

# Remaking Federalism:

HOW STATES CAN REALIGN AND REBUILD A STRONGER  
AND HEALTHIER UNION

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## Contents

01	Overview	PAGE 2
02	Conservative Policymaking Unchecked: How A One-Sided State Policy Environment Took Shape	PAGE 7
03	Nonprofit and Local Organizations Begin to Cohere	PAGE 12
04	Philanthropy Matures	PAGE 17
05	Localities Go Their Own Way— Embracing New Technologies and Evidence-Based Models	PAGE 20
06	Remaking Federalism Recommendations	PAGE 24
07	Report Interviews	PAGE 32
08	References	PAGE 34

# 01

## OVERVIEW



Once upon a time the contours of federalism—America’s distinct mix of national and state government—was a contentious and highly visible public debate. How can the country accommodate 50 separate semi-autonomous nation-states? How much authority should cities and other local governments have? To what degree does the President rule by edict or fiat? But one would have to go back at least 25 years to the Newt Gingrich led Republican takeover of Congress to find much interest or sustained discussion of the topic.

The COVID-19 pandemic has blown the cobwebs out as states receive outsized media attention and governors make full use of their powers. This report is an assessment of that power, particularly in relation to local government. It was originally written and completed just before the pandemic, but has been revised in light of the crisis.

The core findings still hold—state policy in recent years has become more ideologically driven and there is a growing tendency to strip authority away from urban population centers. But the report’s prognosis is far more hopeful as the country will now enter a critical phase in which federalism demands a serious and intentional revision. Once we emerge from the current public health catastrophe there will be a need to revise fiscal outlooks, government relationships and partnerships.

America’s future will depend on refashioning and getting the balance right—clearly, fairly and effectively distributing authority and strengthening the bond between government levels that has frayed in recent years. This document, a year in the making, is far from the only perspective needed to make these determinations, but it provides a foundation. The report provides a fresh assessment of state/city relations and a pragmatic path forward.



The report's main finding is that a relatively unseen erosion of local government authority has been taking place for the past 40 years, influenced by a highly organized, highly ideological, conservative minority that has, in effect, stripped power and self-governance away from America's major population and economic centers—its urban and metro areas.

One of the consequences of this erosion is the growing use of preemption legislation that has chilled and even blocked important local initiatives throughout the United States. Preemption is a tool that precludes local government from addressing issues on their own. While used historically to align local and state laws or provide a floor of minimum standards for cities to build on, it is now used to block and punish local initiative. As a result, municipal governments no longer have authority to negotiate contracts with their own vendors, set local election laws, require paid sick leave, institute universal broadband access, or manage their revenue and spending without fear of state intervention. COVID-19 has shone a bright spotlight on this dynamic as cities everywhere are scrambling to address issues of public health, safety and budget blowouts with little flexibility or authority.

This is not a war on cities per se—although there is a strong anti-urban strain running through it, and, indeed throughout American history. But it does constitute a redefinition of intergovernmental relations, one in which the country's densest population centers are losing autonomy and the power of large blocs of citizens' voices and votes has been markedly diminished.

The primary purpose of this report is to outline actions that could help to once again root our nation's democracy around the principles of majority rule, representative government, and civic participation. This project is the product of the NYU Wagner Innovation Labs. It was written by Neil Kleiman, with contributions from Kim Haddow from the Local Solutions Support Center, and support from the Kresge Foundation. The project's goal was to examine urban policy at the state level and better determine the degree to which metro interests are being addressed through state policy. As well, the authors sought to

articulate a policy strategy within which city and state relations may be improved going forward. The primarily qualitative approach included a thorough literature review, examining local and state documents and related articles, and interviews with more than 40 field leaders including state elected officials, nonprofit leaders, foundation program officers and national policymakers focused on intergovernmental affairs.

The conclusions are encouraging: Even before the COVID-19 crisis, there was a growing number of policy actors in cities across America organizing and advancing a counterweight. In many states, mayors, foundations, universities, professional organizations and advocacy groups are beginning to work both collectively and strategically. On a parallel track, a number of government and legal scholars are redefining city and state relations by drafting new frameworks that ensure state authority while also allowing cities to advance policy that protects and supports their residents. This report will reflect these findings and spell out a path forward. Many of these actors are NOT looking to form a leftwing counterbalance, but instead establish sensible policymaking and a government framework rooted in facts, fairness and democratic principles.



# 02

## CONSERVATIVE POLICYMAKING UNCHECKED: HOW A ONE-SIDED STATE POLICY ENVIRONMENT TOOK SHAPE



It might be interesting to write this section as Democrat vs. Republican, or rural vs. city, or even as a David vs. Goliath narrative. But this is actually not the story of a binary power struggle. Rather, it is about just one group of conservative actors that has come to thoroughly dominate state-level policymaking. A combination of three conservative organizations has developed, promoted and overseen passage of the vast majority of significant state policy legislation adopted during the past twenty years. With progressive organizations scattered in their responses and local governments focused on keeping the streets clean and lights on, there has been little counterweight to their influence.

