

# State-Federal Relations: Federal Dollars Down, Federal Power Up

By John Kincaid

*Most facets of coercive federalism—including federal aid shifted from places to persons, conditions and earmarks attached to federal aid, pre-emptions, limits on state taxation, federalization of criminal law, defunct intergovernmental political institutions, reduced federal-state cooperation in major programs, and federal-court litigation—remain vibrant. Only unfunded mandates and court orders requiring major state institutional change are less prevalent. State policy activism remains vigorous, but the Supreme Court is not enamored with state authority.*

State-federal relations reflect long-term trends born in the late 1960s, and short-term trends triggered by current events. The long-term trends encompass coercive or regulatory federalism. These persist because Congress and the president feel politically and constitutionally uninhibited about displacing state powers.<sup>1</sup> The U.S. Supreme Court, which was state-friendly in the 1990s, is again less congenial.

A shorter term trend is one of fiscal constraint arising from the costs of national defense and homeland security, social welfare, tax cuts, and federal deficits and debt.<sup>2</sup> Although state revenues have improved, states face rising costs for major programs such as Medicaid, which consumes 17 percent of states' general fund spending. Caught between rising social-welfare costs, reduced federal domestic spending and voter resistance to tax increases, states face daunting budget challenges.

Even so, states are touted for policy innovation. This activism, which began in the 1980s, reflects state governments' enhanced capacity produced by reforms that followed World War II, plus the demise by the mid-1970s of traditional boss rule, which removed a major obstacle to innovation. Additionally, President Richard Nixon's appointment of Warren Burger as chief justice of the Supreme Court in 1969 and Ronald Reagan's election in 1980 precipitated a federal-state partisan divide that generated liberal state activism in response to conservative federal policymaking.<sup>3</sup>

## Legacies of 2005

Two events particularly marked recent state-federal relations: Hurricane Katrina and Supreme Court appointments.

### *Hurricane Katrina*

Katrina struck the Gulf Coast Aug. 29, 2005, and became catastrophic in New Orleans when breached levees allowed Lake Pontchartrain to flood the city,

especially low-income neighborhoods. Katrina displaced about 1 million people, contributed to the deaths of more than 1,200 people, and produced damages of about \$250 billion.

Katrina's destructiveness was made more deadly than necessary by the failure of all governments—city, parish, state and federal—to respond competently before, during and after the storm. Virtually all the responsible officials—elected and administrative—failed to identify and correct errors as the disaster unfolded, creating a dearth of leadership and initiative. Local and state officials bore heavy responsibility for pre-hurricane failures—from endemic corruption, a bloated city government and neglected levees to a failure to implement a timely evacuation of New Orleans. In turn, the initial post-disaster response of most federal agencies, especially the Department of Homeland Security (DHS), was non-existent.

This monumental intergovernmental failure was surprising in light of generally positive views of the principal federal response agency, the Federal Emergency Management Agency (FEMA). Columnist David Broder had recently noted that FEMA's "operations in the wake of hurricanes, tornadoes and other natural disasters are regarded as models of efficiency by state and local officials" and that the National Response Plan, unveiled in 2005 and developed in partnership with state and local officials, promised effective and cooperative intergovernmental responsiveness to disasters.<sup>4</sup>

Since Katrina, there have been calls for a massive increase in the federal role in disasters. The federal role certainly needs vast improvement, but the value of a predominant federal role is questionable because it would place too much reliance on only one government to respond adequately. It would be more effective to have intergovernmental cooperation characterized by improved clarity of responsibilities, lines of authority, communication, coordination, and joint action achieved through better planning and

## FEDERAL-STATE RELATIONS

training to enhance the fail-safe redundancies possible in a federal system. This approach is also suggested by the comparative success of the Emergency Management Assistance Compact (EMAC) in aiding the storm-devastated states. Many state and local officials prefer to work through EMAC than through FEMA when possible.

