MEMORANDUM

Date: November 29, 1994

To: Senator Dole

From: Alec Vachon

Re: BRIEFING: IS ADA AN UNFUNDED MANDATE?

Although ADA is sometimes characterized as an "unfunded mandate," under the Kempthorne bill (S. 993) it would not, for two reasons. First, there is a specific exemption for "civil rights statutes" which according to the Committee report would cover ADA. Second, as discussed below, ADA is not substantively different from section 504 of the Rehabilitation Act. The Kempthorne bill also excludes from the definition of which is a condition of Federal assistance.

Also, ADA may benefit state and local governments by reducing the likehood of challenges under the 14th Amendment of the Constitution. If ADA and 504 were repealed.

WHAT WOULD HAPPEN IF 504 OR ADA WERE REPEALED? INVOKING FOURTEENTH AMENDMENT

MISCONCEPTIONS ABOUT ADA

ADA AND KANSAS LAW

SUMMARY AND TALKING POINTS

BILLS ON UNFUNDED MANDATES/103RD CONGRESS, 1ST SESS.

1. H.R. 140 by CONDIT (D-CA) -- Federal Mandate Relief Act of 1993 [80 lines]
Official Title (Caption):
A bill to end the practice of imposing unfunded Federal mandates on State and local governments and to ensure that the Federal Government pays the costs incurred by those governments in complying with certain requirements under Federal statutes and regulations.

Most Recent Action:
01/05/93 -- In The HOUSE
Introduced by CONDIT (D-CA)
Referred to House Committee on Government Operations
06/10/93 -- In The HOUSE
Extensions to Remarks by CUNNINGHAM (R-CA) in "Congressional Record" (CR Page E-1481)
10/22/93 -- In The HOUSE
Remarks by GILLMOR (R-OH) in "Congressional Record" (CR Page H-8430)
10/27/93 -- In The HOUSE
Remarks by CONDIT (D-CA) in "Congressional Record" (CR Page H-8568)
Remarks by ORTON (D-UT) in "Congressional Record" (CR Page H-8572)
Remarks by CLEMENT (D-TN) in "Congressional Record" (CR Page H-8575)
Remarks by BARLOW (D-KY) in "Congressional Record" (CR Page H-8575)

2. H.R. 410 by STUMP (R-AZ) -- Intergovernmental Mandate Relief Act of 1993 [224 lines]
Official Title (Caption):
A bill to reduce the growing costs imposed on State and local governments by unfunded Federal mandates.

Most Recent Action:
01/05/93 -- In The HOUSE
Introduced by STUMP (R-AZ)
Joint referral to House Committee on Government Operations
Joint referral to House Committee on the Judiciary
Joint referral to House Committee on Rules
Extensions to Remarks by STUMP (R-AZ) in "Congressional Record" (CR Page E-34)
10/27/93 -- In The HOUSE
Remarks by STUMP (R-AZ) in "Congressional Record" (CR Page H-8577)

3. H.R. 886 by CLINGER (R-PA) -- Mandate and Community Assistance Reform Act of 1993 [819 lines]

Official Title (Caption):
A bill to provide mandate relief assistance to State and local governments, and for other purposes.
Most Recent Action:

02/16/93 -- In The HOUSE
Introduced by CLINGER (R-PA)
  Joint referral to House Committee on Rules
  Joint referral to House Committee on Government Operations
  Extensions to Remarks by CLINGER (R-PA) in "Congressional Record" (CR Page E-333)
10/27/93 -- In The HOUSE
  Remarks by ORTON (D-UT) in "Congressional Record" (CR Page H-8572)
10/28/93 -- In The HOUSE
  Extensions to Remarks by HOBSON (R-OH) in "Congressional Record" (CR Page E-2723)

4. H.R. 1088 by BAKER (R-LA) -- Small Business and Private Economic Sector Impact Act [132 lines]
Official Title (Caption):
A bill to require analysis and estimates of the likely impact of Federal legislation and regulations upon small businesses, the private sector and State and local governments, and for other purposes.

Most Recent Action:
02/24/93 -- In The HOUSE
Introduced by BAKER (R-LA)
  Joint referral to House Committee on Government Operations
  Joint referral to House Committee on Rules
  Extensions to Remarks by HAMILTON (D-IN) in "Congressional Record" (CR Page E-975)

5 H.R. 1295 by MORAN (D-VA) -- Fiscal Accountability and Intergovernmental Reform Act [277 lines]
Official Title (Caption):
A bill to improve Federal decisionmaking by requiring a thorough evaluation of the economic impact of Federal legislative and regulatory requirements on State and local governments and the economic resources located therein.

Most Recent Action:
03/10/93 -- In The HOUSE
Introduced by MORAN (D-VA)
  Joint referral to House Committee on Government Operations
  Joint referral to House Committee on Rules
  Extensions to Remarks by GOODLING (R-PA) in "Congressional Record" (CR Page E-579)
03/11/93 -- In The HOUSE
  Remarks by MORAN (D-VA) in "Congressional Record" (CR Page H-1178)
03/31/93 -- In The HOUSE
  Extensions to Remarks by MORAN (D-VA) in "Congressional Record" (CR Page E-842)
04/26/93 -- In The HOUSE
  Extensions to Remarks by MORAN (D-VA) in "Congressional Record" (CR Page E-1027)

04/28/93 -- In The HOUSE
Extensions to Remarks by GOODLING (R-PA) in "Congressional Record" (CR Page E-1062)
Extensions to Remarks by HAMILTON (D-IN) in "Congressional Record" (CR Page E-1064)
05/11/93 -- In The HOUSE
Remarks by MORAN (D-VA) in "Congressional Record" (CR Page H-2351)
05/19/93 -- In The HOUSE
Extensions to Remarks by MORAN (D-VA) in "Congressional Record" (CR Page E-1290)
05/25/93 -- In The HOUSE
Extensions to Remarks by GOODLING (R-PA) in "Congressional Record" (CR Page E-1351)
06/15/93 -- In The HOUSE
Extensions to Remarks by MORAN (D-VA) in "Congressional Record" (CR Page E-1516)
06/21/93 -- In The HOUSE
Extensions to Remarks by GOODLING (R-PA) in "Congressional Record" (CR Page E-1571)
06/22/93 -- In The HOUSE
Extensions to Remarks by MORAN (D-VA) in "Congressional Record" (CR Page E-1587)
06/30/93 -- In The HOUSE
Extensions to Remarks by MORAN (D-VA) in "Congressional Record" (CR Page E-1679)
07/15/93 -- In The HOUSE
Extensions to Remarks by GOODLING (R-PA) in "Congressional Record" (CR Page E-1791)
07/22/93 -- In The HOUSE
Extensions to Remarks by MORAN (D-VA) in "Congressional Record" (CR Page E-1844)
07/26/93 -- In The HOUSE
Extensions to Remarks by GOODLING (R-PA) in "Congressional Record" (CR Page E-1850)
07/30/93 -- In The HOUSE
Remarks by MORAN (D-VA) in "Congressional Record" (CR Page H-5530)
08/03/93 -- In The HOUSE
Extensions to Remarks by MORAN (D-VA) in "Congressional Record" (CR Page E-1957)
09/29/93 -- In The HOUSE
Remarks by MORAN (D-VA) in "Congressional Record" (CR Page H-7179)
10/27/93 -- In The SENATE
Remarks by DORGAN (D-ND) in "Congressional Record" (CR Page S-14530)
Remarks by DOMENICI (R-NM) in "Congressional Record" (CR Page S-14532)
10/27/93 -- In The HOUSE
Remarks by ORTON (D-UT) in "Congressional Record" (CR Page H-8572)
Remarks by CLEMENT (D-TN) in "Congressional Record" (CR Page H-8575)
Remarks by MORAN (D-VA) in "Congressional Record" (CR Page H-8578)
11/03/93 -- In The HOUSE
Remarks by MEYERS (R-KS) in "Congressional Record" (CR Page H-8707)

11/10/93 -- In The HOUSE
Extensions to Remarks by RAMSTAD (R-MN) in "Congressional Record" (CR Page E-2862)

6. H.R. 3429 by HERGER (R-CA) -- Unfunded Federal Mandates Relief Act of 1993 [279 lines]

Official Title (Caption):
A bill to provide relief to State and local governments from Federal regulation.

Most Recent Action:
11/03/93 -- In The HOUSE
Introduced by HERGER (R-CA)
Referred to House Committee on Government Operations
Extensions to Remarks by HERGER (R-CA) in "Congressional Record" (CR Page E-2759)

7. H.R. 3446 by DELAY (R-TX) -- Economic and Employment Impact Act [127 lines]

Official Title (Caption):
A bill to require analysis and estimates of the likely impact of Federal legislation and regulations upon the private sector and State and local governments, and for other purposes.

Most Recent Action:
11/04/93 -- In The HOUSE
Introduced by DELAY (R-TX)
Joint referral to House Committee on Government Operations
Joint referral to House Committee on Rules
Extensions to Remarks by DELAY (R-TX) in "Congressional Record" (CR Page E-2780)

8. H.Res. 277 by CONDIT (D-CA) -- Resolution Respecting Unfunded Mandates [35 lines]

Official Title (Caption):
Resolution expressing the sense of the House of Representatives respecting unfunded mandates.

Most Recent Action:
10/15/93 -- In The HOUSE
Introduced by CONDIT (D-CA)
Referred to House Committee on Government Operations

9. S. 81 by NICKLES, DON (R-OK) -- Economic and Employment Impact Act [131 lines]

Official Title (Caption):
A bill to require analysis and estimates of the likely impact of Federal legislation and regulations upon the private sector and State and local governments, and for other purposes.

Most Recent Action:
04/29/93 -- In The SENATE
Text from this measure offered and failed as an amendment by NICKLES, DON (R-OK) to S. 171 (Amendment 329)

10. S. 993 by KEMPTHORNE (R-ID) -- Community Regulatory Relief Act [107 lines]
Official Title (Caption):
A bill to end the practice of imposing unfunded Federal mandates on States and local governments and to ensure that the Federal Government pays the costs incurred by those governments in complying with certain requirements under Federal statutes and regulations.

Most Recent Action:
11/03/93 -- In The SENATE
Hearings recessed by Senate Committee on Governmental Affairs subject to the call of the Chair

11. S. 1592 by DORGAN (D-ND) -- Fiscal Accountability and Intergovernmental Reform Act [205 lines]
Official Title (Caption):
A bill to improve Federal decision making by requiring a thorough evaluation of the economic impact of Federal legislative and regulatory requirements on State and local governments and the economic resources located in such State and local governments.

Most Recent Action:
10/27/93 -- In The SENATE
Introduced by DORGAN (D-ND)
Referred to Senate Committee on Governmental Affairs
Remarks by DORGAN (D-ND) in "Congressional Record" (CR Page S-14530)
Full text of measure printed in "Congressional Record" (CR Page S-14531)
Remarks by DOMENICI (R-NM) in "Congressional Record" (CR Page S-14532)

12. S.Res. 157 by GREGG (R-NH) -- Resolution Amending the Standing Rules of the Senate - Supermajority for Federal Mandates [77 lines]
Official Title (Caption):
A resolution to amend the Standing Rules of the Senate to require a supermajority for committee approval of bills containing unfunded Federal mandates.

Most Recent Action:
10/27/93 -- In The SENATE
Introduced by GREGG (R-NH)
Referred to Senate Committee on Rules and Administration
Remarks by KEMPTHORNE (R-ID) in "Congressional Record" (CR Page S-14447)
Remarks by ROTH, WILLIAM (R-DE) in "Congressional Record" (CR Page S-14448)
Remarks by PRESSLER (R-SD) in "Congressional Record" (CR Page S-14451)
Remarks by FEINSTEIN (D-CA) in "Congressional Record" (CR Page S-14452)
Remarks by COVERDELL (R-GA) in "Congressional Record" (CR Page S-14453)

Remarks by MOSELEY-BRAUN (D-IL) in "Congressional Record" (CR Page S-14453)
Remarks by CRAIG (R-ID) in "Congressional Record" (CR Page S-14454)
Remarks by BURNS (R-MT) in "Congressional Record" (CR Page S-14455)
Remarks by HUTCHISON (R-TX) in "Congressional Record" (CR Page S-14456)
Remarks by BENNETT (R-UT) in "Congressional Record" (CR Page S-14456)
Remarks by MCCAIN (R-AZ) in "Congressional Record" (CR Page S-14456)
Remarks by GORTON (R-WA) in "Congressional Record" (CR Page S-14457)
Remarks by HATCH (R-UT) in "Congressional Record" (CR Page S-14458)
Remarks by WARNER (R-VA) in "Congressional Record" (CR Page S-14459)
Remarks by MACK (R-FL) in "Congressional Record" (CR Page S-14516)
Remarks by COATS (R-IN) in "Congressional Record" (CR Page S-14522)
Remarks by BINGAMAN (D-NM) in "Congressional Record" (CR Page S-14522)
Remarks by DURENBERGER (R-MN) in "Congressional Record" (CR Page S-14522)
Remarks by BOND (R-MO) in "Congressional Record" (CR Page S-14523)
Full text of measure printed in "Congressional Record" (CR Page S-14541)
Remarks by GREGG (R-NH) in "Congressional Record" (CR Page S-14542)

13. S.Res. 158 by GREGG (R-NH) -- Resolution Amending the Standing Rules of the Senate - Supermajority for Federal Mandates [77 lines]

Official Title (Caption):
A resolution to amend the Standing Rules of the Senate to require a supermajority for Senate approval of the bills or amendments containing unfunded Federal mandates.

Most Recent Action:
10/27/93 -- In The SENATE
Introduced by GREGG (R-NH)
Referred to Senate Committee on Rules and Administration
Remarks by KEMPTHORNE (R-ID) in "Congressional Record" (CR Page S-14447)
Remarks by ROTH, WILLIAM (R-DE) in "Congressional Record" (CR Page S-14448)
Remarks by PRESSLER (R-SD) in "Congressional Record" (CR Page S-14451)
Remarks by FEINSTEIN (D-CA) in "Congressional Record" (CR Page S-14452)
Remarks by COVERDELL (R-GA) in "Congressional Record" (CR Page S-14453)
Remarks by MOSELEY-BRAUN (D-IL) in "Congressional Record" (CR Page S-144453)
Remarks by CRAIG (R-ID) in "Congressional Record" (CR Page S-14454)
Remarks by BURNS (R-MT) in "Congressional Record" (CR Page S-14455)
Remarks by HUTCHISON (R-TX) in "Congressional Record" (CR Page S-14456)
Remarks by BENNETT (R-UT) in "Congressional Record" (CR Page S-14456)
Remarks by MCCAIN (R-AZ) in "Congressional Record" (CR Page S-14456)
Remarks by GORTON (R-WA) in "Congressional Record" (CR Page S-14457)
Remarks by HATCH (R-UT) in "Congressional Record" (CR Page S-14458)
Remarks by WARNER (R-VA) in "Congressional Record" (CR Page S-14459)
Remarks by MACK (R-FL) in "Congressional Record" (CR Page S-14516)
Remarks by COATS (R-IN) in "Congressional Record" (CR Page S-14522)
Remarks by BINGAMAN (D-NM) in "Congressional Record" (CR Page S-14522)
Remarks by DURENBERGER (R-MN) in "Congressional Record" (CR Page S-14522)
Remarks by BOND (R-MO) in "Congressional Record" (CR Page S-14523)
Full text of measure printed in "Congressional Record" (CR Page S-14542)
Remarks by GREGG (R-NH) in "Congressional Record" (CR Page S-14542)

14. S.Res. 159 by COVERDELL (R-GA) -- Resolution Providing Worker Profiling System and Flexibility for Re-employment Services to States [63 lines]

Official Title (Caption):
A resolution expressing the sense of the Senate that the Department of Labor should provide adequate resources to the States to cover the costs of developing and implementing the worker profiling system and should provide the Governors with adequate flexibility to ensure that the funds appropriated will be made available to provide re-employment services for profiled claimants.

