



Sounding the Alarm: The Role of States in Monitoring the Federal Government

Christian Fritz

In December 2025, more than 40 bipartisan state legislative leaders from over 30 states, working through the National Conference of State Legislatures, issued a resolution titled “Federalism Restoration and State Empowerment.” This resolution reflects an important tradition that dates back to the founding and deserves attention in K-12 classrooms.

The distinctive feature of American federalism has long been understood to be the distribution of powers between the national and state governments. James Madison captured this idea of shared authority or sovereignty when he said the Constitution created a “compound republic” (*Federalist 51*). The compound republic distributes power both among the branches of the national government (separation of powers) and between the national government and the state governments (federalism). Madison envisioned a double security for liberty in which the states played a prominent role in monitoring and checking the power of the national government and the national government could check the states.

This foundational element of our system of government—shared sovereignty—warrants revisiting by K-12 teachers and students. Although states may attempt to limit national power in ways such as withholding cooperation, exerting political pressure, and challenging federal authority through legal and institutional channels, this Digest focuses on the role and responsibility of state governments to “[sound the alarm](#)” when the federal government exceeds its authority.

THE CORE CONCEPT OF AMERICAN FEDERALISM

Political thought in the late eighteenth century assumed that sovereignty was indivisible—that it was impossible to divide sovereignty between two forms of government. Our founding fathers were familiar with governments

in which all power resided with either a national government or local/state government. The model of shared [sovereignty](#) proposed by the 1787 constitutional convention thus departed from the theory and practice of governmental arrangements.

These prevailing understandings of government led some early Americans to believe that the powers granted to the federal government by the Constitution were intended (or at least had a tendency) to consolidate all power in the national government. Fear of such national consolidation and potential extinction of state power became a central concern of the Constitution’s opponents, the [Antifederalists](#). Supporters of the proposed Constitution, the [Federalists](#), worked hard to address that fear. Several supporters wrote essays defending the proposed Constitution, which are now known as *The Federalist Papers*. Central to the Federalists’ response was the claim that the Constitution’s structure itself—rather than mere promises or intentions—would prevent consolidation by separating power among branches within the federal government and dividing power between the federal and state governments.

The authors of those essays, [Alexander Hamilton](#), John Jay, and [James Madison](#), argued that the Constitution would not produce a national consolidation of power. Instead, in *Federalist 39*, Madison discussed numerous features and clauses of the Constitution to illustrate that the government it established was neither wholly “national” nor wholly “federal,” but rather a carefully balanced system in which power is divided, shared, and constrained across multiple institutions and governments.

EMERGENCE OF SOUNDING-THE-ALARM MOBILIZATION

Beyond defending the Constitution’s proposed structure of government, Hamilton, Jay, and Madison stressed

the natural advantages that states enjoyed because they interacted more closely with their citizens than would a distant national government. Moreover, they described state governors and state legislators as playing a key role in monitoring the distribution of power between the national and state governments.

Should the national government be tempted to overreach its constitutional authority or intrude upon the powers reserved to the states, state legislatures and governors would “sound the alarm” by passing resolutions decrying such overreaching. Madison and Hamilton especially predicted that the combination of state action and mobilized resistance in local communities would effectively monitor and adjust the equilibrium of federalism. They described this idea of “sounding the alarm” in eight essays (*Federalist* 26, 28, 44, 46, 52, 55, 84, and 85). “Sounding the alarm” cast governors and state legislators as “sentinels” or “guardians” of the constitutional equilibrium of federalism. In that capacity, they would identify and publicize any perceived encroachments by the national government on the authority of the state governments or the rights of the people. Sounding the alarm was to be a formal state protest against actions of the national government designed to focus public attention and generate interstate political pressure in an effort to reverse the national government’s alleged constitutional overreach.

The proposed Constitution was ratified in June 1788, but the idea of monitoring federalism by the state legislatures and governors was not forgotten. The idea resurfaced early in the new republic, when Virginia’s legislature in 1790 passed resolutions declaring the fiscal measures proposed by George Washington’s administration unconstitutional. As the architect of Washington’s economic policy, Hamilton condemned Virginia’s action and expressed shock at what he described as the presumptuousness of state legislators to call into question measures of the national government. Still, Hamilton could not deny that he had endorsed sounding-the-alarm resolutions during the ratification debates.

Despite objections to the use of [sounding-the-alarm](#) resolutions, the practice of state legislatures and governors monitoring federalism by raising objections grew during the nineteenth century. In what became a typical state response, sounding the alarm initially took the form of resolutions directed at a state’s congressional delegation, with copies shared with other state legislatures. Because state legislatures selected U.S. senators until 1913 when the Seventeenth Amendment made senators directly elected by the people as had been the case for members of the House of Representatives from the start, sounding-the-alarm resolutions prior to 1913 “instructed”

U.S. senators but only “requested” House members to act on matters of perceived federal overreach. Even during the Civil War, state legislatures in both the Union and the Confederacy passed resolutions identifying perceived overreach by their respective national governments and urged those governments to desist from overreaching. “Instructing and requesting” resolutions that sounded the alarm persisted into the late nineteenth century before gradually fading as a common practice once the direct election of U.S. senators removed the basis for state legislatures to “instruct” them. Even so, sounding the alarm by state legislatures and coordinated action by the states to resist perceived constitutional overreaching by the national government were important mechanisms for states to voice their concerns. Indeed, the practice of sounding the alarm remains a viable and legitimate tool to monitor America’s constitutional order.

