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Chapter 1 : Federal and State Regulations | USF Diversity, Inclusion and Equal Opportunity

If the state and federal laws are in explicit conflict, the federal law prevails. These cases of conflict are explained with examples below. This is a good video about the history of state rights and conflicts between federal and state laws.

Federalism Federalism Federalism is a system of government in which power is divided between a national federal government and various state governments. In the United States, the U. Constitution gives certain powers to the federal government, other powers to the state governments, and yet other powers to both. States have their own legislative branch, executive branch, and judicial branch. The states are empowered to pass, enforce, and interpret laws, as long as they do not violate the Constitution. The federal government determines foreign policy, with exclusive power to make treaties, declare war, and control imports and exports. The federal government has the sole authority to print money. Most governmental responsibilities, however, are shared by state and federal governments and these include taxation, business regulation, environmental protection, and civil rights. Federalism in the United States has evolved quite a bit since it was first implemented in Two major kinds of federalism have dominated political theory. There is dual federalism, in which the federal and the state governments are co-equals. Under this theory, there is a very large group of powers belonging to the states, and the federal government is limited to only those powers explicitly listed in the Constitution. As such, the federal government has jurisdiction only to the extent of powers mentioned in the constitution. Under the second theory of federalism known as cooperative federalism, the national, state, and local governments interact cooperatively and collectively to solve common problems. Cooperative federalism asserts that the national government is supreme over the states. Regardless of the kind of federalism, the Constitution does provide some very specific powers to both the states and the federal government. Delegated Powers â€" Delegated powers are those powers specifically assigned to the Federal Government. The national government has very specific enumerated powers including the regulation of interstate and international trade, coinage and currency, war, maintenance of armed forces, postal system, enforcement copyrights and power to enter into treaties. Reserved Powers â€" In this case, all powers not specifically delegated to the Federal Government are to be reserved or saved for the State Governments. These powers include power to establish schools, establishment of local governments, and police powers. Implied Powers â€" These are powers that are NOT specifically delegated in the Constitution, but are understood to be necessary or allowed.

Chapter 2 : Federal and state environmental relations - Wikipedia

One way to learn about federal laws and regulations is through the federal agencies charged with enforcing them. Check the list below for links to agency sites on popular legal topics. Where no federal law exists, sites offer compilations of state laws on a topic.

The results on the state level, as of December , vary widely, as detailed below and in separate NCSL reports on Health exchanges and on Medicaid expansion. Update and Archive Notice: For seven years, to , some states and courts played a central role in seeking or demanding achnge in the federal ACA. As of , much health policy focus has shifted to discussions, proposals and congressional action on multiple alternative approaches, commonly termed the "American Health Care Act AHCA and related Senate measures, none of which became law. Supreme Court already admitted that an individual mandate without a tax penalty is unconstitutional," Paxton said in a statement. District Court in the Northern District of Texas. Read the lawsuit as filed. The latest lawsuit against Obamacare poses little immediate danger to the health care law â€" but it could look a lot more potent if the balance of the Supreme Court changes in the next two years. Supreme Court voted to uphold health insurance subsidies for people who purchased their insurance through a federal health insurance exchange. The ruling in King v. Burwell means that 6 million to 7 million people will continue to receive insurance subsidies. Supreme Court upheld most provisions of the Patient Protection and Affordable Care Act, but rejected the portion of the law that would have penalized states that did not comply with the expanded eligibility requirements for Medicaid, making expansion optional and a state decision. See information at U. Supreme Court and the Federal Health Law. Additional cases continue in , especially on paying insurers for the cost-sharing assistance NCSL will continue to update and analyze the law and its effects on states. A much smaller number of bills were considered - Earlier opposition enacted laws were expanded or amended in Arizona, Arkansas, South Carolina, and Tennessee. For ,15 such bills have been signed into law, in ten states. Select the keyword "Challenges, Opt-outs and Alternatives. These measures may include formal rejections of Medicaid expansion and prohibitions on running a state-based exchange. This number does not include all measures that may oppose HHS regulations or interpretations of implementation of the PPACA, such as mandated coverage of contraception, or optional steps such as administration and enforcement of insurance regulations. Summary of Enacted Provisions: Additional states have enacted measures considered non-conforming with the stated goals of the ACA, such as non-expansion of Medicaid, non-participation in the operation of the health exchange or marketplace, blocking individual health benefits such as contraception, or restrictions on navigators. These are detailed and tallied in other reports: The most recent actions were during in Arizona and Arkansas. Eighteen states currently have statutory or state constitutional language providing that state government will not implement or enforce mandates requiring the purchase of insurance by individuals or payments by employers. Supreme Court upheld the individual coverage mandate, which does not require a state role, the federal law fully applies and any contradictory state laws will have no current effect on PPACA provisions. These state laws do aim at barring state agencies and employees from enforcing fines and penalties, as of These actions are distinct from the 26 states that were parties to the federal court challenge ruled on by the Supreme Court on June 28, Utah repealed most of their compact statute in While 23 states have considered bills seeking to nullify the legal validity of the ACA, none of the bills have become law in their original form. One state, North Dakota, has enacted a law using portions of model state nullification language. Restricting use of Navigators. These are not repeated in the table above. This is binding but not statutory. Opposes elements of federal health reform, providing by constitutional amendment that residents may provide for their own health care, and that "a law or rule shall not compel any person, employer, or health care provider to participate in any health care system. Establishes the interstate "Health Care Compact" in the state of Alabama, allowing states that join the compact to propose state health policies that could replace federal provisions, citing, "Each member state, within its state, may suspend by legislation the operation of all federal laws, rules, regulations and orders regarding health care that are inconsistent with the laws and regulations adopted by the member state pursuant to this compact. Congress

