

Testimony of
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Good morning Mr. Chairman and members of the committee. I appreciate the opportunity to appear before you today on behalf of the nation's governors. Strengthening our federalism partnership is the top priority of the National Governors' Association. Over the last several years, Congress has accomplished much on behalf of state and local governments. We are here to express our appreciation for your work and urge you to keep moving forward on a number of major issues.

State and local elected officials have always worked closely with Congress and the administration on critical issues. In times of national distress, the states immediately step forward to work with you in unifying and mobilizing the nation for quick action.

But in times of crisis or times of calm, we have strong ideas on how we should work together. The National Governors' Association's Washington office was actually founded in 1967 to protect the appropriate balance of federalism between state and federal governments. Our first initiative was to work with Congress to convert the Law Enforcement Assistance categorical grant into a block grant to the states. We now have more than one dozen block grants.

Progress to Date

In the last decade, we witnessed major advances as Congress entrusted state and local governments with national goals while using state and local laws, rules, and procedures for effective implementation. We have made major progress in moving from the micro-management often imposed by the federal bureaucracy toward performance goals and results that foster innovations by states, cities, and counties.

Our nation's "laboratories of democracy" are shining brightly all across America in crime reduction, education reform, employment practices, pollution prevention, broad-based health coverage, and multi-modal transportation. Congress gave states our version of the Safe Drinking Water Act, stopped the wholesale passage of unfunded mandates, reduced agency micro-management, and gave us new block grants in welfare, transportation, children's health, child care, drug prevention, statewide health expansions, and – just last week – education flexibility.

For all of these initiatives by Congress, we thank you and pledge our acceptance of the responsibility to exceed the national goals, as we have done in welfare reform and are already doing in education.

I am here today on behalf of the nation's governors not only to thank Congress and this committee, in particular, but also to express our growing concerns about a new trend. While we appreciate the considerable reduction in the number of unfunded mandates that force the spending of our own funds, states now often face broad preemptions that restrict access to our own funds, laws, and procedures for meeting the people's needs. We must maintain a common sense approach to government services that makes sense to the people. Only a full partnership between elected officials of all levels of government can make it work.

Devolution Revolution

The federal government has shifted much power and responsibility to state and local governments over the past few years. The Unfunded Mandates Reform Act, welfare block grants, drinking water legislation, and highway fund transfers are a few examples of legislative initiatives that have transferred authority from the federal government to state governments.

This trend, often referred to as "The Devolution Revolution," has received considerable attention from the media, academics, and, most of

all, legislators eager to claim responsibility for the complementary accomplishments of shrinking the size of the federal government and empowering state and local officials.

Despite all the benefits conferred to states by devolution, the magnitude and significance of this revolution has at times been exaggerated. Many of the devolutionary initiatives are better in theory than in practice, either lacking enforcement to make them effective or imposing new burdens on states as conditions of funding. Also, while devolution has occupied center stage during the past few years, another story has unfolded in the wings with much less fanfare.

The New Problem – Preemption of State Authority

While shifting power to the states with one hand, the federal government has been busy taking power away from the states with the other. The independence and responsibility that devolution has given states in certain areas has been offset by preemption elsewhere. Even as states have benefited enormously from block grants over the past few years, the federal government has preempted state laws affecting trade, telecommunications, financial services, electronic commerce, and other issues.

Federal preemption of state laws has not occurred as the result of a malicious desire to undermine states' sovereignty. Rather, preemption has occurred as the byproduct of other issues. Unfortunately the outcome is the same for states, regardless of the motive.

To varying degrees, the federal government is often ignoring the powerful role and the constitutional rights of states in the American system of government that enables elected officials of all levels of government to best serve the people.

The rise of the new global economy, rapid advances in modern technology, and efforts toward industrial deregulation have accelerated the pace of preemption. To compete with international competitors,

respond quickly to technological developments, and maximize opportunities created by deregulation, businesses seek to streamline legal and regulatory requirements. Efforts to substitute uniform national legislation for disparate state laws comprise an important part of this process and have led to federal preemption of state authority in many areas.

Businesses understandably do not want to be handcuffed by a myriad of state and local codes, statutes, and rules that prevent them from responding effectively to the rapidly changing dynamics of the domestic and world marketplaces. If industry has to be regulated at all, a standard set of federal laws and regulations presents a far more compelling alternative. However, just as federal laws and oversight serve important purposes that include preventing monopolies, raising revenues to fund national defense, and financing social security, state and local laws fulfill a variety of critical functions as well.

State and local taxing authority provides funds for education, roads, law enforcement, health care, and environmental protection. State banking, insurance, and securities laws impose capital adequacy requirements, underwriting standards, and licensing procedures that safeguard consumers' deposits and investments and protect them from fraud and abuse. State utility regulations ensure that citizens receive high-quality water, electric, sewage, and telephone services at reasonable rates.

