



FEDERALISM SYMPOSIUM PROGRAM

Friday, October 29, 2010
George Washington University Law School
2000 H Street, N.W., Washington, DC

9:00 – 9:15 am

Welcome and Introductions:

Robert A. Stein, ULC President; Everett Fraser Professor,
University of Minnesota School of Law, Minneapolis, MN
Raymond P. Pepe, Chair, ULC Federalism and State Law
Committee; K & L Gates, Harrisburg, PA
Alan B. Morrison, Associate Dean, George Washington
University Law School, Washington, DC

9:15 – 10:15 am

Origins of Federalism Principles: What They Were and What They Are
Now

Daniel A. Farber, Sato Sho Professor, University of California,
Berkeley, School of Law, Berkeley, CA

Among the topics that Professor Farber will discuss are:

- 1. Factors that have led to expansion or contraction of federal power and scope of federal legislation and regulation*
- 2. The courts and pre-emption, summarizing the basic doctrines that have developed and the limitations of and problems with those approaches. When considering the preemptive effect of conduct by regulatory agencies, have the courts handled those inquiries reasonably?*
- 3. Dissection of the reasons for Reagan, Clinton, and Obama executive orders on preemption*
- 4. Brief review of the theory of federalism*
- 5. Barriers to effective delineation of responsibilities and power*

Moderator: Robert Stein

10:15 – 10:30 am

Break

10:30 – 11:30 am Legislating Areas of Shared Federal and State Interest

Discussion of examples of preemption that were necessary and done reasonably well, and preemption that either was ill advised or not well done. There should be focus on some specific examples (e.g., medical devices and drugs; tobacco labeling and advertising), so that the discussion is not at an overly general level.

Professor Catherine M. Sharkey, New York University
School of Law, New York, NY

What should Congress do differently when it considers preempting state law, particularly when it considers doing so in areas that have traditionally been the subject of state law or regulation?

Panelists:

Professor Brian Wolfman, Georgetown University Law
Center, Washington, DC , former Director of the Public
Citizen Litigation Group,

Daniel Jarcho, McKenna, Long & Aldridge, Washington,
DC

Professor Sharkey

Moderator: Alan Morrison, George Washington University Law School

11:30 am – 12:30 pm Regulating Areas of Shared Federal and State Responsibility: A Case
Study of the Financial Reform Legislation

This panel will look in some detail at the preemption and other effects on the federal/state relationships as a result of the new financial reform legislation, both because of the current interest in that legislation and as a general example of federal legislation in an area of shared responsibility.

Speaker:

Professor Arthur E. Wilmarth, Jr., George Washington
University Law School, Washington, DC

Panelists:

Raymond Natter, Barnett Siron Natter, Washington, DC

Lauren Saunders, National Consumer Law Center,
Washington, DC

Moderator:

12:45 – 2:00 pm

Luncheon with Speaker

Senator and former Governor Thomas Carper of Delaware

2:15 – 3:15 pm

Perspectives on the Obama Administration's State and Federal
Cooperation Initiatives

Associate Attorney General Thomas Perrelli (*invited*)

Professor David J. Barron, formerly Acting Assistant Attorney
General, Office of Legal Counsel; Harvard Law School,
Cambridge, MA

Gerald Coyne, Chief Deputy Attorney General, Rhode Island

Speakers will discuss President Obama's decision to issue the May 2009 memorandum that reaffirmed the Clinton Executive Order on Preemption and how the administration has used the principles espoused in the Executive Order to deal with some of the issues that have arisen since the issuance of the memorandum.

Have the Executive Orders (including an earlier one issued by President Reagan) been effective and useful? What should federal executive and regulatory agencies do differently when they consider preempting state law, particularly when they consider doing so in area that have traditionally been the subject of state law or regulation?

Moderator:

3:15 – 3:30 pm

Break

3:30 – 4:45 pm

Redefining the State and Federal Relationship

Part A:

Overview and Discussion of the ULC Draft Statement of Federalism
Principles and the Report and Recommendations of the ABA Task Force
on Agency Preemption of State Tort Law

Raymond P. Pepe, K & L Gates, LLP, Harrisburg, PA

Edward F. Sherman, Chair of the ABA Task Force; W.R. Irby
Chair & Moise S. Steeg, Jr., Professor, Tulane University
School of Law, New Orleans, LA

Moderator: Robert Stein

Part B: Open Questions and Discussion

Panelists from the 2:15 p.m. Panel and from Part A of this Panel

Other Panelists

Joni Cutler, Member, South Dakota House of
Representatives, Sioux Falls, SD

Daniel Troy, former Chief Counsel, Food & Drug
Administration; Senior Vice President and General
Counsel, Glaxo Smith Kline, Philadelphia, PA

David L. Williams, President of the Kentucky Senate and
Chair of the Council of State Governments, Frankfort, KY

Moderator: Professor Daniel Farber

Among the topics for discussion during Parts A and B are:

*How best to integrate the roles and responsibilities of
federal and state governments in recognition of our
complex national economy;
Discuss and evaluate the different general models for
shared federal/state responsibility (which are summarized
in the ULC Federalism Principles);
Should Congress be more explicit as to when a federal
regulatory agency has the power to preempt, or should
agencies be given more discretion to decide those issues?
What should be the nature of the prescribed rulemaking
process before an agency can preempt?
Would it be useful to re-establish an entity such as the
former National Advisory Committee on Intergovernmental
Relations to facilitate dialogue among federal, state and
local government officials about the allocation of
responsibilities among the governmental levels in specific
areas, and do discuss specific issues and problems that are
on the horizon.*

Comments and Questions from the audience

4:45 – 5:00 pm

Concluding Session

Moderator: Robert Stein