Wisconsin Institute for Law & Liberty
Center for Competitive Federalism

Wisconsin not Washington

Unleashing the creative potential of a purple state

Mario Loyola
Senior Fellow and
Director, Center for Competitive Federalism

Jake Curtis
Associate Counsel

July 2016

WILL

Wisconsin not Washington

Unleashing the creative potential of a purple state

Mario Loyola
Senior Fellow and
Director, Center for Competitive Federalism

Jake Curtis
Associate Counsel

July 2016

Wisconsin not Washington

Unleashing the creative potential of a purple state

Table of Contents

Introduction

When Scott Walker was elected governor in 2010, Wisconsin was one of the worst states in the country in which to do business. Since then, we have seen bold and impactful reforms, and Wisconsin has made great strides. It has clawed its way to 15th place in the CNBC Global CFO Council ranking, from 29th in 2010.

Still, much work remains. Even in the CNBC ranking, Wisconsin remains below the national average in friendliness to business and cost of doing business. According to the Kaiser Family Foundation, in 2014, Wisconsin's state and local spending per person ($7,797) was 43 percent higher than the national average ($5,457) despite an average income below the national average. Even after $2 billion in tax cuts, Wisconsin's working families bear the highest state and local tax burden of any Midwestern state, much higher than Minnesota, and higher than any state except New York, New Jersey, Connecticut, and California—all states with significantly higher levels of income. Even after several years of outperforming the nation in economic growth, Wisconsin still lags behind the national average in both per capita income and family income, according to the U.S. Census Bureau.

With the anemic growth, regulatory uncertainty, and federal overreach of the Obama era, many states have faced major challenges. Some states have sought to meet those challenges by pursuing the "Texas model" of low taxation, low regulation, and open competition. That model has worked well in "red states" with a history of small government, large disadvantaged populations, and a culture of upward mobility.

Wisconsin, however, is a blue state -- or at least a deep purple -- with a legacy of generous government benefits, and a heavy burden of taxation and regulation. Although the Democratic Party has a significant edge in terms of voter identification -- about five percent --the Republican Party controls the governor's mansion and both houses of the legislature. Wisconsin has voted Democrat for president seven out of the last eight elections. But since 1987, Wisconsin has had a Republican governor in 21 of 29 years. The state's independents, meanwhile, are almost evenly split between the two parties.

That makes for a different kind of politics and presents different challenges for reform. Wisconsin may need to become more like Texas, but we do not write on a blank slate. Wisconsin faces obstacles and expectations that are different than those faced by red states. What has worked elsewhere may need to be adapted to fit a purple state.

In a purple state like Wisconsin, reforms should stress not just limited government but good government. They should be not just pro-business but pro-competition, championing basic human rights – such as the right to work, the freedom of association, and the freedom of contract. They should defend working families from the special interests that have captured American government in the last century.

Wisconsinites of all political persuasions can understand the value of local communities able to live according to their diverse preferences. They understand that freedom means diversity and local choice, not a uniform one-size-fits-all solution imposed by distant bureaucrats in Washington. They value the right to privacy and autonomy, and to live according to one's free will.

The overriding goal of a "Wisconsin model" should be to make Wisconsin, once again, the best state in the Midwest in which to work and live. Like other states, we face constraints imposed by Washington. Through the strategy of "cooperative federalism," the federal government has spent 80 years imposing an ever higher baseline of taxation and regulation on all the states. Loosening the straightjacket of "cooperative federalism" is particularly difficult because the strategy severely restricts the ability of states to modulate their levels of taxation and regulation downward. Under the one-way ratchet that characterizes cooperative federalism states always have the "flexibility" to have more taxes and regulations than the federal baseline, but never less.

Through the strategy of "cooperative federalism," the federal government has spent 80 years imposing an ever higher baseline of taxation and regulation on all the states.

Wisconsin can lead the Midwest, and the country, in devising a model of success for "purple states." But it needs to fight against the straightjacket of "cooperative federalism" and champion instead the competitive federalism of the original Constitution, as enshrined in the Tenth Amendment -- the Constitution's intended reservation of essential government functions to the states.

Part I explains the strategy of "cooperative federalism" through which the federal government is slowly taking over state and local government and imposing on all of them a high baseline of taxation, regulation, and service to special interests. It suggests strategies for fighting back against this pernicious federal influence. Part II looks more closely at possible policy initiatives aimed at making Wisconsin competitive, through an embrace of "competitive federalism."

