

The Exceptional Structure: How the Compound Republic Secures the People's Rights

Constitutional Authority for the Limits, Divisions, Balance, Checks, and Restraints of Governing Power in the State–Federal Governing Partnership

A documentary record drawn from the Federalist Papers, the ratifying conventions, the Bill of Rights, presidential addresses and veto messages, and the Supreme Court of the United States

Where's the Line? YOU Are the Answer · Class 2 Brief · iGovern.us

Executive Summary

American liberty does not rest on electing the right person. It rests on a **structure** — a carefully engineered system of limits, divisions, balance, checks, and restraints on governing power. The Framers' singular innovation was the **Compound Republic**: the power surrendered by the people is first divided between two distinct governments — State and National — and then subdivided among legislative, executive, and judicial branches. "Hence a double security arises to the rights of the people."

This report assembles the primary-source record establishing three propositions: first, that the Framers, the Presidents, and the Supreme Court uniformly teach that it is the structure of American government — not the virtue of officeholders — that secures the people's rights; second, that the balance of power in the State–Federal governing partnership is the load-bearing wall of that structure, deliberately drawn as a line between "few and defined" national powers and "numerous and indefinite" State powers; and third, that maintaining that line — knowing where it is, and preventing either government from stepping over it — is the perpetual constitutional task of the sovereign people.

The central question this brief answers: *What are the limits, divisions, and balance of State–national governing powers — and how can I and my State agents know them with the greatest degree of clarity possible?* The method, throughout, is a fixed hierarchy of clarity: the constitutional text first; its meaning at drafting and ratification second; the Framers' and Ratifiers' own primary documents and earliest applications third; and Supreme Court decisions — with greatest emphasis on the present Court — as confirming evidence, consulted but never substituted for the source. (Utah has codified exactly this hierarchy at Utah Code § 63C-4a-304(3); see Section IV-D.)

I. A Government of Structure, Not of Men

The Framers did not gamble the people's rights on the goodness of rulers. They assumed the opposite — and engineered accordingly.

"If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions. ... Ambition must be made to counteract ambition."

James Madison, Federalist No. 51 (1788). Full text at the Yale Avalon Project.

“The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.”

James Madison, Federalist No. 47 (1788). Full text at the Yale Avalon Project.

“... to the end it may be a government of laws and not of men.”

John Adams, Massachusetts Constitution, Declaration of Rights, Art. XXX (1780).

Two centuries later, four Justices of the Supreme Court restated the principle in the joint dissent in the Affordable Care Act case:

“The fragmentation of power produced by the structure of our Government is central to liberty, and when we destroy it, we place liberty at peril. Today’s decision should have vindicated, should have taught, this truth; instead, our judgment today has disregarded it. ... Structural protections — notably, the restraints imposed by federalism and separation of powers — are less romantic and have less obvious a connection to personal freedom than the provisions of the Bill of Rights or the Civil War Amendments. Hence they tend to be undervalued or even forgotten by our citizens. It should be the responsibility of the Court to teach otherwise, to remind our people that the Framers considered structural protections of freedom the most important ones.”

Joint dissent of Justices Scalia, Kennedy, Thomas, and Alito, NFIB v. Sebelius, 567 U.S. 519 (2012).

II. The Compound Republic: A Double Security

In a single republic, the people’s power goes to one government, checked only by dividing that government into branches. The American design goes further — the division of power between two governments comes **first**.

“In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself.”

James Madison, Federalist No. 51 (1788). Quoted by the Supreme Court in *Printz v. United States*, 521 U.S. 898 (1997), and in Justice Kennedy’s concurrence in *United States v. Lopez*, 514 U.S. 549 (1995).

“[The federal government’s] jurisdiction extends to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects. ... The proposed Constitution ... is, in strictness, neither a national nor a federal Constitution, but a composition of both.”

James Madison, Federalist No. 39 (1788). Full text at the Yale Avalon Project.

Alexander Hamilton — the founding generation’s foremost advocate of energetic national government — told the New York Ratifying Convention that this balance is the point of the whole design:

“This balance between the National and State governments ought to be dwelt on with peculiar attention, as it is of the utmost importance. It forms a double security to the people. If one encroaches on their rights, they will find a powerful protection in the other. Indeed, they will

both be prevented from overpassing their constitutional limits by a certain rivalry, which will ever subsist between them.”

Alexander Hamilton, Speech to the New York Ratifying Convention, June 21, 1788. Text at Founders Online, National Archives.

The Supreme Court has described this two-government design as the Framers’ signature achievement:

“Federalism was our Nation’s own discovery. The Framers split the atom of sovereignty. It was the genius of their idea that our citizens would have two political capacities, one state and one federal, each protected from incursion by the other.”

Justice Anthony Kennedy, concurring, U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779, 838 (1995).