Most Recent Action:
10/28/93 -- In The SENATE
Passed (agreed to) (by Unanimous Consent) with preamble
Full text of measure printed in "Congressional Record" (CR Page S-14600)
Full text of measure printed in "Congressional Record" (CR Page S-14632)

15. S.J. Res. 130 by KEMPTHORNE (R-ID) -- National Unfunded Federal Mandates Day, Designation [47 lines]

Official Title (Caption):
A joint resolution designating October 27, 1993, as "National Unfunded Federal Mandates Day".

Most Recent Action:
09/09/93 -- In The SENATE
Introduced by KEMPTHORNE (R-ID)
Referred to Senate Committee on the Judiciary

16. S.J. Res. 148 by BROWN (R-CO) -- Constitution of the United States, Amendment - Unfunded Federal Mandates [45 lines]

Official Title (Caption):
A joint resolution proposing an amendment to the Constitution of the United States barring Federal unfunded mandates to the States.

Most Recent Action:
10/27/93 -- In The SENATE
Introduced by BROWN (R-CO)
Referred to Senate Committee on the Judiciary
Remarks by KEMPTHORNE (R-ID) in "Congressional Record" (CR Page S-14447)
Remarks by ROTH, WILLIAM (R-DE) in "Congressional Record" (CR Page S-14448)
Remarks by PRESSLER (R-SD) in "Congressional Record" (CR Page S-14451)
Remarks by FEINSTEIN (D-CA) in "Congressional Record" (CR Page S-14452)
Remarks by COVERDELL (R-GA) in "Congressional Record" (CR Page S-14453)
Remarks by MOSELEY-BRAUN (D-IL) in "Congressional Record" (CR Page S-14453)
Remarks by CRAIG (R-ID) in "Congressional Record" (CR Page S-14454)
Remarks by BURNS (R-MT) in "Congressional Record" (CR Page S-14455)
Remarks by HUTCHISON (R-TX) in "Congressional Record" (CR Page S-14456)
Remarks by BENNETT (R-UT) in "Congressional Record" (CR Page S-14456)
Remarks by MCCAIN (R-AZ) in "Congressional Record" (CR Page S-14456)
Remarks by GORTON (R-WA) in "Congressional Record" (CR Page S-14457)
Remarks by HATCH (R-UT) in "Congressional Record" (CR Page S-14458)
Remarks by WARNER (R-VA) in "Congressional Record" (CR Page S-14459)

Remarks by MACK (R-FL) in "Congressional Record" (CR Page S-14516)
Remarks by COATS (R-IN) in "Congressional Record" (CR Page S-14522)
Remarks by BINGAMAN (D-NM) in "Congressional Record" (CR Page S-14522)
Remarks by DURENBERGER (R-MN) in "Congressional Record" (CR Page S-14522)
Remarks by BOND (R-MO) in "Congressional Record" (CR Page S-14523)
Remarks by BROWN (R-CO) in "Congressional Record" (CR Page S-14540)

The city of San Diego, in responding to the mayors' survey, reported that it will spend $58 million this year in obeying those three laws plus the Underground Storage Tanks Act, Clean Air Act, Asbestos Abatement Law, Lead Paint Abatement Law, Endangered Species Act, Americans with Disabilities Act and Fair Labor Standards Act.

"We are not objecting in substance to most of the laws that deal with cleaning up the environment, or providing safe drinking water or providing access for the handicapped," said Mayor Jerry Abramson of Louisville, Ky., president of the mayors' organization.

"What we are objecting to," he said, "is a bankrupt federal government that continues to pass laws without the wherewithal to fund them -- a federal government that requires, demands and mandates local governments to financially implement, at local taxpayer expense, the wishes of our national leaders. . .

"If it's good for America, and Congress decides to pass laws to require certain actions, Washington needs to pay the freight," Abramson said.

Unfunded programs government professor, noted that until the late 1970s most U.S. mandates, such as highway construction laws, were funded by the federal government.

As the federal budget deficit grew, funds available for new initiatives decreased. Congress continued to fashion new programs but began ordering state and local governments to pay.

At the same time, the states started to suffer from their own fiscal problems.

The U.S. Advisory Commission on Intergovernmental Relations has found that another reason for the growth of mandates has been a proliferation of special interest groups working from Washington. These organizations have found it easier to concentrate their lobbying on Congress rather than try to push their causes through 50 state legislatures.

The federally financed commission that studies state-federal relationships, has called for a moratorium on <unfunded> and underfunded <mandates> for at least two years.

During that period, Congress and the executive branch would study mandates "for the purpose of restoring balance, partnership, and state and local self-government in the federal system."

The commission also has urged the Supreme Court to "re-examine the constitutionality of mandates."

Clinton, declaring the "cumulative effect of <unfunded> federal <mandates> has increasingly strained" states and communities, last week issued an executive
order aimed at easing the problem.

Clinton prohibited executive branch officials from issuing any mandate not required by statute unless federal funds are provided and it is done in consultation with the affected localities.

But the executive order is expected to have only minimal impact. Congressional action will be required for substantive change.

Congress taking up issue

Congress last week began the process of considering the issue. The Senate Government Operations Committee held a hearing on nearly a dozen bills on the subject. Congressional sources predict legislative action next year.

Agreeing that the states and localities "make a good case" against <unfunded> <mandates,> Committee Chairman John Glenn, D-Ohio, said that "the

cost of federal mandates has been increasing at the same time that the federal aid to comply with those mandates has been declining."

Glenn added that "sometimes, because of state and local inactions, it is in the public interest for the federal government to impose mandates on smaller governments.

"But the time is past," he said, "when Washington can simply pass the buck without the bucks."

Some 10 bills dealing with mandates also have been introduced in the House where a bipartisan group of representatives has organized a Congressional Caucus on <Unfunded Mandates> that as of last week had about 80 members.

In both chambers, the bills range from measures that would prohibit <unfunded mandates> to legislation that would require mandates to disclose their the costs.

Even if Congress only requires mandates to carry their price tag, it could inhibit the federal government from ordering the states and localities to pay for new programs.

As voters become more aware of how much their local taxes are going up because of actions taken in Washington, they may not look kindly on members of the House and Senate who vote for new programs but evade responsibility for financing them.

<Unfunded mandates> have emerged indirectly as a political issue in California, where Gov. Pete Wilson has complained that federal laws and regulations require the state to pay for social services received by undocumented migrants.

The San Diego County Board of Supervisors has voted to send Clinton a monthly bill seeking reimbursement for such costs. Clinton has said he is sympathetic but has not said he will pay the bill.

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SECTION: NEWS; Pg. 15A

HEADLINE: GIVE LOCAL GOVERNMENTS A BREAK / FEDERAL REQUIREMENTS, WITHOUT FUNDS TO PAY FOR THEM, ARE STRANGLING CITIES, COUNTIES AND TOWNS

BYLINE: Paul Coverdell

BODY:

The banner headline I read in a local newspaper told a powerful message: "City Votes Storm Water Tax; Federal Mandate Left No Choice, Council Says."

These few words bring home the ugly truth of what <unfunded> federal <mandates> cost our cities and communities - higher taxes.

The article stated that Congress has decreed or mandated that localities must catch and control rainwater so that it meets quality standards and does not mix with sewage and overload collection and treatment facilities. What Congress has forgotten to do is provide communities with any funds for compliance.

The result is that localities must raise taxes or dig deep into their property tax base to foot the bill - just another example of Congress passing legislation and passing the buck for implementing such legislation onto local communities.

It's time to put an end to this practice, and I have introduced legislation aimed at stopping Congress from spending local property taxes to pay for expensive federal regulations that the federal government won't pay for itself.

The bill states that passage or implementation of federal regulations without funding to cover the cost of local-government compliance will require a two-thirds majority vote. The principle behind it is simple: If Congress believes there is a compelling reason for passage of an <unfunded> federal <mandate,> then let us pass it by a compelling majority.

On the surface, it is easy to see how the federal government got into this mess. Congress and the federal government have spent every dime they have - and over $ 4 trillion they don't have - to carry out their unending desire to spend, spend and spend. Now Congress has begun a full-scale raid on local property taxes in its hunt for more dollars.

Property owners throughout the nation probably don't realize it, but the federal government now consumes as much as 10% of their property taxes to pay for these mandates. The burden on local budgets is even greater, reaching as much as 30%, according to the Department of Community Affairs in my state, Georgia. And in Glynn County, Ga., the Brunswick area, officials estimate that 42% of their budget consists of requirements resulting from <unfunded> state and federal <mandates.> In counties and municipalities across the nation, the story is the same.

And, as new mandates are enacted, that percentage could rise, meaning communities will be forced to raise property taxes to pay for this federal raid on their finances.

I met with local officials, community leaders and business representatives in a series of round-table discussions concerning mandates and their effects on local budgets. In each meeting, legislators, mayors, county commissioners and local administrators said the crushing weight of <unfunded> federal <mandates> is the No. 1 fiscal problem they face. As one mayor told me, "<unfunded>

<mandates> are foreclosing our local governments from being able to deal with our own priorities."

On the state level, researchers at the National Conference of State Legislators identified more than 172 federal laws containing <unfunded mandates> with which the states must comply. The conference also found that from 1991 to 1992, in the 102nd Congress, 15 new <unfunded mandates> were enacted.

There is some good news to report. As of October, the conference has identified 27 bills introduced in this Congress to provide mandate relief. The Senate Governmental Affairs Committee has held hearings on the issue.

Also, on Oct. 28 the Senate unanimously passed a resolution instructing the Department of Labor to provide resources for the states to develop and implement a new worker-profiling program. This saved the states from having to pick up the federal tab for the program.

There is, however, some bad news. The legislators' conference reports that as of October, 132 bills containing <unfunded mandates> have been introduced in this Congress. That's almost five <unfunded-mandate> bills for every bill providing mandate relief.

On a national level, government regulation is estimated to cost at least $ 8,000 per household and may reduce the national output by as much as $ 1.1 trillion per year. But mandates cost more than money. They also cost jobs - as many as 3 million jobs over the past two decades, according to the Heritage Foundation.

Many regulations or mandates directly increase the cost of employing workers and thereby act like a hidden tax on job creation and employment. These regulations place especially heavy burdens on small businesses, the primary engines of job creation.

The Federal Mandate Relief Act is a start at redirecting our focus to the costs Congress passes on to local governments through mandates.

Indentifying these financial burdens will cause Congress to stop and think about the consequences of its actions on property taxpayers and local governments before it passes <unfunded mandates.> This undisciplined appetite for spending has to stop if we are to get our financial house in order.

Federal mandates

Local governments have no hard numbers on the cost of federal mandates, but a study of 134 cities by the U.S. Conference of Mayors estimates that they cost 11.7% of their local budgets. And a study of 128 counties by the National Association of Counties puts the number at 12.3% of local budgets. Some highlights of the counties study:

Mandate	Cost
Immigration Act	$ 1.5 billion
Clean Water Act/Wetlands	1.2 billion
Resource Conservation and Recovery Act	0.6 billion
Clean Air Act	0.3 billion
Americans with Disabilities Act	0.3 billion

What some counties pay Los Angeles County leads the country in the amount of money it will spend to comply with mandates:

County	Costs

Los Angeles, Calif.	$ 1.0 billion
Prince Georges, Md.	59.3 million
Orange, Fla.	56.3 million
Riverside, Calif.	55.6 million
Harris, Texas	43.0 million)

CHICAGO TRIBUNE
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SECTION: EDITORIAL; Pg. 24; ZONE: N

HEADLINE: WHEN FEDS SPEND LOCAL FUNDS

BODY:

It was called National <Unfunded Mandates> Day and, as thrillers go, it won't replace Halloween. But, declared last month by local and state governments, it Raises a chiller of an issue: the federal government's responsibility to pay for the programs it approves.

Washington has developed a bad habit of approving programs both the president and Congress think are good ideas but that neither is willing to fund. It is a bipartisan, non-ideological habit.

Everyone wants such useful programs as the Safe Drinking Water Act, the Resource Conservation and Recovery Act, the Clean Water Act, the Clean Air Act and the Superfund program, but nobody wants to pay for them. Instead, their costs get passed on as mandates to local governments, who must pay for them, often at the expense of other, more crucial services like police, housing, education and fire.

Usefulness is no excuse to pass the buck. A program worth passing is worth paying for. An evasion of that responsibility by forcing lower governments to pay for it only creates new problems for local governments-and local taxpayers-the program is intended to help.

Chicago in the past fiscal year spent $70.8 million-including $27 million in paperwork alone-on <unfunded mandates,> said Mayor Richard Daley, chair of the U.S. Conference of Mayors' task force on <unfunded> federal <mandates,> during a recent visit to Washington with other state and local officials.

Other Illinois cities paid additional millions. One study showed a sampling of 10 <unfunded mandates> gobbled up 11.7 percent of city revenues nationwide.

President Clinton has responded by signing an executive order that calls for a reduction in <unfunded mandates> and an increase in flexibility for cities, counties and states to seek exemptions.

The president deserves applause for responding so directly, but more is needed. Sen. Carol Moseley-Braun has introduced a bill requiring that costs to local and state governments be identified before the Senate considers a mandate.

That's a good start. Government behaves badly enough when it spends beyond its means to provide programs the public wants. It behaves worse when it takes the glory and passes the cost on to others.

LOAD-DATE-MDC: November 16, 1993

AP 11-16-94 19:29 EST 68 Lines.
AM-AZ--States' Rights, Bjt,600<

STATE LEGISLATIVE LEADERS, CONGRESSIONAL DELEGATION MEET<

By AL BRAVO Associated Press Writer

PHOENIX (AP) State legislative leaders told the incoming Arizona congressional delegation Wednesday that unfunded federal mandates must be addressed, beginning with the federal Clean Air Act.

In a meeting among legislative leaders, U.S. Sen. John McCain, four of the recently elected U.S. represenatives and the elected U.S. senator, the state lawmakers pressed for more autonomy from the federal government.

The top priority for state Senate President John Greene and House Speaker Mark Killian is the Clean Air Act which forced the Legislature into a special session a year ago.

But after the meeting, McCain, R-Ariz., said Congress could not turn back such mandates although the new Republican-controlled chambers should be more sympathetic to the states.

``I think the scenario we can probably expect is that new pieces of legislation would have this requirement that federal government provide the means to pay for at least rules and regulations and measures that are laid on the states and local communities,'' McCain said. ``And then, as we revisit acts such as the Clean Water Act, the Endangered Species Act and others, you would probably see these changes come about. It's going to be a slow process.''

The legislative leaders were simply happy to have a friendly ear to their plight. The new representatives were listening.

``It seems to me the principle that those government decisions which need to be made ought to be made at a level closest to the people is one that I honor,'' said John Shadegg, a Republican elected to the 4th Congressional District seat vacated by U.S. Rep. Jon Kyl.

Kyl, who was elected to the Senate, said the incoming Congress will be more receptive to states' pleas.

``We now have the opportunity to reauthorize several of those laws with significant changes,'' the Arizona Republican said. ``They probably won't eliminate all the mandates and potential unfunded manadates, but if we do it right, we can roll back some of the most pernicious clauses.''

The Clean Air Act was set as the priority and gave former state senator Matt Salmon, who was elected to the 1st Congressional District, a chance to vent some frustration after last year's special session.

``The fact is we could do away with all the planes and trains and cars and all the industrialization in this state (and) we still wouldn't comply with the requirements to comply with the particulate levels in the atmosphere because we live in the desert,'' he said.

Greene, R-Phoenix, said other issues the state would like the congressional delegation to address were the Endangered Species Act, the Clean Water Act and the Americans with Disabilities Act.

``We have to be more careful what we legislate,'' Greene said after the meeting. ``Not only from a constitutional prospective but real world with the practical effect of that. How many more of these kinds of bills can we withstand without bringing this country to its knees.''

Legislative staffers said the meeting of elected congressional members and state lawmakers to discuss matters was unprecedented.

