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Trump endorses states' rights — but only when he agrees with the state

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The Trump administration is all in favor of states' rights. Except when it's not.

Attorney General Jeff Sessions brushed aside state autonomy to sue California over its so-called sanctuary policies that shield undocumented immigrants from deportation. He also unleashed federal prosecutors to go after marijuana businesses in the states that have legalized cannabis sales.

Interior Secretary Ryan Zinke is butting heads with governors in coastal states over his agency's plan to open federal waters to offshore drilling.

And Education Secretary Betsy DeVos told states they lacked the authority to crack down on predatory practices by some of the nation's largest student loan companies.

President Donald Trump wouldn't be the first Republican to pay lip service to states' rights as a presidential candidate and then to govern quite differently, but the disconnect is especially jarring because he has been so vocal about the issue. Trump declared in his inaugural address that "we are not merely transferring power from one administration to another, or from one party to another, but we are transferring power from Washington, D.C., and giving it back to you, the American people."

He made an even more direct commitment when he first met the nation's governors, pledging to "make states the laboratories of democracy once again."

Advocates of robust state authority say they're disappointed but not surprised.

"It's one thing when they're not in power, and another once they come into power," said Clark Neily of the libertarian Cato Institute.

Most egregious, Neily argued, is the Trump administration's targeting of laws legalizing marijuana for recreational use passed by eight states and the District of Columbia. More than 20 more states now permit limited use of medical marijuana under certain circumstances.

"The states and people moving in one direction and the federal government moving in another," he said. "That's exactly what the Founding Fathers" wanted to prevent with a federalist system.

Of course, from the earliest days of the American experiment, states have pushed back against administrations of all ideological stripes that were trying to impose their views. The perpetual tug of war between the federal and state governments, addressed only generally in the 10th

Amendment to the U.S. Constitution, has created reams of case law. And the challenges continue: Republican-led states brought dozens of suits against former President Barack Obama's administration, whether over new limits on smog, bathroom access for transgender students or the mandate that most Americans carry health insurance.

But in Trump's administration, it's not just Democratic state attorneys general and governors who are challenging the orders.

Sen. Cory Gardner, Republican of Colorado, clashed with the attorney general of his own party after Sessions, in January, rolled back Obama's policy of noninterference with states that legalized marijuana. Gardner railed against the decision on the Senate floor as "a trampling of Colorado's rights, its voters" and vowed to block Trump's nominees to the Justice Department over the issue, though he has since released his hold on several nominees.

DeVos' move in March to shield companies that collect federal student loans from state crackdowns on abusive practices drew objections from nearly half the nation's attorneys general — several Republicans among them.

Colorado Attorney General Cynthia H. Coffman slammed the policy as "attempted federal overreach." The Trump administration, she said in a statement to POLITICO, "simply does not have the authority to unilaterally preempt the right of states to protect their citizens from student loan servicers and debt collectors who violate state consumer protection law."

Even the National Governors Association, a nonpartisan organization representing governors of both parties, urged DeVos to reconsider the decision. The group said it is concerned that DeVos' Education Department "is heading in a direction that runs counter to the principles of collaborative federalism governors presented to Congress."

Zinke also is finding it difficult to balance the administration's talk of states' rights with Trump's desire to open federal land and waters to oil and gas drilling.

Governors from nearly every state along the Atlantic and Pacific have asked him to take their coasts out of Interior's five-year offshore drilling plan, saying drilling could hurt their tourism and fishing economies.

Zinke met with the governors of California, South Carolina and other states to discuss the matter. But so far the only state that he has given a pass to is Florida, led by Gov. Rick Scott, who is a political ally of Trump's.

Zinke said he included all federal waters in the proposal to "start a discussion" on the best way to develop U.S. energy. But critics have argued the process resembles a reality TV show, with states waiting to find out whether they will be selected.

"Secretary Zinke is also playing a political game in choosing where to drill," Senate Energy and Natural Resources Committee ranking member Maria Cantwell (D-Wash.) said during a March 13 hearing on Trump's 2019 budget proposal. "The secretary's decision for a last-minute exemption for Florida, while ignoring opposition from at least 10 other states, I think makes this process seem very arbitrary and capricious."

The Trump administration also showed no tolerance for arguments about state autonomy when it sued California in March over its so-called sanctuary policies, the latest legal action to target jurisdictions that shield undocumented immigrants from deportation.

When Sessions announced the lawsuit during a March 7 speech in Sacramento, he stressed the sanctity of federal law, which he called “the supreme law of the land.”

“There is no nullification. There is no secession,” Sessions said. “Open borders is a radical, irrational idea that cannot be accepted.”

In an ironic turn, the Trump lawsuit follows the blueprint of an Obama-era challenge to a 2010 Arizona immigration law — a challenge Republicans fiercely opposed. The Obama administration had sued to block the law known as SB 1070, which would have required immigrants to carry proof of legal status, increased penalties around hiring and harboring undocumented immigrants, and — perhaps most notably — required law enforcement to determine a person’s immigration status during a lawful stop.

At the time, Arizona Republicans lashed out at the Obama Justice Department for interfering with the state’s ability to enforce immigration laws.

“The American people must wonder whether the Obama administration is really committed to securing the border when it sues a state that is simply trying to protect its people by enforcing immigration law,” Sen. John McCain and former Sen. Jon Kyl said in a written statement.

Besides its lawsuit against California, Trump’s Justice Department has also threatened to withhold federal grants from jurisdictions that hinder immigration enforcement. A federal judge in Chicago temporarily blocked that policy nationwide in September, however.

Of course, what an administration critic sees as an infringement on state sovereignty, a supporter could view as an important federal role.

Trump’s and the GOP’s push for nationwide reciprocity for concealed carry gun permits, for instance, would tie states’ hands when it comes to policing exactly how guns are carried across their borders. But some supporters argue that it’s precisely the federal government’s role to protect constitutional rights, such as the ability to carry a firearm across state lines.

House Republicans in December passed legislation that would require all states to recognize a concealed carry permit issued by any other state. The measure, a top priority of the National Rifle Association and opposed by most Democrats, is meant to make it simpler and easier for Americans to carry concealed firearms anywhere in the country.

The bill, which now faces much tougher odds in the Senate, effectively requires cities and states with stricter gun laws to recognize concealed carry permits issued by jurisdictions with lax requirements.

Robert Verbruggen, deputy managing editor of the conservative National Review, wrote that the policy amounted to “federal overreach,” arguing Congress shouldn’t federalize an issue that’s better left to states.

“It is the states rather than the federal government that should decide the question of reciprocity,” Verbruggen wrote. “State legislators know the reasoning behind their own permitting regimes,

and thus are well-equipped to decide which other states' policies are similar enough to justify recognizing their permits."