This story has played out under the radar for many years. This is partly due to the fact that while states may be the most consequential level of government in terms of local authority, they tend to receive little media or political attention. In addition, the conservative organizations behind this movement have intentionally stayed out of view.

In just the past few years, significant information about the various conservative actors and their motives has come to light. Starting with scrutiny of several controversial bills, major media outlets have undertaken a number of longform media investigations, including a *New York Times* article entitled, “The Big Money Behind State Laws,” and a recent *USA Today* piece, “Copy, Paste, Legislate: You Elect Them to Write New Laws. They’re Letting Corporations do it Instead.” Equally helpful has been recent scholarship including *Democracy in Chains: The Deep History of the Radical Right’s Stealth Plan for America* by Nancy MacLean and *State Capture: How Conservative Activists, Big Business, and Wealthy Donors Reshaped the American States—and the Nation* by Harvard and now Columbia University scholar, Alexander Hertel-Fernandez.

Hertel-Fernandez has documented conservative influence by tracking the bills of the American Legislative Exchange Council (ALEC). This text analysis assessment is actually a bit easier than it sounds because ALEC bills are literally cut and pasted and sent to different states with nearly identical language. Indeed, some elected officials have been guilty of sponsoring bills that go to the floor with the ALEC logo still on them. Hertel-Fernandez found that the number of bills enacted by

ALEC steadily increased over the years, at its peak reaching close to 200 annually. This may not seem like a lot, but few organizations that can even claim to have helped pass more than two bills. Moreover, the bills that have passed are often ones that transform state policy, such as right-to-work laws that hobble organized labor, voter ID regulations that make it exceedingly difficult to register, and “stand-your-ground”-type legislation that decreases penalties for use of firearms.

## WELL-EXECUTED STRATEGY

How exactly has this particular conservative movement become so effective at the state level? Simply put, with a well-executed strategy backed by a consistent level of funding and an unwavering agenda. For the conservative activists and organizations advancing recent state efforts there has been a firm commitment to do whatever it takes to succeed. Others can learn from their core strategies, some of which are described below.

**Organizational Coordination and Shared Funding:** The conservative state strategy has been led by just three organizations (see sidebar), each created separately with a different purpose, though they work together closely. ALEC generates the model bills and then tests them in multiple states to improve marketability. Then, the State Policy Network (SPN) affiliates provide academic cover, local perspective, and general policy support. Finally, Americans For Prosperity (AFP) administers one of the largest grass roots political operations in the country to pressure local elected officials and sway public opinion, even down to the block level. Taken together, each organization has a critical and complementary function. Additionally, the organizations coordinate public affairs and share a wide network of funders: corporations, national foundations, and individual wealthy donors.

**Reconciling Conflicting Priorities:** The conservative movement has done an excellent job of resolving the competing priorities that can paralyze any social or political movement. This is best seen in the fact that most outsiders believe that ALEC is solely powered by corporate lobbyists, the Koch Brothers or movement conservatives; in reality, they are all part of the enterprise. How these significant—and quite

## THE CONSERVATIVE TROIKA

Conservative state-level dominance is supported by three key organizations that work in concert. They are the American Legislative Exchange Council (ALEC), Americans for Prosperity (AFP), State Policy Network (SPN):

**ALEC** – Produces legislative packages including model bills and advocacy points and disseminates bill packages to all 50 states. Work is done through “task forces” composed of market and social conservatives, corporate lobbyists, and state representatives.

**SPN** – This umbrella organization for over 60 associated state think tanks provides policy support, including white papers, talking points and op-eds tailored to local outlets.

**AFP** – This national organization of 2 million activist-volunteers provides a grassroots network activated through rallies, petitions and local coalition issue advocacy.



varied—strains of the conservative movement are accommodated is remarkable. ALEC leaders discovered a brilliant way to settle internal struggles early on—all policy is decided in smaller issue-based task forces, with whomever makes the largest commitment and dedication of revenue winning the day. Equally important in the task force structure is participation of state legislators as members. Rather than keep politicians at arm's length, the organization understands that the very best champions for legislation are the lawmakers who are themselves directly engaged in setting policy.