With this foundational study, the Wisconsin Institute for Law & Liberty's new Center for Competitive Federalism seeks to raise awareness of the challenges and opportunities facing Wisconsin today, as a new generation of Wisconsinites forges a new legacy of exemplary achievement.

From Competitive Federalism to Federal Straightjacket and Back Again

Our Constitution was designed to guarantee local self-government under the protection of a limited federal government. Federal and state governments were each accorded exclusive zones of responsibility, with federal powers supreme but strictly limited and enumerated. As for state powers, the Tenth Amendment explicitly states what was obvious in the Constitution's very structure:

> **The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.**

Hence federal power was supreme under the Supremacy Clause, but only with respect to those powers that were specifically delegated in the Constitution. The states and the people retained all residual rights and powers. And even with respect to the two great sources of federal power – the spending power and the power to regulate interstate commerce – federal power was strictly limited.

The spending power was limited in two ways: first, by the requirement of apportionment for direct taxes, which made it virtually impossible to enact a uniform income tax, and second, by the requirement that money be spent only "to
provide for the common Defence and general Welfare of the United States."

The commerce power meanwhile was stricly limited to "Commerce with foreign Nations, and among the several States, and with the Indian Tribes," which meant that Congress could regulate only the traffic that actually crossed out of the jurisdiction of a single state. Manufacturing, agriculture, and transactions between citizens in the same state were categorically outside the federal power to regulate interstate commerce.

With severe limits on the federal power to impose direct taxes (such as income taxes) and on the federal power to regulate the internal commerce of the states, the Constitution's very structure ensured that most government spending and regulation would occur at the level of the states, subject to interstate competition for people and businesses. The structure we now refer to as "competitive federalism" was a result the Framers explicitly intended.

As James Madison wrote in Federalist No. 45:

> **The powers delegated by the proposed Constitution to the federal government, are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected. The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State.**

This clear separation between federal and state power was fundamental to the Constitution's structure, as was universally understood through the 19th century and well into the 20th century. In the famous case of Gibbons v. Ogden (1824) the Supreme Court held that federal power, "though limited to specified objects, is plenary as to those objects." But Gibbons also affirmed that federal powers could not touch "that commerce which is completely internal, which is carried on between man and man in a State, or between different parts of the same State, and which does not extend to or affect other States." The Court observed that "inspection laws, quarantine laws, health laws of every description, as well as laws for regulating the internal commerce of a State" were but a few examples "of that immense mass of legislation" not surrendered to the federal government. "No direct general power over these objects is granted to Congress," Chief Justice John Marshall observed, "and, consequently, they remain subject to State legislation."

Yes, the Supremacy Clause means that federal law is supreme over a state law, but the states only agreed to that because the subjects on which the federal government could legislate would be strictly limited, and did not include the great majority of matters left to state governments.

This framework of competitive federalism created a powerful brake on the growth of government at every level. But a century ago, two major developments replaced the framework of "competitive federalism" with "cooperative federalism," in which the federal government increasingly subverts and controls state and local government.

The first development occurred in 1913, when the 16th Amendment dramatically expanded the federal spending power, by lifting the requirement of apportionment for direct taxes such as income tax. Federal spending ballooned. Two further decisions, United States v. Butler (1936) and Steward Machine Co. v Davis (1937), made it clear that Congress could tax and spend for whatever purpose it liked, and could impose whatever conditions it wanted on recipients of that money. These moves opened up a new way for the federal government to control the states: conditional federal grants. Under conditional federal grants, the federal government taxes money away from state residents and then "offers" to give it back, so long as the state implements federal policies. Now about 30 percent of every state's budget is federal revenue, almost every dollar of it with coercive conditions attached.

The second development occurred in the course of the New Deal. Franklin D. Roosevelt ran on a program of government protections for farmers and union labor. This "New Deal" consisted of government-created cartels and monopolies that would restrict competition in those sectors and allow those major constituents of his political coalition to restrict output and raise prices above competitive levels. Roosevelt's program required being able to federally regulate all agricultural activity and all labor contracts, which in turn required expanding the federal commerce power from a fraction of the country's commercial transactions -- only those that actually crossed state lines -- to transactions among citizens of the same state. Indeed, the power had to go even further.