### *Supreme Court Appointments*

Chief Justice William Rehnquist's death opened a Supreme Court seat that had been friendly to the states since 1976.<sup>5</sup> Sandra Day O'Connor's retirement opened the Court's most influential swing seat. O'Connor often joined Rehnquist in supporting the states. Hence, state-federal relations was an important issue in the selection of their successors.

John G. Roberts Jr. became the Court's 17th chief justice by a 78-22 vote. He appears unlikely to be as friendly as Rehnquist was to the states. In his first federalism case on the Court, Roberts joined his eight colleagues to deny 11th Amendment sovereign-immunity to Georgia by upholding the right of a paraplegic prisoner to sue Georgia under the Americans with Disability Act (ADA) for conduct that violated the 14th Amendment, not just the ADA.<sup>6</sup>

Roberts then dissented in a 6-3 ruling that upheld Oregon's Death With Dignity Act.<sup>7</sup> Former U.S. Attorney General John Ashcroft had declared that prescribing drugs to assist suicide is not a legitimate medical practice and that dispensing drugs for suicide violates the federal Controlled Substances Act (CSA). A majority of the Supreme Court held that the CSA does not permit the attorney general to prohibit doctors from prescribing controlled substances for physician-assisted suicide under Oregon's law. However, Roberts did dissent in a 5-4 ruling that upheld congressional authority to abrogate the sovereign immunity of states in bankruptcy proceedings.<sup>8</sup>

In contrast, Samuel A. Alito Jr., who was confirmed by a 58-42 vote, supported state powers in several cases during his service on the U.S. Court of Appeals. Alito dissented in a 1996 case involving a submachine gun manufactured in Pennsylvania and sold to a Pennsylvanian. He argued the gunmaker's federal firearms conviction was unconstitutional because, pursuant to the Supreme Court's 1995 *Lopez* ruling,<sup>9</sup> the federal law was unconstitutional because it overreached Congress's commerce power. In 1991, Alito voted to sustain a Pennsylvania law requiring married women seeking an abortion to first notify their husbands. Alito voted with the majority on the appeals court in 2000 to prohibit a state government employee from suing in federal court

for sick leave under the federal Family and Medical Leave Act. The Supreme Court rejected Alito's view on the 1991 and 2000 cases.

### **Enduring National Issues**

The fiscal lifeblood of federalism will be defined by costs associated with national defense, aging, deficits and deconstruction of federal funding roles in many domestic programs.

### *Homeland Security*

Having failed to respond competently to Hurricane Katrina, DHS is scrambling to enhance its disaster preparedness and move forward on other fronts. Grant funding was improved by exempting homeland security grants from the Cash Management Improvement Act of 1990—which requires grant funds to remain in the U.S. Treasury until state and local governments apply for reimbursement—and by creating a one-stop shop in DHS for its State Homeland Security Program, Urban Area Security Initiative, Law Enforcement Terrorism Prevention Program, Citizen Corps Program, Emergency Management Performance Grants and Metropolitan Medical Response System.

DHS also adopted a more risk-based eligibility formula for its FY 2006 Urban Areas Security Initiative grants. DHS identified 35 urban areas (compared to 50 in 2005) eligible for 2006 grants, and funding declined from \$830 million in 2005 to \$765 million in 2006. Another major change is that cities and counties in designated regions must submit a regional "investment justification" for funding. Some mayors and governors criticized the changes, arguing that in order to apply for funding, they will have to elicit cooperation from multiple jurisdictions in a very short time.

About 22 states have established "fusion centers," or "data integration centers," to assemble and share federal, state, regional, local and tribal law-enforcement and public-safety information. Also, big-city police chiefs are creating systems to gather and share information on terrorist threats independent of federal officials. Motorola has developed equipment to allow police chiefs to communicate directly with each other across the country and with counterparts outside the United States. Some big cities are stationing police abroad. New York, for instance, has officers in London, Lyon, Singapore, Tel Aviv and Toronto.

