

# Trends in Federalism: Continuity, Change and Polarization

By John Kincaid

*Coercive regulatory trends have displayed considerable continuity since the late 1960s, including a shift of federal aid from places to persons, increased policy conditions attached to federal aid, rising preemptions, federalization of criminal law, encroachments on state tax systems, hollowed intergovernmental institutions, and reduced cooperation within major intergovernmental programs. Two other trends—unfunded federal mandates and federal court orders—have become less significant. A newer trend has been the state-friendly federalism jurisprudence of the U.S. Supreme Court since 1991, although the Court's 2002–2003 term did not advance this trend. State activism in forging new policies and bucking federal policies continues as well, and is likely to intensify in response to rising partisan polarization.*

Despite having a former governor, George W. Bush, in the White House, the federal system has not been a more congenial environment for the states. Like gubernatorial presidents Bill Clinton, Ronald Reagan and Jimmy Carter, Bush has responded to national political and fiscal opportunities, not to state interests.<sup>1</sup>

## Homeland Security

The predominance of continuity might seem surprising, because many pundits predicted that the war on terrorism would induce centralization, a seismic shift in intergovernmental relations, and even the death of federalism. Yet, despite the massive reorganization of the federal executive branch involved in establishing the Department of Homeland Security, antiterrorism is being institutionalized with much the same patterns of cooperation, conflict, coercion and competition that characterize other intergovernmental policy fields. This is because institutions are creatures of habit, and the federal system is a vast complex of interconnected semi-autonomous institutions.

Relevant federal, state and local agencies are improving cooperation, coordination and communication in ways that build on past relationships, as well as on lessons learned since the terrorist attacks of 2001. States also are reorganizing agencies and realigning practices to correspond to the new homeland security threat and to the new tasks and funding streams emanating from Washington, D.C.

At the same time, there are fears of possible federal commandeering of state and local public safety and health agencies, and federal officials have intimated that state failures to voluntarily bring practices, such as driver's license issuances, and equipment, such as computers, in line with federal guide-

lines will provoke coercive federal measures. Both liberal Democrats and conservative Republicans have expressed alarm about federal encroachments upon both states' rights and individual rights under the USA Patriot Act and other antiterrorism policies. However, given the political incentives for presidents to prevent terrorist attacks, and given the potential for catastrophic attacks, homeland security policy, while relying greatly on federal coordination with state and local governments, will likely lean more toward coercive than cooperative federalism.

Some state and local oppositional activism has been evident across the country. Four states and about 150 localities have passed resolutions criticizing the Patriot Act. More than 150 city councils approved resolutions opposing the war in Iraq. Many librarians oppose Patriot Act provisions that allow federal officials to examine records on library patrons. Some librarians are purging records so that information will not be available to federal investigators.<sup>2</sup>

The principal source of conflict, though, has been funding—the time-honored bone of intergovernmental contention. States and local governments have complained about too little federal funding, too much red tape tied to funds, delayed releases of funds, and shortfalls between funds promised and funds delivered by the federal government.<sup>3</sup> Large states, such as California and New York, have objected to the Patriot Act's formula for distributing funds. New York officials complained that of \$600 million distributed in early 2003, for example, the Empire State received only \$1.38 per resident and California received \$1.33 per capita, compared to a national average of \$3.29 per person and to much higher per capita payments made to small states, such as \$9.78 for Wyoming.<sup>4</sup> New York Gov. George Pataki and

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Senators Charles Schumer and Hillary Rodham Clinton argue that funding should be linked to likely threats to jurisdictions. In turn, local officials in some states, including New York, have complained that their state holds back too much homeland security money and also misallocates federal and state funds among localities.<sup>5</sup>

### Partisan Polarization

The partisan polarization evident in the 2000 presidential election and in Washington, D.C., is a new contextual trend that is increasingly shaping federalism and intergovernmental relations. In 2003, it became evident that polarization has strained the traditional bipartisanship of the Big 7 state and local associations, especially the National Governors Association (NGA), where partisan conflict led to the firing of NGA's chief lobbyist, to reduced dues payments by some states, and to several states withdrawing from the NGA for a time. Although bipartisanship still prevails generally in these associations, continued polarization will weaken their ability to present a united front, especially on major issues that have significant impacts on both the states and the national electoral balance.