> ***With federal power now overlapping (and supreme) over virtually all activities of state government, some wondered whether the state governments could any longer be saved from full federal control.***

At first, the Court refused, but starting in 1937, after Roosevelt threatened to pack the Court with five extra justices sympathetic to his New Deal, the Supreme Court caved in. With NLRB v. Jones & Laughlin Steel Corp. (1937) and United States v. Darby (1941), the Court threw in the towel, and decided that Congress could regulate whatever economic transactions it liked. And when the government discovered that even this power was not enough to protect the New Deal's cartels from competition, the Court in Wickard v. Filburn (1942) expanded the federal commerce power far enough to regulate how much wheat a farmer could grow on his own farm for his own consumption. In just a few years, the federal government went from a limited power to regulate a subset of the nation's commercial transactions to a virtually unlimited regulatory power over all activity that could affect the economy.

With federal power now overlapping (and supreme) over virtually all activities of state government, some wondered whether the state governments could any longer be saved from full federal control. The new commerce power was incompatible with the very structure of our Constitution. It's quite clear from a cursory review of the ratification debates that the Constitution would never have been ratified if Americans had known at the time that the federal government would one day seize this power. Indeed, opponents of the Constitution, such as Patrick Henry, predicted that this would happen, and it was their main argument against ratification.

Before exploring the problems of "cooperative federalism" in greater depth, it's important to understand what was driving this transformation. As Michael Greve explains in The Upside Down Constitution (2013), officials in states with uncompetitive levels of taxation and regulation realized that they could use the federal government to secure protection from competition and to win other benefits for themselves and their special interests, as long as they were willing to give up local self-government in favor of national majority rule. Under cover of "race to the bottom" arguments, these states sought to protect uncompetitive policies from the competitive advantages of competitive states, as envisioned in the Constitution's original structure of competitive federalism.

Crucially, the expansion of the federal spending and commerce powers also allowed politicians to impose a variety of forced-transfer schemes, whereby governments at all levels force money to flow in the direction of special interests. These schemes, alive and well today, run the gamut from progressive taxation, to the subsidies of the federal farm program, to price supports and occupational licensing schemes. The common element of these schemes is government-created barriers to competition that allow competitors to restrict output and raise prices above competitive levels, thereby allowing them to extract unfair profits from an unsuspecting public. The politicians and politically powerful special interests win, and the public loses.

The schemes of cooperative federalism (i.e., coercive federal control of state policies) and barriers to competition (i.e., the government-created cartels and monopolies) work together. That's how the Constitution's original structure of "competitive federalism" was replaced by the government cartels and monopolies of cooperative federalism – and by the slow federal takeover of state governments that we see in motion today on a daily basis, from the EPA's Clean Power Plan to the Obama administration's transgender proclamation.

The rest of this Part explores the spending and regulatory sides of cooperative federalism, and then takes a look at how barriers to competition (such as licensing schemes) work hand-in-hand with cooperative federalism to keep states like Wisconsin uncompetitive.

Conditional federal grants

After the 16th Amendment removed the requirement of apportionment, the stage was set for a massive expansion of federal spending, and for the even more insidious manipulation of that spending. Starting with President Dwight Eisenhower's national highway system, the federal government began transferring to state governments a greater percentage of GDP than total federal revenue just a few decades earlier. With the Great Society, federal funds for the states expanded dramatically, chiefly through education funds for poor local area school districts, and Medicaid.

From there, federal spending programs proliferated, and now account for about a third of all state spending, spread across hundreds of programs, all with conditions attached. Crucially, those conditions apply not just to what states do with the federal grant money, but also to what they do with their own money -- and even to state policies that are entirely secondary to the grant purpose, in areas which the federal government is still specifically prohibited from regulating.

The test case was South Dakota vs. Dole (1987), in which the Supreme Court, under Chief Justice William Rehnquist, reaffirmed the old New Deal case of Steward Machine Co. The Court upheld a provision of the highway bill that allowed the Department of Transportation to reduce federal highway funding for any state that refused to raise its drinking age to 21.