### *Aging*

An aging population is the states' most formidable fiscal challenge. Federal aid will be constrained because the federal budget faces the same challenge.

Social Security, Medicare, Medicaid and other health spending will consume about 46 percent of the FY 2006 federal budget. In contrast, agriculture, commerce, community development, education, energy, environment, housing, job training, natural resources, social services and transportation jointly will consume only about 10 percent of the budget. Interest payments on the national debt will absorb 8 percent. The Medicare prescription drug benefit might cost more than \$700 billion over 10 years. At the same time, senior citizens, many of whom live on fixed and time-limited incomes, will likely resist tax increases.

### ***Federal Deficits***

President Bush's proposed FY 2007 budget indicates that his planned tax cuts will cost \$285 billion over the next five years. The budget projects a \$354 billion deficit in FY 2007, compared to about \$423 billion in FY 2006. Absent tax increases, deficits will induce rolling reductions in domestic spending.

The Deficit Reduction Act of 2005 cut \$39.5 billion in federal spending—primarily from education and health, including Medicaid, Medicare, student loans and crop subsidies—over the next five years. A Medicaid reduction of \$4.8 billion is expected to be achieved partly by increasing co-payments, allowing providers to refuse treatment to non-payers, reducing payments for pharmaceuticals, and increasing penalties for seniors who shift assets to qualify for Medicaid.

### ***Federal-State Program Deconstruction***

Federal fiscal reductions and withdrawals from domestic programs will continue for the foreseeable future. Yet, while state and local governments will pay more of the costs for domestic services, they also will be expected to comply with federal regulations.

The president's \$2.77 trillion FY 2007 budget proposal would reduce or eliminate 141 domestic discretionary programs. Discretionary grants for state and local governments would decline by more than \$12.1 billion (a 6.7 percent decline) while mandatory entitlement grants would increase by \$6.4 billion (a 2.6 percent hike). Overall, grants-in-aid would decline by about 1.4 percent.<sup>10</sup>

Proposed cuts include reductions in crop subsidies, rural development, EPA's State and Tribal Assistance Grants, and the Clean Water State Revolving Fund. The Commodity Supplemental Food Program would also be eliminated. Education spending would decline by 3.8 percent and eliminate 42 programs, though spending would increase to improve K–12 math and science education. The budget would cut the Community Development Block Grant by 20 percent, Section

202 housing for low-income seniors by 26 percent, and Section 811 housing for low-income disabled persons by 50 percent. It terminates HOPE VI grants. A \$1.1 billion cut in block grants for day care, job training and mental health is proposed, as is termination of the Preventive Health-Care Block Grant and the Community Services Block Grant. However, the three major entitlement programs—Social Security, Medicare and Medicaid, which will consume about 45 percent of federal spending—would increase by 8 percent, even though their growth would be slowed, with Social Security spending reduced by \$2.2 billion, Medicare by \$36 billion, and Medicaid by \$13.5 billion over the next five years.

The largest spending increases would be 12.2 percent for the Department of State, 8 percent for Veterans, 6.9 percent for Defense, and 3.3 percent for Homeland Security.

### ***The States' Fiscal Conditions***

States closed a \$264 billion budget gap as fiscal conditions "rebounded notably in fiscal 2005."<sup>11</sup> General fund spending rose by 6.5 percent in 2005. The increase reflected:

1. the final impact in 2005 of a \$20 billion federal-aid package enacted in 2003, which provided \$10 billion in Medicaid cost relief and \$10 billion for states to use as a "flexible grant" for other budget relief;
2. restoration of funds to programs cut during the previous four lean years;
3. welfare needs, especially Medicaid; and
4. under-funded pension liabilities.

Total estimated state spending in 2005 was \$1.3 trillion, of which 22.5 percent went to Medicaid, 21.9 percent to K–12 education, 10.8 percent to higher education, 8.1 percent to transportation, 3.4 percent to corrections, 2 percent to public assistance, and 31.3 percent to all other activities.