This polarization has affected public, presidential, congressional and judicial responses to virtually all public policy issues and introduced fundamental philosophical differences over some long-standing federal-state practices and intergovernmental programs. The consequences of polarization were reflected, for example, in the battles that scuttled reauthorization of three major intergovernmental programs in 2003: the 1996 welfare-reform law, the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21), and the Individuals with Disabilities Education Act (IDEA). The compromises needed to enact legislation under conditions of polarization will likely make some intergovernmental programs more complex and somewhat schizophrenic.

This polarization also makes it impossible to resurrect bipartisan and nonpartisan intergovernmental institutions, such as the U.S. Advisory Commission on Intergovernmental Relations (ACIR), which were dismantled or defunded during the 1980s and 1990s. These institutions sought to foster intergovernmental cooperation and consensus building. The ACIR, for example, an independent bipartisan commission established in 1959, was defunded in 1996.

### Grants-in-Aid

Some 608 categorical grants and 17 block grants for state and local governments continue to shift fed-

eral aid from places to persons. That is, compared to 1978 when only 31.8 percent of federal aid was for payments to individuals (e.g., Medicaid and social welfare), nearly two-thirds of federal aid is now dedicated to payments to persons. Medicaid alone accounts for about 45 percent of all federal-aid money. Consequently, even though federal aid has increased annually since 1987, less and less has been available for traditional place-based functions such as economic development, transportation, criminal justice and government operations. The rise of homeland security has made this shift highly problematic because states and localities now need more place-based aid for first responders, infrastructure protection, and the like, while more and more state and local money must be diverted to the escalating costs of key person programs, such as Medicaid.<sup>6</sup>

Although the recession that triggered today's state fiscal woes lasted only from March to November 2001, the effects continue to strain most states' budgets. In mid-2003, under pressure from state and local officials, Congress enacted a \$20 billion aid package as part of a \$330 billion tax cut deal struck with the president. The package provides \$10 billion in Medicaid cost relief and \$10 billion in FYs 2003 and 2004 that states can use as a "flexible grant" for other state budget relief. "The resurgence of unfunded federal mandates," commented Utah's House Speaker Martin Stephens, "has exacerbated state fiscal problems. States can use [this] money to fill holes in their budgets caused by recent federal cost shifts."<sup>7</sup>

A notable change in the delivery of federal aid to places, however, has been the significant increase in congressional pork-barreling. The number of earmarked projects increased from under 2,000 in 1998 to some 9,362 in FY 2003. Supporters of these projects argue that they are necessary and that members of Congress, who are elected officials, are better suited than "bureaucrats" to make these funding allocations.

Congress also continues to attach substantive conditions to grants-in-aid to accomplish policy objectives not directly achievable under Congress's constitutionally enumerated powers. For example, April 15, 2003, was the deadline for school districts to certify that they permit voluntary religious expression, such as prayer and Bible study, by students and teachers so as not to lose federal-aid money under the No Child Left Behind Act (NCLB) of 2002. May 31, 2003, was the deadline for states to submit their accountability plans under the NCLB. October 1, 2003, was the deadline for all states to enact the .08 blood

alcohol level for drunk driving in order to avoid reductions in federal-aid highway funding.

Consistent with previous Republican administrations, President Bush has advocated greater administrative flexibility for states in federal-aid programs. Under Bush, the U.S. Department of Health and Human Services has issued some 3,000 Medicaid waivers, more than all earlier administrations.<sup>8</sup> Bush has also proposed a “superwaiver” in conjunction with welfare reform reauthorization that would allow states to alter eligibility rules and transfer funds among programs, including food stamps, public housing, homeless assistance, child care, adult education, the Social Services Block Grant, and many employment and job training programs.

