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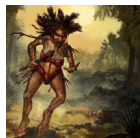
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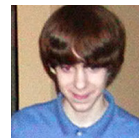
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The Dangers of 'Cooperative' Federal-State Programs

By [Mario Loyola](#)

December 20, 2012 12:09 P.M.

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This week, the editors of the *Wall Street Journal* agreed with what Michael Cannon, myself, and others have been saying for months: States should absolutely refuse to create the Obamacare's state insurance exchanges and should instead let the feds come in and do it themselves. Responding specifically to Douglas Holtz-Eakin (who created a bit of a stir on NRO recently when he argued in favor of the state exchanges) the editors offered a crucial insight, one with sweeping implications far beyond the health-care context:

The "federalism" ruse is a special instance of bad faith. If federal-state cooperation means anything, then it requires some element of genuine state control and the freedom to innovate. The Health and Human Services Department is abusing the laboratories-of-democracy line as cover even as it prohibits states from doing experiments. And it's dictating details down to the lab coats and microscopes.

The folks at HHS envision the exchanges as centralized, interventionist, hyper-regulatory bodies. HHS's idea of flexibility is

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telling the states they can make the exchanges even more centralized and interventionist. But if they don't agree to that model, then Washington will impose it anyway.

This sort of “cooperative federalism” is actually pervasive throughout the federal leviathan. It is one of the two pillars of the federal government's general strategy for controlling the states — the other being federal funds, such as Medicaid, which have so many conditions attached to them that states are left with virtually no flexibility.

State compliance with such programs is supposed to be voluntary, but there is always a penalty, so there is always coercion. Under the Clean Air Act, for example, the Environmental Protection Agency “approves” State Implementation Plans if they conform to an EPA wish-list, and if not, the EPA imposes a Federal Implementation Plan. You're damned either way. As we've been told by EPA officials (e.g., former regional administrator [Al Armendariz](#)) EPA likes to “crucify” local businesses to make examples of them. Hence, states often jump at the chance to implement federal regulations themselves, just to keep the feds out. But when they do that, they become little more than deputies of the federal government, and the preferences of their state's residents become subordinated to the federal will.

That's not how the Constitution is supposed to work. Federal and state governments are supposed to remain separate, in their respective sovereign spheres. The conservative movement has long fought for a revival on constitutional restraints on federal power, but it is only just starting to grasp the dangers of “cooperative federalism” — regulatory and spending programs through which the federal government takes over state governments under the fiction of voluntary cooperation.

This is the subject of [my new article](#) in *The American Interest* magazine. Here's a taste:

Acting through the EPA's cooperative regulatory programs, Congress does not merely hide accountability for its own policies within state agencies. It also escapes the vital limitations that the legislative process imposes on it when it must provide for the implementation of its own programs. If the EPA didn't have the option of subverting states into implementing its new greenhouse gas regulations, for example, it might have to hire tens of thousands of bureaucrats to process permit applications from the six million businesses that could eventually be subject to the new regulations. It is inconceivable that Congress would appropriate such vast sums to implement an imposition that, in the form of “cap and trade”, couldn't pass Congress even with a Democratic supermajority. But if the EPA has the money to implement the scheme in just a few states, it can threaten most of them into compliance.

This is why the refusal of some 26 states (and counting) to implement Obamacare's state insurance exchanges is such a milestone for constitutional conservatism. Let the federal government pay for, implement, and be accountable for its own regulations. Allowing your states to be deputized as agents of the federal government increases

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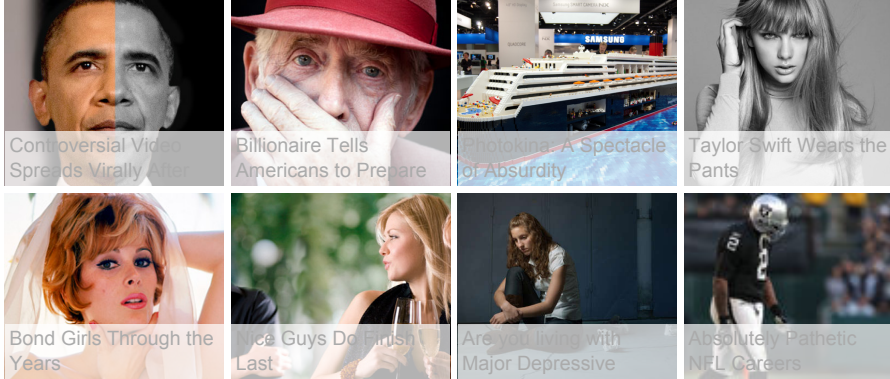
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federal power far beyond what the federal government could do on its own. It's time to focus on the dangers of "cooperative federalism," and attack it everywhere that it rears its ugly head.

— *Mario Loyola is director of the Center for Tenth Amendment Studies at the Texas Public Policy Foundation.*

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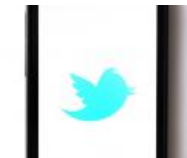
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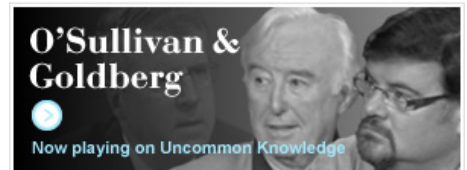


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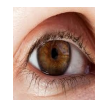
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