### ***Onward Coercive Federalism***

Although American federalism remains cooperative in many ways—especially in most areas of intergovernmental administration—the predominant political, fiscal, statutory, regulatory and judicial trends feature federal dictates on state and local governments.

### ***Grants-in-Aid***

Although Bush's FY 2007 budget proposes to reduce federal aid, that aid will still exhibit three significant characteristics of coercive federalism. First, aid has shifted substantially from places to people; almost

## FEDERAL-STATE RELATIONS

two-thirds of federal aid is now dedicated for payments to individuals (i.e., social welfare).<sup>12</sup> Among the long-term consequences of this shift are that place-oriented aid for such things as infrastructure, economic development and education has declined sharply, increased aid for social welfare has locked state budgets into programs ripe for escalating federal regulation and matching state costs, and local governments have experienced a steep decline in federal aid. Medicaid, which accounts for almost 45 percent of all federal aid, is a prime example. Combined federal and state spending on Medicaid increased by 59 percent from 2000 to 2005.

A second characteristic of grants-in-aid under coercive federalism is the increased use of conditions of aid, now often mistakenly called “mandates” (unfunded or funded). These conditions of aid, a powerful tool for federal policymakers, are used to achieve federal objectives that lie outside Congress’s constitutionally enumerated powers and to extract more state-local spending on federal objectives.

For example, in May 2005, the Supreme Court unanimously upheld the Religious Land Use and Institutionalized Persons Act (RLUIPA) of 2000, a congressional reaction to the Court’s 1997 ruling which voided the Religious Freedom Restoration Act for states. RLUIPA prohibits government from burdening the exercise of religious beliefs unless the burdens meet a “compelling government interest.” A state or local government that receives federal money for land development or prisons must comply with RLUIPA’s “compelling interest” standard.<sup>13</sup>

Responding to the Court’s 2005 ruling upholding municipal use of eminent domain for economic development,<sup>14</sup> Congress enacted a rider on an appropriations act prohibiting federal funds distributed under the act from being used to implement the Court’s eminent domain ruling.

The No Child Left Behind Act (NCLB) of 2002 is the states’ current *bête noir* because of the act’s costly testing and performance requirements. The National Conference of State Legislatures blasted the NCLB as flawed, stifling of state innovation, and unconstitutional.<sup>15</sup> Although the U.S. Department of Education has taken a more flexible approach to enforcing NCLB, Bush wants to extend NCLB beyond the eighth grade to all public high schools. Other reformers urge more federal involvement, such as replacing the policy of “50 states, 50 standards and 50 tests” with “national standards, national tests and a national curriculum.”<sup>16</sup>

The National Education Association and nine school districts sued the U.S. Department of Education, arguing that NCLB is an illegal unfunded

mandate. When Connecticut’s attorney general filed suit against the NCLB’s testing provisions, however, some civil rights advocates defended the provisions, and Connecticut’s NAACP sided with the U.S. Secretary of Education. Some groups fear that allowing states to not comply with allegedly unfunded portions of NCLB would open the door to non-compliance with unfunded civil rights mandates.

The Deficit Reduction Act of 2005 reauthorized welfare reform—Temporary Assistance for Needy Families (TANF)—for another five years at the FY 2004 level of \$16.5 billion. The new law contains tougher work-participation rules, even though it keeps the previous 50 percent work-participation requirement. States also must establish and maintain work-verification procedures, and a 1–5 percent penalty can be imposed on a state’s family-assistance grant for non-compliance.

The third notable change affecting federal aid has been increasing congressional earmarking (i.e., state or local pork-barrel projects), from 3,055 in 1996 to 14,211 in 2004.<sup>17</sup> For example, the 1981 highway authorization contained less than 10 earmarks; the 1987 law contained 121; the 1991 law had 538; the 1998 SAFETEA law contained 1,850; and the 2005 reauthorization was festooned with 6,371.

