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CONFERENCE OF WESTERN ATTORNEYS GENERAL
2018 CWAG Annual Meeting
July 24, 2018

WHEREAS, the United States Constitution created a system of dual sovereignty with power divided between the States and the Federal Government; and

WHEREAS, under the principles of Federalism established implicitly in the body of the Constitution and explicitly by the Tenth Amendment, States retained all powers inherent in sovereignty except for those powers expressly delegated to the Federal Government by the Constitution; and

WHEREAS, Federalism reflects the principle that dividing power between the Federal Government and the States serves to protect individual liberty; and

WHEREAS, progressively the Federal Government has expanded its powers into areas of traditional state sovereignty; and

WHEREAS, in order “to ensure that the principles of federalism established by the Framers guide the Executive departments and agencies in the formulation and implementation of policies,” President Ronald Regan in 1987 issued Executive Order 12612, which ordered Executive departments and agencies implementing policies with federalism implications to follow enumerated federalism principles; and

WHEREAS, in 1999, President William “Bill” Clinton issued Executive Order 13132 reconfirming the federalism principles set forth in Executive Order 12612, and again directing federal agencies in implementing policies with federalism implications to adhere to enumerated federalism principles; and

WHEREAS, Executive Departments and federal agencies have not adhered to the federalism principles set forth in Executive Orders 12612 and 13132, and continue to advocate for expanding federal power into areas of traditional state sovereignty; and

WHEREAS, adherence to the constitutional principles of federalism is essential to the maintenance of our dual system of sovereignty;

NOW, THEREFORE, BE IT RESOLVED, that the Conference of Western Attorneys General adopt the following federalism policy positions:

- 1) Congress should recognize the role of state governments in our federal system of government and only enact legislation in those areas where it has clear constitutional authority and there is a demonstrated need for a national solution; and
- 2) In absence of clear constitutional or statutory authority, the presumption of sovereignty should rest with individual states, and uncertainties regarding the authority of the federal government to regulate should be resolved in favor of state regulation; and
- 3) Congress should require that all federal legislation contain a statement citing the power or powers granted to Congress in the Constitution upon which the legislation is based; and
- 4) In the absence of a clear and unequivocal statement in federal legislation of Congress' intent to preempt state law, it should be presumed Congress does not intend to preempt state law; and
- 5) When Congress does exercise its constitutional authority to preempt state law, federal legislation should be tailored as narrowly as possible to achieve the objectives of the statute and to preserve to the maximum extent possible state regulatory authority; and
- 6) Federal legislation should recognize the role of states in our federal system of government by expressly treating States as sovereigns rather than as other stakeholders; and
- 7) Congress should require Executive Departments and federal agencies to consult with States on federal actions that have federalism implications and clarify that the Federal Advisory Committee Act does not apply to such consultations with States; and
- 8) The Executive Branch should modify the Federalism Executive Order to include enforceable provisions to ensure Executive Departments and federal agencies comply with the Federalism Executive Order; and
- 9) Each Executive Department and federal agency should be required to prepare and include in the Federal Register a federalism statement for each proposed regulatory action that demonstrates compliance with the Federalism Executive Order; and
- 10) Each federalism statement should contain the following information:

- a. A certification that the policy has been reviewed under the federalism principles in the Federalism Executive Order;
 - b. Identify any provision in a proposal that is inconsistent with the principles, criteria, and requirements contained in the Federalism Executive Order, and the legal basis for such inconsistency; and
 - c. Identify the extent to which a proposal will impose any costs or burdens on states;
 - d. Identify the extent to which a proposal will interfere with traditional State governmental functions, and/or State sovereignty; and
 - e. Identify whether a proposal is intended to preempt State authority; and, if so, the Constitutional and statutory basis for preemption.
- 11) The Executive Branch should be required before initiating litigation to ensure federalism has been considered as an integral part of the decision-making process; and
- 12) CWAG authorizes the Executive Director: 1) to make these views known to the President, Congress and other interested parties; 2) to work with other state associations to implement federalism principles consistent with this resolution; and 3) to take such other actions as are necessary to advance federalism policies set forth in this resolution.

ADOPTED BY THE CONFERENCE OF WESTERN ATTORNEYS GENERAL
AT THE CWAG ANNUAL MEETING IN SANTA ANA PUEBLO, NEW
MEXICO ON JULY 24, 2018