The Court had warned in Butler in 1936 that through the tactic of conditional federal grants, "constitutional guarantees, so carefully safeguarded against direct assault, are open to destruction by the indirect, but no less effective, process of requiring a surrender, which, though, in form voluntary, in fact lacks none of the elements of compulsion." In South Dakota the Court recognized the potential problem in such conditional grant programs, but essentially waved the problem away by creating a distinction without a difference. The Court recognized that the penalties attaching to such conditional federal programs could not be so onerous as to pass "the point at which pressure turns into compulsion." The Court insisted that state prerogative must be preserved, both in theory and in fact. But the Court argued the states' freedom of choice is preserved in the states' ability to refuse the funding itself.

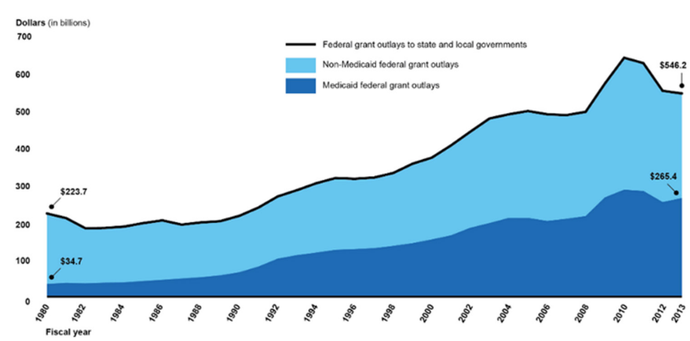
The problem with this logic is that any amount of money taxed away from the states and returned to them only on condition of compliance with federal preferences weakens the state's ability to choose. If the penalty involved is miniscule, there is still pressure, and freedom of choice is lessened. Conversely, if the penalty is enormous, there is still freedom of choice, notwithstanding the pressure. Either there is coercion in both cases or there is coercion in neither. The Court's insistence that there is some point at which mere encouragement turns into compulsion is simply unworkable.

The only case that has struck down even a small part of a federal grant program as coercive was NFIB v. Sebelius (2012), and that only happened because the Affordable Care Act's Medicaid-expansion provisions threatened to withhold all pre-existing Medicaid funds if a state did not adopt what the Court considered an entirely new program. However, NFIB is potentially transformative because it recognizes that the threat to withdraw federal funds can be a "gun to the head" and gives lower courts some basis for finding coercion in other programs.

The problems of conditional federal grants abound. Conditional federal grant programs inflate state budgets well beyond what states would be willing or able to sustain with their own tax revenue. State legislators sometimes complain about coercion, but their constituents are getting taxed to sustain these programs and consequently they depend on the programs, and have every right to expect the benefits. With federal "assistance" states are able systematically to spend more than 30 percent above what they generate in taxes. It is no coincidence that this state fiscal surplus accounts for virtually the entire federal deficit. According to OMB's historical tables, assistance to the states averaged about 3.0 percent of GDP between 1982 and 2012. During the same period, the federal deficit has averaged 3.4 percent of GDP.

This does not mean that spending has remained constant -- far from it. The economy has grown enormously since the early 1980s, and so have federal outlays to the states, as Figure 1 shows.

Figure 1: Total Federal Outlays for Grants to State and Local Governments and Medicaid, in 2013 Constant Dollars, Fiscal Years 1980-2013



Source: GAO analysis of OMB data.

So why would the federal government raise massive deficits only to transfer almost all of that borrowed money to state governments? State governments have their own taxing authority. Why don't they just raise the extra money themselves?

There are two answers. The first is tax competition among the states. One example from the 1920s suffices to demonstrate the point. In response to state competition for wealthy retirees, which took the form of lowering estate taxes, Congress adopted a federal estate tax, and then provided that most state estate taxes could be offset against the federal tax obligation. The purpose of this one-two punch was to eliminate the choice then facing wealthy retirees: they would have to pay the estate tax no matter where they decided to spend their final days, the only difference being whether the federal or state government would wind up with the revenue. For the states seeking wealthy retirees, the allure of lowering estate taxes was eliminated in one fell swoop, because they would only be giving up tax revenue from their existing retirees, without being able to attract wealthy retirees from other states.

The net effect was, essentially, to kill interstate tax competition, by using federal power to coerce states into imposing a more or less uniform state estate tax. And that is one clear purpose of federal "assistance" to the states. It guarantees that, with respect to the third of every state's budget that consists of federal funds, every state has a state income tax in the amount of the effective federal rate, collected on their behalf by the IRS, and returned to them with all manner of conditions attached.