“Though on the surface the idea may seem counterintuitive, it was the insight of the Framers that freedom was enhanced by the creation of two governments, not one. ... [O]f the four structural elements in the Constitution — separation of powers, checks and balances, judicial review, and federalism — federalism was the unique contribution of the Framers to political science and political theory.”

Justice Anthony Kennedy, concurring, United States v. Lopez, 514 U.S. 549 (1995).

III. Where’s the Line? “Few and Defined” vs. “Numerous and Indefinite”

“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. ... 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.”

James Madison, Federalist No. 45 (1788). Cited as authoritative by Chief Justice Roberts in NFIB v. Sebelius, 567 U.S. 519 (2012).

James Wilson told the Pennsylvania Ratifying Convention that the line between the two jurisdictions was drawn with deliberate precision:

“... this Constitution deserves approbation ... [for] the accuracy with which the line is drawn between the powers of the general government and those of the particular state governments. ... The powers are as minutely enumerated and defined as was possible.”

James Wilson, Pennsylvania Ratifying Convention, December 1787.

“I wish to preserve the line drawn by the federal constitution between the general and particular governments as it stands at present, and to take every prudent means of preventing either from stepping over it.”

Thomas Jefferson, Letter to Archibald Stuart, December 23, 1791. Text at Founders Online, National Archives.

The Bill of Rights Makes the Line a Rule of Law

The Bill of Rights was adopted, in the words of its own preamble, to add “further declaratory and restrictive clauses” to the Constitution “in order to prevent misconstruction or abuse of its powers.” Its final two amendments codify the structure itself:

“The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”

U.S. Constitution, Amendment IX (1791).

“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.”

U.S. Constitution, Amendment X (1791).

“To take a single step beyond the boundaries thus specially drawn around the powers of Congress, is to take possession of a boundless field of power, no longer susceptible of any definition.”

Thomas Jefferson, Opinion on the Constitutionality of a National Bank, February 15, 1791. Text at the Yale Avalon Project.

“The Tenth Amendment is not ‘a general assumption,’ but a prohibitory rule of law. ... The Constitution draws a sharp and clear line between federal jurisdiction and state jurisdiction.”

Senator Barry Goldwater, The Conscience of a Conservative (1960).

IV. The Inventory of Powers: Delegated, Reserved, Retained

Recall the four circles: the People’s power is a circle the size of the earth; all government combined, a basketball; the Federal Government, a penny. This section takes inventory of what is actually in each circle — **the penny** (powers delegated to the national government), **the garden** (the numerous matters reserved to the States — fifty unique gardens), and **the earth** (what the People never delegated to any government at all). The delegated inventory below is drawn from the tabulation in Appendix A of *Where’s the Line? How States Protect the Constitution* (“A Tabulation of the ‘Few and Defined’ Powers Delegated to Congress as of 1791”), and has been codified — clause by clause, with constitutional citations — in Utah law at Utah Code § 63C-4a-304(1).

A. The Penny: What the People Delegated to the National Government

Nearly the entire national inventory fits in eight memorable baskets. Every item carries its constitutional address — so you and your State agents can check the deed:

Basket	What It Covers	Constitutional Address
1. War & Peace	Declare war; letters of marque; raise and support armies (2-year appropriations); provide and maintain a navy; govern land and naval forces; call forth, organize, arm, and discipline the militia (States keep officer appointments and training); Commander-in-Chief; defend States from invasion and insurrection	Art. I §8, cls. 11–16; Art. II §2; Art. IV §4
2. Foreign Affairs	Treaties (with Senate consent); ambassadors and foreign-affairs	Art. II §§2–3; Art. I §8, cl. 10

	officers; receive foreign representatives; punish piracies, felonies on the high seas, and offenses against the law of nations	
3. Money & Measures	Coin money and regulate its value; fix weights and measures; punish counterfeiting; borrow on U.S. credit; uniform bankruptcies; (since 1913) income tax without apportionment	Art. I §8, cls. 2, 4–6; Amend. XVI
4. Trade Across Lines	Regulate commerce with foreign nations, among the several States, and with the Indian tribes; lay uniform duties, imposts, and excises	Art. I §8, cls. 1, 3
5. Borders & Belonging	Uniform rule of naturalization; census every ten years; admit new States	Art. I §8, cl. 4; Art. I §2; Art. IV §3
6. Post & Progress	Post offices and post roads; patents and copyrights (“science and useful arts”)	Art. I §8, cls. 7–8
7. Law of the Union	Constitute inferior federal courts and fix their jurisdiction; punish treason; exclusive legislation over the federal district (≤10 miles square) and enclaves purchased with State-legislature consent for “forts, magazines, arsenals, dock-yards, and other needful buildings”; full-faith-and-credit rules; federal oaths; propose amendments	Art. I §8, cls. 9, 17; Art. III; Art. IV §1; Art. V; Art. VI
8. Federal Property & Housekeeping	Manage, dispose of, and make needful rules respecting federal territory and property; override State rules on times and manner of congressional elections; presidential succession and electors’ timing; carry the foregoing into execution (Necessary & Proper — tied to the listed powers, not free-standing); enforce the Reconstruction and voting amendments	Art. IV §3; Art. I §4; Art. II §1; Art. I §8, cl. 18; Amends. XIII–XV, XIX, XXIII–XXVI