LEGITIMACY OF SOUNDING THE ALARM

Two persistent but mistaken assumptions impede a full appreciation of the contemporary relevance of sounding the alarm as legitimate state action.

First, sounding alarm has mistakenly been associated with [nullification](#)—the discredited doctrine that individual states possess a right to veto or nullify actions of the national government with which they disagree. Nullification was advanced by the South Carolinian [John C. Calhoun](#) in the 1830s. However, Calhoun distorted the practice of sounding the alarm by equating it with nullification. (Some southerners perpetuated this misunderstanding in the twentieth century in efforts to defend racial segregation.) While the practice of sounding the alarm provided superficial plausibility for nullification, Madison never intended that a single state had the right to nullify national measures. There was a clear throughline of sounding the alarm from its description in *The Federalist* to its ongoing use by state legislatures. Namely, that states individually and collectively were entitled to weigh in on questionable constitutional overreaching by the national government to generate political pressure and shape public opinion.

Second, governors and state legislators offering their opinions on potential constitutional overreach might intrude on the work of the courts, particularly the Supreme Court. The Court certainly plays a key role in identifying constitutional overreach by the national government against the states or vice versa. However, the Supreme Court has never possessed an exclusive role in monitoring the American constitutional order. Instead, the Constitution has long required the attention and scrutiny of the people and their elected officials.

An early example was the constitutionality of a national bank. Highly contested when chartered in 1791, the First Bank of the United States remained controversial during the struggle over its recharter in 1816. The Supreme Court purported to settle the matter in *McCulloch v. Maryland* (1819), when Chief Justice John Marshall rendered an opinion unequivocally declaring the bank's constitutionality. Neither President Andrew Jackson nor President John Tyler agreed. Both noted that many Americans still questioned the constitutionality of a national bank. Indeed, the public opinion and political support Jackson mustered in his "war" against the bank in 1832 ended with the bank's demise, demonstrating that *McCulloch* was not the final word on the bank. As a practical matter, it took many years after *McCulloch* before public sentiment shifted and both the benefits and constitutionality of such a bank became widely accepted and reincarnated in today's Federal Reserve system.

THEORETICAL BASIS OF SOUNDING THE ALARM

From the beginning, sounding the alarm was justified by the oath that all state legislators and other public officials take to support the Constitution (Article VI). That oath requires state officials to recognize the supremacy of the Constitution and to comply with all constitutional actions of the federal government. But the oath also imposes an obligation, if not duty, to speak up if the national government seeks to exercise unconstitutional powers.

Ultimately, sounding the alarm grows out of the constitutional foundation of the American Revolution: that the ultimate and ongoing [justification of government](#) rests on the sovereign authority of the people. The function of state legislatures in sounding the alarm reflects the people's right to scrutinize their government.

EFFECTIVENESS AND SIGNIFICANCE OF SOUNDING THE ALARM

Historically, governors and state legislators exercising their right to sound the alarm have played an important role in monitoring American federalism. And from the start, state resistance to perceived overreach by the federal government has always crossed party lines. After Federalist John Adams' administration passed the Alien and Sedition Acts that threatened freedom of speech, due process, and freedom of the press, state legislatures mounted resistance. Similarly, when Republican Thomas Jefferson was president, state legislatures opposed warrantless seizures of goods and the use of state militias by the national government to enforce Jefferson's embargo policies.

Both of these instances of sounding the alarm met with success. Although the Virginia and Kentucky Resolutions

of 1798 did not prompt many other states to issue similar resolutions, the actions by Virginia and Kentucky heightened scrutiny of the Alien and Sedition Acts and became a central campaign issue for the Republican party. Jefferson's election to the presidency in 1800 and those of his followers to Congress reflected strong public opinion about the unconstitutionality of the acts. Likewise, the sounding-the-alarm resolutions passed by New England Federalist legislatures contributed to a growing but politically polarized attack on the constitutionality of the embargo and its enforcement. The embargo was repealed and replaced by the Non-Intercourse Act of 1809 in the final days of Jefferson's presidency.

States' sounding the alarm continued long after state legislatures no longer "instructed" their U.S. senators. Three examples of modern-day state resistance include opposition to the Patriot Act of 2001, the REAL ID Act of 2005 (which delayed its full implementation for 25 years), and the Affordable Care Act of 2010. All three measures prompted some state legislators and governors to question their constitutionality. Even more recent instances of states sounding the alarm about perceived constitutional overreach by the federal government have occurred in both the first and second administrations of President Donald Trump, including issues involving immigration and federal police power.

THEORETICAL BASIS OF SOUNDING THE ALARM

The history, tradition, and constitutional foundations for sounding the alarm should be a part of Americans' civic education. As long as the American federal system persists, the national government cannot do whatever it wants with respect to the states. Neither can states ignore national authority with which they disagree. As such, governors and state legislatures continue to exercise a legitimate right to sound the alarm at any time they think the federal government is overreaching its constitutional authority. The dynamic nature of American federalism ensures that the equilibrium between the federal and state governments will remain contested.



ABOUT THE AUTHOR

Christian Fritz is Emeritus Professor of Law at the University of New Mexico. He is a legal historian who has focused his writing on American constitutional history. His recent books include *American Sovereigns: The People and America's Constitutional Tradition Before the Civil War* and *Monitoring American Federalism: The History of State Legislative Resistance*.