before it becomes a recognized as interstate compact. Prohibits the "funding or implementation of a state-based health care exchange or marketplace. Restricts ACA-related activities by providing that the State Insurance Department shall not allocate, budget, expend, or utilize any appropriation authorized by the General Assembly for the purpose of advertisement, promotion, or other activities designed to promote or encourage enrollment in the Arkansas Health Insurance Marketplace or the Health Care Independence Program, including unsolicited communications mailed to potential recipients; television, radio, or online commercials; billboard or mobile billboard advertising; advertisements printed in newspapers, magazines, or other print media; and Internet websites and electronic media. Also would prohibit responding to an inquiry regarding the coverage for which a potential recipient might be eligible, including without limitation providing educational materials or information regarding any coverage for which the individual might qualify. Also see S Arkansas - SB , signed into law by the governor as Act No. Provides that the Dept. Also see H Prohibits the establishment through existing state law of a state-based health insurance exchange in the state under the ACA. Referencing the King v. Burwell case before the U. Joint resolution proposes a State Constitutional amendment to prohibit laws or rules from compelling any person, employer, or health care provider to participate in any health care system, permit any person or employer to purchase lawful health care services directly from health care provider, or permit health care provider to accept direct payment from person or employer for lawful health care services. Prohibits any agency or state action to expand Medicaid or accept any federal grant money to establish a state-run health exchange. Also ends the Univ. Provides by statute that "a resident of Indiana may not be required to purchase coverage under a health plan. Other provisions restricting agencies from implementing ACA provisions were deleted from the final enacted bill. Authorizes the state to join the "Health Care Compact," requiring member states of the compact to take action to secure the consent of Congress for the compact; asserting that member states of the compact have the primary responsibility to regulate health care in their respective States. Kansas - H , passed House and Senate; signed by the governor, May 25, Opposes specific provisions of federal health reform, providing in Sec. Accepts and adopts membership in the Health Care Compact; provides that each member state, within its state, may suspend by legislation the operation of all federal laws, rules, and regulations, and orders regarding health care that are inconsistent with the laws and regulations adopted by the member state pursuant to the compact. The purposes of this compact are, through means of joint and cooperative action among the compacting states to promote and protect the interest of consumers purchasing health benefit plan coverage. Provides that "any federal mandate implemented by the state shall be subject to statutory authorization of the general assembly. Any new proposed rule must "Certify that the rule does not have an adverse impact on, or must exempt small businesses with fewer than fifty full- or part-time employees. Establishes the interstate Health Care Compact, which would pledge member states to act jointly to oppose certain elements within health reform. Would amend state law chapter , a new section relating to the authority for creating and operating health insurance exchanges in Missouri. Would prohibit the establishment and operation of health insurance exchanges in Missouri unless the exchange is created by a legislative act, an initiative petition, or referendum, requiring voter approval. S , as Proposition E, was on the statewide ballot November 6, for a binding vote. Opposes elements of federal health reform, providing that by state law state agencies "may not implement or enforce in any way the provisions" or any federal regulation or policy implementing federal health reform "that relates to the requirement for individuals to purchase health insurance and maintain minimum essential health insurance coverage. Would prohibit, by state statute, the federal and state government from mandating the purchase of health insurance coverage; would prohibit imposing penalties related to health insurance decisions. Provides by insurance statute that a resident of New Hampshire shall not be required to obtain, to maintain, or be assessed a fee or fine for failure to obtain health insurance coverage. Effective date July 1, Prohibits the state from establishing a state based health insurance exchange. Also provides that in the event a federally-facilitated exchange is established for New Hampshire, the insurance commissioner retains authority with respect to insurance products sold in New Hampshire "on the federally-facilitated exchange to the maximum extent possible by law. Effective date June 18, It does permit use of federal grants for premium rate review. Continues an exception if health coverage is required by a court or by the state Department of Human