**Market Testing:** Complementing the relatively smooth decision-making process of bill generation is a well-honed approach to testing and packaging ideas for wide distribution. Once bills come out of the task force process, they are field-tested in multiple locales and then further refined based on state priorities and political dynamics. Tulane University political scientist Mirya Holman says that, "ALEC is a machine; their MO is blanketing places with extreme bills and see what happens. So they will throw model legislation at liberal, moderate and conservative states and then adjust." Once the bill and related advocacy points are perfected, it is then distributed throughout the country. Arnold Ventures program officer Michelle Welch notes, "They are like FedEx; certifying (legislation) and sending it off to other jurisdictions."

**Urban Dis-Empowerment:** Perhaps the most powerful strategic approach being used increasingly by the conservative troika is preemption; a near complete revision of intergovernmental relations. The term "preemption" means nothing to the vast majority of Americans. From a state/city government perspective it means that states define what a local government can and cannot do. Historically, preemption was a safety mechanism to ensure that localities don't enact overtly racist or unjust policies. It also created some consistency in state policy in general. But that is not how preemption is being used now. States are deliberately, extensively and sometimes punitively prohibiting local efforts to address a host of problems.

When local governments want to enact a new tax, design a new downtown, or improve local employment policy they are informed that they have neither the autonomy nor the authority to act in these

and other areas. The ability of cities to make their own decisions, and to regulate, set and enforce standards is intentionally blocked. This is taking place in many states. Possibly the most concerning aspect of the increased use of preemption is the undemocratic negation of local ballot measures approved by voters. Among those initiatives overridden; a Tempe campaign finance disclosure law passed with 91% of the electorate and was overturned; a Nashville local hire law passed with 57%; and a Milwaukee paid sick measure passed by 70% of voters.

The preemption trend began in 2010 with the U.S. Supreme Court Citizen's United decision, which opened the door to unprecedented corporate giving in state legislative races and to the dominance of the GOP in the midterm elections. In every legislative session since that time, more local governments have lost power.

In the 2019 legislative session, this continued: North Dakota became the 26th state to preempt local action on minimum wage; Maine became the 23rd state to prohibit local action on paid sick time. In Texas alone, 62 preemption bills were filed.

And while this session marked a turning point in counter efforts—including the passage of four preemption repeal bills (three in Colorado and one in Arkansas), successful education efforts by cross-issue coalitions and the emergence of more local champions, conservatives will not be abandoning such an effective anti-regulatory, power-consolidation tool anytime soon.

# 03

## NONPROFIT AND LOCAL ORGANIZATIONS BEGIN TO COHERE



Examining the conservative troika leaves no doubt of their remarkable success and sheer dominance over state policymaking. They have passed hundreds of bills of significant import, redefined areas of policy in virtually every state, and are now overturning voter-approved referenda and neutering urban self-governance. The question is, “Why has there been virtually no opposition?”

Alexander Hertel-Fernandez made clear that any perception that progressives lack the money or organizational clout is false. “There are a lot of myths out there in terms of ALEC and the lack of response. The idea that the left doesn’t have enough money or the same capability to set an agenda just isn’t true. There is significant money on the left. And, ALEC, like any organization, has had many issues overcoming internal disagreements. All movements are inherently fractious. They figured it out; so can others.”

The sheer quantity of enterprises that could form a counterweight to these three organizations is tremendous. There are myriad urban and progressive enterprises in Washington, DC. Most states are home to hundreds of non-conservative policy organizations and nonprofit organizations, and there are also powerful professional government associations that focus on practical issues of governing.

The major issue—and it’s a big one—is that all of the non-conservative organizations are not strategically aligned. Most organizations function in isolation, focused on their specific issue (or more typically, a sub-issue within a larger one). Sharing funding, staff people and strategy is anathema to most political and policy organizations outside of this far-right orbit.

In our analysis, we looked at a wide range of organizations that could form a state policy counterbalance. It became apparent that the policy and advocacy community is splintered, typically through single-issue or area silos. “I find that most groups are just taking on one issue, like criminal justice or the environment,” said Sarah Szurpicki, a vice president at Michigan Future, Inc., a nonpartisan policy organization based in Ann Arbor. “It often feels like the only way to advance state policy is to pick a very specific issue area and push a bill with a coalition. That’s the way it has always been and it



seems like the right path, but it's an uphill battle the whole way and an insane amount of work. A different approach might be starting with a broad understanding of the challenges facing the state; start with our challenges and statewide priorities first. But this rarely happens, as everyone is organized into their specific issues, so the issues lead."

Speaking to a lack of more global strategy, Neera Tanden, president of the progressive national think tank, Center for an American Progress, noted, "It is hard to even compare ALEC groups and progressives at the state level. They (progressive organizations) are just not as aggressive or directional; they just aren't Machiavellian. We need more of that; we must have a strategy."

Taken together, progressive and urban-oriented organizations tend to work on their own, splitting and in some ways limiting the impact of their funding and other resources, including energetic and talented staff. The troika, meanwhile, is crystal clear about which issues to pursue and, because they constantly road-test legislation in different states they have a sense of how, where and when to most efficaciously pursue various issues.