The important role of state laws and regulatory responsibilities should not be forgotten in the midst of the scramble to accommodate businesses and the forces of globalization, technology, and deregulation. States and their citizens stand to benefit as much as businesses from these changes, but not at the cost of continuing federal preemption of state laws.

In the aftermath of the recent elections, congressional leaders and the President have repeatedly articulated the importance of working with the nation's governors. Allowing states to continue governing in the areas

that states have traditionally governed would be a good way to demonstrate commitment to a true state-federal partnership and would also provide a refreshing change.

In this new era of globalization of the marketplace, we must preserve the peoples' participation in government decisions, especially at the local level through elections. Together we recently enacted laws and regulations to improve our dialogue with Congress to stop the unilateral imposition of unfunded mandates, to focus more on the citizens' total tax burden from all governments. We have instituted prior consultation, fiscal impact statements, deference to our own laws and procedures through block grants, and limited enforcement procedures.

Current Issues of Federalism

To preserve and enhance our federal system of representative democracy through elected officials, we must recognize the long-term negative impacts of preemption.

We urge you to consider some approaches to ensure that Congress considers these negative impacts (both intended and unintended) prior to voting on bills that preempt state authority. Once state authority is taken away, it is very seldom returned. We are simultaneously asking the President to include these principles in any revision of his Executive Order on Federalism. We believe the following principles of federalism are essential to the major issues facing states today.

Principles of Federalism

- The bipartisan partnership between elected officials at all levels of government is the unique and most powerful force in our form of federalism.
- This partnership is based on early consultations over issues that affect the states.

- A legislative proposal's impact on federalism should be transparent and fully disclosed before decisions are made.
- This partnership is based on the interdependent nature of our governments that demands an attitude of the highest respect and a deference toward state and local laws and procedures that are closest to the people.
- These elements of our partnership should have some means of enforcement.

Federalism Legislation

Mr. Chairman, we know that this committee, in particular, understands and appreciates these fundamental features of federalism. You have proven it through many years of working with us – from the Intergovernmental Cooperation Act, the Intergovernmental Personnel Act, General Revenue Sharing, the Paperwork Reduction Act, the Unfunded Mandates Reform Act, the Federal Financial Assistance Improvement Act, the Regulatory Right-to-Know Act, and the Regulatory Improvement Act. Our thanks to every member who stands with us for enactment of each of these vital measures.

Because federalism legislation can never be perfect or finished, we are here today to encourage each of you to continue your efforts and expand your good work to this new threat to federalism. We will support your efforts to apply these principles of enforceable federalism to legislative and regulatory preemptions of state revenues, laws, and administrative procedures.

When we fail to use these federalism principles – consultation, disclosure, impact statements, deference, and enforcement – we spend even more effort to correct the problems created in areas such as telecommunications, the Internet, environmental laws, local zoning, regulatory preemption, and long-term tax policy.

Mr. Chairman, we urge you to move forward on the following bills and issue areas that are high priorities for NGA.

The Mandate Information Act (H.R. 350, S. 427). This bill would clarify that the point of order provision of the Unfunded Mandate Reform Act also applies to any cut or cap in entitlement programs (Medicaid, food stamps, child nutrition) unless the states are given “new or expanded” flexibility to manage the cut or cap. It would also be extended to mandates on the private sector of more than \$100 million.

The Federal Financial Assistance Improvement Act (H.R. 409, S. 468). Both bills would require the Office of Management and Budget (OMB) to develop uniform common rules for its seventy-five crosscutting regulations. OMB must also develop electronic filing and management of grants to reduce paperwork and uniform base data for grant applicants that could be used for multiple information purposes.

Preemption Assessments. Bipartisan House and Senate staff are meeting to clarify state and local government concerns over excessive preemptions. Issues include prior notification, annual and cumulative reports, point of order, rules of construction, and possible judicial review of the process but not content. These discussions also cover federalism impact statements for executive branch preemptions and changes in the Government Performance and Results Act to require mutual agreement among federal, state, and local governments on what data are necessary to meet agency goals without federal micromanagement of state and local information needs.

The Regulatory Improvement Act (S.746). This bill would provide better prior consultation for state and local officials with federal agencies on new regulations and would require federal agencies to conduct risk assessments and benefit-cost estimates for new regulations. This is now an option.

The Regulatory Right-to-Know Act (H.R. 1074, S. 59). This bill would require an annual accounting statement of the costs and benefits of federal regulations notice and comment procedure and public disclosure of actions taken on state and local concerns.

Mr. Chairman and members of the committee, we are working with the President to formalize these same federalism principles for a revised Executive Order on Federalism.

Our message to you and to the President is the same. We need to move toward an “enforceable” federalism partnership between the elected officials of all levels of government.

We urge you to join us in a revived working partnership involving all of America in our system of government through all of its elected officials. We can best meet the single and special needs of some of the people, while also meeting the collective needs of most of the people.

Thank you very much.