Services through a court or administrative proceeding. North Dakota - S was enacted and signed by the governor, April 27, It seeks to preserve their "freedom to choose their health care and health care coverage. Oklahoma - S was enacted and signed by the governor, May 18, South Carolina - H State budget for fiscal year was enacted and signed by the governor, August 2, It includes Section Enacts state participation in the Interstate Healthcare Compact; providing that state compact members must take action to obtain congressional consent to the compact; providing that the legislature is vested with the responsibility to regulate healthcare delivered in their state; provides for healthcare funding; also establishes the S. Prohibits, by statute, the state, the TennCare or Medicaid program or its residents from participating in any state option for Medicaid eligibility expansion authorized under the federal PPACA. Non-binding resolution; requests lawsuit against any fines. Provides by statute that the state join an interstate Health Care Compact, including a pledge to take joint and separate action to secure congressional approval "in order to return the authority to regulate health care to the member states. Renames the Constitutional Defense Council and creates the Commission on Federalism; provides for the repeal of the State Health Compact by July 1, , and subjects these provisions to a point sunset review prior to repeal. Amends state law by adding a section, "Health insurance coverage not required. No resident of this Commonwealth, regardless of whether he has or is eligible for health insurance coverage under any policy or program provided by or through his employer, or a plan sponsored by the Commonwealth or the federal government, shall be required to obtain or maintain a policy of individual insurance coverage. No provision of this title shall render a resident of this Commonwealth liable for any penalty, assessment, fee, or fine as a result of his failure to procure or obtain health insurance coverage. A constitutional amendment, stating that residents have the right to make their own health care decisions, while "any person may pay, and a health care provider may accept, direct payment for health care without imposition of penalties or fines for doing so. Amends the duties of the Wyoming Health Insurance Exchange Steering Committee to require a study report with 3 options including 1 an exchange based on Wyoming data without influence from the health care reform acts, 2 using selected parts of required federal features and 3 an exchange in complete compliance with the Act. Congress to call a constitutional convention to propose an amendment to repeal the Affordable Care Act. Article 5 requires two-thirds of the legislatures to make such a formal request in order to convene a constitutional convention. Colorado House Seeks U. Convention to Repeal ACA. Adopted by House 42yn; adopted by Senate 28y-5n. Would oppose any state role in compulsory participation in a health care system or purchase of health insurance; would prohibit any government official from enforcing prohibitions on purchase or sale of health insurance in private health care systems otherwise authorized by the laws of the state; would affirm a right to direct payment or purchase of lawful health care services; would prohibit threats of penalties, fines, taxes, salaries, wage withholding, surcharges or fees to punish or discourage the exercise of such right. Would authorize the Governor to enter into the "Interstate Health Care Freedom Compact," intended to guarantee the right and freedom of residents to pay or not to pay directly for health care services and to participate or not to participate in health plans and health systems. Also would create an "Interstate Advisory Health Care Commission" with representatives from each member state. Would have opposed selected provisions of the ACA, by declaring that the public policy of the state "is that every person within the state of Minnesota is and shall be free to choose or decline to choose any mode of securing health care services without penalty or threat of penalty. Would provide for an "Interstate Health Care Freedom Compact;" intended to guarantee the right and freedom of residents to pay or not to pay directly for health care services and to participate or not to participate in health plans and health systems. Compacts would coordinate across state lines. Would create advisory representatives from each state and require congressional approval.

Chapter 3 : Federalism | Wex Legal Dictionary / Encyclopedia | LII / Legal Information Institute

In the environmental law of the United States, relationships between state and federal parties often shape environmental laws and the practical impact of those www.nxgvision.com addition, environmental problems often do not have well defined boundaries and thus jurisdictional overlap complicate these matters.