That is essentially the whole penny. As James Wilson assured the Pennsylvania Ratifying Convention, “the powers are as minutely enumerated and defined as was possible,” and “nothing more is intended to be given than what is so enumerated.” The Constitution then bolts the door from the other side: Article I, § 10 prohibits a short list of powers to the States (treaties, coining money, ex post facto laws, impairing contracts, duties on imports without congressional consent, keeping troops in peacetime) — tabulated in Appendix B of *Where’s the Line?* Everything else remains where it started.

B. The Garden: Matters Affirmed as Reserved to the States

During ratification, the Constitution’s own advocates listed — publicly, to win the people’s votes — the kinds of matters that would remain with the States. Appendix C of *Where’s the Line?* collects that ratification-era list: marriage, divorce, and domestic relations; manufacturing and labor relations; business enterprises and agriculture; land use, land titles, and conveyances; property outside interstate trade; commerce wholly within State lines; State and local government; establishment and regulation of most crimes; civil litigation; social services and care of the poor; training the militia and appointing its officers; religion; education; roads other than post roads; and all other powers not delegated. The Supreme Court has affirmed the reservation, category by category:

Reserved Matter	Supreme Court Affirmation
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Family & domestic relations	“The whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the states, and not to the laws of the United States.” <i>In re Burrus</i> , 136 U.S. 586, 593–594 (1890)
Criminal law (most crimes)	“[W]e can think of no better example of the police power, which the Founders denied the National Government and reposed in the States, than the suppression of violent crime and vindication of its victims.” <i>United States v. Morrison</i> , 529 U.S. 598, 618 (2000)
Education & schools	“No single tradition in public education is more deeply rooted than local control over the operation of schools.” <i>Milliken v. Bradley</i> , 418 U.S. 717, 741 (1974); accord <i>Lopez</i> (Kennedy, J.): “it is well established that education is a traditional concern of the States”
Health, safety & medicine	“[T]he regulation of health and safety matters is primarily, and historically, a matter of local concern.” <i>Hillsborough County v. Automated Medical Labs</i> , 471 U.S. 707, 719 (1985); <i>Metropolitan Life</i> (1985) (“lives, limbs, health, comfort, and quiet”)
Land use, zoning & property	Zoning sustained as a core police-power function, <i>Village of Euclid v. Ambler Realty Co.</i> , 272 U.S. 365 (1926); “zoning property for development” listed as a vital State function, <i>NFIB v. Sebelius</i> (2012)
Professions & local commerce	State licensing of professions sustained, <i>Dent v. West Virginia</i> , 129 U.S. 114 (1889); no federal “plenary police power” over local activity, <i>Lopez</i> (1995); <i>Morrison</i> (2000)
State offices & self-organization	“[T]he authority of the people of the States to determine the qualifications of their most important government officials ... is a power reserved to the States under the Tenth Amendment.” <i>Gregory v. Ashcroft</i> , 501 U.S. 452, 463 (1991)

C. The Earth: What the People Never Delegated to Any Government

The largest inventory belongs to no government at all. The Ninth Amendment — “the enumeration ... of certain rights, shall not be construed to deny or disparage others retained by the people” — was Madison’s answer to the fear that listing some rights would imply surrendering the rest. Before asking “which government?”, the sovereign asks **“if government at all?”** Matters the people retained include, by way of illustration: conscience, belief, and worship; speech, press, and assembly (“Congress shall make *no law*”); how to raise and educate one’s children; whom to marry and how to order family life; what to eat, grow, and build for one’s own household; one’s labor, trade, and the fruits of both; the security of home and papers; self-defense; travel; and association. The Court has recognized the principle in every era:

“The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.”

Pierce v. Society of Sisters, 268 U.S. 510, 535 (1925); accord *Meyer v. Nebraska*, 262 U.S. 390 (1923).

“If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.”

West Virginia State Board of Education v. Barnette, 319 U.S. 624, 642 (1943).

The practical rule from the book: when any governing matter arises, first ask whether We the People delegated it to *any* government. If not — no matter how brilliant the proposed program sounds — the answer is already given: the matter stays with the people.

