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TESTIMONY OF

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ON BEHALF OF THE

NATIONAL CONFERENCE OF STATE LEGISLATURES

REGARDING

**THE UNFUNDED MANDATES REFORM ACT: OPPORTUNITIES FOR
IMPROVEMENT TO SUPPORT STATE AND LOCAL GOVERNMENTS**

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

**SUBCOMMITTEE ON REGULATORY AFFAIRS AND FEDERAL
MANAGEMENT**

UNITED STATES SENATE

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Chairman Lankford, Ranking Member Heitkamp and distinguished members of the Subcommittee on Regulatory Affairs and Federal Management, I am Curt Bramble, President of the National Conference of State Legislatures (NCSL) and President Pro Tempore of the Utah Senate. I appear before you today on behalf of NCSL, a bipartisan organization representing the legislatures of our nation's states, commonwealths, territories, possessions and the District of Columbia.

Thank you for the opportunity to discuss the Unfunded Mandates Reform Act of 1995 (UMRA) and the opportunities for improvement to support state and local governments. NCSL applauds the leadership of the committee for bringing the discussion of unfunded and underfunded mandates before the committee, as the financial impact of federal actions on state and local governments is often overlooked.

Mr. Chairman, I would also like to thank you for your continued leadership in seeking to strengthen UMRA, both through introducing the Unfunded Mandates Information and Transparency Act of 2015 (UMITA; S. 189) and shepherding similar legislation through the House Committee on Oversight and Government Reform during your time in the U.S. House of Representatives. I also want to thank Senator Deb Fischer, a former state legislator and NCSL executive committee member, for her leadership on this issue.

My testimony today will highlight the effectiveness and limitations of UMRA and the impact of these limitations on state budgets. I will also discuss NCSL's support for

provisions in S. 189 that provide additional safeguards for states with respect to federal unfunded mandates.

UMRA was adopted over 20 years ago in an effort “...to curb the practice of imposing unfunded federal mandates on state and local governments.”¹ While at that time it renewed the commitment to cooperative federalism and brought attention to the growing reliance of mandates as a policy instrument, its shortcomings have caused unfunded and underfunded federal mandates to continue to pose an undue burden on state and local governments.

NCSL remains supportive of UMRA and is appreciative of its role in providing the fiscal impact, though limited, of federal legislation on state and local governments. As a result of UMRA, the Congressional Budget Office (CBO) analyzes the intergovernmental fiscal ramifications of pending legislation. UMRA has a procedural hammer to call further attention to potential unfunded or underfunded mandates and the mere procedural threat has changed some, but not all, discussions and negotiations leading up to the advancement of legislation. CBO’s annual reports to Congress have consistently shown that few pieces of legislation cross UMRA’s threshold. Some of this can be attributed to the procedural threat UMRA imposes, some to the threshold itself, but in most cases the narrow definition of a federal intergovernmental mandate in the underlying law. As a result, the limited scope of UMRA has allowed federal statutes and regulations, with significant fiscal implications for state and local governments, to be enacted or issued, respectively, without being identified as containing intergovernmental mandates, and more importantly, without a truly reflective cost estimate.

¹ Unfunded Mandates Reform Act of 1995.

Mr. Chairman, state legislators view mandates more expansively than UMRA's definition. We believe there are mandates on states when the federal government:

- establishes a new condition of grant-in-aid for a long-standing program;
- reduces current funds available, including a reduction in the federal match rate or a reduction in available administrative or programmatic funds, to state and local governments for existing programs without a similar reduction in requirements;
- extends or expands existing or expiring mandates;
- establishes goals to comply with federal statutes or regulations with the caveat that if a state fails to comply they face a loss of federal funds;
- compels coverage of a certain group of individuals under a current program without providing full or adequate funding for this coverage;
- establishes overly prescriptive regulatory procedures; and
- intrudes on state sovereignty.

The experience of state and local governments, coupled with our view of what constitutes a mandate, supports the need for UMRA to be changed. NCSL has longstanding policy that urges Congress to consider reforms that include:

- Expansion of the definition of a federal intergovernmental mandate to include:
 - new conditions of federal funding for existing federal grants and programs, including costs not previously identified;
 - changes to all open-ended entitlements, such as Medicaid, child support and Title 4E (foster care and adoption assistance);

- proposals that would place a cap or enforce a ceiling on the cost of federal participation in any entitlement or mandatory spending program;
 - proposals that would reduce state revenues, especially when changes to the federal tax code are retroactive or otherwise provide states with little or no opportunity to prospectively address the impact of a change in federal law on state revenues; and
 - proposals that fail to exceed the statutory threshold only because they do not affect all states.
- Improvements to Title II, including enhanced requirements for federal agencies to consult with state and local governments and the creation of an office within the Office of Management and Budget that is analogous to the State and Local Government Cost Estimates Unit at CBO.

The Unfunded Mandates Information and Transparency Act of 2015 addresses several of these recommendations. In particular, NCSL is pleased that S. 189 expands the scope of reporting requirements to include new conditions of federal funding for existing federal grants and programs. In UMRA, the term “federal intergovernmental mandate” does not include conditions of federal assistance or an enforceable duty arising from participation in a voluntary program. Changes to grant requirements for established state-federal programs often results in new prescriptive requirements that shift costs to state governments. While statutorily these programs are deemed “voluntary,” in some cases these are state-federal partnerships that have existed for decades. UMITA seeks to rectify this problem by allowing any chairman or ranking member of a committee in the Senate

or House of Representatives to request CBO to compare the authorized level of funding with the prospective costs of carrying out a condition of federal assistance imposed on state, local or tribal governments.

We also support provisions in UMITA that modify the definition of direct cost in the case of federal intergovernmental mandates, expand UMRA's reporting requirements to independent regulatory agencies, and create a mechanism for congressional requests for a regulatory "look-back" analysis of mandates in existing federal regulations.

In addition, NCSL is appreciative of UMITA's inclusion of provisions to enhance agency consultation with state and local governments. This process is often haphazard and inconsistent with approaches and commitments varying throughout federal agencies. State and local governments welcome a uniform and predictable process for consultation.

Mr. Chairman, NCSL recognizes the need for the federal government to reduce its annual deficits, curb growth in the national debt and achieve a sustainable fiscal path. Provisions in UMITA are critical to ensuring that these efforts be made with a full understanding of the fiscal impact on state and local governments. This is not about blocking legislative or regulatory action, this is about transparency and government responsibility by ensuring the full potential impacts of intergovernmental mandates in legislation and regulations is known. Mr. Chairman, I thank you for this opportunity to testify before the subcommittee, and look forward to answering any questions the committee may have.