While organizations outside of this group lack this strategic and highly successful approach, during the course of research we heard a desire from non-conservative organizations to

become more strategic. In fact, there is a growing sense that coalition work is absolutely necessary for greater success.

As an example, the State Innovation Exchange (SiX), a national progressive organization is squarely focused on strategy development at the state-level. Its executive director, Jessie Ulibarri noted that, "There is a tendency to think about one issue and in one way. Maybe it is 'let's pass this ordinance and then move on.' So we are investing in basic civics advocacy; less how a bill becomes a law, but what strategically needs to be done to obtain your goal. What are all the surrounding issues connected to an issue and how do we work on them on multiple fronts? We need to move beyond civics and (discern) the strategic pain points and opportunities."

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Another possible counterweight to the troika could theoretically come from established professional government associations that represent city and county interests. These organizations include the National League of Cities, U.S. Conference of Mayors, International City/County Management Association, and the National Association of County Organizations. Each is well-run and has thousands of government members, many of whom have seen their authority, responsibility and revenue capacity curtailed by conservative policymakers. Unfortunately, these entities are not positioned to serve as a counterweight for reasons that are different from those of left-of-center advocacy groups. The professional organizations are certainly strategic in terms of their priorities and organizing their many members. However, they are by definition non-partisan and oriented toward member services. Not only do they have no interest in jumping into the political fray, but their relationship with state leaders is sensitive and must be carefully managed.

While the missions and functions of the conservative troika and professional organizations may be at odds, people in the field do have a sense that more could be done to organize around some of the more pernicious conservative affronts, particularly that of preemption, which is arguably more about good government and "small-d" democratic values than a partisan position.



Encouragingly, government associations have been working more strategically and collaboratively over the past 15 years. The National Conference of State Legislatures has established “policy camps” in which state and local representatives work on complicated issues, such as healthcare, together. The National League of Cities (NLC) is working in partnership with the Local Solutions Support Center (LSSC) to educate mayors and their staffs about the consequences of preemption by co-hosting meetings and providing these local policymakers with research and communications tools needed to develop counter efforts against state roadblocks to local autonomy. This partnership has expanded to include several state Municipal Leagues eager to endorse and advance the updated version of “home rule” being developed by LSSC and the NLC. In addition, a well-respected research organization, called the Center for State and Local Government Excellence, which has representatives from state and city associations, is producing practitioner-oriented white papers and reports to better align state and local governments across the country.

# 04

## PHILANTHROPY MATURES

As noted previously, an organizational infrastructure to counterbalance the state dominance of conservatives is beginning to develop. Just as important is the question of whether or not grantmakers and donors are willing to support such organization.

On the right, the Koch brothers are known for having established a well-functioning and highly strategic funder consortia with no precedent in American history. On the left, and in the political center, there are challenges to forming a counterweight. Within philanthropies as in the organizations that they fund, there is a tendency to splinter into isolated and unstrategic individual areas of policy. In fact, many representatives of nonprofits and other advocacy organizations interviewed for this report believe that their uncoordinated role within state policy is, in part, due to their splintered funding.

Even if traditional funders are not inclined to fund strategically, there has been significant growth in the numbers of individual philanthropists who want to have an impact on policy. David Callahan, in his book *The Givers: Wealth, Power, and Philanthropy in a New Gilded Age*, documents the rise of a new group of billionaires who aspire to shape public policy debates. Where once there was just George Soros, there are now dozens of individual donors committed to policy and political change, in part because of their overt interest in forming a direct counterpoint to the troika.

Several of those philanthropists have even organized themselves into a progressive consortium called the "Democracy Alliance." However, even with an organizational structure similar to that of their counterparts on the political right, they are still less strategic. In fact, the Democracy Alliance is actually loath to pick "winners." The Alliance has worked hard to better focus its funding but it is still challenging. "We Need to get from 'here is (the) menu' of organizations to 'here is the plan,' notes Gara LaMarche, the Democracy Alliance's Executive Director. "But the gap between where we are and the aspiration is vast. We have tried to do this; but it is like herding cats. Whenever we poll our members, everyone says we need to have fewer options and get more strategic but it is hard (for them) to make the cut."

In addition, there is a lack of patience to build a strategy for the long term, both amongst big donors and more traditional private foundations. Hertel-Fernandez, the Columbia University professor studying progressive and conservative state political movements, describes it as “herky-jerky” funding in which support flows to state, federal and city level activity and then back again, without the consistency needed to build a track record of success. As an example, many private grants flow to projects and organizations focused at the federal level when a Democrat is in the White House, and then back to supporting projects focused on local governments when a Republican is president.