Also taking part in Wednesday's meeting were elected U.S. Reps. J.D. Hayworth and Bob Stump, state Sens. Tom Patterson, R-Phoenix, Jim Buster, R-Yuma, Gus Arzberger, D-Willcox, James Henderson, D-Window Rock, Rep. Brenda Burns, R-Glendale, Robert Burns, R-Glendale and George Cunningham, D-Tucson.

AP 11-15-94 22:25 EST 55 Lines.
PM-AR--Disabled Voting, Ark Bjt,490<

FEDERAL COURT TO RULE ON REQUEST TO MAKE SUIT A CLASS ACTION<

By JAMES JEFFERSON Associated Press Writer

LITTLE ROCK (AP) A federal judge this week will consider a request to include all disabled Arkansas voters in a lawsuit that would require the state to make polling places accessible to everyone.

Advocates for the disabled filed suit in August 1993 alleging that few of the state's more than 2,100 polling places are accessible to disabled voters, in violation of the Americans with Disabilities Act and other state and federal laws that have been on the books for up to a decade.

A hearing on the plaintiffs' request to have the suit declared a class action is scheduled Thursday before U.S. District Judge George Howard Jr.

Attorneys Peter A. Miller and Lynn Lusk of Little Rock filed the complaint on behalf of the Arkansas chapter of the American Civil Liberties Union and a half-dozen disabled plaintiffs.

The suit ultimately seeks from Howard an order requiring the state to develop a plan and timetable for full compliance with laws that mandate accessibility for the elderly and for persons with disabilities.

``We may even be entitled to monetary damages due to the failure to comply,'' Lusk said Tuesday. ``Some counties are pretty bad.''

Named as defendants are all county election commissions in the state, as well as Gov. Jim Guy Tucker, Secretary of State Bill McCuen and the state Board of Election Commissioners.

The basis for the suit is a survey from the 1992 general election. Election officers filed accessibility documents from only about 700 of the more than 2,100 polling places designated for the election, and nearly 90 percent of those were poorly accessible to the disabled and elderly, according to Lusk.

He said he had no reason to believe that conditions, on the whole, had improved significantly this year, though no formal survey was conducted. Members of the ADAPT program were asked to observe conditions informally at polling places around the state and reported some problems, he said.

For example, he said, members reported that a wheelchair ramp at Crestwood Elementary School in North Little Rock was at the back of the building at the farthest entrance from voting booths was not clearly marked and led to a locked door.

Problems reported at other polling places around the state included no ramps, no disabled parking, no ballots printed in Braille or enlarged type and no telecommunications device (TDD) lines for disabled voters to call for ballot information and voting instructions.

Public Law 98-435, enacted in September 1984, specifies 47 requirements that polling places must meet to fully comply with the law, encompassing parking, walks, curbs and ramps, doors and thresholds, elevators and corridors.

AP 11-15-94 18:16 EST 71 Lines.
AM-Addicts-Disability, 1st Ld-Writethru, a0659,610<

STUDY: FEW ADDICTS ON WELFARE GET TREATMENT AND RECOVER<

By JENNIFER DIXON Associated Press Writer

WASHINGTON (AP) Just 1 percent of the low-income drug addicts and alcoholics who collect disability benefits ever recover or get jobs. Most are dropped from the rolls only when they die or go to jail, according to a federal study.

The report, by the inspector general at the Department of Health and Human Services, also documents government failure to make sure substance abusers are in treatment as a condition of collecting monthly disability checks of $446.

More than 80,000 drug addicts and alcoholics receive benefits under Supplemental Security Income, a welfare program run by the Social Security Administration for the elderly and disabled.

Fewer than 10 percent of SSI substance abusers are in treatment, and Social Security does not know the treatment status of most of the rest, said the federal report released Monday.

Earlier studies by the General Accounting Office and the Republican staff of the Senate Special Committee on Aging found that addicts were spending their checks on drugs and alcohol, sometimes to the point of overdose and death, because of inadequate supervision.

This month's look at the problem finds that death is the most common reason addicts and alcoholics are crossed off the SSI rolls and that many substance abusers collect benefits for years. Investigators identified 510 who have been receiving benefits since the program was begun in 1974.

Sen. William Cohen, whose Senate Aging Committee investigation prompted Congress to end unsupervised cash payments to addicts earlier this year, said the study underscores how Social Security's disability programs are vulnerable to abuse.

``Taxpayer dollars are flowing into the veins of drug addicts, and the government is rarely taking steps to shut off the payments,'' said Cohen, R-Maine.

For their study, the investigators tracked 20,101 recipients who were on the rolls in June 1990. Nearly four years later, as of February 1994, 76 percent a total of 15,271 were still on SSI. On average, they had been collecting benefits for 7.4 years.

Of the remaining 4,830 who were not receiving benefits, half had died.

An additional 399 were dropped because they refused treatment, 370 were in jail or another public institution and 197, just 1 percent of the overall total, had recovered their health or found jobs. The rest had obtained other benefits or been removed for other reasons.

Sen. Cohen, who is in line to become chairman of the Senate Aging Committee next year, said he is hopeful that the new restrictions on SSI payments to addicts, including a three-year

limit on benefits, ``will go a long way toward curbing these abuses.''

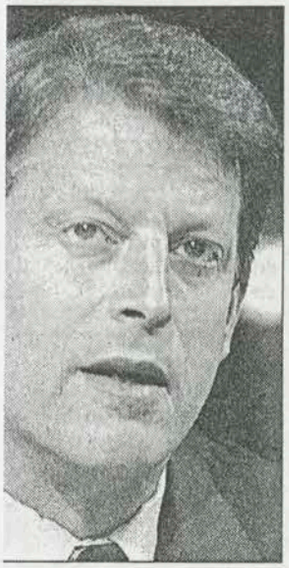
Under current law, substance abusers on SSI are supposed to be in treatment but only if it is available and are only suspended if they refuse treatment when it is offered.

Under the new law, which takes effect in March, drug addicts and alcoholics on SSI will be kicked off the rolls after three years, regardless of whether they receive treatment.

Social Security Commissioner Shirley Chater said the agency intends to be aggressive about making sure these recipients are referred to treatment facilities where they will be given ``ample opportunity to overcome their addictions.''

``The public has a right to expect substance abusers will not simply continue to collect cash benefits without making an attempt to overcome their addictions and seek productive work,'' Chater said.

FEDERAL REPORT



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Unfunded federal mandates disable states, legislator says

By Greg Pierce
THE WASHINGTON TIMES

The Americans With Disabilities Act "is just destroying us," a Missouri state legislator told Rep. James P. Moran Jr. and Sen. Paul Simon yesterday.

Chris Kelly, chairman of the Missouri House Budget Committee and "a die-hard Democrat," made the comment during a session of the State-Federal Assembly of the National Conference of State Legislators, which is meeting in Washington this week.

Mr. Moran, Virginia Democrat, was finishing his presentation on unfunded mandates — federal laws that force state or local governments to pay the bill — when Mr. Kelly interjected, "You guys are just killing us."

Mr. Kelly said his committee has wrestled with ways to pay for the disabilities act, which mandates that facilities be made accessible to the disabled.

Mr. Moran said he was absent the day the bill was approved but probably would have voted for it.

"What you're saying is right on target," Mr. Moran said. "That's not to say ADA was not a good piece of legislation," but it has caused budgetary problems for the states.

Mr. Simon, Illinois Democrat and a co-sponsor of the law, said, "I would take a good look at the law and what people say you ought to be doing."

The senator said a school district in his home state had complained that because of the law it would have to spend $30,000 on an elevator, but it turned out a $580 ramp would suffice.

"We tried to make it [the law] practical," Mr. Simon said.

Mr. Kelly said he and his colleagues on the Missouri House Budget Committee had heard such stories but found there wasn't much wiggle room.

"Senator, it is the law," he said.

"I beg you, stop" the mandates, he told both men.

Earlier, Mr. Moran said there will be "some very serious problems" with unfunded mandates in the president's health care plan, but "it is absolutely impossible" to have legislation without them.

He said he favors legislation requiring that every bill include estimates of the cost to state and local governments as well as the private sector. Such estimates would operate like an environmental impact statement, he said.

The Virginia congressman, who had to deal with such mandates as mayor of Alexandria, said they are unfair because state and local officials are so caught up in federal mandates that they can't set their own priorities.

Mr. Moran said he opposes legislation by Sen. Dirk Kempthorne, Idaho Republican, and Rep. Gary Condit, California Democrat, that would require federal funding of all mandates.

He said he has "serious questions" about the motives of those favoring the Kempthorne-Condit bill and thinks it may just be an attempt to stop federal spending.

Mr. Simon said he supports the Kempthorne bill.

Environmental groups are the most likely to oppose curbs on mandates, Mr. Moran said, because environmental laws often cost a great deal to enforce. If the unfunded costs of such bills were known, they would never get out of committee, he said.

Mr. Simon, speaking out for a balanced-budget amendment to the Constitution, said the Wall Street Journal editorial page had warned that it would lead to tax increases. The New York Times editorial page, on the other hand, warned that it would lead to spending cuts.

They're both right, the senator said.

planned

it would be better to let the
commission handle it.
tt DeFife, director of the
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— Greg Pierce

TNAUER

TESTIMONY OF JUSTIN DART
BEFORE THE
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
APRIL 28, 1994

Mr. Chairman, it is an honor to appear before the Committee on Governmental Affairs. I am the former chair of the President's Committee on Employment of People with Disabilities.

On July 26, 1990, I had the privilege of witnessing the most important event in the history of people with disabilities. On that day, President Bush signed into law the Americans with Disabilities Act.

Senators, on that day, I cried.

I cried tears of agony for the crushing burden of responsibility we were undertaking as we promised the world to put an end to thousands of years of oppression and exclusion.

Throughout all history people with disabilities have been regarded as subhumans. At worst, they have been killed or left to die as beggar–outcasts. At best they have been cared for through subsistence welfare, usually in the most isolated and demeaning circumstances.

I remembered when I was 24 years old and had worked hard to be at the top of my education class in my university, only to be refused by the State of Texas to be certified as a teacher because of my wheelchair.

I remembered my disabled mother and brother who took their own lives because they were unwilling to face this massive discrimination and prejudice.

I remembered the 1989 congressional testimony of Perry Tillman:

> "I went to Vietnam like a lot of other young men to fight for our country's ideals--freedom and the ability to become whatever we dreamed of becoming...When I came home as a wheel chair user, I found out that the rights I fought for applied to everyone except me."

But, I also cried tears of joy.

The ADA is a landmark in the evolution of human beings, the first

comprehensive civil rights law for people with disabilities in the history of the world. It is the emancipation proclamation for forty-nine million Americans with disabilities, and the symbol of dignity, respect and hope for almost a billion persons with disabilities around the world.

There are no words to tell you how proud I am of America; there are no words to tell you what it means to me and to millions of Americans with disabilities to be legally recognized as human beings, to be declared full members of the human race.

And so, Mr. Chairman, it would be impossible to convey to you the depth of the anger, the terror we feel when we read that our sacred, hard won civil rights law has been trivialized as an "unfunded mandate" that is burdensome to the nation.

The ADA is not an unfunded mandate. The ADA is a civil rights law that implements the promises of the equal protection clause of the 14th amendment of the United States Constitution.

The Bill of Rights is not an unfunded mandate. The historic Civil Rights Act of 1964, the Voting Rights Act, the Fair Housing Act are not unfunded mandates. The ADA is not an unfunded mandate.

The ADA is a brilliant blueprint for rational change. It is probably the most cost-effective civil rights law ever passed. According to President Bush, excluding millions of people with disabilities from the productive mainstream costs $200 billion cash annually in public and private funds. ADA will cost a tiny fraction of the amount it will save.

The ADA provides the proper balance between the civil rights of people with disabilities and the legitimate concerns of state and local governments, employers, and private businesses. It is flexible, allowing different solutions in different situations. It has numerous provisions designed to eliminate undue hardships and undue financial burdens frequently described by those concerned about unfunded mandates.

Attorney General Dick Thornburgh, in 1989 congressional testimony stated it this way:

> "This bill is fair, balanced legislation. It builds on an extensive body of statutes, case law, and regulations to avoid unnecessary confusion; it allows maximum flexibility for compliance; and it does not place undue burdens on Americans who must comply."

Mr. Chairman, the section in the ADA applicable to state and local governments is basically one sentence long--it specifies that state and local governments must

comply with the very same standards set out in section 504 of the Rehabilitation Act of 1973. Most state and local governments, as recipients of federal financial assistance, have been subject to section 504 rules of nondiscrimination for over 20 years.

In other words, those governments that have taken reasonable steps over the past 20 years to eliminate architectural and other artificial barriers in compliance with section 504, are most likely already in compliance with the ADA. It is those governments that have done the least over this period that are now complaining the loudest.

During the last two years I have personally held at least two forums in each of the fifty states to dialogue with leaders of state and local governments, business, and the disability community about full, harmonious, and cost-effective implementation of the ADA. I would like to share with you what I have found.

First, those communities which have developed formal communications among people with disabilities, government officials and private businesses have had the greatest success in implementing the ADA in a cost-effective manner. People with disabilities often know the cheapest way to ensure compliance.

For example, an architect might propose redesigning a water fountain to lower its height at a cost of several thousand dollars. On the other hand, a person with a disability would suggest installing a cup dispenser for under five dollars.

Second, there is a lot of fear and misunderstanding out there about the costs of compliance with the ADA. This fear is being fueled by lawyers, architects, builders, and self-styled expert consultants whose only interest is to promote profits for themselves.

The fears being raised now about the impact of the ADA are similar to those misgivings that were raised in the first few years following the implementation of section 504 of the Rehabilitation Act. There were predictions that those covered by the section 504 regulations would be bankrupted or forced to severely curtail or alter their services. These doomsday predictions were based on ignorance and myth and proved completely false.

Similar misgivings in the area of race discrimination surfaced in 1965 and proved to be equally unfounded.

Doomsday predictions about the ADA have not come true; they will not come true.

I have included a list of typical mis-understandings in Appendix 1 of my

written testimony. Let me give you some examples.

State and local officials have told me how burdensome it is to require that all public buses be retrofitted with lifts. I tell them that they are misinformed--buses are not required to be retrofitted; only new buses require lifts. Further, the federal government pays a significant portion of the cost of the lift.

State and local officials have complained to me about how they have to make every existing building, every existing entrance way, and every existing bathroom accessible. A local official told me about the burden of installing an elevator in a small rural library.

I tell them someone is selling them a bill of goods.

With respect to existing facilities, the ADA regulation (section 35.150 of part 35 of the Code of Federal Regulations) includes a standard which is referred to as the "program accessibility" standard. What this means is that the program of services must be made accessible, but not necessarily every building or every floor of every building. In other words, a public entity is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section.

For example, according to the regulations, a public entity can comply through such means as reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternative accessible sites, or any other methods that result in making its services, programs or activities accessible.

The regulations also state that the ADA:

-does NOT necessarily require a public entity to make each of its existing facilities accessible;

-does NOT require a public entity to take any action that would threaten or destroy the historic significance of an historic property; and

-does NOT require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.

In sum, I have found that the more people understand about what the ADA does and does not require, the more comfortable they feel about implementation.

Third, I have also learned that the ADA is frequently used as a scapegoat for local officials who want to renovate a building but cannot muster sufficient local

support.

Last year I read in a weekly newspaper that a tiny impoverished West Texas County was going to have a County Commissioners' meeting to vote for "renovations to the court house required by the ADA"--an automatic elevator, new bathrooms, all kinds of expensive things I knew they couldn't afford and ADA did not require.

I called the County judge and offered to come to the meeting and explain that the ADA really didn't require them to spend all that money in a time of budget problems. He said, "Justin, come to the meeting if you want to, but keep your damn mouth shut. I finally got the votes to fix this run-down courthouse right and by God I'm going to do it."

Mr. Chairman, the ADA may be misunderstood, but it is not a burdensome, unfunded mandate. It's a well thought-out, well-written, cost-effective civil rights law. It declares me to be a human being and I thank God for it. What we need is not less civil rights, but more information, and more courage to use it.