Bush has proposed a voluntary block grant to provide fixed amounts of money for Medicaid and the State Children’s Health Insurance Program (SCHIP) for optional beneficiaries rather than giving states matching funds as under the current program. Optional beneficiaries such as senior citizens and disabled people constitute about one-third of all Medicaid enrollees but consume about two-thirds of Medicaid spending. Under this plan, most states would receive more funds for seven years than they would under the matching program, but federal funds would decline thereafter.

Bush has proposed to replace Section 8 housing vouchers with a program run by the states with an annual lump-sum payment from the federal government. He also has proposed to block grant Head Start (in the form of a pilot program), Unemployment Insurance administration, law-enforcement grants, child-welfare foster-care grants, job training in the Workforce Investment Act, transportation aid in the Job Access program and juvenile delinquency programs.

Bush wants to shift responsibility for passenger rail service to the states. States would contract with Amtrak or other railroads for passenger service. States also would be encouraged to form regional compacts to provide interstate service. Instead of subsidizing Amtrak directly, federal aid would be given to states to support railroad infrastructure and capital investment. States would cover operating costs.

A major state and local complaint, though, is that many programs, such as the Help America Vote Act of 2002, are under funded and that Congress and the president deliver less than what was promised at the time of enactment. Most controversial has been the NCLB, which requires states, beginning in 2005, to test pupils in grades three through eight annually in reading and math, to test those in grades 10 through 12 in science every year, and to provide highly quali-

fied and subject-trained teachers in every classroom.<sup>9</sup> States can select their testing standards pursuant to federal guidelines, but schools that do not improve student achievement must provide tutoring and opportunities for students to transfer to higher achieving schools. After six years, failing schools can be closed and reopened under new management. The NCLB seeks to raise all students’ reading and math test scores to 100 percent of state-defined proficiency by 2014.

Many state and local officials have characterized the NCLB as an unfunded mandate because the federal government provides too little money for states and school districts to meet the NCLB’s requirements. U.S. Secretary of Education Rod Paige responded, however, that: “In raw terms, this president [Bush] has increased education spending by \$11 billion. As a nation, we now spend \$470 billion a year on K–12 education locally and federally—more than on national defense. What is ‘under funded’ about that?”<sup>10</sup> Regardless of funding, the NCLB is an unprecedented federal intrusion into a traditional state and local governmental function.

### Unfunded Mandates

The robust growth of unfunded mandates on state and local governments, which began in the late 1960s, was effectively staunched by the Unfunded Mandates Reform Act (UMRA) of 1995. According to the Congressional Budget Office’s (CBO) June 2003 report, only two unfunded mandates exceeding UMRA standards have been enacted since 1995: a 1996 federal minimum-wage increase and a 1998 reduction in federal reimbursement of state administrative costs for the Food Stamp program, which together imposed average annual costs of \$9 million per state. A mandate violates UMRA if it imposes an annual cost on state, local and tribal governments exceeding \$58 million (or about \$1.2 million per state).

NGA, however, publicizes a list of unfunded mandates, which includes, among others, homeland security, Medicaid, the NCLB and special education. Although these programs are neither mandates nor unfunded obligations, state and local officials contend that they are “de facto mandates” because they are under-funded grants-in-aid that state and local governments cannot realistically reject or opt out of once in place. For instance, the Individuals with Disabilities Education Act (IDEA) of 1975 commits the federal government to funding 40 percent of each state’s IDEA costs. As of FY 2003, the federal government still covered only 18 percent of those costs.

