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“The Current State of Federalism in America”

INTRODUCTION

Good morning. Thank you Mr. Chairman for inviting me here today to speak to you and the distinguished members of this Committee regarding the current state of federalism in America.

Mr. Chairman, federalism and devolution, as you well know, represent a cornerstone of our nation’s underlying democratic principles.

The 10th Amendment to the Constitution of the United States recognizes the uniqueness that continues to exist and thrive in each and every state in America. More importantly, the 10th Amendment acknowledges that the states have the authority and the ability to minister to their own exigencies.

When our forefathers debated how our nation would be governed, they devised a clear set of principles that defined the roles and responsibilities of the federal government and state governments. Yet, over time, adherence to those principles has eroded.

Recently, a shift away from the “Washington knows best” attitude ushered in the first change in majority in the United States House of Representatives in 40 years. A strong component that helped fuel the shift of power can be directly attributed to a platform that clearly emphasized a return of power and control to the state level.

But somehow the shift towards devolution came to an abrupt stop. The American people, and governors such as myself, were led to believe that real reform was on the way, only to realize that Washington would not

truly reflect the guiding principles of federalism designed by the framers of the Constitution.

To this end, Mr. Chairman, it is with a sense of optimism for reform and historical gravity that I address this august body.

I strongly commend you for your appreciation and attention to the issue of federalism. For when granted the power and flexibility, states and local governments have proven to be the innovators of the ideas and reforms that are improving the lives of all Americans.

Throughout our history, state and local governments have acted as the laboratories of democracy. State and local governments continually amaze us with innovative and decisive action when they are allowed to flourish unfettered by excessive federal restraint.

It is critical that we closely examine the relationship and responsibilities respective to our governing bodies, and review the impact federal restrictions have on states' ability to govern effectively. More importantly, as we enter a new millennium, we must reinvigorate the partnerships among the federal, state and local governments to ensure the American people are the benefactors of a strong, united effort to address and solve the problems that face our great country.

As President of The Council of State Governments, I speak to you today on behalf of an organization whose individual members are involved daily in conducting the peoples' business at the state level.

CSG is comprised of state leaders from all 50 states and U.S. territories representing all three branches of government. CSG's membership is the living embodiment of the vibrancy of American federalism.

HISTORY OF CSG'S FEDERALISM ADVOCACY

CSG has consistently been a strong proponent of the federalist model. Our commitment to sharing those principles was reinvigorated at a summit convened in November of 1997, following enactment of the Unfunded Mandate Reform Act of 1995 (UMRA).

At the prompting of Governor Michael O. Leavitt of Utah, the meeting, held in conjunction with the American Legislative Exchange Council, the National Conference of State Legislatures and the National Governors' Association, was convened to recommend state reaction to the historic devolution of shifting responsibility from the federal to the state governments.

Then, as now, states faced a variety of challenges and opportunities as they approached varying degrees of federal restriction. The summit produced an eleven-point plan aimed at improving balance and greater accountability to the state-federal partnership.

I have attached a copy of the eleven points advocated at the conclusion of this meeting to my written testimony, but I would like to summarize those objectives and provide a few brief examples of how federal restrictions and interference is impacting our ability to institute positive reform in our respective states.

The principals voted on and passed at the meeting include requiring Congress to justify its constitutional authority to enact each given bill; limit and clarify federal preemption of state law and federal regulations imposed on states; streamline block grant funding; and simplify financial reporting requirements.

EXAMPLES OF FLAWS IN THE CURRENT FEDERALIST STRUCTURE

As Governor of the state of Wisconsin, I have dealt with a wide variety of federal restrictions that prevent my state from reaching its full potential and advancing the best interest of our citizens.

From welfare reform to health care, Wisconsin has become America's laboratory of reform, instituting dozens of innovative initiatives that have made our programs models for the nation. Yet, I have had to travel to Washington to solicit, on bended knee, the permission to implement our landmark reforms.

I am not alone. My experience and the experiences of other state leaders have made the boundaries of the devolution debate clearer today than ever before. Time and time again, we have developed and passed legislation to deal with our unique problems, only to be rebuffed by the federal government.

Let me briefly describe some more recent issues that illustrate the frustration at the state level.

Welfare Reform:

The integrity of the 1996 welfare reform agreement is threatened by attempts by Congress and the administration to reduce the funding and restrict the flexibility of welfare-related programs, including the Temporary Assistance for the Needy Families (TANF) block grant.

In 1996, Congress, governors and the administration entered into a historic welfare reform agreement. In exchange for assuming the risk involved with accepting the primary responsibility for transforming the welfare system from one of dependency to self-sufficiency, Governors agreed to five years of guaranteed funding along with new flexibility to administer federal programs.

Any attempt to change welfare reform-related programs or funding is a serious violation of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and would undermine states' welfare reform efforts.