Discriminatory practices under these laws also include: Title VII also prohibits discrimination because of participation in schools or places of worship associated with a particular racial, ethnic, or religious group. Employers are required to post notices to all employees advising them of their rights under the laws EEOC enforces and their right to be free from retaliation. Such notices must be accessible, as needed, to persons with visual or other disabilities that affect reading. Title VII Title VII prohibits not only intentional discrimination, but also practices that have the effect of discriminating against individuals because of their race, color, national origin, religion, or sex. National Origin Discrimination It is illegal to discriminate against an individual because of birthplace, ancestry, culture, or linguistic characteristics common to a specific ethnic group. A rule requiring that employees speak only English on the job may violate Title VII unless an employer shows that the requirement is necessary for conducting the business. If the employer believes such a rule is necessary, employees must be informed when English is required and the consequences for violating the rule. However, an employer who requests employment verification only for individuals of a particular national origin, or individuals who appear to be or sound foreign, may violate both Title VII and IRCA; verification must be obtained from all applicants and employees. Employers who impose citizenship requirements or give preferences to U. Religious Accommodation An employer is required to reasonably accommodate the religious belief of an employee or prospective employee, unless doing so would impose an undue hardship. Sexual Harassment - This includes practices ranging from direct requests for sexual favors to workplace conditions that create a hostile environment for persons of either gender. The "hostile environment" standard also applies to harassment on the bases of race, color, national origin, religion, age, and disability. Pregnancy Based Discrimination - Pregnancy, childbirth, and related medical conditions must be treated in the same way as other temporary illnesses or conditions. The Wage and Hour Division is listed in most telephone directories under U. Government, Department of Labor. An age limit may only be specified in the rare circumstance where age has been proven to be a bona fide occupational qualification BFOQ ; discrimination on the basis of age by apprenticeship programs, including joint labor-management apprenticeship programs; and denial of benefits to older employees. An employer may reduce benefits based on age only if the cost of providing the reduced benefits to older workers is the same as the cost of providing benefits to younger workers. Equal Pay Act EPA The EPA prohibits discrimination on the basis of sex in the payment of wages or benefits, where men and women perform work of similar skill, effort, and responsibility for the same employer under similar working conditions. Employers may not reduce wages of either sex to equalize pay between men and women. A violation may also occur where a labor union causes the employer to violate the law. It is necessary to understand several important ADA definitions to know who is protected by the law and what constitutes illegal discrimination: Individual with a Disability An individual with a disability under the ADA is a person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Major life activities are activities that an average person can perform with little or no difficulty such as walking, breathing, seeing, hearing, speaking, learning, and working. Qualified Individual with a Disability A qualified employee or applicant with a disability is someone who satisfies skill, experience, education, and other job-related requirements of the position held or desired, and who, with or without reasonable accommodation, can perform the essential functions of that position. Reasonable Accommodation Reasonable accommodation may include, but is not limited to, making existing facilities used by employees readily accessible to and usable by persons with disabilities; job restructuring; modification of work schedules; providing additional unpaid leave; reassignment to a vacant position; acquiring or modifying equipment or devices; adjusting or modifying examinations, training materials, or policies; and providing qualified readers or interpreters. Reasonable

accommodation may be necessary to apply for a job, to perform job functions, or to enjoy the benefits and privileges of employment that are enjoyed by people without disabilities. An employer is not required to lower production standards to make an accommodation. An employer generally is not obligated to provide personal use items such as eyeglasses or hearing aids. Prohibited Inquiries and Examinations Before making an offer of employment, an employer may not ask job applicants about the existence, nature, or severity of a disability. Applicants may be asked about their ability to perform job functions. A job offer may be conditioned on the results of a medical examination, but only if the examination is required for all entering employees in the same job category. Medical examinations of employees must be job-related and consistent with business necessity. Drug and Alcohol Use Employees and applicants currently engaging in the illegal use of drugs are not protected by the ADA, when an employer acts on the basis of such use. Employers may hold individuals who are illegally using drugs and individuals with alcoholism to the same standards of performance as other employees. Enacted in part to reverse several Supreme Court decisions that limited the rights of persons protected by these laws, the Act also provides additional protections. It also directs the EEOC to expand its technical assistance and outreach activities. However, no such employee benefit plan or system which measures earnings shall excuse the failure to hire, and no such seniority system, employee benefit plan, or system which measures earnings shall excuse the involuntary retirement of, any individual on the basis of any factor not related to the ability of such individual to perform the particular employment for which such individual has applied or in which such individual is engaged. This subsection shall not be construed to make unlawful the rejection or termination of employment when the individual applicant or employee has failed to meet bona fide requirements for the job or position sought or held or to require any changes in any bona fide retirement or pension programs or existing collective bargaining agreements during the life of the contract, or for 2 years after October 1, , whichever occurs first, nor shall this act preclude such physical and medical examinations of applicants and employees as an employer may require of applicants and employees to determine fitness for the job or position sought or held. This section shall not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporations, associations, educational institutions, or societies of its various activities.

Chapter 4 : State Laws and Actions Challenging Certain Health Reforms

Federal regulations "preempt any State law, including State statutes, regulations, or rules, that would conflict with or hinder satisfaction" of certain requirements regarding guaranty agency imposition of collection charges, reporting to consumer reporting agencies, and collection efforts on defaulted loans.