D. How to Know the Line with the Greatest Clarity: Utah’s Codified Method

Utah has codified the entire framework — the delegated inventory and a rank-ordered method of interpretation — at Utah Code § 63C-4a-304 (the standard applied by Utah’s Federalism Commission). Subsection (1) lists the delegated powers clause-by-clause (mirroring the table above). Subsection (3) then fixes the hierarchy of clarity — the direct answer to the question *“How can I and my State agents know the line with the greatest degree of clarity possible?”*:

1. The text of the United States Constitution, as amended (§ 304(3)(a)(i));
2. The meaning of that text at the time of its drafting and ratification (§ 304(3)(a)(ii));
3. Primary source documents directly relevant to — or created by persons directly involved in — the drafting, adoption, ratification, or initial implementation of the Constitution (§ 304(3)(a)(iii)): the Federalist Papers, ratifying convention debates, and early applications by the founding generation;
4. Other relevant sources, including federal court decisions, which the State may consult (§ 304(3)(b)) — with greatest weight to the present Supreme Court’s structural decisions — while remaining not bound by a federal court holding when taking the measure of the constitutional line (§ 304(3)(c)).

Text first; original meaning second; the Framers’ and Ratifiers’ own documents third; court decisions as evidence, not as the source. That ordering is not novel — it is how Washington, Jefferson, Madison, and Monroe themselves evaluated every disputed power, and it is now a working statute any State can adopt.

V. The “Police Power”: The States’ Jurisdiction of General Governance

No feature of the constitutional design is more misunderstood than the States’ “police power.” The term has nothing to do, in the first instance, with police officers or law enforcement. It derives from the Greek *polis* — the political community itself — and names the general, inherent power of a sovereign government to order the affairs of that community. In the American system, this general power of governing belongs to the States alone. The Federal Government has never possessed it.

Two Definitions

Jurisdiction — from the Latin *juris dictio*, “to speak the law” — is “the power, right, or authority to interpret and apply the law; the authority of a sovereign power to govern or legislate; the power or right to exercise authority; the limits or territory within which authority may be exercised.” (Merriam-Webster Dictionary.) Jurisdiction, in short, answers the question: *who has the lawful authority to speak the law on this matter, in this place?*

Police power is the name the law gives to the general jurisdiction of a sovereign over the internal life of its community — the inherent authority to legislate for the health, safety, morals, education, and general welfare of the people. Chief Justice Roger Taney supplied the classic definition:

“[The police powers of a State] are nothing more or less than the powers of government inherent in every sovereignty to the extent of its dominions.”

Chief Justice Roger Taney, License Cases, 46 U.S. (5 How.) 504, 583 (1847).

Not Law Enforcement — the General Power of Governing

Because the modern ear hears “police” and thinks of patrol cars, most Americans assume the police power concerns only criminal law enforcement. The Supreme Court has been explicit that it is something far larger — it is the **general power of governing itself**, the whole residual jurisdiction over daily life that the people never surrendered to the national government:

“The States thus can and do perform many of the vital functions of modern government — punishing street crime, running public schools, and zoning property for development, to name but a few — even though the Constitution’s text does not authorize any government to do so. Our cases refer to this general power of governing, possessed by the States but not by the Federal Government, as the ‘police power.’”

Chief Justice John Roberts, NFIB v. Sebelius, 567 U.S. 519, 535–536 (2012), citing United States v. Morrison, 529 U.S. 598, 618–619 (2000).

Law enforcement is one exercise of the police power. But so are schools, roads, hospitals, licensing, zoning, water law, family law, property law, contract law, public health, and the development of a State’s economy and resources. It is the jurisdiction of everyday life — and it carries a corresponding **duty**: the States hold this power as trustees for their people, charged to exercise it for the “common benefit, protection, and security of the people” (Virginia Declaration of Rights, Art. III).

The Breadth, Extent, and Reach of the Jurisdiction

The Supreme Court has described the sweep of this State jurisdiction — and its denial to the Federal Government — in every era of its history.

“[Inspection laws, quarantine laws, and health laws of every description] form a portion of that immense mass of legislation, which embraces every thing within the territory of a State, not surrendered to the general government: all which can be most advantageously exercised by the States themselves.”

Chief Justice John Marshall, Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1, 203 (1824).

“... the power of the state, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education, and good order of the people, and to legislate so as to increase the industries of the state, develop its resources, and add to its wealth and prosperity.”

Keller v. United States, 213 U.S. 138 (1909), echoing Barbier v. Connolly, 113 U.S. 27, 31 (1885).

“According to settled principles, the police power of a state must be held to embrace, at least, such reasonable regulations established directly by legislative enactment as will protect the public health and the public safety.”

Jacobson v. Massachusetts, 197 U.S. 11, 25 (1905).

“Public safety, public health, morality, peace and quiet, law and order — these are some of the more conspicuous examples of the traditional application of the police power ... yet they merely illustrate the scope of the power and do not delimit it. ... An attempt to define its reach or trace its outer limits is fruitless.”