The second answer goes to the nature of the conditions. They essentially allow the federal government to expand its power while escaping accountability for the results. Congress raises huge deficits in order to purchase control over state governments, by inflating their budgets to the point of utter dependency. That's how Congress buys the obedience of state officials, regardless of party, and regardless how much their constituents might prefer a state alternative to the federal program. The scheme also offers a way for uncompetitive, big-government states to eliminate the competitive advantage of small-government states. State legislators, regardless of party, find it virtually impossible to turn down the federal offer to return to them the money already taken from their constituents – under the coercive threat of transferring the money to other states. This explains why virtually the entire growth in the American public sector since the 1950s has occurred at the state and local level—not, surprisingly, the federal level.

The scheme is deemed mere "encouragement" by the Supreme Court, thus giving Congress plenty of room to circumvent the prohibition against commandeering that the Supreme Court otherwise pays such strident lip service to, even in supposedly conservative decisions like New York v. United States (1992) and Printz v. United States (1997), Justice Antonin Scalia's classic statement on federalism. The Supreme Court has given Congress far too much latitude in using the spending power for highly selective redistribution and, in this context, for manipulating state policies. The spending power was granted to let the federal government provide "for the General Welfare of the United States." That would seem to preclude providing for the general welfare of one state and not another, as the threat of conditional federal grants implies. The Supreme Court, alas, has not thought the matter through quite that far.

Wisconsin's legislators know the consequences all too well. They are left at the mercy of congressional appropriations and dependent on federal bailouts every time there's a downturn in the economy. If the federal government weren't sucking so much money out of the private economy to pay for programs such as Medicaid (while coercing states into match-funding what are really federal programs) the states could run them more efficiently and sustainably on their own, and there would be more money left over for Wisconsin's working families. These programs, which are meant to equalize income disparities among the states, actually exacerbate them, especially through the tactic of match-funding. Rich states can afford bloated Medicaid programs and are rewarded with federal matching funds. Poor states are penalized.

Under the Supreme Court's fictional distinction between encouragement and compulsion, the federal government is very simply taking over the fiscal operations of state government.

Cooperative federal-state regulation

These problems are if anything even more pronounced in the second main species of "cooperative federalism," namely cooperative federal-state regulatory programs. Here the federal government gives states permission to implement some federal scheme so long as they do it the feds' way, otherwise the feds will come in and do it themselves. Examples include the insurance exchanges that Obamacare requires states to set up, under threat of imposing a "federally facilitated" exchange. Examples abound among environmental programs, such as the EPA's Clean Power Plan requirement that states reorganize their electrical power sectors in a way EPA has no power to mandate, under the threat of losing a significant amount of electrical capacity.

With federal "assistance" states are able systematically to spend more than 30 percent above what they generate in taxes. It is no coincidence that this state fiscal surplus accounts for virtually the entire federal deficit.

The blackmail is clearer in this area than in the conditional federal funds context, because the state government is clearly worse off either way. No state would ever willingly enter into a cooperative regulatory program in the hopes of gaining a bargained-for benefit, except as part of a strategy to federalize an uncompetitive policy, as California has accomplished by essentially federalizing its inordinately expensive electrical regulation through the EPA's Clean Power Plan. In competitive states with no interest in the proposed federal program, officials are worse off no matter what they do: If they implement the program according to federal instructions, they are left to face the ire of voters who may hate that program. And if they refuse, and the feds come in and do it themselves, they will face the ire of constituents who will accuse them of needlessly bringing federal regulators in on their heads. Either way, the federal government expands its power, and either way state officials are held accountable by voters.

Such offers are usually thought of as blackmail, but when the federal government does it to the states, it's called "cooperative federalism." When the federal government shows up with the blackmail offer of a new conditional regulatory program, it is really California and New York and their coalition of uncompetitive states using the federal machinery to do the blackmailing. The victims of the blackmail are invariably state legislators like those in Wisconsin who believe in freedom -- and the people they represent.

Rule of the Special Interests

The central driver of cooperative federalism is the desire of government officials in uncompetitive states to protect their special interests from competition. Hence, government-cartel formation is the root of the constitutional transformation that progressive government has wrought, the purpose of which, as Prof. Richard A. Epstein has written, was "to make the world safe for cartels."