The federal role in mental health includes regulating systems and providers, protecting the rights of consumers, providing funding for services, and supporting research and innovation. As a major funding source for mental health services, the federal government establishes and enforces minimum standards that states can then expand upon. Federal Legislation and Regulations. Federal laws create changes and provide oversight across the states. Legislation at this level may take a longer time but can have a massive impact once passed. Regulations are rules issues by federal agencies to help implement the laws. In terms of mental health, regulations cover a variety of topics and apply to a number of groups including schools, insurance companies, treatment providers, and employers. The agencies also issue additional guidance when questions about compliance arise. The federal government invites individuals and groups to submit comments on regulations. You might see this or hear this referred to as a notice for proposed rulemaking. For more information about how you can be heard, check out www. The federal government works to protect the rights of individuals with mental health disorders in a variety of settings, including the workplace, schools, and in treatment. It sets privacy standards, prohibits abuse, and fights discrimination to promote civil liberties and inclusion. It works to provide reasonable accommodations and supports to those who need them. Federal Role in Funding Services. The federal government is a major funding stream for mental health services. While these programs do not focus exclusively on mental health, Medicaid is the single largest funder of mental health services in the country, which makes this support especially valuable. MHA supports the continued role of the federal government in funding services and advocates for expanded and sustained funding for mental health services. Federal Role in Research. Federal funding of mental health research creates opportunities to study causes of, treatments for, and recovery from mental health disorders that might not otherwise be available. This information contributes to our overall understanding of mental health disorders and services and can improve treatment and future research. State mental health systems must meet certain standards set by the federal government, but they are free to expand beyond what exists at the federal level and improve services, access, and protections for consumers. This freedom to experiment with new or innovative services and delivery models allows states to create improvements that can ultimately be translated across the country. State Legislation and Regulations. State laws create changes and provide oversight within the state. Regulations are rules issued by state agencies to help carry out laws. In terms of mental health, state regulations can address a variety of issues including treatment facilities, medical records, and standards for involuntary treatment. These rules help states to implement their mental health plans and provide guidance as to what is and is not allowed under law. States follow the protections established by the federal government with many states increasing protections even further. From the workplace to schools to treatment facilities, states have the power to increase standards for protecting privacy, fighting abuse, and eliminating barriers and discrimination to promote civil liberties and inclusion. This ranges from discretion over civil commitment standards to determining duty-to-warn laws to supporting access to the least restrictive services that keep people in the community. In addition to funding state hospitals, state funding is typically funneled to county and local levels where services are offered. Because they vary in their services and delivery of services, state reporting of outcomes provides important insight into what may or may not work and can translate into improvements both within a state and across other states. This flexibility can create examples of new or improved programs that can then be implemented around the country. State funded academic institutions also play an important role in fostering research.

Chapter 5 : Federal and State Laws | Department for Children and Families

State and Federal Laws Administrative Procedure Act & OAL Regulations: The Administrative Procedure Act (APA) establishes rulemaking procedures and standards for state agencies in California. The requirements set forth in the APA are designed to provide the public with a meaningful opportunity to participate in the adoption of state.

Dish Network , an employee sued for wrongful termination after he tested positive for marijuana. The plaintiff is a quadriplegic who used medical marijuana outside of working hours. Brandon Coats was a registered medical marijuana user, accessing the product in a manner consistent with state constitutional guarantees and state statute. This week, the Colorado Supreme Court ruled against Mr. Coats, and, frankly, the court was probably correct in its ruling. This perspective is not a popular one in the marijuana advocacy community, but it is a reality. Coats broke the law by using marijuana. He used a product that is illegal under the Controlled Substances Act, as marijuana is a schedule I drug. The Colorado Supreme Court did not let Mr. A confusing legal landscape created by congressional action and executive branch inaction led to this outcome. The provision in question was C. Based on reactions to the ruling, particularly in the marijuana and patient advocacy communities, this finding is quite controversial. Yet, should it be? This claim is not necessarily off-base. The provision of statute is a Colorado labor law, and perhaps its reach should include only other Colorado laws. Next though an issue the Court passed on , the text of Amendment 20 and Amendment 64 provide some insight. Amendment 20 a constitutional provision dealing with medical marijuana in Colorado offers an affirmative defense to medical marijuana users. To be clear, this does not necessarily deem its use legal. A creative court surely could have rested a ruling on this point: Alas, the Colorado Supreme Court withheld its creativity in Coats. The federal government, through the Fair Labor Standards Act , other laws and agency regulations, also sets bounds and rules for employment. An employer must maintain a working environment that is consistent with both state and federal laws. If a state allows children to be employed or working days to be long and without breaks, federal law would still prohibit it. Admittedly, the use of medical marijuana bears no resemblance to child labor exploitation. Labor law is federalist in nature, jurisdiction being shared between states and the federal government. In reality, a federal official could arrest Mr. Coats for marijuana-related offenses under federal law. By that logic, Mr. Advocates argue that if only the Colorado Supreme Court ruled in favor of Coats, the issue would be settled. However, perhaps that is not the case. Admittedly, I am not a labor lawyer, and thus, I ask: If Dish Network had standing in federal court, this issue becomes a no-brainer given the Controlled Substances Act, making the Colorado Supreme Court ruling mootâ€”regardless of its outcome. If you disagree with Coats, who should you blame? The answer to this question is simple: Yes, the Colorado Supreme Court could have ruled differently. Yes, the Colorado legislature could rewrite Dish Network draws into focus is an increasingly difficult element of drug policy and law in the United States. States are legalizing the use of medical and recreational marijuana. Federal efforts have limited funding for the use of enforcing medical marijuana laws Congress or use prosecutorial discretion to limit the enforcement of marijuana laws Department of Justice. However, those moves do not resolve the serious disconnects in the law that extend far beyond a medical marijuana patient fearing prosecution. Inconsistencies between state and federal marijuana laws extend to issues of employment, housing, banking, property rights and a variety of other areas. In fact, in many ways they enhance the legal difficulties and complexities in American drug policy. Federal officialsâ€”the president, regulators and, most importantly, Congressâ€”must take ownership over a system of disconnected laws and policies. Federalism is a system that can work quite well, yet current drug policy shows precisely how a patchwork of temporary fixes can lead to profound confusion and unintended consequences. And in the case of Coats v. Dish Network, that patchwork also has a real life victim: His research examines questions of presidential power in the contexts of administration, personnel and public policy. Additionally, he focuses on campaigns and elections, bureaucratic process and legislative-executive interaction. He is the author of a new book, Presidential Pork. This article first appeared on the Brookings site.

