



THE COUNCIL OF STATE GOVERNMENTS

Statement from Utah Senate President Wayne L. Niederhauser, on behalf of The Council of State Governments

Subcommittee on Intergovernmental Affairs Committee on Oversight and Government Reform United States House of Representatives

“Unfunded Mandates: Examining Federally Imposed Burdens on State and Local Governments”

April 26, 2017

Chairman Palmer, Ranking Member Demings, and Members of the Committee, thank you for the opportunity to testify before you today.

My name is Wayne Niederhauser; I am the Senate President of the great state of Utah. I have the honor of serving the citizens of the 9th district of Utah in Salt Lake County, which includes Alta, Draper, and my home town of Sandy.

I also have the privilege of working closely with The Council of State Governments – also known as CSG – and I am here in that capacity today.

On behalf of CSG and our state leaders throughout the country, I want to thank you for convening this important hearing and for your leadership in exploring ways to improve the relationship between our states and the federal government.

Founded in 1933, The Council of State Governments is the nation’s only organization serving all three branches of state government. CSG is a region-based, non-profit, non-partisan organization that fosters the exchange of ideas that help state officials shape public policy. CSG has also been a leader in advancing the role of the states in our federal system and working to identify solutions to improve the regulatory process

This hearing comes at an important time. In the first months of the new administration, the President and Vice President have both voiced their strong support for strengthening the relationship with state and local governments.

In fulfillment of their regulatory reform agenda, the administration has issued several executive actions with implications for state and local governments. These actions, which highlight the importance of federalism and thorough cost-benefit analyses, open the door for reforms beneficial to states in the federal rulemaking process.

While these executive orders are important steps toward keeping faith with the established principles of federalism, CSG believes Congress should follow suit and consider legislative action to codify processes that ensure adequate state input. In fulfillment of that objective, CSG has placed a specific emphasis on urging Congress to update the Unfunded Mandates Reform Act, or UMRA, of 1995 to ensure state views are taken into account in the development of proposed regulations and legislation.

We applaud Congresswoman Virginia Foxx for reintroducing H.R. 50, the Unfunded Mandates Information and Transparency Act, which addresses the UMRA's narrow coverage, exemptions and loopholes, and will ultimately make it a more effective instrument to reduce unfunded legislative and regulatory mandates.

This Committee understands the constitutional and foundational role that states play in our federal system, as outlined in the tenth amendment. The tenth amendment states, "the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the state respectively, or to the people." This laid the foundation for states to develop innovative ideas and policies, and fulfill their role as "laboratories of democracy."

My feeling is that the federal government has largely ignored a workable balance of responsibility in favor of a system that is more expensive and less efficient. The Utah legislature passed a resolution outlining several dozen areas of state responsibility that have been assumed by the federal government – that resolution will be attached with my written testimony.

State-based innovation is being stifled by a growing web of federal policies and regulations, which come in the form of unfunded mandates. Mandates themselves are likely an injury of constitutional authority; the fact that they are so often unfunded adds the insult.

In 2015, only 114 laws were enacted by Congress, compared to 3,140 rules that were issued by federal agencies. State leaders are challenged to balance budgets, and these difficulties are compounded by unanticipated economic costs associated with unfunded mandates resulting from federal regulations without adequate state input.

Unfunded mandates limit state and local flexibility to address more pressing local problems like crime and education. States are often forced to retroactively find the money to pay the bills and compensate by foregoing discretionary actions that may be vitally important to citizens locally. In addition, these mandates may come in a "one size fits all" box that can shut down innovative efforts to address problems that involve unique local considerations.

Among the most costly mandates are those that involve environmental compliance. States administer 96.5 percent of all federally delegated environmental programs, but federal grants to states fund only 28 percent of the amount needed to run the programs.

The U.S. Environmental Protection Agency (EPA) and the Army Corps of Engineers infamous rule to establish an expansive new definition of “waters of the United States” for the entire Clean Water Act provides a prime example, of which this committee is well aware. A smaller example, to help round out the picture, is the Groundwater Rule that requires us to manage a new violation type, including site inspections, forced us to hire new employees and costs us \$240K per year – out of our pockets, and this is not even our rule.

The Perkins program from the Department of Education is my final illustration. Utah receives a grant of approximately 12 million dollars to support state administrative costs, professional development, and other more local education expenses.

In return for this \$12 million, we are locked into a Maintenance of Effort agreement that now costs the state over 241 million dollars per year. The money isn’t a complete loss – we would have funded many of these things anyway – but perhaps not in the same way. The lack of flexibility comes at a cost and stifles budget innovation in America’s laboratories of democracy.

I’ve attached a summary of the Perkins situation, from the Utah State Board of Education, for your review.

Goals behind federal mandates are often admirable, but we have our own local goals which are just as admirable, more important to local citizens, more likely to be effective and less expensive.

Along with the cost of financing these new unfunded mandates, the majority of federal regulations have been enacted with limited – or no- input and consultation from state and local governments. Moreover, federal agencies regularly process rules without even conducting an analysis on the potential economic costs – as required by the Unfunded Mandate Reform Act.

For example, the EPA issued a total of 8,733 new regulations from 2000 through 2015, while only producing a formal Regulatory Impact Analysis for 50 of those rules. It is hard to comprehend how none of the other rules would trigger the UMRA’s analytical requirements.

This is what led CSG to start a multi-year initiative focused on improving the role of states in our federal system. CSG, along with the Western Governors Association, National Association of Counties, Conference of Western Attorney Generals, and the Pacific Northwest Economic Region, have adopted a set of federalism principles and recommendations.

I've included the full list of principles in my written testimony. Briefly, they focus on the importance of: avoiding pre-emption, avoiding unfunded mandates, promoting state flexibility, and improving the consultation process with state and local governments.

One size does not fit all. Local governments should be encouraged to provide unique local solutions.

Stronger coordination and communication will help reduce conflicts, which far too often end up in the courts which comes with enormous economic and opportunity costs.

Cooperative federalism requires the federal government to work in good faith with the states as equal partners.

We are thankful for organizations like CSG who are our eyes and ears in Washington, but the broken system demands congress implement lasting change to the process.

Navigating the relationship between state and federal governments is no easy task, but I believe, with your leadership, we can take steps to improve the outreach and consultation, and division of responsibilities between our states and the federal government.

Again, thank you and the Committee for the opportunity to appear before you today, and I look forward to your questions.