I respectfully suggest a simple economical solution for the problems of misinformation about the ADA, and the resulting unnecessary expense and the denial of rights. Congress must appropriate a sufficient amount of money to allow the Department of Justice to provide accurate ADA information to state and local communities, to business, and to people with disabilities.

To address the legitimate concerns of state and local governments, I respectfully suggest that as you draft legislation to protect states and communities from unwarranted financial burdens, you protect also the expansion of free enterprise democracy. Some of the bills before you, had they been in force for the last two hundred years, would have presented major barriers to the passage of our most significant social, economic, and civil rights legislation. A detailed analysis of the pending "unfunded mandate" bills is attached to my testimony as Appendix 2.

Finally, Mr. Chairman, I believe there is an underlying conceptual problem with many of the bills you are considering. Our adversarial political system has sometimes created the impression that there is a fundamental conflict between civil rights and free enterprise; that civil rights is a kind of bothersome luxury that do-gooders impose on sound business and sound government.

This is a dangerous fallacy. Civil rights and free enterprise are two sides of the same solid gold cultural currency that has revolutionized the productivity and the quality of human life in this nation.

Our forefathers and mothers came to this country because we offered

extraordinary legal guarantees of equal opportunity. They got rich and America got rich. Every time we expanded those civil rights guarantees to include another oppressed minority, Americans got richer. With the strongest civil rights guarantees in the world, we have one of the highest standards of living, and one of the lowest tax rates among industrial democracies.

America is rich not in spite of civil rights. America is rich because of civil rights.

The ADA is the most recent landmark in our magnificent march to the promised land of liberty and justice and prosperity for all. People with disabilities will rise from welfare poverty to be workers, customers, and taxpayers. Every county, city, and state will prosper. Every American will prosper.

Thank you for the opportunity to share my views with the Committee. God bless you.

glenntst.A28

APPENDIX 1

FLEXIBILITY OF THE ADA LEGAL FRAMEWORK

PREPARED BY:

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APPENDIX 1: FLEXIBILITY OF THE ADA LEGAL FRAMEWORK

OVERVIEW OF THE ADA LEGAL FRAMEWORK

The landmark Americans with Disabilities Act (ADA) provides comprehensive civil rights protections to individuals with disabilities in the areas of employment, public accommodations, and state and local government services.

The regulation promulgated by the Department of Justice implementing Title II of the ADA (state and local governments) is found in Part 35 of Title 28 of the Code of Federal Regulations.

Most programs and activities of state and local governments are recipients of Federal financial assistance from one or more Federal funding agencies and, therefore, are already covered by Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in federally assisted programs and activities.

Because Title II of the ADA essentially extends the nondiscrimination mandate of Section 504 to those state and local governments that do not receive federal financial assistance, the ADA regulation parallels the provisions of existing Section 504 regulations. This approach is based on Section 204 of the ADA which simply incorporates by reference Section 504 regulations previously issued by the Justice Department.

Definition of "Disability". The ADA defines "disability" to mean, with respect to an individual: a physical or mental impairment that substantially limits one or more major life activities of such individual, a record of such an impairment, or being regarded as having such an impairment. This is the same definition included in Section 504, the Fair Housing Act, and the Air Carriers Access Act.

Employment. Title I (and Title II for state and local governments) specifies that an employer may not discriminate against any qualified individual with a disability in regard to any term, condition, or privilege of employment. The ADA incorporates many of the standards of discrimination set out in regulations implementing Section 504, including the obligation to provide reasonable accommodations unless it would result in an undue hardship on the operation of the entity.

Public Services, including public transportation. Title II of the ADA specifies that no qualified individual with a disability may be discriminated against by a public entity, i.e., state or local government. As explained above, the ADA regulations parallel Section 504 regulations.

The regulations provide that renovations and new construction must be "readily accessible to and usable by" individuals with disabilities. "ADAAG" (Americans with Disabilities Accessibility Guidelines for Buildings and Facilities) standards must be followed unless the Attorney General certifies that state standards provide equivalent access.

With respect to existing facilities, the ADA regulation includes a standard which is referred to as the "program accessibility" standard. What this means is that the program of services must be made accessible, but not necessarily every building or every floor of every building.

For example, according to the regulations, a public entity can comply through such means as reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternative accessible sites, or any other methods that result in making its services, programs or activities accessible.

The regulations also state that the ADA:

- does NOT necessarily require a public entity to make each of its existing facilities accessible;

- does NOT require a public entity to take any action that would threaten or destroy the historic significance of an historic property; and

- does NOT require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.

To the extent structural changes in facilities are undertaken to comply with the "program accessibility" standard, state and local governments are given three years, however, in any event, the changes should be made as expeditiously as possible.

With respect to public transportation provided by public transit authorities, all new fixed route buses must be made accessible unless a transit authority can demonstrate to the Secretary of Transportation that no lifts are available from qualified manufacturers, despite the fact that good faith efforts have been made to locate such lifts, and that a further delay in purchasing new buses would significantly impair transportation services in the community served. There is no requirement to retrofit any existing bus.

A public entity must also provide paratransit for those individuals with disabilities who cannot otherwise use mainline accessible transportation up to the point where the provision of such supplementary services would pose an undue financial burden on the transit authority.

New stations must be designed and constructed in an accessible manner. However, only key existing stations serving rapid rail and light rail systems must be made accessible as soon as practicable but in no more than 30 years where modifications are extraordinarily expensive (with two-thirds of the stations to be made accessible with

20 years).

TYPICAL MISUNDERSTANDINGS ABOUT THE ADA

The ADA provides the proper balance between the rights of people with disabilities and the legitimate concerns of state and local governments. It allows maximum flexibility and it does not place undue burdens on state and local governments to comply.

Unfortunately, there is a lot of fear and misunderstanding by state and local officials about the costs of compliance with the ADA. This fear is fueled by lawyers, architects, builders, and self-styled expert consultants whose only interest is to promote profits for themselves.

Set out below are examples of "myths" versus "realities" about the ADA.

SELF-EVALUATIONS AND SURVEYS

A large county in the Southwest contracted with an architectural firm for a survey of their existing buildings. The firm utilized the barrier removal standards of the ADAAG, which cover alternations and new construction Because this higher standard of accessibility was used (which was the incorrect standard), Title II's more flexible "program accessibility" standard was ignored.

The firm indicated that each existing barrier, in every building, must be removed, which would have cost millions of dollars. The Department of Justice advised the county of Title II's "program accessibility" requirements and provided concrete examples of ways Title II compliance could be achieved with minimal structural changes. In fact, many of the compliance recommendations required no structural changes.

A large county in the Northeast undertook an expensive survey of every building in the county, including not only places where the public received services and participated in programs, but such places as garages where construction equipment and snow plows were stored. Since architectural barriers at employee-only work spaces do not prohibit people with disabilities from receiving the benefit of a public entity's programs, these barriers need not be removed. The employment provisions of the ADA might require barrier removal at employee-only work spaces, but only when barrier removal is used to reasonably accommodate a disabled applicant for employment.

A school district in Troy, New York was advised by a consultant that all schools had to be retrofitted with elevators and that one school with an elevator required a second elevator to shorten an accessible route. The school district was advised that other alternatives could be explored (e.g., classes on ground floor, alternative locations for PTA meetings, etc.).

The City of Albany was advised that all restrooms in city buildings had to be made accessible. They were advised that a targeted retrofit of selected restrooms could satisfy the ADA's access requirements.

A county Health Department north of New York City was about to renovate a building to make it accessible when it was informed that its programs were already accessible since all services were available at convenient, alternative sites.

The Ulster Veterans Office provided inaccessible van service for trips to the VA Hospital in Albany. There were advised to purchase a new accessible van. EPVA told the agency to contract with an ambulette service when necessary.

HISTORIC BUILDINGS

A small county in Pennsylvania housed its Veterans Affairs office in a very small building which is listed on the National Register of Historic Places. Because this

building was not wheelchair-accessible, the Veterans Affairs staff had adopted the practice of conducting interviews and any other necessary business at the homes of clients who used wheelchairs or other mobility devices.

An architectural firm, which had been hired by the county, advised the country to construct a ramp to the building's entrance and to renovate the interior to comply with accessibility standards. The Department of Justice informed county officials that the home visit policy of its Veterans Affairs office complied with the ADA "program accessibility" requirements and no structural changes were necessary. Estimated cost savings were $20,000.

The Cooperstown, New York historic City Hall was advised to install an elevator to hearing rooms on the second floor. They were informed that, when necessary, hearings could be held on the first floor, which was already accessible.

POLLING SITES FOR ELECTIONS

A question was raised whether polling places in existing inaccessible facilities must be made accessible under the ADA. The Justice Department explained that existing polling places are not required to be accessible, provided alternative methods are effective in enabling individuals with disabilities to cast a ballot on the day of the election. A policy of taking the ballot outside to a voter who is unable to enter the polling place is an acceptable method of providing program access.

HEARING ROOMS IN TOWN HALL

A question was raised whether the hearing rooms located on the second floor (which was inaccessible) in Town Hall would have to be made accessible in order to come into compliance with the ADA. In this case, the Town acknowledged that the second floor of the Town Hall could be reached only by ascending a flight of stairs and that the second floor is inaccessible to some people with disabilities. The first floor of

the Town Hall was accessible.

The Justice Department found that the Town was not required to make the second floor accessible because it had adopted a policy that specifies that when people with disabilities need to access a program, service, or activity (including hearings) on the second floor, the Town will relocate it to the first floor.

CURB CUTS

A question was raised regarding the scope of a government's obligation to make streets accessible i.e., curb cuts. The Department of Justice explained that Section 35.150(d)(2) of the ADA regulations states that public entities with responsibility for or authority over streets, roads, or walkways must prepare a schedule for providing curb ramps where pedestrian walks cross curbs. Priority must be given to walkways serving state and local government offices and facilities, transportation, places of public accommodation, and employers, followed by walkways serving other areas. This schedule must be included as part of the transition.

However, the Department also explained, that Section 35.150 does not necessarily require a curb ramp at every intersection. Alternative routes to buildings that make use of existing curb cuts may be acceptable under the concept of "program accessibility", even if an individual with a disability may need to travel a longer route to reach a particular building than would a nondisabled individual.

Further, in residential areas, as opposed to commercial areas, it may be appropriate to establish a procedure for installing curb ramps upon request when an individual with disabilities moves into a neighborhood. Moreover, the fundamental alternation and undue burdens defenses will limit the number of curb ramps required in many cases.

In the case of new construction and alterations, the rules requires that curb

ramps be provided at any intersection having curbs or other barriers to entry from a street level pedestrian walkway.

ATHLETIC FIELDS

A question was raised whether every softball field in the city would have to be made accessible. The city was particularly concerned with the expense of providing access to a field that was built down in a ditch so there were steep walls surrounding it.

According to the "program accessibility" standard, this field would not have to be made accessible so long as other fields in the city were accessible.

PARKS AND RECREATION

A question was raised by the New York State Department of Parks and Recreation about ensuring access to the seashore. "Would sandy beaches have to be paved." The answer is obviously "no". At Jones Beach State Park, lifeguards unroll a vinyl mat which gives wheelchair users the ability to travel across the sandy beach. Paving the beach is not required because such an approach would "fundamentally alter" the nature of the beach. Fundamental alterations are not required.

In accordance with the "program access" requirement, New York State was not required to make all beaches accessible. However, New York State chose to make all beaches accessible in the manner previously described because of its low cost and ease of administration.

A large city conducted a survey of all of its parks and recreation areas. The architects informed the city that it would cost millions of dollars to make all the parks accessible. Before the contracts were let, the city was informed that the "program accessibility" standard only required that some, but not all, of the parks be made accessible.

A City in Central New York planned to close a municipal pool because officials received an $84,000 estimate to render it accessible. They were advised to relocate a proposed ramp and purchase a portable transfer tier, saving tens of thousands of dollars.

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APPENDIX 2

ANALYSIS OF THE UNFUNDED MANDATE BILLS

FROM THE PERSPECTIVE OF INDIVIDUALS WITH DISABILITIES

PREPARED BY:

Paralyzed Veterans of America on behalf of the Civil Rights Task Force of the Consortium for Citizens with Disabilities

April 28, 1994

APPENDIX 2

FOR THE RECORD

PARALYZED VETERANS OF AMERICA

PRESENTED TO THE

COMMITTEE ON GOVERNMENTAL AFFAIRS

ANALYSIS OF UNFUNDED MANDATE LEGISLATION

APRIL 28, 1994

Mr. Chairman, it is a privilege to present this statement on behalf of the members of Paralyzed Veterans of America, a congressionally chartered veterans service organization, and the Civil Rights Task Force of the Consortium for Citizens with Disabilities.

The purpose of this Appendix is to respond to the pertinent questions raised by Senators Glenn and Roth regarding the unfunded mandate bills that are pending before the Committee from the perspective of individuals with disabilities.

The Americans with Disabilities Act is a civil rights statute. Like other civil rights statutes, it is not an unfunded mandate.

Attorney General Thornburgh, on behalf of President Bush, testified before the Senate about the importance of enacting comprehensive civil rights legislation for people with disabilities.

> "Over the past 20 years, civil rights laws protecting disabled persons have been enacted in piecemeal fashion. Thus, existing Federal laws are like a patchwork quilt in need of repair. There are holes in the fabric, serious gaps in coverage that leave persons with disabilities without adequate civil rights protections." Senate Hrg. 101-156, p. 197, Committee on Labor and Human Resources (1989).

The ADA was enacted in response to a long documented history of discrimination. As Congress recognized in the findings section of the Act:

"individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society." 42 U.S.C § 12101(a)(7).

The clear and unequivocal conclusion that the ADA is a civil rights statute implementing constitutional protections is articulated in the Act's statement of purpose:

"It is the purpose of this Act-
(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;
(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;
(3) to ensure that the Federal government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and
(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities."
42 U.S.C. § 12101(b).

The ADA prohibits discrimination by employers, public accommodations, and state and local governments. The legislation incorporates by reference remedies available under other civil rights statutes (see, e.g., Section 107, which incorporates by reference the remedies under Title VII of the Civil Rights Act of 1964).

Senator Harkin, the chief sponsor of the ADA, categorized the ADA as a civil rights statute in a statement in support of the conference report:

"The ADA is, indeed, the 20th century Emancipation Proclamation for all person with disabilities. Today, the U.S. Senate will say to all Americans that the days of segregation and inequality are over and, as I said, by your winning your full civil rights, you strengthen ours."

Senator Orrin Hatch (R-UT) stated on the floor of the Senate that:

"This is a bill that really enfranchises 43 million Americans who have not had the type of coequal treatment in

our society that persons with disabilities really deserve. It is a bill that recognizes that the Federal Government does have a role in seeing that their rights are enforced. We now have before us the most sweeping piece of civil rights legislation since the Civil War era." Cong. Rec., S10714, Sept. 7, 1989.

In sum, the ADA is a civil rights statute that makes it illegal as a matter of federal policy to discriminate on the basis of disability.

The fact that a law had to be passed as recently as four years ago to protect inalienable rights of 49 million Americans with disabilities is unfortunate. To now have such a law be considered an "unfunded mandate" is inconceivable.

The effect of defining the ADA and other civil rights statutes as unfunded mandates is to state that as a matter of public policy the Federal government must pay state and local governments the costs of not discriminating against a significant portion of their citizenry. Such a policy is preposterous!

Much of the legislation before Congress today concerning unfunded mandates could well jeopardize the advances this nation has just started to make in alleviating a history of discrimination and second-class citizenship faced by people with disabilities. As stated above, we strongly oppose the inclusion of the ADA and other disability and civil rights legislation in the unfunded mandate debate. Senator Jim Sasser has introduced a bill, S. 1606, in which "unfunded mandate" is defined to exclude any laws or regulations that enforce the Constitutional or statutory rights of individuals. This definition is essential to ensure that all citizens will be able to enjoy certain inalienable rights, regardless of race, gender, ethnic origin, or disability. The definition of unfunded mandates should be of concern to all on this panel and in Congress, and <u>any</u> legislation affecting unfunded federal mandates must exempt Constitutional and statutory rights.