Berman v. Parker, 348 U.S. 26, 32 (1954).

“[The] States traditionally have had great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons.”

Metropolitan Life Ins. Co. v. Massachusetts, 471 U.S. 724, 756 (1985), quoted in Medtronic, Inc. v. Lohr, 518 U.S. 470 (1996).

Mark the asymmetry: the State jurisdiction is so broad the Court calls attempts to trace its outer limits “fruitless” — while the same Court has repeatedly refused to read any federal power in a way that would create its national equivalent:

“[We have always] rejected readings of the Commerce Clause and the scope of federal power that would permit Congress to exercise a police power.”

United States v. Lopez, 514 U.S. 549 (1995) (Kennedy, J., concurring); accord id. at 566–567 (majority opinion).

“[W]e can think of no better example of the police power, which the Founders denied the National Government and reposed in the States, than the suppression of violent crime and vindication of its victims.”

Chief Justice William Rehnquist, United States v. Morrison, 529 U.S. 598, 618 (2000).

The sum of the record: the police power is the general power of governing — vast in the hands of the States, denied to the Federal Government, and held in trust for the people. When citizens assume “police power” means only law enforcement, they surrender in their imagination the very jurisdiction the Constitution reserves to the governments closest to them.

VI. Variations Without Amendment: How the Line Moved While the Text Stood Still

Article V provides exactly one lawful way to move the constitutional line: amendment. Yet over the last century the operative division, balance, and limits of State–national power have shifted dramatically — recognized and often ratified by the Supreme Court — while the text of the delegated powers has not changed at all. George Washington foresaw precisely this danger: “let there be no change by usurpation; ... it is the customary weapon by which free governments are destroyed.” The principal variations:

Variation	What Happened (no text changed)	Key Cases
Commerce Clause expansion	“Commerce ... among the several States” (a power over trade crossing State lines) was extended after 1937 to reach manufacturing, labor, agriculture, and ultimately wheat a farmer grew for his own family — on an “aggregate effects” theory. Darby (1941) dismissed the Tenth Amendment as “but a truism.”	NLRB v. Jones & Laughlin Steel (1937); United States v. Darby (1941); Wickard v. Filburn (1942); extended in Gonzales v. Raich (2005)
Spending power as purchase of State compliance	The General Welfare Clause was read (adopting Hamilton’s broad view over Madison’s) as an independent spending power; conditional grants then let Congress buy control of matters it cannot regulate directly — highways for drinking ages,	United States v. Butler (1936); Steward Machine & Helvering v. Davis (1937); South Dakota v. Dole (1987)

	education dollars for curriculum strings.	
The administrative state	Congress delegated sweeping lawmaking to executive agencies; for 40 years courts deferred to agencies' own reading of their power (Chevron), placing much of the "numerous and indefinite" under federal regulatory writ.	Chevron v. NRDC (1984); regulatory burden ≈ \$2T/yr
Structural amendments with structural side-effects	The Seventeenth Amendment (1913) — a lawful Article V change — removed the State legislatures' voice in the Senate, disabling the chamber the Framers designed as the States' structural check; the Sixteenth funded the expansion.	U.S. Const. amends. XVI, XVII (1913)
The modern Court's partial restoration	Beginning in 1992 the Court began re-marking the line: anti-commandeering (States cannot be conscripted), first Commerce limits in 60 years, coercion limits on spending, "major questions" limits on agencies, and the end of Chevron deference.	New York v. United States (1992); Lopez (1995); Printz (1997); Morrison (2000); NFIB (2012); Murphy v. NCAA (2018); West Virginia v. EPA (2022); Loper Bright v. Raimondo (2024); Dobbs (2022)

The Present Supreme Court: Re-Marking the Line

The greatest emphasis belongs on where the Court stands now, because it is the operative recognition of the line your State agents work with today:

"The Federal Government may not compel the States to enact or administer a federal regulatory program."

New York v. United States, 505 U.S. 144, 188 (1992).

"The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers ... to administer or enforce a federal regulatory program."

Printz v. United States, 521 U.S. 898, 935 (1997); reaffirmed in Murphy v. NCAA, 584 U.S. 453 (2018) (anti-commandeering is "simply the expression of a fundamental structural decision incorporated into the Constitution").

"[In] certain extraordinary cases ... the agency must point to clear congressional authorization for the power it claims."

West Virginia v. EPA, 597 U.S. 697 (2022) (the "major questions" doctrine).

"Chevron is overruled. Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority."

Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024).

"The Constitution ... is not the source of any federal power to regulate abortion; the authority ... is returned to the people and their elected representatives."

Dobbs v. Jackson Women's Health Organization, 597 U.S. 215 (2022) (paraphrasing holding) — a working example of a matter returned to the State gardens.

