

The Sure Guardians: The States' Powers, Tools, and Duty to Check and Restrain Federal Overreach

The Specific Means — “Powerful and at Hand” — for the States to Confine the Federal Government to Its Delegated Powers and Restore the State–Federal Governing Balance

A documentary record drawn from the Federalist Papers, the ratification debates, the Virginia and Kentucky Resolutions, Madison’s later writings, the Supreme Court of the United States, and the working statutes and institutions of the States

Where’s the Line? YOU Are the Answer • Class 3 Brief • iGovern.us

Executive Summary

Classes 1 and 2 established that the People are sovereign and that the structure of the Compound Republic — not the virtue of officeholders — secures their rights. This brief establishes the third pillar: **the States are the appointed guardians of that structure**, and they hold specific, constitutional, and battle-tested tools — “powerful and at hand,” in Madison’s words — to check and restrain the federal government whenever it exceeds the limits of its delegated powers, intrudes on the powers reserved to the States or the People, or impairs the State–Federal governing balance.

The central question this brief answers: *What powers, tools, means, and mechanisms do the States actually possess to check and restrain federal overreach — and how, specifically, would and should a State use them when the line is crossed?* The answer proceeds from the Founders’ own battle plan (Federalist Nos. 28 and 46, rendered in plain English), through the ratification-era assurances on which the people voted, Madison’s doctrine of interposition, the eight distinct methods it comprises, the Supreme Court holdings that arm and protect each method today, modern case studies proving the tools still work, and the working institutions — Utah Code § 63C-4a-304, the Federalism Commission, and the National Federalism Initiative’s ENLL framework — that put the whole toolkit on the shelf of every State leader.

“[T]he State Legislatures will jealously and closely watch the operations of this Government, and be able to resist with more effect every assumption of power ... the greatest opponents to a Federal Government admit the State Legislatures to be sure guardians of the people’s liberty.”

James Madison, Speech Introducing the Bill of Rights, First Congress, June 8, 1789.

I. The Duty: Trustees Bound to Interpose

The Founders thought of all government officials as fiduciaries — agents bound by duties of loyalty and good faith to their employer, the sovereign people. A fiduciary’s duties include preventing other agents from invading his assigned responsibilities and alerting the employer when they try. Imagine a business that employs an accountant and a lawyer: if the lawyer begins filing the tax returns, hiring clerks, and signing contracts that belong to the accountant’s portfolio, the accountant does not merely have permission to object — she violates her own duty if she stays silent. Just so with the two sets of agents the people employ: when federal agents invade the States’ portfolio, State officials are **duty-bound** to push back. (This fiduciary framing is developed in Robert G. Natelson, “The States’ Duty to Defend

Against Federal Excess: James Madison and the Methods of ‘Interposition’” (2016), on which Part V of this brief draws.)

“[T]he government of each state is, and is to be, sovereign and supreme in all matters that relate to each state only. It is to be subordinate barely in those matters that relate to the whole; and IT WILL BE THEIR OWN FAULTS, if the several states suffer the federal sovereignty to interfere in the things of their respective jurisdictions.” (Capitals in original.)

John Dickinson (“Fabius”), Letter III, 1788 — the “Penman of the Revolution,” writing to secure ratification.

“We may safely rely on the disposition of the State legislatures to erect barriers against the encroachments of the national authority.”

Alexander Hamilton, Federalist No. 85 (1788).

“It is important to strengthen the State governments ... It must be done by the States themselves, erecting such barriers at the constitutional line as cannot be surmounted either by themselves or by the General Government.”

Thomas Jefferson, Letter to Archibald Stuart, December 23, 1791.

Madison gave the duty its name — **interposition** — from the founding-era dictionaries: “to thrust in as an obstruction ... to offer as a succour or relief; to place between.” The State places itself between its people and a federal act that exceeds the federal deed:

“[I]n case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the states, who are parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them.”

James Madison, Virginia Resolutions, December 21, 1798. Text at Founders Online, National Archives.

II. The Founders’ Battle Plan: Federalist 28 and 46 in Plain English

Hamilton and Madison did not leave the States a vague hope — they left an operations manual. Below, each passage is paired with a plain-English rendering so the plan reads the way its authors meant it to be used.