Chapter 6 : The Federal and State Role in Mental Health | Mental Health America

KAMIN_FINAL 5/31/ PM COOPERATIVE FEDERALISM AND STATE MARIJUANA REGULATION SAM KAMIN INTRODUCTION I would like to thank Melissa Hart and the Byron R. White Center for the Study of American Constitutional Law for the.*

Endangered Species Act Formation of Policy[edit] Prior to the late s, nearly all environmental policy was at the state and local level. Currently, most federal environmental laws grant both expansive regulatory authority to federal agencies, as well as authorize states to implement plans outlined in federal laws. This model is often called "cooperative federalism. States can directly shape federal policy in the way states choose to enforce, or not enforce, environmental regulation. Federal regulation of nonpoint source water pollution is often cited as weak, in part because localities often lack the incentive to enforce federal regulations, and federal enforcers do not have the authority to countermand state decisions. States often serve as testing grounds for policies which may be adopted as federal law or policy later. This idea, often called " Laboratories of democracy ," was articulated by Louis Brandeis in dissent to a supreme court ruling. States often adopt successful regulations from other states as well. Currently, 18 states and New York City have enacted laws requiring the recycling of electronics at the end of their useful lives. Some states have adopted legislation similar to existing legislation in other states, and Congress has recently considered several bills to regulate e-waste , perhaps as a result of pioneering state regulation. States have also used litigation to force federal regulation. A "deluge" of litigation has forced federal agencies, and the EPA in particular, to adopt more aggressive policies. In the absence of federal climate change regulation, states have brought public nuisance suits against carbon emitters and the EPA. EPA , a group of states succeeded in compelling EPA to promulgate rules to regulate C02 emissions under the clean air act [8] States have spurred federal action by bringing suit against emitters directly, such as when California sued General Motors [9] and a number of states sued power companies, both over carbon emissions. States may perceive this signal to mean more stringent regulation is necessary. In some cases, states have reacted to federal environmental policy by enacting legislation to limit state agencies from enforcing standards more stringent than federal standards. Federal law may preempt state legislation in issues of interstate commerce or navigable waters. Federalism doctrine limits federal power as well. For example, federal policy regarding non-point water pollution is typically subsidies to states with plans to regulate these emissions, in part because of the serious question as to whether the federal government can regulate interstate land use, as it applies to pollution. Environmental issues are often regional or nationwide and this is reflected in regulation. Some problems are addressed at the federal level or the state level, while others are regulated by both. Under the 10th amendment , any area over which the federal government does not have authority is under state authority. Federal regulation preempts state and local legislation under the supremacy clause when the two conflict, and under the Dormant Commerce Clause when federal legislation is silent and states seek local protectionism. In many situations of environmental regulations, state and federal governments have Concurrent powers , where each government is permitted to have its own regulation. When the federal government would like state governments to take certain actions, the federal government may use conditional spending provisions , offering money if states take the desired actions. While some link must exist between the federal money and the desired action, the links may be tenuous. The federal government may not coerce state action or commandeer state resources to take certain actions. However, when the federal government has authority to take the desired actions directly, it may use conditional preemption. Conditional preemption is where the federal government allows states to take the desired actions, and if states do not satisfy federal demands, the federal government steps in and takes over enforcement. Examples[edit] With the Coastal Zone Management Act , the federal government sought to encourage states to develop a plan for managing coastal zones. The act is voluntary and the federal government assists with the creation of plans and with finances. State management plans have authority and any federal actions in the states is limited to state plans. The federal government wanted states and tribes to have a plan in the event of a chemical disaster. They offered funding for states and tribes to create such a plan, as well as offered technical expertise and information. The

