

# When states' rights are right

*Gemma Alexander*

States' rights advocates have often ended up on the wrong side of history – most famously, during the Civil War, but more recently in battles over [segregation](#), [voter suppression](#), and [religious discrimination](#). But plenty of evidence supports the wisdom of balancing power between state and federal governments. The traditional role of the federal government in protecting citizens from unfair state laws is sometimes reversed, and there's a growing [movement](#) in which state governments have taken the moral high ground against misguided federal policies. Here are five times that states have stepped up when the federal government couldn't get it right.

## Marriage equality

In 2015, the U.S. Supreme Court legalized [same-sex marriage](#) in *Obergefell v. Hodges*. But SCOTUS was nonetheless behind the curve on gay marriage. In 1992, the District of Columbia established [domestic partnerships](#) that provided spousal rights to gay couples; in 1999, California was the first state to do so. A Hawaiian court took the first step toward legalizing gay marriage when it [ruled](#) in 1993 that denying marriage to same-sex couples violated the state's constitution. A decade later, in 2003, Massachusetts became the first state to provide marriage equality when its highest court issued a similar ruling. During the next decade, different states went in different directions, some banning but others legalizing same-sex marriage. But by the time the Supreme Court decided *Obergefell*, marriage equality was [already the law](#) in 37 states and the District of Columbia.

## Climate change

The United States briefly took the lead in the fight against climate change when it helped create the [Paris Climate Accord](#), the international agreement that requires participating nations to undertake ambitious efforts to combat climate change and adapt to its effects. The Accord has been ratified by 172 nations, with even war-torn Syria pledging to participate. But President Donald Trump has rejected it, making the United States the [only nation](#) uncommitted to [addressing climate change](#). Responding to the president's action, the governors of California, New York, and Washington created [The United States Climate Alliance](#), a bi-partisan coalition of

states committed to the Paris agreement. The Alliance quickly grew to include 15 states, representing more than 36 percent of the U.S. population. Alliance-member governors recently [attended](#) climate talks at the United Nations General Assembly and will attend the United Nations' Framework Convention on Climate Change, meetings that were once the exclusive domain of the U.S. State Department.

## Net neutrality

In December, the federal government ended [net neutrality](#) regulations that had kept internet service providers from unnecessarily interfering with users' access to content on the internet. The Federal Communications Commission (FCC) acted despite wide public support, across the political spectrum, for a free and open [internet](#), and despite evidence that the FCC's public comment process had been flooded by robotic fake comments submitted with identities stolen from real Americans. Eighteen states [petitioned](#) the FCC to delay its net neutrality vote while an investigation into the fraudulent public comments was completed. After the vote, the states of New York and Washington [responded](#) immediately by announcing lawsuits to fight the FCC's action. Other states have pledged to join them; when the lawsuits are filed (which could be as soon as January 2018), as many as 18 states may be involved. Anticipating pushback against the unpopular move, the FCC repeal order included language that prohibits state and local governments from establishing their own net neutrality protections. However, both [New York](#) and [Washington](#) have proposed state legislation designed to work around those restrictions and preserve the free and open internet for their residents.

## Marijuana legalization

The federal government has listed marijuana as a Schedule 1 drug since 1970, repeatedly rejecting efforts to [reclassify](#) it. The current U.S. Attorney General has [unfavorably](#) compared pot smokers to the KKK. Using alarmist language reminiscent of the 1930s anti-pot film *Reefer Madness*, Attorney General Jeff Sessions has worked to [block](#) both medical marijuana laws and, on January 4, 2018, the Department of Justice rescinded the Obama-era [Cole memo](#), which had deprioritized federal enforcement of marijuana laws in states that had legalized marijuana. Meanwhile, those states are raking in millions in [new tax revenue](#) and generating [new jobs](#) and businesses. Marijuana sales in Washington state alone generated [\\$281 million](#) in 2017 excise taxes, and up to 150,000 people nationwide worked in the marijuana industry at the beginning of 2017. Although it is too soon for truly reliable

studies, states appear to reaping the financial benefits without experiencing any of the dire [effects](#) of crime and addiction predicted by opponents. To date, 29 states and the District of Columbia have [legalized](#) medical marijuana, with others allowing limited medical use. Eight states have legalized recreational marijuana, and 14 others have decriminalized the possession and use of small amounts of pot.

## **International trade**

Twelve nations that border the Pacific Ocean developed the [Trans-Pacific Partnership](#) (TPP), and together they represent roughly 40 percent of the world's economic output. The TPP was designed to eventually create a Pacific Rim free-trade zone comparable to the single market of the European Union, but the pact had to be ratified by all 12 participants to take effect. Despite flaws, the TPP was widely supported as beneficial to all parties. It did, however, have detractors in the United States – chief among them, Donald Trump. Once elected, President Trump [backed out](#) of the agreement. The remaining 11 members have moved forward to develop a more modest agreement that excludes the United States. Since pulling out of the TPP, Trump has repeatedly and publicly [threatened](#) the future of the North American Free Trade Agreement (NAFTA), too. U.S. governors, seeking to protect [international businesses](#) in their states, have responded by stepping up their [international travel](#) schedules. Governors are attending international trade conferences and meeting individually with foreign leaders to establish direct trade relations, [defend NAFTA](#), and bypass the president's jingoistic, anti-trade stance.

The tension between federal power and states' rights runs deep in American history, going all the way back to the [writing of the U.S. Constitution](#). But history has shown that the right side of the argument is neither federal nor state, but the safety provided by maintaining the balance between them.