UMRA also does not take account of the costs

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of federal court orders on state and local governments, some of which have imposed enormous costs for institutional change. The number, scope and costs of such orders began to increase dramatically during the 1960s. This feature of coercive federalism may be coming to an end, however, as evidenced by the closing down of the 26-year-old desegregation lawsuit against the Kansas City Missouri School District in August 2003.<sup>11</sup> The case, begun in 1977, cost Missouri taxpayers some \$2 billion and produced a 1990 U.S. Supreme Court decision upholding the authority of a federal judge to order a state or local government to levy a tax increase to pay for his court order.<sup>12</sup>

A recent study suggests, however, that overall federal policies had a \$467 billion positive impact on state and local finances in FY 2004 and a \$153 billion negative impact, leaving a \$314 billion positive-impact balance.<sup>13</sup>

### Preemption

Federal preemption, which skyrocketed after 1969, continues to be prevalent, and even the U.S. Supreme Court justices who support the states in many 10<sup>th</sup> Amendment, 11<sup>th</sup> Amendment and commerce clause cases have upheld federal preemptions of state powers. Many preemptions do not completely occupy a field; instead, they allow states to enact their own rules or standards so long as they are equal to or higher than the federal provisions. Recently, however, there has been a tendency for more preemptions to occupy a field and deny states the authority to enact their own legislation.

For example, the Fair and Accurate Credit Transactions Act of 2003 preempts most state laws on identity theft and limits the states' authority to enact pro-consumer laws on such matters as credit reporting and financial privacy. In the past, pro-consumer laws often originated in the states. For instance, the new federal rule that merchants truncate credit-card numbers originated in California, Connecticut and Nevada. In 2001, California was the first jurisdiction to require disclosure of credit scores to consumers.

Congress enacted anti-spam legislation (Can-Spam Act) in 2003 that preempted California's and Delaware's rigorous laws as well as many provisions of anti-spam laws in about 34 other states. The federal law allows consumers to opt out of receiving junk e-mail. Only after a consumer asks to be taken off the list is the sender required to stop transmitting messages. The California and Delaware statutes contained an "opt in" provision prohibiting unrequested commercial e-mail.

Meanwhile, Attorney General John D. Ashcroft has sought to override state laws on medicinal marijuana and physician-assisted suicide. In October 2003, however, the U.S. Supreme Court let stand a ruling by the Ninth Circuit Court of Appeals that federal attempts to revoke the drug licenses of physicians who advise patients to smoke marijuana under state law violate the First Amendment as well as principles of federalism.

### Federalization of State Criminal Law

Another trend has been the federalization of state criminal law, to the point where there are some 3,500 federal criminal offenses today, about half of which have been enacted since the mid-1960s. Legislation enacted in 2003 to provide grants and assistance to states to establish a national Amber Alert system (already then operating in 41 states) to notify the public of child abductions also contained many punitive sentencing provisions with respect to kidnapping and sex offenses against children, further limited federal judges' sentencing discretion, and expanded prosecutors' wiretap powers.

This trend has met criticism from some liberals and conservatives,<sup>14</sup> but the political incentives for presidents and members of Congress to support crime legislation are very high. Some members of the Supreme Court have evidenced concern about this trend as well. For example, in ruling in March 2003 that antiabortion protesters cannot be prosecuted as racketeers under the Racketeer Influenced and Corrupt Organizations Act (RICO), the Court expressed concern about potential uses of RICO to transform local crimes into federal crimes.

### Taxation

Another characteristic of coercive or regulatory federalism has been federal encroachments on state tax systems and powers. Two issues were prominent for states in 2003: federal tax cuts and taxation of Internet and catalog sales.

The \$330 billion tax cut of 2003 will likely reduce state tax collections by several billion dollars during the next two years, depending on whether states decouple affected provisions of their tax codes from the federal tax code. Decoupling, however, will make tax compliance more complex for many taxpayers and perhaps provoke more taxpayer resistance to state and local tax increases and reforms. Federal tax reductions might, over time, also reduce grant money for states and localities, and shift taxes toward more regressive levies as state and local governments enact compensating tax and fee increases.