Implications — and What States Can, Should, and Might Do

The implication of “variation without amendment” cuts both ways. If the line moved by practice, precedent, and acquiescence, it can be restored the same way — by States and citizens who stop acquiescing. The lawful toolkit (drawn from Madison’s Federalist 46 sequence and codified in Utah Code § 63C-4a-304(4)):

- Evaluate: adopt a statutory constitutional standard (Utah’s § 63C-4a-304 model) so every federal act is measured against the text, original meaning, and primary sources — not merely against the latest news cycle;
- Decline to be conscripted: refuse State personnel and machinery to administer federal programs the State judges beyond the line — squarely protected by New York, Printz, and Murphy;
- Weigh the strings: treat every conditional grant as a contract offer, price the sovereignty being sold, and negotiate or decline — NFIB confirms Congress may not put “a gun to the head” of a State;
- Litigate: State attorneys general have repeatedly re-marked the line in court (NFIB’s Medicaid holding, Murphy, West Virginia v. EPA were all State-led);
- Correspond and coordinate: formal written notice to the offending federal branch, multi-State coordination, and engagement of the congressional delegation (Federalist 46’s “correspondence ... opened, plans of resistance ... concerted”; § 304(4)(ii)–(vii));
- Legislate: enact State laws asserting and defending the constitutional allocation (§ 304(4)(ix));
- Educate: public curriculum on federalism for citizens and State officers (§ 304(4)(iii)) — the Hamilton condition: the structure protects rights only if “the citizens understand their rights and are disposed to defend them”;
- Amend, never usurp: where the people actually want the line moved, use Article V — Washington’s sole prescribed remedy.

VII. Jurisdiction Over the Land Itself: The Federal Government’s Own Answer

Nowhere is the line more misunderstood — including by State leaders themselves — than on the ground: who governs the federal areas within a State? For nearly a century many States have acted as if federal *ownership* of land automatically carries federal *jurisdiction* over it. The federal government’s own most comprehensive study — still its latest word on the subject — says otherwise.

The Eisenhower Study and the 1962 GSA Inventory

At President Eisenhower’s direction, an Interdepartmental Committee produced the two-part *Report on Jurisdiction over Federal Areas within the States* (Part I, 1956; Part II, 1957), followed by the General Services Administration’s *Inventory Report on Jurisdictional Status of Federal Areas Within the States* (June 30, 1962) — a county-by-county inventory recording the jurisdictional status of every acre of federal land in the nation under four categories:

1. Exclusive federal jurisdiction — only where a State ceded it or consented under Art. I, § 8, cl. 17 (forts, magazines, arsenals, dock-yards, and other needful buildings) or by cession statute;
2. Concurrent jurisdiction — State and nation share, by the State’s agreement;
3. Partial jurisdiction — the State ceded some measure, reserving the rest;

4. Proprietary interest only — the United States holds the land as an ordinary landowner, with no legislative jurisdiction; State law governs.

The overwhelming majority of federal land in the western States — the national forests, BLM rangelands, and most other federal areas never purchased with State-legislature consent — falls in the fourth category. The federal government has never updated this inventory: in correspondence with Congressmen Rob Bishop and Jason Chaffetz of Utah, the GSA affirmed that the 1962 Inventory remains the federal government's most recent official statement of the jurisdictional status of federal areas within the States. Most State leaders have never heard of the study — even though it is the most comprehensive examination of the question ever made, and it was made by the federal government itself.

The Supreme Court Agrees

“Where lands are acquired without such consent, the possession of the United States, unless political jurisdiction be ceded to them in some other way, is simply that of an ordinary proprietor. ... Such property ... is subject to the legislative authority and control of the States equally with the property of private individuals.”

Fort Leavenworth Railroad Co. v. Lowe, 114 U.S. 525, 527, 531–532 (1885).

“Absent consent or cession a State undoubtedly retains jurisdiction over federal lands within its territory. ... The Federal Government does not assert exclusive jurisdiction over the public lands in New Mexico, and the State is free to enforce its criminal and civil laws on those lands.”

Kleppe v. New Mexico, 426 U.S. 529, 542–543 (1976). (Note the counterweight: under the Property Clause, Congress retains power to make “needful rules” respecting federal property, and a valid federal land regulation prevails over conflicting State law. The State's jurisdiction is the default; displacement requires an actual, constitutional federal enactment.)

The States Already Exercise This Jurisdiction — Every Day

The practical proof is all around us, though rarely named for what it is. On proprietary-interest federal areas:

- State criminal law governs: a murder, theft, or assault on ordinary BLM or national-forest land is investigated by the county sheriff and prosecuted in State court under State law;
- State fish and wildlife law governs hunting and fishing on federal lands — State licenses, State seasons, State wardens (the very setting of Kleppe);
- State water law allocates and administers water rights on and across federal lands (as Congress itself acknowledged in the McCarran Amendment);
- State courts serve process, State taxes reach private possessory interests and activities on federal land, and residents of such areas vote, school their children, and record titles under State law;
- County sheriffs retain their office and authority throughout the county, including within proprietary-interest federal areas.