Otherwise, onerous conditions were blocked when Congress reauthorized surface transportation in the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). SAFETEA-LU provides \$286.5 billion in new funding, and offers financial incentives for states that (1) recently enacted, or will enact within five years, a statute to fine drivers for failing to wear a seat belt even if they are not breaking other laws, and (2) enact more punitive laws for repeat DUI offenders.

A formula fight produced a compromise wherein donor states will by 2008 get back 92 cents (rather than the current 90.5 cents) for every dollar they contribute to the transportation program. Also, earmarked monies will be counted against the amount each state receives from the grant formula. At the same time, fast-growing states, mostly in the South and Southwest, will get more money.

An enduring characteristic of grants-in-aid has been the unwillingness of Congress and presidents to funnel substantial amounts of aid through block grants. The lion’s share of aid, including Medicaid, flows through categorical grants.

### *Mandates*

Mandates also characterize coercive federalism. However, the Unfunded Mandates Reform Act (UMRA)

of 1995 cut mandate enactments, though it did not eliminate standing mandates. Only five intergovernmental mandates with costs above UMRA's threshold have been enacted since 1995.<sup>18</sup>

A sizable new mandate is the REAL ID Act of 2005. States argue that it is under-funded by Congress and could cost states \$100 million in FY 2006 as they start producing licenses with digital photographs and machine-readable technology. States must get security clearances for motor vehicle workers, and motor vehicle offices must verify the authenticity of applicants' identification documents (e.g., birth certificates and passports). States, which must comply with REAL ID by 2008, can opt out of its rules, but then their licenses will not be accepted for any federal government purpose, including boarding an airplane, purchasing a firearm and entering a federal building.

### *Pre-emptions*

With Republicans gaining four Senate seats and five House seats in 2004, the unprecedented levels of federal pre-emption of state powers characteristic of coercive federalism accelerated in 2005. This was symbolized by the Class Action Fairness Act, which moves from state to federal courts most class-action lawsuits involving at least 100 plaintiffs, two-thirds of whom live in different states, seeking \$5 million or more in damages. Federal judges will apply state consumer protection laws, but federal procedural law will govern the cases.

The Protection of Lawful Commerce in Arms Act of 2005 prohibits civil liability lawsuits in state courts against firearm and ammunition manufacturers, distributors, dealers and importers when their products are used unlawfully by a third party. Existing lawsuits must be dismissed. Other pre-emptions enacted in 2005 included the Vaccine Liability Exemption Act, Patient Safety and Quality Improvement Act and the Energy Policy Act.

Pre-emption is frequently upheld by the Supreme Court. In fact, the former "Federalism Five" justices (Kennedy, O'Connor, Rehnquist, Scalia and Thomas) most often voted against the states in pre-emption cases.

### *Taxation*

Another characteristic of coercive federalism is federal constraints on state taxation and borrowing. Federal judicial and statutory prohibitions of state taxation of Internet services and mail-order sales are among the most prominent constraints.

The President's Advisory Panel on Federal Tax Reform called for ending deductions for state and

local taxes. This issue has a partisan electoral dimension because the average state and local tax payment in blue (Democratic) states was \$7,487 in 2005 compared to \$4,834 in red (Republican) states. State and local tax deductions equaled 5.9 percent of average income in the blue states and 3.7 percent in the red states.<sup>19</sup>

### *Federalization of Criminal Law*

Another feature of coercive federalism is the federalization of state criminal law. There are now some 3,500 federal criminal offenses, more than half of which have been enacted since the mid-1960s. These laws cover a wide range of behavior from terrorism to carjacking, disrupting a rodeo, impersonating a 4-H Club member and carrying unlicensed dentures across state lines. Generally, federal criminal laws are tougher, including capital punishment, than comparable state laws.