Hamilton’s Plan — Federalist No. 28 (1787)

Hamilton’s Words	Plain English
“It may safely be received as an axiom in our political system, that the State governments will, in all possible contingencies, afford complete security against invasions of the public liberty by the national authority.”	Take it as a rule of the system: whatever happens, the States are your complete security against federal invasions of liberty. Not partial. Complete.
“Projects of usurpation cannot be masked under pretenses so likely to escape the penetration of select bodies of men, as of the people at large. The legislatures will have better means of information.”	Washington can fool a scattered public — it cannot fool 50 State legislatures. Your State officials will see the power grab coming before you do.

“They can discover the danger at a distance; and possessing all the organs of civil power, and the confidence of the people, they can at once adopt a regular plan of opposition.”	They spot the danger early — and because they hold the actual machinery of government (courts, budgets, officers, laws) plus the people’s trust, they can mount an organized, official plan of opposition — not a protest, a plan.
“They can readily communicate with each other in the different States, and unite their common forces for the protection of their common liberty.”	And they don’t act alone: the States call each other, line up, and pull together — one common defense of the common liberty.
“[Provided] the citizens understand their rights and are disposed to defend them.”	One condition: it only works if YOU know your rights and are willing to stand up for them. That is the ignition key.

Madison’s Plan — Federalist No. 46 (1788)

Madison’s Words	Plain English
“[S]hould an unwarrantable measure of the federal government be unpopular in particular States ... the means of opposition to it are powerful and at hand.”	If the feds pass something beyond their power, the States don’t need new weapons. The tools are already powerful — and already in the drawer.
“The disquietude of the people; their repugnance and, perhaps, refusal to co-operate with the officers of the Union ...”	Step one: the people make their unhappiness loud — and simply refuse to help federal officers carry the program out. (No State hands, no State machinery.)
“[T]he frowns of the executive magistracy of the State; the embarrassments created by legislative devices, which would often be added on such occasions ...”	Step two: the Governor frowns officially — public censure, no cooperation from the executive branch. Step three: the legislature gets creative — laws, procedures, and ‘devices’ that snarl the federal program at every turn.
“... would oppose, in any State, difficulties not to be despised; would form, in a large State, very serious impediments; and where the sentiments of several adjoining States happened to be in unison, would present obstructions which the federal government would hardly be willing to encounter.”	One State doing this is a real headache. A big State is a serious roadblock. Several neighboring States in unison? Washington won’t even pick the fight.
“[A]mbitious encroachments of the federal government ... would be signals of general alarm. ... A correspondence would be opened. Plans of resistance would be concerted. One spirit would animate and conduct the whole.”	And if the overreach is a genuine power grab, it sets off the general alarm: the States open a correspondence, coordinate a common plan, and move as one body with one spirit.
“[O]ne set of representatives would be contending against thirteen sets of representatives, with the whole body of their common constituents on the side of the latter.”	Do the math: one Congress against (now) fifty legislatures — with the people standing behind the fifty. It was never meant to be a fair fight.

Read together, the two papers describe an **escalation ladder**: citizen refusal → executive frowns → legislative devices → interstate unison → general alarm and concerted plans. Every rung is constitutional; every rung is still available; and the top rungs were designed to make federal usurpation not merely losable but *unprofitable to attempt*.

III. The Ratification Bargain: The Assurances on Which the People Voted

These were not idle musings. They were the assurances given — in print, under fire from the Constitution’s skeptics — to persuade the ratifying conventions. The Anti-Federalists warned the new government would swallow the States; the Constitution’s advocates answered that the States themselves were the safeguard. The people ratified on those terms. The assurances are, in that sense, part of the bargain:

“[T]he State legislatures, who will always be not only vigilant but suspicious and jealous guardians of the rights of the citizens against encroachments from the federal government, will constantly have their attention awake to the conduct of the national rulers, and will be ready enough, if any thing improper appears, to sound the alarm to the people, and not only to be the VOICE, but, if necessary, the ARM of their discontent.”

Alexander Hamilton, Federalist No. 26 (1787) (emphasis added).

“An instance of such interference with regard to any single state will be a dangerous precedent as to all, and therefore will be guarded against by all ...”

John Dickinson (“Fabius”), Letter III, 1788.

“The sovereign power of altering and amending the constitution ... which is truly and evidently the real point of sovereignty, is vested in the several legislatures. ... If two thirds of those legislatures require it, Congress must call a general convention ... and if three fourths of the state legislatures or conventions approve such amendments, they become an actual and binding part of the constitution, without any possible interference of Congress.”

Tench Coxe, writing in support of ratification, 1788.

“The powers vested in the federal government are only such as respect the common interests of the Union ... each State retains its sovereignty in what respects its own internal government.”

Roger Sherman, “A Citizen of New Haven,” December 1787.