LEGISLATIVE APPROACHES

Legislation before this Congress addresses mandate reform in a variety of ways. Most of the bills are allegedly prospective, i.e., they would affect legislation enacted after the date of enactment. However, some of the proposed legislation, if enacted, would include regulations not yet issued in final form pursuant to legislation enacted prior to the passage of the bills. We are concerned that the recently secured rights of people with disabilities will once again be threatened.

For example, legislation introduced by Senator Kempthorne (S.993) would not only affect future enacted legislation, but also regulations that have not yet been promulgated, amendments

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to, and reauthorization of existing legislation.

The ADA itself will likely be amended at some point in the future, and regulations have yet to be developed - existing rights could be endangered unless the federal government, under S. 993, pays state and local governments not to discriminate against its citizens with disabilities. In fact, the ADA Accessibility Guidelines that apply to state and local governments have not yet been published or incorporated by the Department of Justice as a final regulation. If S. 993 were in effect when these guidelines become final, standards specifically developed for government operations would have no legally enforceable effect.

FUNDING

At the heart of the proposed legislation is the issue of financial burden. Bills introduced by Senators Gregg (S.648), Kempthorne (S.993), and Coverdell (S.1188) would require the federal government to fund any new Federally imposed obligations on state or local governments.

S.648 and S. 993 would both require the Federal government to provide the financial means for State and local governments to meet any new obligations placed upon them. Senator Gregg's bill includes a "pay-or-excuse mechanism" whereby a State or local government would be excused from complying with any new Federal mandate if it did not receive Federal funds to cover the cost of complying.

Senator Kempthorne states in S. 993 that "excess fiscal burdens on State and local governments have undermined, in many instances, the ability of State and local governments to achieve their responsibilities under State and local law." What are the "responsibilities under State and local law" of governments, if not to serve the needs of the citizens in its jurisdiction, including citizens with disabilities? Yet it is evident by the testimonies of State and local officials, in the Price Waterhouse report, at recent press conferences and at previous Congressional hearings, the extent to which programs, activities and services of these governments are not accessible to people with disabilities. Clearly the needs of citizens with disabilities are not being, and historically have not been, met. We believe that governments' concern about meeting their public responsibilities must apply to all citizens, including citizens with disabilities.

The structural and programmatic access requirements of the ADA have applied to many of these governments since the enactment of Section 504 of the Rehabilitation Act of 1973. Indeed, President George Bush stated on the day he signed the ADA that "The Administration worked closely with the Congress to ensure that, wherever possible, existing language and standards from the

ATT-4

Rehabilitation Act were incorporated into the ADA." Yet many government officials are today decrying the "new" burden placed upon them. These cries are indicative of public entities lack of compliance with Section 504. Had any of the bills requiring funding for federally imposed obligations been in effect when either the Rehabilitation Act or the ADA were enacted, state and local governments would in fact have had lesser responsibilities than do private entities also covered by these laws.

COST-BENEFIT

Several proposed reform bills would require Congress to justify its actions in all new legislation and or regulations with a cost-benefit analysis. Senator Carol Moseley-Braun's bill, S. 563, would require a Congressional Budget Office analysis of each bill or joint resolution reported in the House or Senate. Executive Order 12866 requires each agency to provide a thorough cost and benefit assessment on all intended regulations, and identifies costs and benefits to include "both quantifiable measures and qualitative measures of costs and benefits that are difficult to quantify. Yet any attempt to put either a quantitative or a qualitative value on a civil rights law or regulation that beneficially alters the lives of people with disabilities would be meaningless.

The cost and benefits associated with the Americans with Disabilities Act can not always be given a monetary value. In attempting to tally quantifiable costs, an analysis of Title II requirements would have to exclude all costs that are now being borne by state and local governments because of twenty years of noncompliance with Section 504 of the Rehabilitation Act of 1973.

A monetary value must be determined for the failure to comply with existing state laws that require accessibility. A CBO employee must quantify the cost of a lifetime of daily discrimination faced by an individual with a disability. This arbitrary figure must then be multiplied by 49 million. Multiply the cost further by the millions of future individuals with disabilities. If the ADA had not been passed or were to be repealed, a monetary value would have to be determined for the psychological effects on an individual of isolation from society and segregation from one's peers. This figure would also have to be multiply by 49 million, and then again to include all future generations of people with disabilities.

Conversely, many of the benefits of the ADA are difficult to quantify. Cost savings may be easily identified when individuals previously dependent on social welfare programs become employed, tax-paying citizens and contributors to the nation's economy. But identifying the value of accessible government services to future generations of individuals with disabilities who will never need to receive welfare assistance, or who will never need specialized transportation because every city bus will be accessible is complex. The enrichment to the quality of life of

every individual with a disability that implementation of this law will provide is intangible.

President Clinton acknowledges in Executive Order 12866 that there will be "qualitative measures of costs and benefits that are difficult to quantify". When the civil rights of American citizens with disabilities are in question, this appears to be an understatement. No monetary value can be established for an individual who is deaf and, with the assistance of an interpreter can now participate in town meetings and contribute to decisions that effect the community life for him and his family. Nor can a cost figure be attached to the freedom experienced by a teenage girl who uses a wheelchair who now rides the same city bus out to the local shopping mall with her friends.

ECONOMIC IMPACT

Senator Dorgan (S.1592) proposes to improve federal decisionmaking by requiring an economic impact analysis of legislative and regulatory requirements on State and local governments. We reiterate that the notion of attaching monetary values to a civil rights law is virtually impossible. For example, an accurate economic impact analysis of the ADA would have to weigh the cost of making public facilities accessible against the cost of perpetuating the social welfare programs that currently support people with disabilities. In 1990, President Bush estimated the total cost of providing services to people with disabilities to be over $200 billion a year. If the ADA had not been enacted, that figure would increase indefinitely. Alterations to facilities are one-time expenditures that would benefit not only the current 49 million citizens with disabilities the but all future generations of people with disabilities. Experience has indeed demonstrated that accessibility features such as ramps, curb cuts, power doors, and elevators are used by the general public at least as much as by people with disabilities.

REGULATORY FLEXIBILITY

Requiring greater responsibility in the regulatory arena is another approach to mandate relief offered by several lawmakers. Legislation introduced by Senators Glenn (S. 1604) and Sasser (S. 1606) would require greater responsibility in the regulatory arena. Senator Glenn stated in the Purpose of his legislation the intent to "encourage the use of more flexible regulatory approaches that lessen compliance burdens on small governments".

Certainly each state and local government is unique, and small governments have special considerations. The regulations that implement the ADA are based on reasonableness and flexibility. Reasonable modifications to policy and practices is a basic tenet of Title II. 28 CFR 35.130(b)(7). Governments are not required to provide services or programs where they can demonstrate that compliance would cause an undue hardship or undue financial and

administrative burden. But the ADA was designed to be flexible enough to work for all size covered entities. Indeed, we are aware of a transportation system in Augusta, Georgia, that has so successfully implemented the complementary paratransit provisions of the ADA that they are actively seeking passengers for paratransit.

PREEMPTION

The intent of S. 480, introduced by Senator Levin, is to require Congress to define and justify its intent to preempt State and local laws. This purpose has already been met in the ADA. The Federal government does have a role, in the ADA as with other civil rights laws, to ensure that the civil rights of all its citizens are guaranteed. Congress found, in passing the ADA that "the Nations's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals." 42 U.S.C. § 12101(a)(8). Preemption is specifically addressed in such a manner to ensure the broadest protections for people with disabilities: "Nothing in this chapter shall be construed to invalidate or limit the remedies, rights, and procedures of any Federal Law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this chapter." 42 U.S.C. § 12201(b).

In summary, Mr. Chairman, we firmly believe that the civil rights of American citizens, including people with disabilities, is entirely separate and distinct from the issue of unfunded mandates. We urge that any action taken addressing unfunded mandates explicitly exempt the rights guaranteed by the Constitution, the Americans with Disabilities Act and other civil rights statutes.

By Lucy Gwin

The ADA and Other *Unfunded Mandates*

Landmark legislation though it be, the ADA has birthed a mighty backlash.

Last winter a good man known to me as Ike the Lucky Dog called to chew me out about "all this crippled rights stuff." Ike serves on the Board of a Chicago museum. He'd been coming down the museum's wheelchair ramp when he slipped on the steep icy slope and broke his elbow. A compound multiple fracture put him in a series of casts for six months.

I couldn't get an answer to why he'd even used the ramp, or if he believed someone with a disability designed the thing to be so steep. He was furious then and remains furious today. According to Ike, this accident that nearly gimped him out for life would never have happened were it not for the ADA "or one of those other unfunded mandates you people keep stuffing down our throats."

Unfunded mandate is the toxic new term for what mayors, governors and county councils have to waste good money on: curb cuts and lift-equipped buses, ramps and elevators, interpreters and braille, all of our reasonable accommodations. We are perhaps the only citizens who find these acccommodations reasonable. Even Bob Dole, a gimp in his own right, is on the down-with-unfunded-mandates bandwagon.

We can experience the backlash firsthand in parking lots, head to head with ordinary citizens. "You've got all the good parking spaces," they whine. "What else do you people want?"

Glad you asked, America. I took the question to some gimped-out buddies of mine.

Eleanor Smith wants every home in America to have basic access "so all of us can go visiting." Ed Roberts says he wants a society that includes everyone.

Mort and Meg (not their real names) want to get married. "But since we're both on SSI, we'd lose almost half of our income," Meg tells me. "Our parents call it living in sin. We're disabled and they're cool about that. But they want us to do this one normal thing."

Dan Wilkins has a simple, impossible wish: "No meetings about me, no decisions about me, no nothing about me without me."

Deb Fedor wants a ranch, with horses, where she'd hold an ongoing retreat for people with disabilities. "You come when you want to and say what you want and you get it. You have your privacy. You hang out and decide what you want to do with your life."

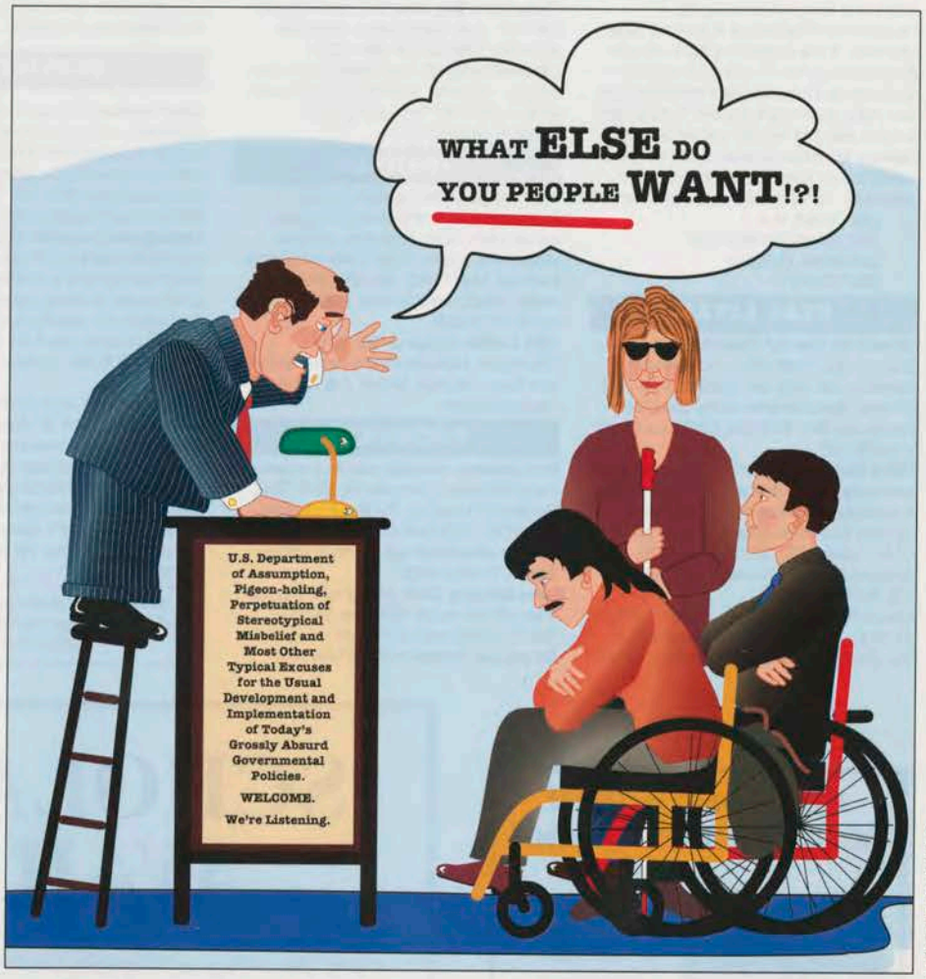

Illustration by Dan Wilkins

What Terry Roarke wants is "immunity from prosecution for physically overreacting against alleged health care providers." Bill Blue (not his real name) wants call girls on call. "In my book, that's a reasonable accommodation for a single guy who doesn't get around too good."

Billy Golfus wants Brinks trucks to pull up in front of his door once a week and unload bags of money, and Barb Knowlen says she wants "a four-wheel-drive lift-equipped assault vehicle with a waterbed in the back. And of course I always want sex."

Ellie Lopez wants four SSDI checks instead of one. "I might actually be able to live on that." Talk about unfunded mandates, America, you ain't seen nothin' yet.

Barry Corbet wants a health insurance policy that actually honors the idea of shared risk. "Why should I pay more every month for high medical costs and a so-called pre-existing condition when I bought the policy before I got the condition?"

Sandy Simes wants her husband Bill to be treated like a human being. Bill was an emergency medical technician working to free a guy from a car wreck when another car ran him down. He uses a wheelchair and speaks only sometimes. Sandy says that now even his family points at him and laughs. "Respect is what I'm talking about," she says, choking up a little after a holiday weekend with the family. We've got a long way to go on that one.

What else do we want? America, we want it all. Just like everyone else. ◆

Lucy Gwin is the Editor of Mouth *magazine.*

CLASSIFIEDS

WANTED

Newsletter for women with disabilities seeks articles, fiction. Send SASE for guidelines. ABLED, 12211 Fondren, Suite 703, Houston, TX 77035.

Please Help! Participants are needed for a study of factors associated with chronic SCI pain that is being conducted in the Department of Psychology at the Ohio State University. If you sustained a SCI in an accident occurring one or more years ago and you currently experience pain associated with your injury, your help is needed. Participation requires about 45 minutes and involves completing a few questionnaires, which would be mailed to your home. Each participant will receive $5. For information please write or call

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SERVICES

Able-Together is a nationwide/worldwide organization of gay and bi-sexual men and women, disabled or nondisabled, seeking to meet or correspond. Quarterly publication of coded ads, since 1986. Info: P.O. Box 460053, San Francisco, CA 94146

International personals singles' newsletter, disabled/nondisabled. We've had marriages! Articles on sexuality and relationships for disabled singles, including our explicit "Real Crip Sex" column for disabled adults, plus hundreds of personal ads. Info? SASE to PEOPLENET, POB 897, Levittown, NY 11756-0911.

Inform Yourself: Alcohol, Drugs and Spinal Cord Injury, by John de Miranda with a grant from the Paralyzed Veterans of America. Provides useful information to persons with spinal cord injury, their families and caregivers. Foreword and cartoons by John Callahan. $10, or 10% discount for 5 or more. Novation, 2165 Bunker Hill Drive, San Mateo, CA 94402.

Advertisers, Sept.-Oct. 1994

THE SAN DIEGO UNION-TRIBUNE
NOVEMBER 21, 1993, SUNDAY

SECTION: NEWS; Ed. 1,2; Pg. A-31

HEADLINE: STATES SAY CONGRESS PASSES THE BUCK -- BUT NOT THE BUCKS

BYLINE: STEPHEN GREEN
Copley News Service

BODY:

With new funding becoming scarcer at every level of government, Congress is under growing pressure to stop ordering states and communities to undertake expensive new programs without providing the money to pay for them.