Lavea Brachman, who previously ran the Greater Ohio Policy Center, a statewide nonpartisan policy organization, and is now at the Ralph C. Wilson, Jr. Foundation summed up this dynamic by saying, “It is one of those chicken and egg situations. If more foundations were interested, we might have better state policy, but they aren’t—so state policy work is underfunded and we have weak state policy alternatives. Most funders don’t get what results mean. Passing legislation takes a long time. There is a lack of understanding of the patience needed.”

To some extent, foundations and individual donors are starting to understand this dynamic and change their approach to grantmaking. A number of traditional funders, including The Kresge Foundation, the Rockefeller Family Fund, Robert Wood Johnson, Kellogg and Open Society Foundations, have banded together to rethink the structure of state/local intergovernmental relations by supporting LSSC and others to help address the myriad legal and organizing challenges inherent in preemption issues. Others such as Arnold Ventures have invested significant dollars to reorient state policymaking around data and evidence by supporting a network of state policy labs.



# 05

**LOCALITIES GO THEIR OWN WAY —  
EMBRACING NEW TECHNOLOGIES  
AND EVIDENCE-BASED MODELS**

One of the most encouraging conclusions we came to in this research is that city governments are operating above these partisan battles and establishing their own practice-minded counterweights. Instead of local government officials fighting ideological fire with fire, they are simply focusing their efforts on better local governance and improved service delivery. Cities want nothing more than the authority and responsibility to manage their own streets. As one mayor said, "We are not looking for a handout or money. We just want to manage our own affairs."

This is not surprising; mayors have been nonpartisan beacons throughout American history. New York City's famed mayor Fiorello La Guardia is known for saying, "There is no Democratic or Republican way to pick up the trash." More recently former Philadelphia Mayor Michael Nutter noted, "It's not that cities are close to the ground; we are the ground! We are the incubators of innovation and the place where policy meets reality."

There is good reason to give localities more autonomy beyond the well-known hot-button issues of paid sick days and plastic bags. Recent research has found that the more discretion cities have over their own finances, the more likely they are to balance their budgets and attract new private sector businesses. This fact has never been more critical in light of the revenue shortfalls most all governments are facing. Think of tourism-dependent cities such as Las Vegas and New Orleans—heavily reliant on hotel and sales tax revenue—now with few options to plug coming budget craters. Michael Pagano, Dean of the College of Urban Planning and Public Affairs at the University of Illinois at Chicago, has documented just how consequential state authority is in local government finance. Pagano and his research team devised a fascinating measure called Fiscal Policy Space which is essentially the flexibility a city has to control its destiny. The measure includes the degree to which states impose limits on local tax authority and how well-matched a city's economic base is to its revenue authority. Assessing a diverse sample of 100 cities, Pagano found that those locales with more "space" or flexibility were far better positioned to curb spending, balance budgets and create jobs than those with more constrained space. Pagano has noted, "The more you allow localities to control their destiny, the better they do."



This pragmatism is evident to anyone who has spent time at the annual meetings of the three main local government associations: National League of Cities, International City/County Management Association and the U.S. Conference of Mayors. Mayors and city managers were pulled aside at recent conferences and asked the greatest barrier to local reform and invariably state government was the answer (something also confirmed in a 2015 Boston University Initiative on Cities survey of 89 mayors). But you will exhaust days of conference time looking for even one panel or breakout about state government or political strategy. The discussion revolves around the mundane (curb cuts, lighter weight snow ploughs) and the new and exciting (mobile apps that can improve public transit connections, how internet sensors can improve storm water management).

If anything, this local pragmatism and focus on innovation has accelerated significantly almost in parallel with the increased authority limits emanating from state houses. Cities are resourceful. There is a significant uptick in cities embracing new technologies, evidence-based approaches to policymaking and working with local universities to support creative ways to boost local services.

Indeed, there is a wide range of new organizations and networks that have grown to support cities in these efforts. The Bloomberg Philanthropies sponsored What Works Cities initiative has enrolled 100 municipalities focused on using data and scholarly evaluation to improve service delivery systems. Results for America has created a fellows network of local government officials committed to using research to better inform local policy choices. Leaders of each of these efforts noted that their programming is over-subscribed with demand high for an evidence and data-based approach to service improvement.

Another important trend is the growing proliferation of university/city “policy labs,” in which institutions of higher learning are dedicating research, evaluation and data analytic capacity to local government. A 2020 report sponsored by the National Science Foundation found over 60 such university-to-government enterprises. The University of Chicago is best known in this space and has separate labs in areas of crime, education, health, environment and poverty. Whereas universities used to operate as though a moat separated the institution

from its surrounding city, now more and more students and scholars are eagerly problem-solving in partnership with government (see the 2015 *Striking a Local Grand Bargain* report where this is documented in more detail).