“The question ... will always be, whether Congress has exceeded its authority.”

James Iredell (later a founding Supreme Court Justice), North Carolina Ratifying Convention, 1788.

IV. The Doctrine of Interposition: Madison’s Spectrum, 1798–1835

When Congress passed the Alien and Sedition Acts, Madison and Jefferson put the battle plan into practice. Their resolutions did not merely complain — they stated a constitutional doctrine:

“[W]hensoever the general government assumes undelegated powers, its acts are unauthoritative, void, and of no force.”

Thomas Jefferson, draft of the Kentucky Resolutions, 1798. Text at the Yale Avalon Project.

“That the General Assembly doth particularly protest against the palpable and alarming infractions of the Constitution, in the two late cases of the ‘Alien and Sedition Acts’ ...”

James Madison, Virginia Resolutions, 1798.

In his Report of 1800, Madison defended the resolutions as the sober exercise of the States’ role as “parties to the constitutional compact” with the “ultimate right ... to judge whether the compact has been dangerously violated.” And the method worked exactly as Federalist 46 predicted — through the constitutional rungs, not the extraconstitutional ones: the protest sounded the alarm, the people responded, and, as Madison later recorded, “the first elections that ensued put an end to” the offending acts (Letter to Edward Everett, August 28, 1830).

Writing against South Carolina’s misuse of his doctrine in the 1830s, Madison drew the boundary that governs the whole toolkit: the constitutional methods of interposition must be exhausted before any resort to extraconstitutional ones (Notes on Nullification, 1835). The spectrum runs from mild to severe; the severe end exists so the mild end is taken seriously.

V. The Eight Powers: Madison’s Methods, Modern Tools

Professor Robert G. Natelson distills from Madison’s writings eight distinct methods of interposition — six squarely constitutional, two extraconstitutional and reserved for last resort. Here is the full toolbox, each tool paired with its founding authority, its constitutional protection, and a modern working example:

Tool	Founding Authority	Constitutional Basis & Modern Example
1. Public Relations & Education	Fed. 46 (“disquietude ... frowns of the executive magistracy”); Virginia Resolutions (formal protest); Hamilton, Fed. 26 (“sound the alarm”)	First Amendment (speech, press, petition) + inherent sovereignty. Modern: Tenth Amendment resolutions; formal AG opinions; legislative hearings building a public record; NFI continuing education for State leaders.
2. Lobbying Congress	Madison, Resolutions for the Virginia Legislature (1799): States “might have made a direct representation to Congress ... to obtain a rescinding of the two offensive acts”	First Amendment petition; State sovereignty. Modern: legislative memorials; governors’ and AGs’ formal correspondence; delegation accountability meetings; testimony before Congress.
3. Judicial Challenges	Hamilton, Fed. Nos. 16 & 81 (courts void unconstitutional acts); Art. III (States as parties)	Art. III original jurisdiction and State standing. Modern: NFIB v. Sebelius (26 States — Medicaid coercion struck); Murphy v. NCAA (New Jersey); West Virginia v. EPA (State coalition); Massachusetts v. EPA (State standing “entitled to special solicitude”).
4. State Legislative Action	Fed. 46 (“embarrassments created by legislative devices”); refusal to cooperate	Anti-commandeering shield: New York (1992), Printz (1997), Murphy (2018) — the federal government cannot conscript State legislatures or officers. Modern: Utah Energy Security Act (HB 425, 2023 — energy declared within the State police power); Utah Transfer of Public Lands Act (2012); widespread REAL ID non-implementation; States declining Medicaid expansion after NFIB.
5. Coordination Among States	Fed. 46 (“correspondence ... opened; plans of resistance ... concerted”); Fed. 28 (“unite their common forces”)	Compact Clause (with consent where required); joint litigation and amicus briefs; uniform State legislation; multistate governor/AG coalitions; the NFI Summit of States.

6. Article V Convention Process	Tench Coxe (1788): amendment is “the real point of sovereignty ... without any possible interference of Congress”; Washington’s Farewell (change by amendment, never usurpation)	Art. V: two-thirds of States compel a convention for proposing amendments; three-fourths ratify. History: State pressure produced the 17th Amendment; the 21st was ratified by State conventions. The credible threat alone moves Congress.
7. Nullification (last resort)	Kentucky Resolutions (1798); but see Madison, Notes on Nullification (1835): extraconstitutional; not before constitutional tools are exhausted	A State declaration that a federal act is void within the State. Historically fraught; Madison himself confined it to the far end of the spectrum. Distinguish lawful non-cooperation (Tool 4), which needs no such declaration.
8. Revolution (final resort)	Declaration of Independence (the right “to alter or to abolish”); Fed. 28 (“original right of self-defense”)	The ultimate reserve that makes every lesser tool credible — and whose existence is precisely why the lesser tools were designed to make it forever unnecessary.