Endangered Species Program is one example of concurrent powers. The federal program maintains a list of endangered or threatened animals that must be protected. States, such as Florida, may have their own plans designating animals as threatened or endangered. Federal law serves as a floor, establishing the minimum a state may do to protect species on these lists, and the minimum number of animals on these lists. The Clean Air Act provides an example of conditional preemption. States regulators make the permitting decisions with regard to new sources of pollution. The EPA, however, may countermand state permitting decisions under some circumstances. The notion is that as long as states meet the federal standards, the EPA will not step in. However, there are fundamental differences regarding how this is enforced. State notification and assistance are used by the EPA to encourage state and local governments to initiate environmental action. In the CAA, the EPA must issue a notice to the state government, informing the state that there is an instance of non-compliance that must be corrected. If the state does not take corrective measures by the declared deadline in the notice, the EPA can assume all enforcement authority previously given to the state regarding the CAA. The deadline cannot be any later than 1 year from the date the notice was issued. Much like the CAA, states in non-compliance are given a notification; however, in this case it is a day notice. If continued infractions warrant federal intervention, the EPA must provide technical assistance, advice, and a day notification to the state, so the state has a chance for remedial action. However, this issuing right can be given to states that meet federal standards. Although notification to the state by the EPA is required by law, the timeline of the notification is not strictly defined, allowing the EPA to interpret what is considered a "timely manner for notification". Furthermore, the EPA has created "guidelines", called the Enforcement Response Policy, that establish specific techniques to solve pollution problems and sources of pollution that should be dealt with. Although states are not legally required to abide by these "guidelines," the EPA uses them as a measurement of compliance. Therefore, states must adhere to these "guidelines" in order to prevent federal intervention; however, these guidelines are very specific in some cases such that states with limited resources cannot properly address other sources or use more efficient techniques that are not covered in the "guidelines. This list designates sites that must be cleaned up to protect public health. The EPA has the option to lead the cleanup themselves and require state involvement or give funds to a state, who would then lead the cleanup measures. However, before the EPA can provided any funding to a state, the state must guarantee that it will meet certain EPA requirements in the cleanup effort. The Emergency Planning and Community Right to Know Act grants federal authority to state and local governments in order to gather information about potentially hazardous chemicals stored within the local communities. Congress did not provide the EPA with much funding for this Act, allowing for state and local initiatives to expand without federal oversight. Regulation involving underground storage tanks under RCRA encourage state level enforcement. RCRA does not mandate states to adopt an underground storage tank program of their own if the EPA deems the state capable of enforcing compliance and the state enters into an agreement with the EPA. In these circumstances, the state is acting as an agent of the federal government. Thus, actions administered by the state may preclude any further action by the federal government. This is especially the case when dealing with multi-state issues and overlapping jurisdictions. Many regional EPA offices and state environmental entities regularly hold conferences together to ensure that important information and details are shared for quicker action. This creates complications for the entity being punished, as well as the state and federal governments themselves. If overfiling occurs, entities will be less willing to enter agreements with a state, fearing that what the state promises may be superseded by the will of the federal government. Subsequently, the state government may be less cooperative in future dealings with the federal government. An example of this is the case of U. EPA , the Supreme Court found that both the EPA and states have some authority in state permitting decisions, and under certain circumstances, the EPA may countermand state permitting decisions. In an Supreme Court case Gibbons v. This granted the federal government direct regulatory authority over the waterways themselves, and forms the basis of the Clean Water Act and wetlands policy. In , Florida state passed a housing bill that will interfere with federal oversight of waterways and wetlands.

Chapter 7 : Laws and Executive Orders | Laws & Regulations | US EPA

Find regulations Title 40, Code of Federal Regulations (40 CFR) Regulations are codified annually in the U.S. Code of Federal Regulations (CFR). Title Protection of Environment is the section of the CFR that deals with EPA's mission of protecting human health and the environment.