There is also a growing trend towards collaboration amongst local jurisdictions given the growing complexity of issues. For example, in Ohio a newly formed bipartisan coalition of mayors has come together called the Ohio Mayors Alliance. Dayton Mayor and Alliance Co-Chair, Nan Whaley, said “We have no interest in taking on the governor or the president. We want to work together. I am a Democrat and my counterpart is a Republican and there is so much we learn from each other and that is only going to grow.” There are also more examples of municipalities exploring shared service agreements and exchanging labor market information to coordinate business attraction efforts.

Taken together, there are two distinct realities taking place. At the state level a hard-right ideology is driving policymaking and diminishing local authority throughout the country. Meanwhile, at the local level cities are operating in a partisan-free zone that allows appointed and elected officials to embrace new approaches and innovations. And, citizens and the electorate are increasingly a casualty as their interests and priorities are being overridden with increasing frequency. This disconnect must be bridged. What’s needed is a major revision of intergovernmental theory, function and practice in the United States. Put simply, states need to support local reform and improvement and make decisions based on the best information available. The last section spells out how to make that a new reality.

## STATE INTEREST IN EVIDENCE BASED POLICYMAKING

While partisan ideology drives many debates, there is a notable interest and demand for pragmatic policymaking at the state level that has been brewing. Back in 1983 the Republican Legislature in Washington State created the Washington State Institute for Public Policy to discern the most effective programs to invest in. The Institute uses a rigorous benefit/cost analysis akin to *Consumer Reports* that allows elected officials to see which programs are working, which are failing and why. There is no spin or partisanship, just the facts and the Institute’s reports hold more sway in the state house than any other information source. This effort has been seen as so useful that a new enterprise, the Pew-MacArthur Results First Initiative, was established to help other states adopt the model. Results First has helped 26 states establish a similar benefit/cost approach. Another example is the Hewlett Foundation has supported a peer network of state budget directors (Colorado, Louisiana, North Carolina, Rhode Island, and Washington, DC) to meet quarterly and craft statewide reform plans around data and evidence measures.

There is also significant demand for less overtly partisan policy support. We interviewed a handful of democratic lawmakers from red states and there was certainly a need for the exact same legislative guidance and models that ALEC produces, but there was less interest in the overtly partisan perspective. Interestingly, Tennessee is home to a very new and quickly impactful non-partisan policy organization, the Sycamore Institute. Laura Berlind, the organization’s Executive Director said, “We see in Tennessee and other southern states a tendency to pass legislation by anecdote because there is not a lot of research capacity in our state house. What evidence there is tends to be provided by lobbyists who are hired to work a specific angle. We say get good, politically neutral evidence and data in the hands of the people who make decisions.”



# 06

## REMAKING FEDERALISM RECOMMENDATIONS

The COVID-19 pandemic has created a once in a lifetime opportunity to rethink and refashion government relations; to get the balance right. Rather than the current ‘fend-for-yourself’ style of federalism, there is little doubt that greater alignment will yield healthier, more resilient and economically sound policy. In our research, we found that indeed greater collaboration has emerged amongst cities, professional organizations, universities and advocacy groups in recent years. Additionally, both local and national philanthropists have a greater appreciation of strategy and the need for funding consistency and coordination.

But to reach anything akin to policy balance at the state level requires a thorough re-examination of intergovernmental relations that better protects both public will and local authority. This, in turn, should be complemented with state-level agenda setting and leadership development. Finally, we recommend that private philanthropy step up with significant, consistent investments to support this crucial infrastructure.

The following recommendations offer a way to advance this work right now.

## A) STATE AGENDA SETTING

As jarring and destructive as the COVID-19 outbreak is, we've been through disasters before (weather events, fiscal and economic collapse). But response in America is rarely done well; and almost never in a way that builds back stronger. We propose to do just that with a very different take on government and fiscal recovery; one that is customized for each state and informed by the best analysis in the country. Rather than making immediate decisions that have no lasting impact, now is the time respond with ardor but also strategically reposition and improve government relations, budgets and operations going forward. And rather than help that is intense and fleeting, this period should be used to bolt in university and philanthropic support in a way that is enduring and becomes part of a new standard operating procedure.

As this report has documented, for far too long state policy has been heavily influenced by a small cabal of ideologically-driven organizations. Now is the time to reimagine and remake state policy through a well-organized agenda setting process.

To be clear, we are NOT recommending a left-wing counter balance, but a process that is far more democratic and reflective of the demographics of each state. But also one that is focused and ruthless in identifying those issues and actions that each state must take on.