Note Madison’s teaching and Natelson’s caution together: tools 1–6 are the working set; tools 7–8 are the fire axe behind the glass. The more tools a State uses, and the more States use them **in unison**, the stronger the defense — “obstructions which the federal government would hardly be willing to encounter.”

VI. What the Supreme Court Expects of the States

The modern Court has not merely permitted State pushback — it has armed it, protected it, and in the Chief Justice’s own words, all but demanded it.

“[The States] form distinct and independent portions of the supremacy, no more subject, within their respective spheres, to the general authority, than the general authority is subject to them, within its own sphere.”

Printz v. United States, 521 U.S. 898, 918–919 (1997), quoting Madison, Federalist No. 39.

“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, Murphy v. NCAA, 584 U.S. 453 (2018).

“In the typical case we look to the States to defend their prerogatives by adopting ‘the simple expedient of not yielding’ to federal blandishments when they do not want to embrace the federal policies as their own.”

Chief Justice John Roberts, NFIB v. Sebelius, 567 U.S. 519 (2012), quoting Massachusetts v. Mellon, 262 U.S. 447, 482 (1923).

“The States are separate and independent sovereigns. Sometimes they have to act like it.”

Chief Justice John Roberts, NFIB v. Sebelius, 567 U.S. 519, 579 (2012).

Read that last line the way it was written: the Chief Justice of the United States, in the most consequential federalism case of the century, telling the States that the toolkit is in their hands — and that the Court expects them to pick it up. The anti-commandeering trilogy (New York, Printz, Murphy) is the legal shield over Tool 4: a State’s refusal to lend its legislature, officers, or machinery to a federal program is not defiance of law — it is the constitutional design working.

VII. Case Studies: The Tools Still Work

Case Study	Tools Used	What Happened
Printz — sheriffs refuse (1997)	4 (refusal to administer) + 3 (litigation)	County sheriffs declined to run federal Brady Act background checks; the Court held federal officers cannot command State or local officers to administer a federal program.
REAL ID Act (2005–)	1 + 4 + 5	Dozens of State legislatures refused or conditioned implementation; Congress and DHS extended deadlines for nearly two decades rather than confront the States — Madison’s ‘obstructions ... hardly ... willing to encounter,’ in real time.
NFIB Medicaid (2012)	3 + 5	Twenty-six States sued; the Court held the threatened loss of all Medicaid funds was unconstitutional coercion — ‘a gun to the head’ — and made the expansion optional; many States then declined (Tool 4).
Murphy v. NCAA (2018)	4 + 3	New Jersey repealed its own State-law ban despite a federal statute forbidding it to; the Court struck the federal act as commandeering — a State’s control of its own law is beyond federal command.
West Virginia v. EPA (2022)	3 + 5	A State coalition challenged an agency’s attempt to restructure the nation’s energy sector without clear congressional authorization; the Court agreed — the ‘major questions’ doctrine now guards the line against agency overreach.
Utah Energy Security Act, HB 425 (2023)	4 + 1	Facing a federal order to eliminate fossil-fuel generation, Utah legislated that energy production for the health, safety, and welfare of its people lies within the State’s police power — defining the line, asserting it, and preparing to defend it. The order was not pressed.
Utah NFI, HB 488 (2025)	1 + 2 + 5	Utah institutionalized the whole toolkit: continuing education for State leaders, an annual Summit of States, and a national federalism commission as jurisdictional watchdog.

VIII. The Toolkit Institutionalized: The Utah Model and the ENLL Framework

A tool only counts if a State leader can reach it. Utah has spent a decade bolting the founders’ toolkit to the wall of State government, in statute, where any State can copy it:

- The Constitutional Standard — Utah Code § 63C-4a-304: the delegated powers codified clause-by-clause; the hierarchy of interpretation (text → original meaning → primary sources; court decisions consulted, not controlling); and the action menu (correspondence, coordination, education, litigation, legislation, and ‘other actions within the constitutional powers of the state’).