States cannot tax out-of-state Internet and catalog sales, which may have cost them \$20 billion in FY 2002, but 34 state negotiators agreed on the Streamlined Sales Tax agreement to facilitate state taxation of Internet and catalog purchases, and some major retailers (e.g., Wal-Mart, Target and Toys “R” Us) began voluntarily in early 2003 to collect online sales taxes in 37 states and Washington, D.C. The Streamlined Sales Tax Implementing States group is trying to persuade state legislatures to enact the agreement. Many states are pushing for federal enactment of the Simplified Sales and Use Tax Act that would authorize state taxation under the streamlined system.<sup>15</sup>

Online sales of cigarettes are another problem. The Jenkins Act of 1949 requires out-of-state retailers to provide sales records to states where cigarettes are shipped so states can collect excise taxes, but there is no enforcement of the act by the U.S. Department of Justice and the FBI. An effort is under way in Congress to strengthen the act.

### U.S. Supreme Court

In contrast to the state-friendly federalism jurisprudence of the U.S. Supreme Court since 1991, the Court’s 2002–2003 term was one in which, said Justice Ruth Bader Ginsburg, federalism was “the dog that didn’t bark.”<sup>16</sup> Although the states won many cases, and of cases brought by state attorneys general, the states won 13 and lost seven, they lost the bellwether federalism case, *Nevada Department of Human Resources v. Hibbs*.<sup>17</sup> In this 6–3 ruling, the Court upheld, against an 11<sup>th</sup> Amendment challenge, the right of state employees to sue their state in federal court to enforce rights under the federal Family and Medical Leave Act of 1993. This ruling was a surprising departure from the Court’s recent 11<sup>th</sup> Amendment rulings, and all the more so because Chief Justice William H. Rehnquist wrote the majority opinion and Justice Sandra Day O’Connor joined the majority. Thus, two of the Court’s “Federalism Five” voted against the states.

In another case limiting state involvement in foreign affairs, the Court struck down a 1999 California law that required subsidiaries of European companies to disclose the names of millions of persons who had purchased insurance policies from their parent firms in Germany and other European countries between 1920 and 1945 so as to provide payments to Holocaust survivors on unpaid insurance policies. Companies failing to make the disclosures would lose their license to practice in California. The Court also struck down a California law that retroactively eliminated statutes of limitations on sex

crimes so as to allow prosecution of individuals after the expiration of a previous statute of limitation; however, the Court did uphold California’s “three strikes” criminal sentencing statute.

The Court ruled that lawsuits alleging that interest rates charged by national banks are illegally excessive must be heard in federal rather than state courts because the National Bank Act preempts state usury laws. The justices also upheld the federal Children’s Internet Protection Act of 2001, which requires public libraries to install anti-pornography filters on all computers that provide Internet access to library users. Important in the Court’s validating this act was that it is a condition of federal aid rather than a criminal statute. Two federal programs provide about \$200 million per year for libraries to establish and link to electronic networks and to offer discount access to the Internet. “Congress has wide latitude to attach conditions to the receipt of federal assistance in order to further its policy objectives,” wrote Chief Justice Rehnquist.

In *Franchise Tax Board of California v. Hyatt*,<sup>18</sup> the justices ruled unanimously that Nevada courts did not have to extend full faith and credit to a California law that gives California’s tax assessors and Franchise Tax Board immunity for any tort suits arising from a tax assessment. The case involved a California resident who claimed that he moved to Nevada, a state with no income tax, shortly after he earned \$20 million on a patent. The former resident sued California in Nevada courts under Nevada law for intentional torts committed mostly in California. California was supported by 20 states and by many state and local associations which argued that a ruling against California would weaken legitimate tax collection efforts and encourage wealth to flee to tax havens.

