

Attack of the federalistas

By Neal Peirce

The Seattle Times

Monday, February 27, 2006

Is it true that Washington is now ruled by a legion of "federalistas" — officials either in thrall to special interests, or anxious to pre-empt state laws and rules to stop experimentation and shrink the overall size of government?

James Tierney, former Maine attorney general, a Democrat and director of the National State Attorneys General Program at Columbia Law School, asserts that's precisely what's happening in George W. Bush's executive branch. A major investigative report by the Los Angeles Times cites a raft of cases one can read to support the point. The State PIRGs (public interest research groups) have just issued a "Preemption Alert" listing a broad array of federal actions now threatening state powers to protect consumers and the environment.

Once upon a time, Republican leaders championed states' rights and limited federal power. The new wave of preemption actions suggests that's no longer the case. "This is the most aggressive federal government in the history of the United States," asserts California's Democratic Attorney General Bill Lockyer.

The issues on which the federal agencies have already moved, or are currently considering a move against state powers, include a ban on state actions to address perhaps the most critical issue of our time: cutting global warming, in this instance by limiting vehicle emissions. But many are directly consumer-based: looming federal actions to stop states from securing the safety of prescription drugs for their citizens; from protecting consumer credit-card rights; from lawsuits to curb alleged racial bias in banks' lending practices; and from authorizing suits against automakers in roof-crush injury cases.

States' rights, of course, shouldn't always prevail — if they had, we wouldn't have had a civil-rights revolution in the 1960s. Today and always, notes Tierney, there are areas where Washington ought to exercise exclusive jurisdiction.

But the fundamental questions of federal-system balance are never asked by the Bush administration operatives, he contends: "They *always* come down on the side of expanded federal power at the expense of state governments, in every case supported by large regulated industries. They do it administratively, they do it through rule-making. Or when a private industry challenges a state's law or rules in court, this federal government intervenes for the private industry, against the state."

The Bush administration's official position is there's no coordinated approach. Decisions on preempting state laws, in the words of Scott Milburn of the White House Office of Management and Budget, "are made agency by agency and rule by rule."

But the constant pro-industry position suggests the administration has embraced a view akin to that of Michael Greve of the conservative American Enterprise Institute — that preemption is needed to protect the economy from "trial lawyers, ambitious state attorneys general and parochial state legislatures."

One is left wondering — what space is left for state-by-state experimentation, and states' ability to defend their citizens against powerful corporations and the kinds of special interests now riding high in official Washington's Jack Abramoff-style lobbying culture?

Congress, in general, doesn't seem to have as large an appetite for federal preemption as does the Bush administration. Lawmakers of both parties have qualms about excessive executive-branch powers.

But the State PIRGs warn that the danger is not just from the executive branch, but Capitol Hill too. Just last year, Congress knuckled under to the gun lobby with legislation exempting manufacturers from most liability lawsuits filed by state and local governments or individuals for crimes committed with firearms.

Some conservatives, notes Tierney, are worried. "But none of those conservatives work any more for this administration."

Instead, he predicts, the pro-business, pre-emption moves of the Bush administration may just increase, because the officials who remain at the end of any presidential administration tend to be the most ideological and committed, sticking in place to the bitter end. Just note, he recalls, the controversial moves uncorked in the final days of the Clinton administration to reduce harmful emissions from diesel fuel, reduce arsenic levels in water and protect wilderness areas.

The big difference is that many of Clinton's moves had strong public support. Moves to preempt states' rights to reduce consumer rights and advance corporate interests aren't nearly as popular. But the zeal and consistency by which the federalistas are pushing preemption and stomping on states' rights raises deep concern — about our fundamental choices as a society, and about the continued health of our federal system.