The Code of Federal Regulations , the codification of federal administrative law Congress often enacts statutes that grant broad rulemaking authority to federal agencies. Therefore, federal agencies are authorized to promulgate regulations. Under the principle of Chevron deference, regulations normally carry the force of law as long as they are based on a reasonable interpretation of the relevant statutes. Eventually, after a period for public comment and revisions based on comments received, a final version is published in the Federal Register. The regulations are codified and incorporated into the Code of Federal Regulations CFR which is published once a year on a rolling schedule. Besides regulations formally promulgated under the APA, federal agencies also frequently promulgate an enormous amount of forms, manuals, policy statements, letters, and rulings. These documents may be considered by a court as persuasive authority as to how a particular statute or regulation may be interpreted known as Skidmore deference , but are not entitled to Chevron deference. Common law, case law, and precedent[edit] Further information: United States Reports and National Reporter System Unlike the situation with the states, there is no plenary reception statute at the federal level that continued the common law and thereby granted federal courts the power to formulate legal precedent like their English predecessors. Federal courts are solely creatures of the federal Constitution and the federal Judiciary Acts. Prior to a major change to federal court rules in , about one-fifth of federal appellate cases were published and thereby became binding precedents, while the rest were unpublished and bound only the parties to each case. Judges saw themselves as merely declaring the law which had always theoretically existed, and not as making the law. Justice Brandeis once observed that "in most matters it is more important that the applicable rule of law be settled than that it be settled right. And that willingness could itself threaten to substitute disruption, confusion, and uncertainty for necessary legal stability. We have not found here any factors that might overcome these considerations. This trend has been strongly evident in federal substantive due process [47] and Commerce Clause decisions. Tompkins , there is no general federal common law. Although federal courts can create federal common law in the form of case law, such law must be linked one way or another to the interpretation of a particular federal constitutional provision, statute, or regulation which in turn was enacted as part of the Constitution or after. Federal courts lack the plenary power possessed by state courts to simply make up law, which the latter are able to do in the absence of constitutional or statutory provisions replacing the common law. Only in a few narrow limited areas, like maritime law, [53] has the Constitution expressly authorized the continuation of English common law at the federal level meaning that in those areas federal courts can continue to make law as they see fit, subject to the limitations of stare decisis. The other major implication of the Erie doctrine is that federal courts cannot dictate the content of state law when there is no federal issue and thus no federal supremacy issue in a case. State law United States The fifty American states are separate sovereigns , [60] with their own state constitutions , state governments , and state courts. All states have a legislative branch which enacts state statutes, an executive branch that promulgates state regulations pursuant to statutory authorization, and a judicial branch that applies, interprets, and occasionally overturns both state statutes and regulations, as well as local ordinances. They retain plenary power to make laws covering anything not preempted by the federal Constitution, federal statutes, or international treaties ratified by the federal Senate. Normally, state supreme courts are the final interpreters of state constitutions and state law, unless their interpretation itself presents a federal issue, in which case a decision may be appealed to the U. Supreme Court by way of a petition for writ of certiorari.

Chapter 8 : State vs. Federal Law: Who Really Holds the Trump Card? | HuffPost

A federal law applies to the nation as a whole and to all 50 states whereas state laws are only in effect within that particular state. If a state law gives people more rights than a federal law.

Lover of music, travel, and everything art related State vs. Who Really Holds the Trump Card? If a state law gives people more rights than a federal law, the state law is legally supposed to prevail. This means state law will always supersede federal law when the person in question stands to gain more from the state law, right? Yes, you may say, "Well they are. There are two basic levels in the U. A federal law applies to the nation as a whole and to all 50 states whereas state laws are only in effect within that particular state. The law that applies to situations where state and federal laws disagree is called the supremacy clause, which is part of article VI of the Constitution. When there is a conflict between a state law and federal law, it is the federal law that prevails. For example, if a federal regulation prohibits the use of medical marijuana, but a state regulation allows it, the federal law prevails. Confused as to what really happens when state and federal laws clash? The decisions will almost certainly effect what role states can play in recognizing same sex marriage. Even President Obama has said that states and states alone should decide whether same sex marriage is legal within their borders. As of now there are 17 states that recognize same-sex marriage and 33 states that have a ban against it. So, does federal law recognize same-sex marriage? The federal government must now recognize valid same-sex marriages according to the U. This decision cleared the way for same-sex married couples to receive federal benefits. Yet not all facets of the federal government adhere to that. The IRS recognizes same-sex marriage as married under all federal tax provisions where marriage is a factor. The Social Security Administration however, only recognizes marriages that are valid in the state where the couple lives for the purposes of granting federal benefits. Lets move onto my favorite subject, pot. At the federal level there is the Controlled Substances Act, which classifies marijuana as a Schedule I substance. This act considers pot to have a high potential for dependency and no accepted medical use, making distribution of marijuana a federal offense. In October of , the Obama Administration sent a memo to federal prosecutors encouraging them not to prosecute people who distribute marijuana for medical purposes in accordance with state law. We can look at the case of Gerald Duval Jr. Duval claims he is on the frontlines of the war over medical marijuana. Now, he will soon serve a year prison sentence for breaking the U. How can this even be fair? Well, this my friends is how I see it Regress back into your childhood and think of your father as the state law and your mother as the federal law. You want to go to a party and stay out a little later past your curfew. Your father state says yes but your mother federal says no. Who ultimately has the final say?

Chapter 9 : Federalism | US Department of Transportation

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