After 80 years of progressive government, our society is drowning in cartels and monopolies created to benefit special interests at the expense of the public, often with spurious "public safety" or "public convenience" justifications, from excessive occupational licensing, car dealership, and alcoholic-beverage distribution regulations at the state level, to the federal agriculture and labor regulations adopted as emergency measures during the New Deal, many of which are still in force all around us right here in Wisconsin.

> ***[M]onopolies and cartels are the most important tools that progressives have for protecting their special interests.***

Cartels for agriculture and labor were the whole point of the New Deal. All the New Deal–era Supreme Court cases that expanded the federal commerce power approved some kind of cartel in either agriculture or labor. One reason is that state-created cartels were hard to protect from interstate competition. Any state that established minimum wheat prices would just lose market share to neighboring states.

At an even more basic level, in the purely private market, there is no way to enforce cartel discipline or keep out new entrants. The attempt to sustain monopoly or cartel pricing thus becomes a recipe for losing market share to competitors. Through regulation, however, government can solve these problems. Government is therefore the perfect co-conspirator for anybody who wants to create a monopoly or a price-fixing cartel. Government can write laws to prevent the entry of new competitors and also to enforce cartel discipline.

Thus, monopolies and cartels are the most important tools that progressives have for protecting their special interests. Almost the entire progressive agenda, from the early 20th century onward, boils down to creating a monopoly or cartel for some part of its political coalition.

These monopolies and cartels are not merely the central drivers of the tragic transition from competitive federalism to cooperative federalism. They are also the means by which special interests with powerful lobbyists turn the government into a system of reverse-Robin Hood, through which they impose huge invisible losses on Wisconsin's working families for their own benefit.

One implication is clear: Restoring the Constitution's competitive federalism starts with pulling these special interest cartels and monopolies up by the roots. Legislators need only remember who actually elected them, and whom they really serve.

Towards a Wisconsin Model

Many Wisconsin legislators share Governor Scott Walker's desire to cement Wisconsin's legacy as a leader in policy innovation for the 21st century. One key way to advance this goal is to take a comprehensive look at state spending and state regulations through the lens of competitive federalism.

The goal is to make Wisconsin the best place to live and work, first in the Midwest, and ultimately in the country. In order to accomplish this goal, Wisconsin's leaders must fight for the flexibility that the Constitution originally guaranteed in the Tenth Amendment -- the freedom to tax and spend, and regulate the internal commerce of the state, according to the preferences of the people of Wisconsin. In other words, Wisconsin's leaders must become advocates for competitive federalism.

That means fighting both the high levels of taxation and regulation imposed by the federal government, and the cartels and monopolies imposed by federal law, such as the farm program. Gov. Walker has often said that in a truly free market, Wisconsin farmers would do even better than today, because they're the most efficient and innovative in the world. Senator Ted Cruz recently won the Iowa caucus running against ethanol subsidies and mandates that provide free benefits to large parts of the Iowa economy. People like free things, but they can also understand that what's bad for society as a whole is also bad for them and their children in the long run. Politicians need to be brave enough to stand on principle, and trust the people to make the right choices.

Making Wisconsin competitive again requires reforms in every area, from the level and stability of regulation and taxation, to the availability of skilled labor and reliable transportation infrastructure.

<u>Restoring Competitive Federalism</u>

The "point of the spear" is to make Wisconsin competitive again. Wisconsin businesses and workers know best what would make the state an easier place to do business and a better place to flourish. A Commission on Competiveness could be charged meet with constituents throughout the state and report back to the governor and legislators in time for the next legislative session.

In the long term, it is critical to stop, and start reversing, the federal government's slow takeover of Wisconsin's budget and state agencies. Through conditional federal spending and "cooperative" federal-state regulatory programs, the federal government manipulates state spending and state regulations. No state wants to be alone in pushing back, so states behave as if they are in a prisoner's dilemma. But they aren't. They can coordinate, and Wisconsin can lead the way.

In the meantime, states like Wisconsin can fight back against cooperative federalism by raising awareness of federal coercion in relevant programs, and by capitalizing on the fact that state and local officials have no obligation to enforce federal law or participate in the implementation of federal regulations.