The justices held 8–0 that federal courts cannot close the door to a state prisoner who is appealing a state *habeas corpus* denial because he or she seems not to have a winnable case; instead, the inmate need only present a plausible case. The decision opens the door considerably to federal appeals after many federal courts had virtually closed their doors in complying with the restrictive provisions of the 1996 Antiterrorism and Effective Death Penalty Act.

In important policy cases, the Court limited the reach of the federal Employee Retirement Income Security Act (ERISA) by upholding Kentucky’s “any willing provider” law, which allows any health care provider to join an insurance network so long as the provider accepts the insurer’s rules and payment levels. The insurance industry contended that ERISA

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preempted Kentucky's statute. This decision helps clarify the scope and conditions of ERISA's preemption of state authority to regulate health care and to facilitate greater access to private-sector health insurance. In turn, the Court lifted an injunction that had blocked implementation of the Maine Rx Program since its 2000 enactment. The program seeks to obtain discounts on prescription drugs for the state's uninsured residents. Maine was supported by an *amicus* brief filed by 29 states.

Highly publicized was the Court's validation of an affirmative action program operated by the University of Michigan law school while invalidating the university's undergraduate program that awarded 20 extra points on a 150-point scale to black, Hispanic, and Indian applicants. The Court did not, however, require states to adopt affirmative action; hence, the decisions did not overturn California's Proposition 209 on race-neutral admissions to state colleges and universities. Also highly publicized was the Court's 5–4 overturning, on broad privacy grounds, of a Texas law that criminalized same-sex sodomy, thus voiding sodomy laws still extant in 13 states in 2003.

Finally, and pertinent to partisan polarization, the Court opined that in redistricting, states can consider a minority group's general influence on the electoral process rather than only the number of minority voters in a district. The decision was a victory for Democrats who had sought to spread black voters across more districts so as to produce more victories for Democratic candidates rather than packing African-Americans into majority-minority districts where they produce fewer Democratic victories. The U.S. Department of Justice contended that any reduction in the percentage of minority voters in such a district is an unconstitutional "retrogression" or dilution of minority voting rights.

### State Activism

The legal assaults on Wall Street by New York's attorney general and the influence of state treasurers on the ouster of the chairman of the New York Stock Exchange in September 2003 highlighted the policy activism that has been evident in states since the late 1970s. States have been pioneering innovative policies, some of which are adopted by the federal government, and countering federal policies with legislation and court rulings. This activism is often attributed to the reform and resurgence of state governments during the 1950s and 1960s. Although reforms strengthened state capacities, state policy activism switched into high gear in reaction to the rise of coercive federalism under which both conserva-

tives and liberals have found ever more reasons to seek refuge in state policymaking when they cannot achieve their objectives through federal policymaking.

For instance, moral conservatives appalled by U.S. Supreme Court rulings on abortion and sodomy have sought to thwart such policies through state regulation. Pro-life activists, for example, have been pressing for state laws to add requirements to abortions (e.g., a 24-hour waiting period and parental notification), to prohibit state funding, and to criminalize injury to a fetus. According to the American Life League, "You can do a lot more in the legislatures than on the federal level right now."<sup>19</sup>

In turn, liberal activists responding to conservative Supreme Court rulings and to deregulation since the Reagan era have also stimulated considerable state policy activism. For example, several multistate lawsuits were initiated against the U.S. Environmental Protection Agency in 2003 alleging relaxed enforcement or lack of enforcement of federal environmental standards. According to the policy director of the liberal Center for Policy Alternatives, "states are now the vanguard of the progressive movement."<sup>20</sup>

### Conclusion

In the end, though, both conservative and liberal activists almost always prefer a preemptive or coercive federal policy over state-by-state policies when they can achieve victory in the federal arena and when state policies violate their own policy preferences. In this respect, state activism reflects more continuity than discontinuity in coercive or regulatory federalism.