Although state and local officials have complained in the past about so-called <unfunded> federal <mandates,> the protests have reached a new crescendo.

President Clinton recently agreed that mandates have become burdensome, and Congress has begun to take a serious look at the problem that costs local and state governments billions of dollars a year and eats up a significant portion of local tax revenue.

If Congress stops or limits <unfunded mandates> -- a prospect that appears increasingly likely -- it could inaugurate a new era in federalism as state and local governments reclaim some of the authority they have lost to Washington in recent decades.

Until now, Congress has used <unfunded mandates> in a variety of matters ranging from prohibiting discrimination against the handicapped to setting standards for drinking water.

Signaling that they have become serious about making their displeasure known to Congress, state and local government organizations have begun to coordinate their lobbying against <unfunded mandates,> including devoting a day last month to promoting the cause here.

"This is the first time that state and local governments have tried to demonstrate that they are serious about this," said Tim Conlin, an associate professor of government at George Mason University in Fairfax, Va., who has studied federal mandates.

Money over philosophy

While a debate has been waged by academics and government specialists over whether the federal government has accumulated too much power at the expense of states, cities and counties, the escalation in the dispute over mandates has more to do with money than philosophy.

"We are trying to stay solvent," said Roger Honberger, a Washington lobbyist for San Diego County government.

The negative financial impact of <unfunded mandates> on state and local governments has been considerable. A new study by the U.S. Conference of Mayors found that <unfunded> federal <mandates> consume 11.7 percent of locally raised revenues.

The mayors' survey of cities around the country estimated that the <unfunded> <mandates> will cost the municipalities more than $6.5 billion this year.

The three most costly <unfunded mandates,> according to mayors, are the Clean Water Act, the Solid Waste Disposal Act and the Safe Drinking Water Act.

JOINT HEARING
before the
SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
AND
SENATE COMMITTEE ON BUDGET
on
S. 1, Unfunded Mandates
Thursday, January 5, 1995, 9:30 a.m.
Room 216 of the Hart Senate Office Building
WITNESS LIST

* * * *

PANEL I:

The Honorable Dirk Kempthorne
United States Senator, (R-ID)

The Honorable ~~William F.~~ Rob Portman Clinger, Jr.
United States Representative, (R-PA)

* * * *

PANEL II:

Sally Katzen
Administrator, Office of Information and Regulatory Affairs
Office of Management and Budg

* * * *

PANEL III:

The Honorable George V. Voinovich
Governor, State of Ohio
National Governors' Association

The Honorable Edward Rendell
Mayor, City of Philadelphia, Pennsylvania
U.S. Conference of Mayors

The Honorable Jane Campbell
Representative, State of Ohio
National Conference of State Legislatures

Commissioner Randall Franke
Marion County, Oregon
National Association of Counties

Councilwoman-at-Large Carolyn Long Banks
Atlanta, Georgia
National League of Cities

Boyd W. Boehlje
State of Iowa
National School Board Association

* * * *

PANEL IV:

Justin Dart
Former Chairman, President's Committee on
Employment of People with Disabilities

Nancy Donaldson
Legislative Director
Service Employees International Union

* * * *

JOINT HEARING OF SENATE COMMITTEES ON

GOVERNMENTAL AFFAIRS AND BUDGET

January 5, 1995

STATEMENT OF REPRESENTATIVE ROB PORTMAN

Chairmen and members of both committees, I am honored to be before you to speak on the subject of legislation designed to curb the practice of imposing federal mandates on state and local governments.

The good news for you is that, because the House cannot keep the type of civilized hours that you do in this chamber, I was up until a few hours ago and, thus, promise to keep my remarks this morning very brief.

First, I would like to commend the extraordinary efforts that have been made by members of these two committees and their staffs in drafting S.1, the Unfunded Mandate Reform Act of 1995. It's been a particular pleasure for me and my staff to have worked closely with Senator Kempthorne and his staff over the last year in crafting responsible and strong legislation for both the Senate and the House. I applaud your efforts to move so expeditiously on this issue of vital concern to our state and local officials and the constituents we all represent.

The House is also committed to moving the legislation in short order. Yesterday, I joined with Representatives Bill Clinger, Gary Condit and Tom Davis in introducing companion legislation to S.1 in the House. We in the House share your firm commitment to have a bill ready for the President's signature within a very brief period of time.

In my view, S.1 represents a very thoughtful, effective, and bipartisan approach to bringing the relief needed to state and local governments, which have been burdened by increasing numbers of unfunded federal mandates. As you know, S.1 and its House companion are in large part based on provisions which were included in S. 993, which, thanks to the effective leadership of Senator Glenn, my colleague from Ohio, and Senator Roth, passed the Senate Governmental Affairs Committee on a bipartisan basis last year; and H.R. 5128, which passed the House Governmental Operations Committee overwhelmingly last year.

We all have stories from our constituents about the way unfunded mandates force state and local governments to revamp their budgets, reorder priorities and, in many cases, reduce vital services and/or increase taxes. For example, I received a letter recently from Mark Schockman, Fire Chief of the Clearcreek Fire District located within my congressional district, stating that unfunded mandates "are having strong impacts on our ability to provide emergency and non-emergency services to our customers, and your constituents."

Put simply, I believe it is an abuse of power for the federal government to impose mandates on state and local governments with no understanding of the impact such mandates will have on these local jurisdictions. These local governments must have the right to set their own priorities and to work out their own budgets without fear that a new set of costly priorities might be sent down from Washington.

As you will have noted, S.1 contains certain provisions that

relate exclusively to procedures in the House of Representatives. These are included to recognize differences that exist between the two chambers in parliamentary practices and to achieve "parity" in the House with the Senate practices. Thus, the House bill includes language that attempts to preserve the point of order against unfunded mandates that might otherwise be waived by the House Rules Committee. It also retains the right of House members to move to strike any such mandate. Finally, the bill amends House Rules to require Rules Committee disclosure in the event that points of order against unfunded mandates are ultimately waived.

In closing, I would like to again express my appreciation for the bicameral efforts to date. On both sides of the Capitol, every effort has been made to address concerns that have been raised by earlier drafts of the legislation. I believe that we have ended up with an effective and fair approach. As you will hear today, it has won the enthusiastic support of the so-called Big Seven, the national organizations representing Democratic and Republican elected local and state public officials. Most importantly, it's "good government" legislation that brings greater responsibility and accountability to the legislative process. I'm proud to have been involved in this effort. I am grateful to have been given the opportunity today to share my thoughts with you this morning, and I look forward to continuing to work with Senator Kempthorne and the distinguished members of these committees in enacting a common sense solution to a growing crisis in the federal-state-local partnership.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

ADMINISTRATOR
OFFICE OF
INFORMATION AND
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STATEMENT OF SALLY KATZEN
ADMINISTRATOR
OFFICE OF INFORMATION AND REGULATORY AFFAIRS
OFFICE OF MANAGEMENT AND BUDGET
BEFORE
THE COMMITTEE ON GOVERNMENTAL AFFAIRS AND
THE COMMITTEE ON THE BUDGET
UNITED STATES SENATE

January 5, 1995

Good morning, Messrs. Chairmen and Members of the Committee. I appreciate the opportunity to testify today on unfunded Federal mandates. This is a very important issue for the Administration.

State, local, and tribal governments have expressed deep-felt concerns about the difficulty of complying with Federal unfunded mandates. As Governor of Arkansas, President Clinton was fully aware of these concerns. As he said on June 13, 1994:

> As a former governor who faced the burdens of Federal mandates for 12 long years, I know how questions over funding concern everything else you [mayors] do -- from putting more police on the street to providing clean water for people in your cities.[1]

We have been moving, with the President's active encouragement, to help solve this difficult problem of unfunded mandates. Last year, we worked to enact S. 993, a bill supported by Senators Kempthorne and Glenn. President Clinton noted his support for this effort to the U.S. Conference of Mayors:

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[1] Remarks by the President in Satellite Feed to Conference of Mayors, June 13, 1994.

> [O]ur people have been working with Members of Congress who are focused on this mandates issue. I can report to you that we're getting closer to a workable bill. And although there are still a few issues that remain to be resolved, I think we can see legislation acceptable to the nation's mayors soon.[2]

Two days later, on June 15, 1994, then-OMB Director Leon Panetta wrote to the Governmental Affairs Committee:

> With the Committee mark-up tomorrow of [S. 993], I wanted to express the Administration's support for your efforts to fashion a bi-partisan compromise on this issue. . . . The compromise that has been crafted will improve the process that deals with the issue of unfunded mandates without increasing the gridlock that the President was elected to eliminate.[3]

As then-Director's statement suggests, the unfunded mandates problem presents a basic dilemma: On the one hand, we need to reduce the burgeoning burdens placed on State and local governments by Federal requirements for which Federal funding is not forthcoming. At the same time, however, we do not want to impair the Federal government's ability to carry out its legitimate functions. There are matters of national policy at stake. To reduce the burden without introducing any unintended consequences requires us to exercise considerable care.

As then-Director Panetta also indicated, S. 993 was a bipartisan effort. OMB and White House staff worked extensively with the staff of other Members of Congress, both Republican and Democrat, to fashion the bill that went to mark-up. While discussions were cooperative and good-natured, there was disagreement, and there was give-and-take. But, through it all, there was good will, and

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[2] Remarks by the President in Satellite Feed to Conference of Mayors, June 13, 1994.

[3] June 15, 1994 letter from then-OMB Director Leon Panetta to then-Chairman John Glenn.

the final version was something that both Senators Kempthorne and Glenn as well as the Administration could and did wholeheartedly endorse.

Such collegial, bipartisan effort is important. Without such efforts, it is harder to make the difficult, but necessary compromises that will assure that the resulting legislation serves the needs of State, local, and tribal governments, but does not, as then-Director Panetta wrote, "increas[e] the gridlock that the President was elected to eliminate." It must be productive and workable.

Given the work that has already gone into S. 993, we think it can serve as a vehicle for prompt passage and signing of unfunded mandate legislation. Having this be the first bill introduced demonstrates its importance to State, local, and tribal governments, and to the public. Since S. 993 served as the basis for S. 1, it also demonstrates that this new Congress is willing to continue with and build upon the cooperative, bipartisan efforts that all of us here engaged in on this issue last term.

We appreciate that we have been able to discuss various drafts of S. 1 with Senators Kempthorne and Glenn, as well as their staffs and the staffs of a number of other Senators. We actively support those provisions that are based upon the carefully drafted language of S. 993, as it was placed into mark-up last year. We have also had the opportunity to review at least some of the other provisions that have been added to S. 1 and we can work with them.

We understand that other provisions were being drafted as I drafted this testimony. Obviously, we have lacked the time to read these provisions and, more importantly, to think them through so that we can have a high degree of confidence that they are workable and will not have unintended adverse consequences.

One of the often repeated complaints from State and local governments is that provisions are added to legislation with the best of intentions but at the last minute, without an opportunity for adequate analysis. Such provisions have sometimes compounded the unfunded mandates problem. We do not seek delay, but we should not fall into the same pattern that has led to the legitimate complaint to which we are now being responsive.

What we are doing will bind us -- as it should -- for the foreseeable future; we should thus make sure that it really achieves our shared objectives. We are making progress. The bipartisan efforts last term, as well as through the holiday season, have been productive, and I am optimistic that we can work together to achieve a productive and workable solution. We cannot abandon or unwittingly impair our ability to govern, but so too we cannot continue as we have in the past. The complaints that have been raised concerning unfunded mandates are real. The President had heard them, and he wants to respond to them. He has supported unfunded mandates legislation and has made it very clear to us that we are to continue our work together, on an expedited basis.

This hearing helps with understanding the underlying structure and intent behind the new provisions of S. 1 and provides an opportunity to consider and resolve concerns that are raised by them.

I appreciate the opportunity to appear here today before you, and I look forward to working with you on this important matter.

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Testimony of
Councilmember Carolyn Long-Banks
City of Atlanta
President, National League of Cities

Before the

U.S. Senate
Joint Hearing of the
Committee on Budget and the
Committee on Governmental Affairs

January 5, 1995

Testimony of
Councilmember Carolyn Long-Banks
City of Atlanta
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Joint Hearing of the
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Messieurs Chairmen and Members of both committees, thank you for the opportunity to speak today on behalf of the National League of Cities, of which I currently serve as President. I am here to both thank you for the foundations laid in 1994 on the issue of unfunded mandates relief for state and local governments and to urge your swift action and enactment of S. 1. There is no issue as important to the leaders of the nation's cities and towns this morning than in assuring them a return to a sense of accountability and to assuring local taxpayers that local taxes and fees may, once again, be devoted to meeting public safety and other local priorities and needs.

I must add a special note of honor and appreciation this morning at being able to testify on legislation sponsored by a former mayor, Sen. Kempthorne; co-chaired by a former city elected official, Chairman Domenici; and co-chaired by a co-sponsor of this bill, Chairman Roth, who helped, with the ranking minority member, Sen. Glenn, to steer this legislation so close to passage last year. Your combined experience and commitment is appreciated.

NLC represents some 150,000 public elected officials from cities and towns large and small across the country. These leaders have charged me to do whatever it takes to earn your support and commitment to move this legislation through the Congress in as bipartisan a manner as possible. I am here to obtain a commitment from you that you will support the mandates relief bill, S.1, and will work for full Senate passage this month.

Let me explain exactly how unfunded mandates affect local governments and their citizens. Simply put, an unfunded federal mandate is a law or regulation that requires a city or town to undertake an action and responsibility with consequent costs to the local budget, but no reimbursement by the federal government. Such mandates are, more often than not, one size fits all, so that they are often inappropriate for many communities. But, most importantly, they put an uncompensated federal requirement ahead of the public health and safety of the citizens of any community.

For instance, last October 1, an EPA rule was triggered into effect mandating every local government in the nation to obtain

an EPA stormwater permit for every discharge point in a community. We know that the average cost for larger cities is $625,000 per permit--or the equivalent of more than six police officers per year in a smaller city. It is our job, as local elected officials, to weigh those decisions about which actions are most critical to public safety. Yet, this federal action on October 1st allows for no such balancing. Failure to comply with the federal mandate subjects us to not only federal enforcement and penalties, but also citizens' suits.

Because of the civil and criminal penalties attached to unfunded federal mandates, local dollars must fund federal environmental programs--regardless of demonstrated need or effectiveness, while priorities regarding public safety, education, public health, police and fire protection, and infrastructure repair are squeezed. Shouldn't our citizens concerned about their safety have some equal rights?

In our 1994 survey of municipal elected officials which we will be releasing the week after next, 74.6 percent of our members reported that the unfunded federal mandates condition worsened in 1994. They reported that this issue topped the list of "most deteriorated conditions" in cities over the last five years.

In my city--and in virtually every city and town across America--the most serious, perceived threat to public safety in America today comes from crime and violence. The most serious obstacle to our efforts to meet that threat comes from unrestricted, unfunded federal mandates sapping and diverting our resources. We need the ability and flexibility to focus our resources to protect our citizens. We can no longer afford to have our resources diverted to meet a laundry list of standards set by another level of government that bears little accountability to our citizens and taxpayers.

Unfunded federal mandates are not just of concern to state and local elected officials; they affect the American people as citizens and taxpayers. Almost every state and local government operate under a constitutional or statutory balanced budget requirement. In order to implement unfunded federal mandates, the money has to come from somewhere. Usually it comes from our citizens in the form of increased taxes and fees, or in reduced public services.

The reason why we care about unfunded mandates is not because we are "opponents of federal health standards" or that we are out to "undermine federal protection of health and safety." It is exactly the opposite. State and local officials are committed to protecting the safety and health of the citizens we serve, but unfunded mandates are making this task nearly impossible to accomplish. We would all like to eliminate every risk there is in our communities. But in a world of limited resources, we have to make choices. Failure to fund federal mandates avoids the responsibility of making choices.