- The Federalism Commission (est. 2012): Utah’s standing jurisdictional watchdog — evaluating federal law against the constitutional standard, reporting to legislative leadership, and empowered to act; it also commissioned an update to the Eisenhower Study on Jurisdiction over Federal Areas.
- The Federal Law Evaluation and Response Act (FLERA): the ‘external check’ process — plain-text constitutional review of any federal law, formal notice to the offending federal branch, mediation in concert with the congressional delegation and coordinating States, and escalation paths up to special legislative session.
- The National Federalism Initiative — HB 488 (2025): three pillars — (1) continuing education for all State leaders on sovereignty and State–federal roles; (2) an annual Summit of States (the 2nd Annual NFI Summit convenes in Salt Lake City, August 11–12, 2026); (3) a national federalism commission to monitor and maintain the balance.
- The Federalism Index & Policy Tracker (federalismindex.org, built with UVU’s Center for Constitutional Studies): live monitoring of every federal action that crosses a State jurisdictional line — searchable by branch and by State committee — so any citizen or legislator can see whether the balance is ‘good and getting better, or bad and getting worse.’

The NFI’s working method — the **ENLL Framework** — sequences the founders’ tools into four disciplined practices: **Educate** (build the shared jurisdictional understanding and the constitutional record — Tool 1), **Negotiate** (governor, AG, and delegation engage federal counterparts to clarify boundaries and document them — Tool 2), **Legislate** (enact State law asserting and defending State jurisdiction — Tool 4), and **Litigate** (State-led judicial challenges — Tool 3) — with interstate coordination (Tool 5) running through all four, and Article V (Tool 6) standing behind them. Escalate in order; exhaust each rung; document everything. That is Madison’s spectrum, reduced to practice.

IX. Six Settled Propositions

Proposition	Primary Authority
1. The States are the appointed, structural guardians of the people’s liberty against federal overreach	Madison, Bill of Rights speech (1789); Hamilton, Federalist Nos. 26, 28, 85; Dickinson, Fabius III (1788)
2. Guarding the line is a fiduciary DUTY of State officers, not an option — ‘it will be their own faults’ if they yield	Dickinson (1788); Madison, Virginia Resolutions (1798) (“in duty bound, to interpose”); Jefferson to Stuart (1791)
3. The means of opposition are ‘powerful and at hand’: an escalation ladder from education to Article V	Madison, Federalist No. 46; Hamilton, Federalist No. 28; Natelson, ‘Methods of Interposition’ (2016)
4. The federal government cannot conscript State legislatures or officers — non-cooperation is constitutionally protected	New York v. United States (1992); Printz v. United States (1997); Murphy v. NCAA (2018)
5. The Supreme Court expects the States to act: ‘the simple expedient of not yielding’ — ‘sometimes they have to act like it’	NFIB v. Sebelius (2012); Massachusetts v. Mellon (1923); Printz (Fed. 39: ‘distinct and independent portions of the supremacy’)
6. The tools work best in unison — several States together ‘present obstructions which the federal government would hardly be willing to encounter’	Madison, Federalist No. 46; case studies: REAL ID, NFIB, West Virginia v. EPA; NFI Summit of States

X. Conclusion: The Feds Can't Push — The States Must Pull

American liberty depends on a healthy tension between the two governing partners — like a tug-of-war whose object is not to drag the other side into the mud but to keep the flag at the center, or like the suspension cables of a great bridge, which hold everything up only so long as the tension holds. For decades the States, one by one, set down the rope: some forgot why they were pulling, some grew dependent on federal funds, some feared reprisal. The flag has drifted far toward Washington — and the federal government cannot push it back. Rope does not push. **The States must pull — not hard, but together, and always.**

Everything in this brief reduces to Hamilton's conditional promise: the State governments afford *complete security* against federal invasions of liberty — *provided the citizens understand their rights and are disposed to defend them*. The tools are on the shelf. The Court is holding the door. The statutes are drafted and working in at least one State. What remains is the sovereign's part: hire, train, and sustain State agents who KNOW the line — and who will pick up the rope.

"The States are separate and independent sovereigns. Sometimes they have to act like it."

Chief Justice John Roberts, NFIB v. Sebelius (2012)

"The means of opposition ... are powerful and at hand."

James Madison, Federalist No. 46 (1788)

"It will be their own faults, if the several states suffer the federal sovereignty to interfere in the things of their respective jurisdictions."

John Dickinson, Fabius III (1788)

All quotations are drawn from primary sources and authoritative published texts (Yale Avalon Project, Founders Online / National Archives, official U.S. Reports, and the cited statutes and reports), verified against the original where available. Plain-English renderings are the author's paraphrase and are labeled as such.