

## Scrutinizing the Effects of State Interest Group Participation in Federal Administration

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Miriam Seifter, *States as Interest Groups in the Administrative Process*, **Va. L. Rev.** (forthcoming, 2014), available at [SSRN](#).

Recent scholarship on administrative federalism has advocated for federal agencies to consider state interests—with many scholars praising the notion of giving states a voice in the federal regulatory process. However, in arguing for a strong partnership between states and federal agencies, federalism scholars have given little attention to what costs might flow from state involvement in federal administration. In *States as Interest Groups in the Administrative Process*, forthcoming in the *Virginia Law Review*, Professor [Miriam Seifter](#) astutely points out this void in the scholarship, and she begins to fill the scholarly gap by carefully scrutinizing and weighing the costs and benefits of state interest group participation in the federal regulatory process.

Specifically, Professor Seifter, who recently joined the University of Wisconsin Law School as an assistant professor, argues that—contrary to the prevailing view of many federalism scholars—state involvement in federal regulation is not all rosy. Rather, she asserts that state interest groups—which she defines as “organizations of state elected or appointed officials whose mission is to represent the official interests of their members, particularly in front of the federal government” (P. 8)—impose significant costs on the administrative process.

Professor Seifter develops her argument by looking to three often-cited benefits commonly thought to flow from state involvement in federal administration: (1) protecting state power; (2) promoting agency expertise; and (3) maintaining democratic accountability. Ultimately, she concludes that state interest groups are not actually championing all three of these goals at once. Rather, she asserts that state interest groups are well-suited for advancing collective, core federalism goals of protecting states as institutions. Yet state interest groups are ill-suited for promoting agency expertise and democratic accountability. State interest groups, for example, tend to advance abstract, aggregate arguments regarding federalism principles and do not help to disseminate to federal agencies the diverse experiences, expertise and information generated by different states. In addition, state interest groups operate in an opaque and non-transparent manner (immune from public disclosure requirements), thereby undermining accountability. The result, according to Professor Seifter, is that the current system of state interest group involvement skews away from enhancing agency expertise and democratic accountability and toward the protection of state power.

The complicated and decidedly not rosy picture of state interest groups that Professor Seifter paints in her article invites the question of what should be done to recalibrate state interest groups so that in the future state power is not protected at the expense of agency expertise and democratic accountability. In her article, Professor Seifter has time to only briefly address this important question. However, at the end of her article, Professor Seifter does begin to sketch out a very preliminary suite of best practices that might guide relevant actors, including federal actors and OMB, state interest groups and courts. For example, to promote greater accountability and transparency, Professor Seifter tentatively suggests that state interest groups—which have claimed immunity from state and federal sunshine laws—might consider voluntarily disseminating their membership and funding information as well as their internal votes. In addition, she briefly argues that courts should take care not to apply judicial deference doctrines in a way that would incentivize agencies to adhere to a consultative process that undermines two central values in administrative decisionmaking—expertise and accountability.

In the end, I was convinced by Professor Seifter’s main claim that state interest group participation has helped to

protect state power at the expense of agency expertise and democratic accountability. However, I was less certain about what the proper path toward reform should be. Thus, I hope that the sorts of preliminary and tentative suggestions for “best practices” that Professor Seifter sketches out in her article are just the beginning of a much longer and larger conversation. After all, state interest group involvement in the administrative process is now entrenched, and state interest groups are not going to disappear. Hence, it seems high time that scholars—prompted by Professor Seifter’s thought-provoking article—begin to more carefully scrutinize what state interest group participation in federal administrative process might most appropriately look like moving forward.

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