For more than a decade, it has been increasingly the federal government that has set the standards designed to protect the health of the public, but the state and local governments that assumed the responsibility (and liability) for implementing and enforcing these standards.

That is the rub. There not only has been no consensus reached between the various levels of government with regard to shared responsibilities, but rather an increasing clash. Over the last two decades the federal government has arrogated to itself--and to itself alone--the authority to determine health and safety standards--more and more to be paid for entirely by state and local taxpayers. There can be no question that what was once a partnership has seriously deteriorated. Where once we shared common responsibilities, today the federal government imposes its own standards--irrespective of our abilities to afford federal spending habits.

Over the last two decades, Congress has enacted 185 new laws passing the buck to state and local tax and rate payers. Yet, during this same period, the federal partnership that once helped finance federal mandates has declined precipitously. The General Revenue Sharing program begun under former President Nixon to distribute assistance to states and local governments on a basis of fiscal need is gone. The municipal wastewater construction treatment grants program, the largest direct program providing direct assistance to local governments when Ronald Reagan came into office is gone--replaced by a loan program at scarcely 10 percent of the size.

By any measure, the cost to states and local governments of complying with federal environmental and labor requirements is escalating. More and more, the federal government simply decides what we must do. It leaves the issue of how to pay to us.

Because current federal environmental and other unfunded federal mandates make no choices and offer no flexibility to us to set priorities in a sane fashion, they undercut resources. They fragment resources and force local spending without regard to use of resources that would mean the greatest benefit in terms of saved lives and property.

All state and local governments must annually or biennially determine their spending priorities. With a limited amount of funds, not every program can be implemented. But the federal government has increasingly undercut the priorities of our families and citizens.

In contrast, the federal government has an enormous advantage--no matter how many priorities it identifies, it can implement all of them by passing the buck to state and local governments. The recognition that state and local governments are partners in governance has eroded in direct proportion to the number of unfunded federal mandates imposed. Mandate relief legislation is

the opportunity for Congress to restore balance in government and ensure effective and efficient problem solving at the local level.

And I want to make very clear that no issue has united Democrats, Republicans and state and local officials over the last decade than this. We, together this morning, speak for the nation's elected governors, state legislators, and county and city elected officials--the public elected officials representing all Americans. This is an issue which unites all of us. The current convention that it is the federal government's role to make the rules and our taxpayers' responsibility to pay is simply no longer acceptable. It must change.

We are united in our efforts to support Chairmen Pete Domenici and Bill Roth and Sen. Kempthorne to change the rules. We have been and will continue to work together with these leaders, and others like Reps. Portman, Moran, Ewing, and Clinger--and dozens of others who are co-sponsors of mandate relief bills, and hundreds of others who are co-sponsors--to insist upon a true partnership, and to insist upon greater responsibility and accountability by the administration and Congress.

Let me now move beyond the frustration felt by local elected officials dealing with unfunded mandates to the promise of relief that S.1 offers. I am very pleased that unfunded mandates is now being viewed by Congress as a priority issue. Senator Kempthorne, Senator Glenn, and the Members of the Governmental Affairs Committee have been instrumental in moving this issue to the legislative forefront, and we appreciate their hard work and commitment. We also express our gratitude to the Budget Committee for its assistance in improving upon last session's Kempthorne-Glenn bill. The alterations incorporated from their suggestions are well-crafted, provide an effective method of enforcement, and recognize permeability as an essential component.

I believe the bill we have before us is precisely the solution state and local governments have been searching for--it holds Congress accountable and forces it to provide funding for its mandates. Our goal is to force the federal government to set priorities and stand behind them--this legislation will accomplish that goal.

S.1 is also flexible in nature--a concept we have long encouraged in legislation and regulatory rulemaking. The bill allows unfunded mandates to be imposed upon state and local governments by a majority override. We see this provision as an important strength of the bill. We recognize that there will likely be occasions where national priorities must take precedence over the protections from unfunded mandates this bill grants. This majority override provision affirms our position that the purpose of S.1 is **not** to derail federal initiatives, but rather to **ensure** that Congress carefully considers all the implications of its

actions and that only legislation of crucial and national nature be enacted at the expense of state and local governments.

Let me reiterate that our motivation is simply that of our role as public servants. The fundamental question that drives us is how can we best provide for the health, safety, and welfare of our citizens. Answering this question becomes many times more difficult when our resources are increasingly dedicated toward implementing unfunded mandates rather than responding to the needs of our citizenry.

In a perfect world, local governments would have unlimited resources, would be able to eliminate virtually every risk to the health, safety, and welfare of our citizens, and would not have to prioritize or make choices between programs. Unfortunately this perfect world is the impossible dream of every local government official.

In the very imperfect world local governments currently operate in, we are burdened by unfunded mandates and simultaneously face severe fiscal constraints. We must prioritize and make choices. Because local governments are forced to implement unfunded federal mandates, federal priorities must be chosen over local priorities. A federal regulation that is expected to save one life every twenty years becomes more important in fiscal terms than a local police squad that is expected to save hundreds of lives per year.

The system of checks and balances set up by the founding fathers was not motivated by a desire to frustrate the policymakers or the public, but to ensure careful consideration of legislation and to protect against the enactment of misguided policies. S.1 provides such a check. It is necessary because years ago Congress discovered a trap door in the system--it discovered that the easy way out of raising federal taxes and prioritizing federal initiatives is to pass the costs on to state and local governments. S.1 bolts that trap door and ensures that it be used in emergencies only.

Thank you for your time and consideration of this very important issue. I would be pleased to answer any questions.

T E S T I M O N Y

Statement of
George V. Voinovich
Governor of Ohio

before the

Committee on the Budget
and
Committee on Governmental Affairs
United States Senate

on

S. 1, Unfunded Mandate Reform Act of 1995

on behalf of

The National Governors' Association

January 5, 1995

NATIONAL GOVERNORS' ASSOCIATION
Hall of the States • 444 North Capitol Street • Washington, DC 20001-1572 • (202) 624-5300

Thank you Chairman Roth, Chairman Domenici, Senator Glenn, Senator Exon, and members of the Budget and Governmental Affairs Committees.

I have made the issue of unfunded federal mandates a top priority throughout my career in public service. In fact, 8 years ago, in a speech to the National Archives volunteers on the 200th anniversary of the Constitution, I said:

> "Over the past 20 years, we have seen the expansion of the federal government into new, non-traditional domestic policy areas. We have experienced a tremendous increase in the proclivity of Washington both to preempt state and local authority and to mandate actions on state and local governments. The cumulative effect of a series of actions by the Congress, the Executive Branch, and the U.S. Supreme Court have caused some legal scholars to observe that while constitutional federalism is alive in scholarly treatises, it has expired as a practical political reality."

We thought it was bad 8 years ago. It's even worse today. I can't tell you how glad I am to be with you today.

Enactment of this legislation is critical to the nation's governors. On behalf of the National Governors' Association, the governors strongly and unanimously support S. 1 without any weakening amendments.

Let me say at the outset that we would not be here today without the leadership of Senator Kempthorne. Senators Roth and Glenn, who met with the Governors last January, helped launch this process when we all agreed to work with Senator Kempthorne and state and local government organizations to draft a mandate relief bill that would get through the Senate and achieve passage in the House. I would also like to thank Senator Domenici for his contribution to strengthen the enforcement mechanisms in the bill.

Last year the members of this panel -- and every state and local elected official throughout the country -- were encouraged that a mandate relief bill seemed destined for passage.

The end result obviously was very disappointing -- the bill we worked so hard to draft and pass through Congress died in the final hours of the last session.

But we were heartened with the announcement in November by Senate Majority Leader Dole that this would be the very first Senate bill.

This is testament to Senator Dole's commitment -- and the commitment of all the members of your committees -- to respond to the plea of state and local governments to restore balance to our relationship as envisioned by the framers of the 10th Amendment.

As the mayor of Cleveland for 10 years, and as Governor of Ohio for the last 4, I know first-hand the frustration and alarm faced by state and local officials because of unfunded federal mandates.

This is why my first order of business as Ohio Governor was to make mandates a top priority within the National Governors' Association. We've come a long way since then.

Mandates force us to cut vital services and raise our taxes. Mandates also rob our citizens and their elected representatives of perhaps the most fundamental responsibility of government -- prioritizing government services.

With all due respect, Mr. Chairman, the federal government is bankrupt. And the Congress is on its way to bankrupting state and local governments.

In my Inaugural Address 4 years ago, I said:

> "Gone are the days when public officials are measured by how much they spend on a problem. The new realities dictate that public officials are now judged on whether they can work harder and smarter and do more with less."

Mandates are making this goal more difficult each day. Washington, which believes it has all the answers, is tying our hands with one-size-fits-all solutions.

This command-and-control attitude by Congress runs contrary not only to what our Founding Fathers envisioned, but is also inconsistent with the total quality movement that is sweeping our country. This movement empowers and invites those closest to the people -- be they in government or on the factory floor -- to improve efficiency and solve problems.

Two years ago, I decided to get the real facts, to find out how bad the mandate problem was in real dollars. We released a study -- the first of its kind by any state -- that concluded unfunded federal mandates will cost Ohio more than $1.74 billion between 1992 and 1995.

As my fellow panelists will tell you, the problem is even more acute for local governments. Last year 12 percent of city and county revenues were consumed by mandates. By 1998, existing mandates will cost local governments $88 billion -- one-quarter of all their revenues.

As I said in our report, in the past five years, education has declined as a share of state spending nationally at a time when nearly everyone acknowledges that improving our schools is one of government's highest priorities

Yet many states cannot spend a greater share of tax dollars on education because new Medicaid mandates consume more and more of our resources. They account for 70 percent of Ohio's mandate costs -- nearly one billion dollars over 4 years. Medicaid was 19 percent of Ohio's budget in 1982 -- it represents one-third today.

I won't disagree that most mandates are well-intentioned. But, in reality, they actually can do more harm than good and often have unintended consequences.

Let me give just two examples.

The most recent federal highway law forces states to use scrap tires in highway pavement.

I'm not sure why the Congress thought this was a good idea, especially since not a single state transportation agency supported it. In fact, many national experts have real doubts about whether it is more durable, and many others have grave concerns about its potentially harmful environmental effects.

In terms of the cost, we've estimated that this mandate will require $50 million a year in scarce highway resources. For the same cost, Ohio could repave nearly 700 miles of rural highways or rehabilitate 137 aging bridges.

Unfunded mandates also preempt important state initiatives and reduce state and local flexibility and innovation.

For instance, despite that Ohio has developed a comprehensive solid waste management plan, we are still required to change most of our landfill rules to conform to federal standards that in many respects are weaker than our own.

The net effect is that our regulators are forced to spend time fulfilling federal paperwork requirements, which reduces their ability to clean up and close landfill sites that pose environmental risks.

All of us on this panel agree -- The public is not well-served when Congress unilaterally passes on new mandates that prevent mayors from providing the police protection their citizens rightfully demand or prevent governors from pursuing the reform in education that our children need.

I firmly believe that the two basic questions for all public officials should be:

- What should government do? and,
- What level of government should do it?

It's long past time that we restore balance in the partnership between federal, state, and local governments. Ultimately, this is the issue we are considering today.

Senate Bill one provides much needed reform toward restoring accountability in government:

- It make members of Congress accountable for passing mandates.
- It forces a recognition that mandates impose costs on taxpayers.
- It strongly encourages Congress to fund new mandates.
- And it erects political and procedural barriers to passing new mandates.

Let us also be clear about what this bill will not do:

- First, it does not eliminate any existing statute or mandates, though we will continue to work with Congress to eliminate or modify those that burden state and local governments. As our study points out, more than 174 mandates have been passed by Congress since the mid-1970s.

- Second it does not undermine any civil or constitutional right.

- And, finally, it does not prohibit the enactment of new mandates. Instead, Congress must work with state and local governments as partners to establish national standards when needed.

This bill represents the first step in a new, long-awaited process of Congress treating states and local governments as equal partners, not as special interests.

The bottom line is that state and local governments should not be treated as special interests. We are elected by the same people who elect you and pay our salaries and pay for the programs we enact.

As a former local official, I am committed to restoring the state-local partnership on federal issues. At a meeting last month, the leaders of the organizations of all state and local government elected officials agreed to coordinate our work with the Congress so that we can more effectively serve the taxpayers of this country.

During the 104th Congress, we will continue to work with you to offer recommendations to give states and local governments the flexibility we need in such areas as health, human services, and the environment.

I think we can all agree that our collective goal is to deliver more effective, streamlined government. Working together I'm convinced that we will move mountains.

Mr. Chairman, enactment of S. 1 -- without weakening amendments -- is the single most important step Congress can take to begin restoring the balance in federal, state, and local relations.

Mr. Chairman, and members of the committees, I can assure you that what you do with this legislation will have a major impact on our support of a Balanced Budget Amendment, which we expect you to pass.

Thank you very much

FEDERAL UNFUNDED MANDATE RELIEF LEGISLATION

Presentation to a joint hearing of the
Committee on Governmental Affairs
and the
Committee on the Budget
of the
United States Senate

by Representative Jane Campbell
President
National Conference of State Legislatures

January 5, 1995

Chairman Roth, Chairman Domenici, Senator Glenn, Senator Exon and members of both Committees; I am Jane Campbell, the Assistant Minority Leader of the Ohio House of Representatives and the President of the National Conference of State Legislatures. I am pleased to join you and the other elected representatives of state and local governments to speak in favor of the bi-partisan legislation before you today, S.1, sponsored by Senator Kempthorne. The National Conference of State Legislatures has worked on the problem of unfunded federal mandates for many years, and spearheaded the effort to bring attention to the issue through publications such as the Mandate Monitor, the newest version of which I have brought with me today. For the record, we counted seven new mandates or preemptions in the last year, bringing the total to twenty for the 103rd Congress. You can see that even as negotiations pressed forward on this bill, unfunded mandates did not stop, and that is why, as with the others present before you, I am here to express NCSL's wholehearted support for the quick passage of S.1.

We believe this bill is the necessary first step in beginning the process of ending the practice of unfunded federal mandates. We also hope that this legislation will begin restoring some sense of balance to the intergovernmental fiscal partnership. The idea of restoring balance to this partnership becomes even more important as you consider the Balanced Budget Amendment. I don't need to remind you that after you pass the amendment, 38 state legislatures must ratify it. If there is going to be a balanced budget amendment, we strongly urge that members of Congress include language that further protects state and local governments against cost shifting and unfunded mandates. No language in the amendment, however, can take the place of action on the legislation we are discussing today.

As a legislator, I know the hours of painstaking negotiations that go into producing legislation such as this, and know that it is also a special piece of legislation that receives the designation of being the first bill introduced in a new session. On behalf of

NCSL, we certainly appreciate the effort and recognition you have given our cause. Thank you. But I also think it is appropriate that your first actions this session deal directly with the problems that the citizens of our communities clearly expressed during the last election. Our constituents are demanding real action to address the financial problems of the government and the concerns of their family. Shifting costs from Washington to the state capitols may help the federal budget, but it does nothing to address the problems of the family budget and does nothing to help what we like to call the public budget. After all, the mandate from this election was not really about the needs of government, but the needs of the people. State and local governments get their money from America's families. For the federal government to pass laws and regulations that require the states to spend money means the we as state legislators have to cut services or raise taxes. We know that we are elected to represent our constituents and to make the best use of our state resources. Our authority to make these critical decisions is undermined when federal mandates direct not only what we spend our money on, but how we meet our goals.

During the past couple of years, I know you have heard many examples of the scope and nature of unfunded federal mandates and the difficulties they impose on state and local governments, so I will try to use those types of anecdotes sparingly. But I do have a couple of examples that relate directly to why this bill will work.