### *Demise of Intergovernmental Institutions*

Coercive federalism has been marked, too, by the demise of executive and congressional intergovernmental institutions established during the era of cooperative federalism. Most notable was the death of the U.S. Advisory Commission on Intergovernmental Relations (ACIR) in 1996 after 37 years of operation.

### *Decline of Political Cooperation*

There also has been a decline in federal-state cooperation in major intergovernmental programs such as Medicaid and surface transportation, with Congress earmarking and altering programs more in response to national and regional interest groups than to elected state and local officials, who themselves are viewed as mere interest groups.

Indeed, a coalition led by Americans for Tax Reform (ATR) has petitioned Congress to terminate the exemption from federal lobbying rules of state and local government lobbyists. The ATR also is campaigning to remove funds from the National Governors Association, labeling it "another liberal lobbying group."<sup>20</sup>

### *Federal-Court Litigation*

Coercive federalism also has been marked by unprecedented numbers of federal court orders and lawsuits filed against state and local governments. The extent to which such litigation might intrude into state affairs was illustrated by an age-discrimination lawsuit filed in federal court in 2005 by an 83-year-old justice of the Oklahoma Supreme Court against his eight colleagues because they declined to select him as chief justice.

## FEDERAL-STATE RELATIONS

Judicial consent decrees, some of which can last more than 20 years, often constrain state and local officials as well. Decrees have become a major means to guarantee state or local government compliance with federal rules in many intergovernmental policy areas (e.g., education, environmental protection and Medicaid). Bills introduced in Congress to allow state or local officials to seek judicial modifications of a decree four years after the agreement or after the election of a new governor or mayor appear unlikely to pass, in part because state and local officials are divided on the proposal.

### Supreme Court's Federalism Fizzle

Since 2002, the Supreme Court has not advanced its state-friendly federalism initiated in 1991. In one of the most publicized federalism cases of 2005, the Court ruled 6-3 that the federal Controlled Substances Act pre-empts state laws allowing the possession and use of marijuana for medical purposes.<sup>21</sup> The Court in a 5-4 ruling struck down state laws that restricted or prohibited out-of-state wineries from selling directly to consumers while not imposing the same rules on in-state wineries.<sup>22</sup> The Court also refused to hear an appeal challenging application of the federal Endangered Species Act to six species of small insects that live in two Texas counties.<sup>23</sup>

### Federalism and the Culture Wars

Federalism features prominently in the so-called culture wars, often producing strange political bedfellows and partisan flip-flops. Many liberals, traditionally champions of federal power, have become guardians of states' rights, seeking to protect assisted suicide, gay marriage, medicinal marijuana and state consumer-protection, environmental, labor and tort laws against federal pre-emption. Many conservatives, traditionally hostile to federal power, now champion federal power. Social conservatives seek to overturn state policies friendly to abortion, assisted suicide, gay rights, marijuana and the like; economic conservatives seek federal pre-emption of state regulations.

### State Activism

A seemingly contrary characteristic of coercive federalism has been state policy activism, especially since the early 1980s. However, this activism has been both a response to coercive federalism as states have bucked federal policies and filled federal policy voids and a stimulant of coercive federalism as interest groups have sought federal tranquilization of hyperactive states.

State officials have pursued litigation and regulation in many policy areas, especially environmental and consumer protection. Connecticut Attorney General Richard Blumenthal expressed a leading justification for such activism: "Our action is the result of federal inaction."<sup>24</sup>

### Conclusion

Although state activism generates a kind of competitive state-federal federalism, coercive federalism is the system's dominant motif.

---

### Notes

<sup>1</sup>See, John Kincaid, "State-Federal Relations: Defense, Demography, Debt, and Deconstruction as Destiny," *The Book of the States* (Lexington, KY: The Council of State Governments, 2005), 25–30; "Trends in Federalism: Continuity, Change and Polarization," *The Book of the States* (Lexington, KY: The Council of State Governments, 2004), 21–7; "From Cooperation to Coercion in American Federalism: Housing, Fragmentation, and Pre-emption, 1780–1992," *Journal of Law and Politics* 9 (Winter 1993): 333–433.