How, Practically, Would a State Exercise Its Jurisdiction?

For State leaders encountering this for the first time, a practical sequence:

1. Know the inventory: obtain the 1962 GSA Inventory pages for your State and county — it is the federal government's own ledger of exactly which parcels carry exclusive, concurrent, partial, or merely proprietary status;
2. Confirm the ledger: request, through your congressional delegation, the federal government's current position (as Utah's delegation did — the answer was that 1962 remains the latest word), and direct your attorney general to compile the State's cession statutes;
3. Declare the default: by resolution or statute, record that on proprietary-interest areas State civil and criminal law applies in full — several counties and States have adopted exactly such jurisdiction resolutions;
4. Govern accordingly: apply State health, safety, wildlife, water, tax, and land-use law on proprietary areas as on any private land, yielding only to specific, constitutional federal enactments — not to assumed federal omnipotence;
5. Review the cessions: where a prior legislature ceded jurisdiction no longer serving the State's people, use the retrocession mechanisms most cession statutes and federal law provide to take it back;
6. Train your agents: the Eisenhower Study and GSA Inventory belong in the orientation of every legislator, sheriff, county commissioner, and attorney general — the "frequent recurrence to fundamental principles" Mason prescribed.

The implication for State leaders is plain: for nearly 100 years we have acted as if federal ownership meant federal jurisdiction. The federal government's own study, its own inventory, its own confirmation to Congress, and the Supreme Court's own cases all say it does not. The jurisdiction is there — waiting for State agents who KNOW they have it.

VIII. Presidential Voices: Guarding the Line Across Two Centuries

"If in the opinion of the people the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed."

George Washington, Farewell Address, September 19, 1796. Full text at the Yale Avalon Project.

"The support of the State governments in all their rights, as the most competent administrations for our domestic concerns and the surest bulwarks against antirepublican tendencies; the preservation of the General Government in its whole constitutional vigor ..."

Thomas Jefferson, First Inaugural Address, March 4, 1801. Full text at the Yale Avalon Project.

"Such a view of the Constitution would have the effect of giving to Congress a general power of legislation, instead of the defined and limited one hitherto understood to belong to them."

James Madison, Veto Message on the Bonus Bill (internal improvements), March 3, 1817.

"The Government of the United States is one of delegated and limited powers."

James Monroe, First Inaugural Address, March 4, 1817.

"Local self-government is ... the true principle of our institutions."

Rutherford B. Hayes, Inaugural Address, March 5, 1877.

"The States should not be induced ... to surrender the management of their own affairs."

Calvin Coolidge, Message to Congress, 1926.

“All of us need to be reminded that the Federal Government did not create the States; the States created the Federal Government. ... It is my intention to curb the size and influence of the Federal establishment and to demand recognition of the distinction between the powers granted to the Federal Government and those reserved to the States or to the people.”

Ronald Reagan, First Inaugural Address, January 20, 1981. Ronald Reagan Presidential Library.

“Federalism is rooted in the knowledge that our political liberties are best assured by limiting the size and scope of the national government. ... The people of the States are free, subject only to restrictions in the Constitution itself or in constitutionally authorized Acts of Congress, to define the moral, political, and legal character of their lives.”

Ronald Reagan, Executive Order 12612 on Federalism, October 26, 1987.

IX. The Supreme Court: The Structure Is Enforceable Law

“... a law repugnant to the Constitution is void; and ... courts, as well as other departments, are bound by that instrument.”

Chief Justice John Marshall, Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803).

“We start with first principles. The Constitution creates a Federal Government of enumerated powers.”

Chief Justice William Rehnquist, United States v. Lopez, 514 U.S. 549 (1995), citing Federalist No. 45.

“Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front. ... In the tension between federal and state power lies the promise of liberty.”

Justice Sandra Day O'Connor, Gregory v. Ashcroft, 501 U.S. 452, 458–459 (1991).

“The theory that two governments accord more liberty than one requires for its realization two distinct and discernable lines of political accountability: one between the citizens and the Federal Government; the second between the citizens and the States. ... ‘Federalism serves to assign political responsibility, not to obscure it.’ Were the Federal Government to take over the regulation of entire areas of traditional state concern ... the boundaries between the spheres of federal and state authority would blur and political responsibility would become illusory.”

Justice Anthony Kennedy, concurring, United States v. Lopez, 514 U.S. 549 (1995), quoting FTC v. Ticor Title Ins. Co., 504 U.S. 621, 636 (1992).