### **Foundation role**

A consortium of state foundations can support an immediate COVID-19 crisis response planning process and then an annual policy development summit to clarify a state's core priorities, assets and strengths. And this year in particular a focus should be on revising and improving core intergovernmental functions, state operational procedures and a strategic review of revenue and spending. Foundations can also support the convening of key organizations to determine how best to coordinate and collaborate on a focused state agenda. Grantmakers are in a powerful position and can encourage advocates, nonprofits and universities to work together rather than duplicating efforts. This will demand a pivot from traditional foundation support of DC policy efforts to one that provides enduring support of locally developed agenda setting.

### **University role**

Universities can play an important neutral convening role; as the place where civic leaders and advocates gather to hash out statewide agendas. Institutions of higher learning can also provide critical research and data to provide more objective analysis to support agendas as they are constructed in real time.

### **Professional Associations role**

There are a handful of local government professional associations such as National League of Cities and the National Conference of State Legislatures that have as their mission to support local issue development. These organizations can play a critical matching-making role helping local advocates and policymakers at the state level be in touch with one another. For example, if agenda setting in Louisiana is focused on youth service funding there may be a similar focus in Montana and that connection could prove quite valuable. The associations can also provide a broader, bird's eye view of policies across all states and how such issues are playing out at the federal level.

## B) LEADERSHIP DEVELOPMENT

There is significant demand for talent generation; more policy and political acumen in and outside of state government. Often in our conversations with national leaders we heard again and again that there are just too few strong advocates for urban issues and even less who possess the political and diplomatic skills necessary to wend legislation through increasingly polarized state houses. This can be accomplished through customized, boot camp like training sessions or more long term, credentialed MPA like degree programs that emphasize state policymaking.

### University role

Most universities—even those in state capital cities—tend to stay above the political fray. That is understandable as universities must remain academically independent. This has begun to change as such institutions as Brown and UC Berkeley have established state policy labs to train research efforts on improved policymaking; and Ohio and Arizona State University provide targeted state legislative training. A perfect way to expand these efforts would be to develop a set of customized courses and trainings for state policymaking that would emphasize the political debate, legislative and legal skills necessary to conceptualize, advance and see legislation through to passage.

There is also a big role for law schools to step up and offer more local law courses and trainings that include bill drafting, charter reform, and intergovernmental regulation analysis. Local governments are hobbled by their lack of understanding of intergovernmental rules, regulations and possibilities. Having law schools more actively demystify and edify will go a long way in helping local officials and their aides advocate for themselves.





## **Foundation role**

Local and national philanthropy such as the Carnegie Corporation and Arnold Ventures have already been active nudging universities towards more practical ends. They and other grantmakers can be even more targeted by creating a small pool of money to develop new degree and customized training for state policymaking.

Philanthropy can also identify other training vendors to develop more customized 2-3 boot camp like sessions for more immediate skill learning and refreshing.

## C) LOCALISM 2.0

This report's overarching recommendation is to adopt a new intergovernmental relations model in this country, what we call "Localism 2.0." With far too much confusion about the lines of state and local policy authority and responsibility, a thoughtful and democratic review of federalism is long overdue. Localism 2.0 will clearly spell out a balanced role between state and local governments, clarify the authority and scope of local government, and establish greater consistency and logic for reviews and revisions of intergovernmental arrangements.

There is an imperative to revisit the fundamental legal structure of state-local relations. At this critical moment, the need to empower cities is clear: constituents are demanding pragmatic problem solving tailored to local needs and conditions and they understand the benefits of true subsidiary in our federal system—experimentation, policy responsiveness, political accountability, and genuine diversity. Local democracy has always been important, but the authority of local governments across the country to foster democratic engagement is insufficient to meet the challenges communities face today. Cities simply remain far too limited in what they can do to respond to local policy demands, from structuring their democratic processes to securing critically needed revenue to responding to a range of regulatory imperatives.

At present, a partnership between the National League of Cities (NLC) and a panel of local government scholars working through the Local Solutions Support Center (LSSC) has published a new "Principles of Home Rule for the 21st Century," built on the recognition that the demands on local governments have changed dramatically in the last 65 years when the principles and provisions of local governance was last revised.

The time for a new, vigorous vision of home rule has arrived and the following principles developed by the NLC and LSSC guide a Localism 2.0 Model.

### ***The Local Authority Principle***

A state's law of home rule should provide local governments full capacity to govern within their territorial jurisdiction, including the power to adopt laws, regulations, and policies across the full range of subjects—and with the powers—available to the state.

### ***The Local Fiscal Authority Principle***

Home rule should guarantee local fiscal authority and recognize the value of fiscal stability at the local level. This principle accordingly includes local power to raise revenue and manage spending consistent with local budgets and priorities. To support local fiscal authority, a state should ensure adequate intergovernmental aid for general welfare at the local level and be prohibited from imposing unreasonable unfunded mandates.