<sup>2</sup>See, John Kincaid, "Trends in Federalism: Is Fiscal Federalism Fizzling?" *The Book of the States* (Lexington, KY: The Council of State Governments, 2003), 26–31.

<sup>3</sup>One of the first responses was the "new judicial federalism" initiated by state high courts. John Kincaid, "State Court Protections of Individual Rights Under State Constitutions: The New Judicial Federalism," *The Journal of State Government* 61 (September/October 1988): 163–69.

<sup>4</sup>David Broder, "Ridge left legacy of cooperation," *Express-Times* (Easton), January 14, 2005, A-6.

<sup>5</sup>*National League of Cities v. Usery*, 426 US 833 (1976).

<sup>6</sup>*United States v. Georgia*, No. 04-1203 (2006).

<sup>7</sup>*Gonzales v. Oregon*, No. 04-623 (2006).

<sup>8</sup>*Central Virginia Community College v. Katz*, No. 04-885 (2006).

<sup>9</sup>*United States v. Lopez*, 514 U.S. 549 (1995).

<sup>10</sup>Federal Funds Information for States, "President's FY 2007 Budget: Some New Twists on Old Themes," *Issue Brief 06-02* (Washington, D.C.: FFIS, February 10, 2006), Table 1.

<sup>11</sup>National Association of State Budget Officers, *Fiscal Survey of States* (Washington, D.C.: NASBO, December 2005), ix.

<sup>12</sup>For explication, see John Kincaid, "The State of U.S. Federalism, 2000–2001," *Publius: The Journal of Federalism* 31 (Summer 2001): 1–69.

<sup>13</sup>*Cutter v. Wilkinson*, 544 U.S. \_\_\_\_ (2005).

<sup>14</sup>*Kelo v. City of New London*, Connecticut, 125 S. Ct. 2655 (2005).

<sup>15</sup>Quoted in Sam Dillon, "Report From States Faults Bush's Education Initiative," *New York Times*, February 24, 2005, A18.

<sup>16</sup>Diane Ravitch, "Every State Left Behind," *New York Times*, November 7, 2005, A23.

<sup>17</sup>Jonathan Weisman and Charles R. Babcock, "'The Cur-

rency of Corruption’,” *Washington Post National Weekly Edition*, February 6–12, 2006, 15.

<sup>18</sup>Congress of the United States, Congressional Budget Office, *A Review of CBO’s Activities in 2004 Under the Unfunded Mandates Reform Act* (Washington, D.C.: Congressional Budget Office, March 2005).

<sup>19</sup>John Maggs, “Limping Toward Tax Reform,” *National Journal* 37 (October 22, 2005): 3280.

<sup>20</sup>Peter J. Ferrara, “The NGA Should Pay Its Own Way,” *Policy Brief* (Washington, D.C.: Americans for Tax Reform, 2005).

<sup>21</sup>*Gonzales v. Raich*, 543 U.S. \_\_\_\_ (2005).

<sup>22</sup>*Granholm v. Heald*, 543 U.S. \_\_\_\_ (2005).

<sup>23</sup>*GDF Realty Investments v. Norton*, 125 S. Ct. 2898 (2005).

<sup>24</sup>Quoted in Brooke A. Masters. “Who’s Watching Out for the Consumer?” *Washington Post National Weekly Edition*, January 17, 2005, 30.

---

### About the Author

**John Kincaid** is the Robert B. and Helen S. Meyner Professor of Government and Public Service and director of the Meyner Center for the Study of State and Local Government at Lafayette College, Easton, Pa. He is former editor of *Publius: The Journal of Federalism*; former executive director of the U.S. Advisory Commission on Intergovernmental Relations; and co-editor of *Constitutional Origins, Structure, and Change in Federal Countries* (2005).