In Wisconsin, and throughout America, welfare reform has demonstrated that states can best solve problems when given flexibility and support.

Congress gave the states the freedom to design their own welfare replacement programs and the block grants to support them. As a result, hundreds of thousands of families are climbing out of poverty and pursuing their piece of the American Dream.

CSG and the nation's governors urge Congress and the administration to reject any proposals that reduce funding or restrict flexibility for welfare-related programs.

Land and Water Conservation Fund:

Since the 1960's, the federal government has collected nearly \$4 billion in annual receipts from the development of oil and gas reserves on the outer continental shelf. Congress has approved appropriations of up to \$900 million per year of those funds to the states under the Land and Water Conservation Fund, but the current administration has been using the money to shore up the federal budget.

The Conservation Reinvestment Act of 1999 (S-25 and HR-701) seeks to rectify this situation by reinstating funding to the states for land acquisition, conservation, and habitat improvement programs.

The Council of State Governments has adopted resolutions in support of the Conservation Reinvestment Act, and full funding for the Land and Water Conservation Fund, Coastal Impact Assistant Fund, and other programs that help to mitigate some of the environmental impacts of offshore mineral development.

Legalized Gaming:

The federal government should not usurp the states' authority to regulate legalized gaming. The National Gambling Impact Study Commission is currently conducting fact-finding studies on the "economic and social impacts of legalized gaming on states, tribes, communities and individuals." However, the members of this commission do not represent

the interests of the states, and there is concern that the Commission's true intent is to recommend national legislation to regulate gaming.

States can and should set sound gaming policies that address key issues and challenges associated with legalized gaming, and state gaming officials should enforce such policies. Some types of gaming, such as Indian gaming and Internet gambling, require cooperation from appropriate federal agencies. But it is the duty and responsibility of individual states, not the federal government, to regulate lotteries and casinos within their borders.

FEDERAL LEGISLATION UNDER CONSIDERATION

Much has been accomplished since that 1997 meeting, but much more remains to be done.

Already in the 106th Session of Congress the House has passed HR 350 – the Mandate Information Act, HR 409 – the Federal Financial Assistance Improvement Act, and HR 439 – the Paperwork Reduction Act. The Mandate Information Act clarifies the point of order provision of the Unfunded Mandate Reform Act, applying the order to any cut or cap in entitlement programs such as Medicaid, food stamps, and child nutrition, unless states are given “new or expanded” flexibility to manage the cut or cap.

The Federal Financial Assistance Improvement Act will require the Office of Management and Budget (OMB) to develop uniform common rules for its seventy-five crosscutting regulations. Under this legislation, OMB must also develop electronic filing and management of grants to reduce paperwork. Just two weeks ago this very committee held hearings on S. 746 – the Regulatory Improvement Act.

The Council of State Governments believe S. 746, co-sponsored by at least three members of this committee, is a move in the right direction

because it will provide needed consultation with state and local officials when federal agencies promulgate new regulations and will require risk assessments and cost-benefit estimates for such regulations.

Additional proposals and ideas are circulating that may further impact the current state of federalism. On March 10, 1999, the Big Seven State and Local organization principals signed a letter that was forwarded to Congress in support of the “Regulatory Right-to-Know Act of 1999.”

By calling for an annual report to Congress by the President and the Office of Management and Budget, which analyzes the impact of federal rules on federal, state and local governments, this bill encourages open communication between federal agencies, state and local governments, the public and Congress regarding federal regulatory priorities.

As you know, Mr. Chairman, staff of the Big Seven state and local organizations has also been collaborating with staff members of this Committee in an attempt to fashion legislation to protect and reiterate the partnership between federal, state and local levels of government.

CSG believes that it is important to bring such legislation to fruition. Among the principles we would like to see embodied in such legislation would be prior consultation with state and local elected and appointed leaders in drafting federal legislation, regulations and executive orders with an intergovernmental impact.

Federalism Partnership legislation should provide for federal assessment through federalism impact statements and provide a form of judicial review for enforcement. Ultimately, CSG believes a true federalist partnership must reflect the intentions of the 10th Amendment, whereby states were granted deference when the Constitution failed to explicitly empower the federal government.

CONCLUSION

As state leaders concluded in their 1997 conference on federalism, “In order for our country to be an innovator at home and leader abroad in the 21st century, it is imperative that our unique federal partnership devise improved divisions of labor and achieve strategic intergovernmental restructuring best suited to the changing public policy circumstances that confront us.”

The states have shown, with the limited experimentation the federal government has allowed, that we can manage complex problems and put our ideas to work, reconnecting the American people with their government.

Devolution will have a profoundly positive effect on the delivery of government programs and services as states compete with one another to devise the best systems. Its impact on the political process, however, will be equally profound: nothing less than a restoration of the American people’s confidence in their government.

Again, I thank you for this opportunity to speak with you today, and I look forward to our ensuing conversation.