- Commission on Competitiveness. One overarching proposal would be to have a commission on competiveness recommend legislative and regulatory reforms to make Wisconsin more competitive again. The council could issue recommendations on workforce training and education, infrastructure, manufacturing, high technology, and ease of starting up and operating a small business.
- Coercive Federal Funds Report. Make the definition of "coercion" in federal funding programs that was articulated in NFIB v. Sebelius (2012) an operational element of state policy. The state should review agency requests for funding, and identify those that involve federal funds with "coercive conditions" attached. State legislators and voters alike could then start each budget cycle with full awareness of which sources of funding in the state budget are instruments of federal manipulation.
- Summit and declaration of states. One way to deal with the dangers of "cooperative federalism" is to reach agreement with other states on how they will handle conditional federal funds and conditional regulation. A short declaration of principles, in which a large number of state governors and legislators commit to refusing conditional federal offers of money and/or regulatory "permission" under certain circumstances, would have a high likelihood of causing a sea change in how Congress structures its fiscal and regulatory programs viz-a-viz the states. Those states whose elected officials are at odds with federal impositions must start acting as a block. No one state is in a position to defy the federal takeover of state policies. Only by working together will they be able to stand up to Washington, and force Congressional delegations of both parties to protect their states from the grossly disparate treatment implicit in federal threats.
- Separation of Feds and States. Prohibit state regulatory agencies, and political subdivisions of the state, from cooperating with federal regulators with respect to certain programs deemed coercive. One example would be to prohibit state and local officials from participating in any new federal scheme to limit Second Amendment rights through state police officers.

Other reforms could explore the following proposals:

- Invest in the 21st Century Workforce. Major reforms could expand on Gov. Walker's Blueprint for Prosperity initiative, and address the long-term impact that years of uncompetitive policies have had on working families. Such reforms could be done in conjunction with K-12 and dropout prevention initiatives.
- Reforms for Sustainable State Spending. Even after $2 billion in tax cuts in the Walker era, Wisconsin has a long way to go in fixing the state's finances. Wisconsin still has the highest state spending per capita of any state in the Midwest.
- Expanding Economic Freedom and Property Rights. There are still too many hindrances on individuals and firms trying to succeed in the marketplace. While regulations for health and safety are vitally necessary, and many communities flourish on local rules, regulations that limit competition merely for the benefit of special interests with good lobbyists can only serve to injure the public in ways large and small. It's important to raise awareness of such abuses and begin the process of

eliminating them. Occupational licensing and over-criminalization of commercial activity deserves particularly close scrutiny.

- A Safety Net for the Opportunity Society. As Gov. Walker said in his 2016 State of the State Speech, "True freedom and prosperity do not come from the mighty hand of the government. They come from empowering people to live their own lives through the dignity that comes from work." Reforms could further focus welfare reform on giving the needy a hand up, not indefinite handouts.
- Local Government Reform. The multiple layers of federal, state, and local government with jurisdiction over the same things creates confusion and uncertainty. Streamlining agencies and activities will save taxpayer dollars and make government more accountable and transparent.

Conclusion

The Midwest, where progressive government was born, is becoming the birthplace of a new conservatism. It is a conservatism not just of limited government but of good government, not just pro-business but pro-competition, a conservatism that could finally weaken the hold of special interests on our government.

It's a conservatism that can be true to its principles and still appeal to moderates, independents, and even Democrats. A large number of Wisconsin voters voted twice for President Barack Obama and two or three times for Governor Scott Walker. These Republicans, independents, and Democrats can agree that Wisconsin's taxes are too high and its regulations too burdensome; that government is failing to bring opportunity to Wisconsin's youths or to the disadvantaged who need opportunity most; and that diversity and local choice are better than one-size-fits-all solutions imposed by distant bureaucrats in Washington, D.C.

About the Authors

Mario Loyola is Senior Fellow at WILL, focusing his research on federalism and constitutional law. He served in the Pentagon as a special assistant to the undersecretary of defense for policy, and on Capitol Hill as counsel for foreign and defense affairs to the U.S. Senate Republican Policy Committee, and a senior advisor for Senator Ben Sasse of Nebraska. Loyola is a contributing editor at National Review and was a senior fellow at the Texas Public Policy Foundation, where he was director of federalism and constitutional studies.

Jake Curtis is Associate Counsel & Federalism Litigator at WILL. Prior to Joining WILL, Jake served as State Senator Duey Stroebel's Policy Director and as a litigation and government affairs associate at one of Wisconsin's largest business law firms and a small firm specializing in municipal labor and employment matters. He previously served as an Ozaukee County Supervisor as well as a special appointed Assistant District Attorney in Milwaukee County.