of splintering what might otherwise be a big-tent political coalition dedicated to safeguarding democracy, preserving civic and state capabilities, and stabilizing the economy. In many cases, expressions of frustration, anger, and alienation will be understandable—and thus ought to be validated. State governments need to be preemptive in their messaging, explaining clearly and candidly why difficult choices are going to be made and why disaffected interest groups must continue to play nice as we all work our way through what's an unmistakable constitutional crisis.⁸⁷

One way to hold a shaky coalition together is to make a credible precommitment to address presently unmet demands. Rather than offer empty or easy-to-break promises of down-the-road support, states may enact legislative reforms scheduled to take effect in, for instance, four or five years' time.⁸⁸ Like signing but postdating a check, a down-the-road commitment may not be ideal; but it is far more bankable than saying *Don't worry. I promise we'll take care of you later on.*

⁸⁶ Cf. Jack M. Balkin, *Living Originalism* 294 (2011) (describing off-the-wall proposals gain cultural and legal acceptance).

⁸⁷ This is reason to fear such consensus-building will be very difficult. See Shane Goldmacher, *As Ground Shifts, "Flailing" Democrats Struggle to Find their Footing in Diversity Fight*, N.Y. Times (Feb. 8, 2025), <https://www.nytimes.com/2025/02/08/us/politics/democrats-dei-trump.html>; Olivia Reingold, *Inside the DSA's Hostile Takeover of the Democratic Party*, The Free Press (Nov. 3, 2025), <https://www.thefp.com/p/inside-the-dsas-hostile-takeover>; Adam Wren, *The "Woke" Words Democrats Should Cut from their Vocabulary*, Politico (Aug. 22, 2025), <https://www.politico.com/news/2025/08/22/democrats-woke-language-blacklist-00519421>. In 2024, groups ordinarily expected to fall in line and support a mainstream Democrat like Kamala Harris, particularly when squared off against Donald Trump, weren't willing to do so. See Jillian Frankel, *Leaders of "Uncommitted" and "Abandon Harris" Movements Reflect on Trump's Victory and Early Moves*, NBC News (Dec. 26, 2024), <https://www.nbcnews.com/politics/2024-election/leaders-uncommitted-abandon-harris-movements-reflect-trumps-victory-ca-rcna184849>; Edward Helmore, *Michigan Congresswoman Rashida Tlaib Declines to Endorse Kamala Harris*, Guardian (Nov. 2, 2024), <https://www.theguardian.com/us-news/2024/nov/02/rashida-tlaib-decline-endorsement-kamala-harris>. The same big-tent question may well determine if Democrats regain control of the House of Representatives (and thus be in a far better position to challenge and restrain the Trump White House. See, e.g., Sarah Ferris & Manu Raju, *"They're attacking their own"; DC Democrats Irked by Surge of Left-wing Challengers with House Majority on the Line*, CNN (Dec. 21, 2025), <https://www.cnn.com/2025/12/21/politics/house-democrats-primary-challenges-left-wing>.

Note that hunkering down is entirely compatible with the earlier directive labeled “Swing for the Fences.” The former refers to addressing substantive policy priorities; the latter, by contrast, embraces legal and policy gambits, including ones that the courts might strike down, designed to advance the cause of democratic stabilization.

III. Conclusion

What is being asked of states is admittedly extraordinary and perhaps unreasonable. Under most other circumstances, it’s also highly impractical. Worst of all, it might even run the risk of exacerbating the nation’s polarization and our politics of tribalism. But when one canvasses the roster of potential actors and institutions *capable* of stepping up and *motivated* to step up, the states are our best and, perhaps, only hope.

⁸⁸ Daniel E. Walters, Tomorrow’s Climate Law, Today, 58 U.C. Davis L. Rev. 2121 (2025); Daniel E. Herz-Roiphe & David Singh Grewal, Make Me Democratic, but Not Yet: Sunrise Lawmaking and Democratic Constitutionalism, 90 N.Y.U. L. REV. 1975 (2015).