### ***The Presumption Against State Preemption Principle***

To appropriately balance state and local authority, a system of home rule should provide that states may only act with respect to home rule governments expressly. And to exercise the power to preempt, the state must articulate—and, in the case of state–local conflict, must demonstrate—a substantial state interest, narrowly tailored. Moreover, state laws displacing local authority should be general, not unreasonably singling out individual local governments or groups of local governments.

### ***The Local Democratic Self-Governance Principle***

A state's law of home rule should ensure that local governments have full authority to manage their own democratic process and structure of governance. Local democratic self-governance includes a local government's authority over its personnel and property. Home rule should also protect local officials from individual punishment by the state for the exercise of local democracy. This protection includes barring states from holding local officials personally liable or removing local officials from office in the case of state–local policy conflicts. In addition, state “speech or debate” immunity should extend to local lawmakers. And states should only act with respect to local democratic self-governance through express and general state laws that articulate an overriding state interest that is narrowly tailored to that interest.

## **Foundation role**

Private philanthropy can help support the development of these principles in practice by supporting strategic planning and convening around a new model. Funding could also help in identifying 3-4 pilot states where an initial intergovernmental model can be tested and refined.

## **Professional Organization role**

It is critical that the local professional organizations contribute to and support these new principles and processes. They are well-positioned and increasingly predisposed to discuss more collaborative and productive intergovernmental arrangements and Localism 2.0 could be the perfect vehicle for clarifying and reconciling the perspectives of the various levels of government.

## **University role**

There is a great need within academia for the fields of law and political science to work closer together. Much of the causes and answers to the current crisis in democracy and intergovernmental affairs are rooted in law and legal precedent. But there are just a small handful of researchers committed to these issues. We need more legal scholars providing leadership and depth in the area of public governance. And political scientists, while quite steeped in the policy and political machinations of party politics, rarely address the legal and constitutional issues that undergird and dictate governance at every level. Both would benefit from more communication and exchange of ideas. And more than that, the two disciplines could align to provide a platform for informed discussion and debate with community members.



# 07

## REPORT INTERVIEWS

We want to thank the many individuals who contributed to this report through one-on-one interviews.

1. **Ben Hecht**, Living Cities
2. **Laura Berlind**, Sycamore Institute
3. **Lavea Brachman**, Ralph C. Wilson, Jr. Foundation
4. **Joshua Franzel**, Center for Local and State Government Excellence
5. **Gara LaMarche**, Democracy Alliance
6. **Alexander Hertel-Fernandez**, Columbia University
7. **Michael McAfee**, PolicyLink
8. **Mark Funkhouser**, former mayor of Kansas City
9. **Sarah Szurpiki**, Michigan Future Inc.
10. **Miyra Holman**, Tulane University
11. **Laura Tobler**, National Conference for State Legislatures
12. **Michael Lind**, LBJ School of Public Affairs, at the University of Texas at Austin
13. **Christy McFarland**, National League of Cities
14. **Stephen Goldsmith**, former mayor of Indianapolis and deputy mayor for New York City
15. **Mark Linton**, The Raben Group
16. **David Eichenthal**, Public Financial Management
17. **Nestor Davidson**, Fordham University
18. **JP Morrell**, Louisiana State Senator
19. **Raumesh Akbari**, Tennessee State Senator
20. **Michelle Welch**, Arnold Ventures
21. **Marek Gootman**, Brookings Institution
22. **Michele Jolin**, Results for America
23. **Stephanie Lee**, Washington State Institute for Public Policy
24. **Sara Dube**, Pew-MacArthur Results First Initiative
25. **Melissa Wavelet**, Colorado Department of Human Services
26. **Steve Savner**, Center for Community Change
27. **Wendy Jackson**, The Kresge Foundation
28. **Ashley Shelton**, The Power Coalition
29. **Karen Aldridge-Eason**, Council of Michigan Foundations
30. **Joda Thongnopnua**, Metro Ideas Project
31. **Alison Goebel**, Greater Ohio Policy Center
32. **Gilda Jacobs**, Michigan League for Public Policy
33. **Regina Bell**, Kellogg Foundation
34. **Christine Robinson**, Ford Foundation
35. **David Callahan**, Inside Philanthropy
36. **Tracy Gordon**, Urban Institute
37. **Solomon Greene**, Urban Institute
38. **John Ratliff**, Brookings Institution
39. **Jessie Ulibarri**, State Innovation Exchange
40. **Nina Revoyr**, Ballmer Group
41. **Sam Mamet**, Colorado Municipal League
42. **Katherine Lusk**, Boston University Initiative on Cities
43. **David Yokum**, Brown University

# 08

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### About The Kresge Foundation

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