

Texas Public Policy Foundation

# Keeping Texas Competitive

## A Legislator's Guide to the Issues 2013-2014



### Agenda for State Action

#### The Issue

Our Constitution has withstood the test of time. But the Framers' original design, in which States would protect and nurture the American tradition of self-governance, and federal power would be used only for limited ends, has been undermined. Waves of assault on the constitutional constraints meant to limit federal power, combined with the steady expansion of the federal bureaucracy, have led to a progressive consolidation of power at the federal level.

For more than 100 years, the federal government has been expanding its power and reach. The steady concentration of power in Washington has been accompanied by a steady intrusion into areas of state authority that the Framers assumed the federal government would never be involved in. In the Framers' conception of democracy, state-based self-government and individual liberty went hand in hand. It was for this reason that they insisted on a federal government of strictly limited powers. They enshrined this ideal in the Tenth Amendment of the Constitution: "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."

A return to the limited system of government envisioned by the Founders will not be easy. The vital solution lies in self-governance itself, what John Locke might have called a "government properly so-called." We the People have a responsibility to engage and understand the issues that affect the fate of our democracy. By elevating our understanding of the need to preserve the authority of the States, and ultimately the sovereignty of the people—the most contentious and important agreement reached at the Constitutional Convention in Philadelphia more than two centuries ago—we can continue to forge a more perfect Union.

#### The Facts

- The Patient Protection and Affordable Care Act of 2010 ("ObamaCare") is a dramatic expansion of the federal government's reach into our daily lives, on an unprecedented scale. ObamaCare contains an individual mandate to maintain health insurance, a clear constitutional overreach. In addition, ObamaCare requires that States dramatically expand their Medicaid programs, and establish new health insurance exchanges to be regulated as utilities for the socialization of health care costs.
- The Environmental Protection Agency and Department of Interior are using regulatory power to invalidate highly successful state programs that are entirely within the law; to accomplish climate-change policies that have been rejected by Congress; to create stifling regulatory uncertainty in those sectors of industry that compete with the goals of radical environmentalists; and to punish States that pursue a free-market, limited-government regulatory model.

#### Recommendations

- Interstate compacts are an effective way to regulate areas of mutual concern among two or more States. In areas of overlapping state and federal jurisdiction, or where state legislation is preempted by an enumerated federal power, the Constitution requires congressional consent (Art. I, Sec. 10). The Supreme Court has held that such congressional consent trumps prior federal law and may even subordinate federal agencies to agencies created by the interstate compact. Interstate compacts have enormous unexplored potential as a way of shielding areas of traditional state authority from the concentration of power in Washington. Texas should enact an interstate compact allowing citizens greater choice in purchasing health insurance across state lines, and should consider other areas where an interstate compact might be an effective solution.

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- Texas should examine the benefits of using constitutional amendments aimed at controlling runaway federal spending. Constitutional amendments can be proposed in one of two ways. First, Congress itself can propose the amendment. Second, Article V of the Constitution provides that on the call of two-thirds of the states, Congress must convene a convention for the purpose of proposing amendments. Any amendments proposed by this convention must then be ratified by three-fourths of the states.
- States have been fighting back against the federal government by suing in federal court. More than half the states have sued the federal government to escape the impositions of ObamaCare. Texas has filed at least a dozen challenges to various federal environmental rules and actions. Texas should continue to seek relief where appropriate through the federal courts, and the legislature should adopt laws requiring our attorney general to file suit in defense of specific rights.

### Resources

*Reclaiming the Constitution: Towards an Agenda for State Action* by Ted Cruz and Mario Loyola, Texas Public Policy Foundation (Nov. 2010).

*Shield of Federalism: Interstate Compacts in Our Constitution* by Ted Cruz and Mario Loyola, Texas Public Policy Foundation (Dec. 2010).

*A Constitutional Solution to Runaway Federal Spending: The Need for a Balanced Budget and Spending Limits Amendment* by Mario Loyola, Texas Public Policy Foundation (May 2011).