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### Notes

<sup>1</sup> See also, John Kincaid, "State-Federal Relations: Continuing Regulatory Federalism," *The Book of the States*, 2002, (Lexington, KY: The Council of State Governments, 2002), 25–32; John Kincaid, "From Cooperation to Coercion in American Federalism: Housing, Fragmentation, and Preemption, 1780–1992," *Journal of Law and Politics* 9 (Winter 1993): 333–433.

<sup>2</sup> Dean E. Murphy, "Some Librarians Use Shredder to Show Opposition to New F.B.I. Powers," *New York Times*, April 7, 2003, A12; Marcos Mocine-McQueen, "Library thwarts Patriot Act snooping," *Denver Post*, July 29, 2003, 1A, 10A.

<sup>3</sup> See, for example, Philip Shenon, "Antiterror Money Stalls in Congress," *New York Times*, February 13, 2003, A1–A21.

<sup>4</sup> Raymond Hernandez, "New York Officials Complain of Unfair Share of Homeland Security Money," *New York Times*, March 30, 2003, A23. See also, John Kincaid and Richard L. Cole, "Issues of Federalism in Response to Ter-

rorism,” *Public Administration Review* 62 (Special Issue 2002): 181–92.

<sup>5</sup> Philip Shenon, “Counterterror Aid Is Tied Up by the States, Mayors Assert,” *New York Times*, September 18, 2003, A25.

<sup>6</sup> See also, John Kincaid, “Trends in Federalism: Is Fiscal Federalism Fizzling?” *The Book of the States*, 2003, (Lexington, KY: The Council of State Governments, 2003), 26–31.

<sup>7</sup> Quoted in “States Fare Well in Federal Budget,” *State Legislatures* 29 (July/August 2003): 11.

<sup>8</sup> Marilyn Werber Serafini, “Waiving Red Flags,” *National Journal* 35 (April 5, 2003): 1072–78.

<sup>9</sup> See, for example, Diana Jean Schemo, “Critics Say School Funding Falls Short of Promises,” *New York Times*, February 5, 2003, p. A16.

<sup>10</sup> Rod Paige, “It’s Not About the Money,” *Wall Street Journal*, October 30, 2003, A16.

<sup>11</sup> Associated Press, “Kansas City Schools Are Held Integrated,” *New York Times*, September 28, 2003, A26.

<sup>12</sup> *Missouri v. Jenkins*, 110 S.Ct. 1651 (1990).

<sup>13</sup> Iris J. Lav, “Piling on Problems: How Federal Policies affect State Fiscal Conditions,” *National Tax Journal* 56 (September 2003): 535–54.

<sup>14</sup> Associated Press, “Fed’s larger role in crime fighting met with criticism,” *Express-Times* (Easton), Decem-

ber 28, 2003, A–2.

<sup>15</sup> Amol Sharma and Martin Kady II, “State Deficits Increase Pressure For Authority to Tax Internet Sales,” *CQ Weekly* 62 (January 10, 2004): 101–2.

<sup>16</sup> CNN, “Justice Ginsburg: Supreme Court Faces Stormy Times,” 12 June 2003, at [www.cnn.com/2003/LAW/06/12/ginsburg.aclu.ap/](http://www.cnn.com/2003/LAW/06/12/ginsburg.aclu.ap/).

<sup>17</sup> 123 S.Ct. 1972 (2003).

<sup>18</sup> 123 S.Ct. 1683 (2003).

<sup>19</sup> Quoted in Associated Press, “Activists push for limits on abortion through legislation at state level,” *Express-Times* (Easton), March 12, 2003, A–5.

<sup>20</sup> Quoted in Dennis Cauchon, “Fed-up states defy Washington,” *USA Today*, December 8, 2003, at [www.usatoday.com/news/washington/2003-12-08-states-usat\\_x.htm](http://www.usatoday.com/news/washington/2003-12-08-states-usat_x.htm).

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