“Although the States surrendered many of their powers to the new Federal Government, they retained a residuary and inviolable sovereignty. ... The Constitution protects us from our own best intentions: It divides power among sovereigns and among branches of government precisely so that we may resist the temptation to concentrate power in one location as an expedient solution to the crisis of the day.”

Justice Antonin Scalia, Printz v. United States, 521 U.S. 898 (1997) (second sentence quoting New York v. United States).

“The federal system rests on what might at first seem a counterintuitive insight, that ‘freedom is enhanced by the creation of two governments, not one.’ ... By denying any one government complete jurisdiction over all the concerns of public life, federalism protects the liberty of the individual from arbitrary power.”

Justice Anthony Kennedy (unanimous Court), *Bond v. United States*, 564 U.S. 211, 220–222 (2011).

“In our federal system, the National Government possesses only limited powers; the States and the people retain the remainder. ... The independent power of the States also serves as a check on the power of the Federal Government: ‘By denying any one government complete jurisdiction over all the concerns of public life, federalism protects the liberty of the individual from arbitrary power.’”

Chief Justice John Roberts, *NFIB v. Sebelius*, 567 U.S. 519 (2012).

X. The People’s Instinct: Knowing Which Government Does What

The structure works only when citizens can answer the four-word question that summarizes the whole Constitution: ***If Government, Which Government?*** The Ninth Amendment asks whether the people delegated a matter to any government at all; the Tenth asks which government — the national government of few and defined powers, or the State governments of numerous and indefinite powers, closer at hand and more accountable. Tocqueville found that ordinary Americans of the founding era could do exactly this:

“I scarcely ever met with a plain American citizen who could not distinguish with surprising facility the obligations created by the laws of Congress from those created by the laws of his own state, and who ... could not point out the exact limit of the separate jurisdictions of the federal courts and the tribunals of the state.”

Alexis de Tocqueville, *Democracy in America*, Vol. I (1835).

XI. Six Settled Propositions

Proposition	Primary Authority
1. It is the structure of government — limits, divisions, balance, checks, and restraints — not the virtue of officeholders, that secures the people’s rights	Madison, <i>Federalist</i> Nos. 47, 51; Adams, <i>Mass. Const. Art. XXX</i> (1780); <i>NFIB v. Sebelius</i> joint dissent (2012)
2. The Compound Republic divides power FIRST between two governments, then among branches — a double security to the rights of the people	Madison, <i>Federalist</i> No. 51; Hamilton, <i>N.Y. Ratifying Convention</i> (1788); <i>U.S. Term Limits v. Thornton</i> (Kennedy, J., concurring) (1995)
3. Federal powers are few and defined; State powers are numerous and indefinite, with a residuary and inviolable sovereignty	Madison, <i>Federalist</i> Nos. 39, 45; <i>United States v. Lopez</i> (1995) (“first principles”)
4. The States — not the Federal Government — possess the general power of governing, the “police power”	<i>NFIB v. Sebelius</i> (Roberts, C.J.) (2012); <i>United States v. Morrison</i> (2000); <i>Keller v. United States</i> (1909)
5. The Ninth and Tenth Amendments make the line a prohibitory rule of law: powers not delegated remain with the	<i>U.S. Const. amends. IX, X</i> ; Jefferson, <i>Bank Opinion</i> (1791); Goldwater, <i>The Conscience of a</i>

States or the People	Conservative (1960)
6. Two clear lines of political accountability — citizens↔Federal, citizens↔State — are what let the people govern; blur the lines and responsibility becomes illusory	United States v. Lopez (Kennedy, J., concurring) (1995); FTC v. Ticor Title Ins. Co. (1992); Tocqueville, Democracy in America (1835)

Conclusion: Rebalance the Tires

The constitutional record assembled here establishes that the State–Federal balance is not a policy preference — it is the mechanism the Framers built to secure the people’s rights, and the Supreme Court enforces it as law. Today the federal “tire” is bloated far beyond “few and defined,” and the State “tire” rides flat, far below “numerous and indefinite.” The founders’ answer is not a better rider or a harder yank of the handlebars to the left or right. It is to restore the pressure the Constitution prescribes on each tire — through the State governments the people elect, train, and sustain — so the structure can again carry the people to their pursuit of happiness.

“The fragmentation of power produced by the structure of our Government is central to liberty, and when we destroy it, we place liberty at peril.”

Joint dissent, NFIB v. Sebelius (2012)

“It forms a double security to the people.”

Alexander Hamilton, New York Ratifying Convention (1788)

“In the tension between federal and state power lies the promise of liberty.”

Justice Sandra Day O’Connor, Gregory v. Ashcroft (1991)

All quotations in this report are drawn from primary sources and authoritative published texts, verified against the original where available (Yale Avalon Project, Founders Online / National Archives, and official U.S. Reports).