S.1 is built on three foundations: information, accountability and consultation. The informational aspect, with the Congressional Budget Office providing timely analysis on the costs of mandates to state and local governments, may work to stop most unfunded mandates and preemptions before they even get to the floor. I know, even in our statehouse, how difficult it is to have a direct knowledge of every part of every bill that comes through. Given the volume of legislation you consider in any session, it must be impossible to have a complete grasp of all the details of each bill and amendment. The

requirement that a bill have a CBO costs analysis before it can be brought to the floor is a kind of stoplight that helps you know that there is a mandate in this bill. It also helps you to begin to understand how much it is going to cost. Our belief is that many members of Congress will be greatly helped by simply having it brought to their attention that they are about to vote on a mandate.

However, for those that intend to mandate, and because it is my guess that no one can tell me what the 20 mandates were during the past session, or even the seven in the past year, we have an accountability component in S.1. These provisions end the past practice of working unfunded federal mandates into sections hidden deep in the text of massive omnibus bills or committee reports. The points of order are another stoplight that build off the informational aspect of the bill. Once you know that a costly mandate exists, you must then decide to authorize funding for the mandate or decide to pass it on to us with a roll call vote. This should not bottle up the process. It simply puts you on record as supporting an unfunded mandate or not. That is accountability.

More accountability comes from following the mandate through the legislative process. Because you have split the authorizing function from the appropriations function, we need something that traces the mandates through the appropriations process. In Ohio, we have a biennial budget process and when programs are established and the budget is adopted, the money is there. Congress is different. If you have decided to fund a mandate, there shouldn't be a back door way to unfund the mandate by not delivering the funds necessary to pay for it. If the appropriations committees are not able to fund the mandate, then the mandate does not take effect. This too is accountability.

The third foundation is consultation, and this is where we begin to take the next step toward correcting the imbalance in the federal system that has led to the proliferation

of these unfunded federal mandates. The states are supposed to be the laboratories of democracy, not the administrative field offices of the federal government.

We can all agree that the purpose of welfare is to keep children from starving. Why can't the federal government set clear goals and provide revenue to states based on some formula that acknowledges need and resources of the state? Let us be the laboratories of democracy we all intended to be. Follow the welfare example -- in Ohio, our eligibility workers have 4000 pages of federal regulations with 2000 pages of clarification with which to contend. In fact, the single biggest cause of "welfare fraud" is overpayment due to a worker's error. None of this administrative overload makes America's families stronger, none moves children out of poverty or enables parents to support their families.

This type of overly prescriptive regulation impedes our ability to address the very problem the program is supposed to address, not to mention the other education and human services functions that cannot be implemented because of the costs that have to be focused on these administrative functions. This also leads us into a public policy straitjacket tailored to produce "one size fits all."

Codifying parts of President Clinton's Executive Orders, as this bill does, and requiring consultation with state and local officials, brings us to the table when the agencies are trying to develop the means of administering any program. It will help us develop a more efficient process for operating programs. It makes us responsible as well for being able to provide you with sound figures on the costs of any specific mandate that you are considering. Please understand that we know this bill also makes requirements of us, but we are ready to answer those challenges and are anxious to begin the process of a stronger partnership. In meetings that I and other NCSL officials had recently with the new leadership of the House, Speaker Gingrich shared with us his desire to find as many

ways as possible to bring us to the table during the development of legislation that has an impact on state government. An excellent addition to this bill that builds on that idea is the process that was developed to deal with partial funding of future mandates. It reminds the authorizing committee to plan ahead for only partial funding of this mandate, and encourages you to think through the ways that the mandated goals can be achieved in less costly and less intrusive ways.

Finding less costly and more efficient ways of accomplishing public policy goals are what we are all trying to accomplish. The impact these unfunded federal mandates have on other areas of the state budget, primarily areas such as *education*, are great. If you look at the Ohio budget, entitlements and other fixed costs, like prison operations, leave very little flexibility. Indeed, in our state, when tax revenues were underestimated, primary, secondary and higher education suffered because it is funded by discretionary money -- threatening investments we want to make for our Ohio citizens.

Because my time is short, I will conclude by saying that we thought S.993 was a strong bill last year. S.1 is even better. It has more information, more accountability and more consultation. It is a great first step in addressing the problems of unfunded mandates and NCSL strongly supports this bill. Thank you for the opportunity to speak before you on this important subject.

1/4/95 5:48 PM

NEWS RELEASE
NATIONAL CONFERENCE OF STATE LEGISLATURES

FOR IMMEDIATE RELEASE
January 5, 1995

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OHIO STATE REPRESENTATIVE JANE CAMPBELL TESTIFIES ON UNFUNDED FEDERAL MANDATES

WASHINGTON, D.C. -- Ohio State Representative Jane Campbell today testified before a joint meeting of the U.S. Senate Budget and Governmental Affairs Committees. Representative Campbell, speaking on behalf of the National Conference of State Legislatures (NCSL), discussed unfunded federal mandate legislation S.1.

Representative Campbell is from Cleveland and represents the state's 11th district. She serves as assistant minority leader of the Ohio House and is President of NCSL.

''State legislators believe this bill is an essential first step to end the practice of unfunded federal mandates and restore balance to the intergovernmental fiscal partnership,'' Campbell said. ''The idea of restoring balance to this partnership becomes even more important as the Balanced Budget Amendment is considered.

''If there is going to be a balanced budget amendment, state legislators strongly urge members of Congress to include language that further protects against cost shifting and unfunded mandates,'' Campbell continued .

Campbell said the bill is effective because it is built on three foundations: information, accountability and consultation. She also said the requirement that a bill have CBO cost analyses before it can be brought to the floor is a ''stoplight'' that helps Congress know that there is a mandate in the bill.

Campbell also said that the points of order in the legislation serve as an accountability component.

''If Congress has decided to fund a mandate, there shouldn't be a back door way to unfund the mandate by not delivering the funds necessary to pay for it,'' Campbell said. ''If the appropriations committees are not able to fund the mandate, then the mandate does not take effect.''

Campbell said that state legislators are ready to answer the challenges put forth in the bill and are anxious to form a stronger partnership.

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William T. Pound/Executive Director

"Finding less costly and more efficient ways of accomplishing public policy goals are what we are all trying to accomplish," Campbell said. "Our constituents are demanding real action to address the financial problems of the government and the concerns of their families.

"Shifting costs from Washington to the state capitols may help the federal budget, but it does nothing to address the problems of the family budget," Campbell continued. "S.1 is substantially better than S.993 was last year. It has more information, more accountability and more consultation. It is a great first step in addressing the problems of unfunded mandates and state legislators strongly support this bill."

NCSL represents the legislators and staffs of the nation's 50 states, its commonwealths and territories.

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THE UNITED STATES CONFERENCE OF MAYORS

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TESTIMONY OF

THE HONORABLE EDWARD RENDELL

MAYOR

CITY OF PHILADELPHIA

ON BEHALF OF

THE UNITED STATES CONFERENCE OF MAYORS

BEFORE

THE COMMITTEE ON GOVERNMENTAL AFFAIRS

AND

THE COMMITTEE ON THE BUDGET

UNITED STATES SENATE

JANUARY 5, 1995

CHAIRMEN AND COMMITTEE MEMBERS, I AM EDWARD RENDELL, MAYOR OF PHILADELPHIA. I APPEAR TODAY ON BEHALF OF THE UNITED STATES CONFERENCE OF MAYORS, AND I SERVE AS VICE-CHAIR OF THE CONFERENCE'S UNFUNDED MANDATES TASK FORCE.

LET ME BEGIN BY THANKING SENATOR ROTH AND SENATOR DOMENICI FOR THEIR CONTINUED SUPPORT OF OUR EFFORT TO END UNFUNDED MANDATES. WITHOUT THE ACTIVE HELP AND ENDORSEMENT OF SENATOR ROTH WE COULD NOT HAVE TAKEN OUR BILL AS FAR AS WE DID IN THE LAST CONGRESS. AND SENATOR DOMENICI HAS LONG CHAMPIONED NOT ONLY THIS CAUSE, BUT A WIDE RANGE OF ISSUES OF IMPORTANCE TO STATE AND LOCAL GOVERNMENT.

THE CONFERENCE OF MAYORS APPRECIATES THE OPPORTUNITY TO, ONCE AGAIN, TESTIFY ON THE ISSUE OF UNFUNDED FEDERAL MANDATES. I SAY ONCE AGAIN BECAUSE ON APRIL 28 OF LAST YEAR WE TESTIFIED ON THE VERY SAME SUBJECT BEFORE THE GOVERNMENTAL AFFAIRS COMMITTEE ALONG WITH OUR STATE AND LOCAL COLLEAGUES. HOWEVER, MUCH HAS CHANGED SINCE LAST YEAR AND I FEEL OBLIGED TO HIGHLIGHT SOME OF THE CHANGES WHICH DEMONSTRATE HOW FAR WE HAVE COME ON THE ISSUE OF UNFUNDED FEDERAL MANDATES.

FIRST, ON APRIL 28 OF LAST YEAR OUR LEGISLATION, S. 993, HAD 54 COSPONSORS. AT THE END OF THE 103RD CONGRESS, WE HAD 67 COSPONSORS FOR OUR LEGISLATION. YET WITH ALL THIS BIPARTISAN SUPPORT, OUR BILL WAS NOT SCHEDULED FOR FLOOR ACTION UNTIL THE FINAL DAYS OF THE SESSION, AT WHICH TIME WE COULD NOT GET A FINAL VOTE ON THE BILL.

TODAY, OUR LEGISLATION IS S. 1 AND ON THE SECOND DAY OF THE 104TH CONGRESS, YOU HAVE DECIDED TO HOLD THIS HISTORIC HEARING. CLEARLY, THIS DEMONSTRATES THE LEVEL OF SUPPORT WE NOW HAVE IN THE SENATE.

SECOND, WHEN WE TESTIFIED ON APRIL 28, GOVERNMENTAL AFFAIRS COMMITTEE CHAIRMAN JOHN GLENN--WHILE EXPRESSING SUPPORT FOR OUR CAUSE--HAD NOT YET ENDORSED OUR LEGISLATION. HOWEVER, BY THE END OF THE 103RD CONGRESS, THE DISTINGUISHED SENATOR FROM OHIO HAD NOT ONLY WORKED TO DEVELOP THE NEW CONSENSUS PACKAGE, BUT ALSO PUT HIS NAME AT THE TOP AND MOVED IT THROUGH HIS COMMITTEE ON A UNANIMOUS VOTE.

AND TODAY, THE SENATOR FROM OHIO STILL STANDS AS OUR CO-LEADER IN THIS BIPARTISAN EFFORT, AND I WOULD LIKE TO THANK HIM FOR HIS COMMITMENT TO RESTORING A BALANCE IN THE FEDERAL-STATE-LOCAL PARTNERSHIP WHICH HAS BEEN ERODED BY UNFUNDED FEDERAL MANDATES.

THIRD, WHEN I TESTIFIED ON APRIL 28, OUR LEGISLATION HAD NOT BEEN ENDORSED BY THE ADMINISTRATION. HOWEVER, BY THE END OF THE 103RD CONGRESS, PRESIDENT CLINTON HAD NOT ONLY ENDORSED THE BILL, BUT ACTIVELY WORKED FOR ITS PASSAGE. THE ADMINISTRATION HAS CONTINUED TO BE VERY SUPPORTIVE OF OUR EFFORTS AND IT IS OUR STRONG HOPE THAT THE PRESIDENT WILL ENDORSE S. 1, AND I WOULD LIKE TO THANK PRESIDENT CLINTON FOR HIS CONTINUED SUPPORT OF STATE AND LOCAL GOVERNMENT.

BUT THROUGH IT ALL, TWO VERY IMPORTANT THINGS HAVE NOT CHANGED.

FIRST, STATE AND LOCAL OFFICIALS STAND UNITED, AS WE DID ON APRIL 28, IN DEMANDING AN END TO UNFUNDED FEDERAL MANDATES. THESE UNFUNDED MANDATES LIMIT MY ABILITY AS A MAYOR, AND THE ABILITY OF ALL STATE AND

LOCAL OFFICIALS, TO PRIORITIZE AND ADDRESS THE NEEDS AND DEMANDS OF OUR CITIZENS AND COMMUNITIES. AND IF THE RECENT NATIONAL ELECTIONS DEMONSTRATED ANYTHING, IT'S THAT THE AMERICAN PEOPLE WANT A GOVERNMENT THAT GETS THE JOB DONE--GETS THE STREETS PAVED, GETS THE GARBAGE PICKED UP, AND FIGHTS THE VIOLENT CRIME THAT PLAGUES FAR TOO MANY COMMUNITIES--IN THE MOST COST EFFECTIVE AND EFFICIENT WAY POSSIBLE.

UNFUNDED FEDERAL MANDATES DIRECTLY INHIBIT THE ABILITY OF STATE AND LOCAL OFFICIALS TO RESPOND TO THESE NEEDS BY TYING OUR HANDS AND SPENDING OUR MONEY FOR US IN WHAT IS OFTEN AN INEFFECTIVE AND INEFFICIENT WAY.

IT IS ALSO OUR BELIEF THAT IF THE FEDERAL GOVERNMENT IS REQUIRED TO FUND PROGRAMS WHICH IT MANDATES AT THE LOCAL LEVEL; THE NATURE, SCOPE, AND INTENDED IMPACT OF THE PROGRAMS WILL BE MUCH MORE CAREFULLY DESIGNED.

THE U.S. CONFERENCE OF MAYORS HAS INVESTED A TREMENDOUS AMOUNT OF TIME, ENERGY AND RESOURCES IN STUDYING THE FISCAL IMPACTS OF UNFUNDED FEDERAL MANDATES, AS HAVE OUR PARTNERS AT THE NATIONAL ASSOCIATION OF COUNTIES. THE CONFERENCE SURVEY OF 314 CITIES ESTIMATED THAT OVER THE NEXT FIVE YEARS, THESE CITIES WILL SPEND $54 BILLION TO COMPLY WITH ONLY 10 FEDERAL MANDATES. IN 1993 ALONE, THE SURVEY ESTIMATED THAT THESE 10 FEDERAL MANDATES ACCOUNTED FOR 11.7 PERCENT OF ALL LOCALLY-RAISED REVENUES IN THE 314 CITIES.

AS THE MAYORS HAVE CONTINUALLY STATED, THE INTENT OF OUR EFFORTS IS NOT TO CHALLENGE THE MERITS OF INDIVIDUAL FEDERAL MANDATES AND REGULATIONS, BUT TO SHOW THAT THE ACCUMULATED WEIGHT OF EXISTING

MANDATES HAS MADE IT NEARLY IMPOSSIBLE FOR LOCAL GOVERNMENTS TO PRIORITIZE THEIR RESIDENTS' MOST PRESSING NEEDS.

THE PROBLEM WITH UNFUNDED FEDERAL MANDATES IS THAT THE FEDERAL GOVERNMENT HAS TURNED STATE AND LOCAL OFFICIALS INTO FEDERAL TAX COLLECTORS. WE COLLECT THE TAXES TO IMPLEMENT FEDERAL PRIORITIES, AND AS A RESULT WE ARE NOT ABLE TO ESTABLISH AND FUND LOCAL PRIORITIES.

FOR EXAMPLE, ON MARCH 8, 1994 THE CONFERENCE OF MAYORS RELEASED A SURVEY OF 146 CITIES WHICH ASKED THEM TO ESTIMATE THE ADDITIONAL RESOURCES THAT WOULD BECOME AVAILABLE IF FEDERAL MANDATES WERE FUNDED IN THE NEXT FISCAL YEAR, AND HOW THEY WOULD LIKELY ALLOCATE THESE RESOURCES. THE 146 CITIES RESPONDED THAT A TOTAL OF $800.8 MILLION--AN AVERAGE OF NEARLY $5.5 MILLION PER CITY--WOULD BE AVAILABLE IF FEDERAL FUNDING FOR MANDATES WERE PROVIDED. OF THIS TOTAL, 13 PERCENT (19 CITIES) SAID THEY WOULD USE ALL OF THE RESOURCES FOR POLICING AND CRIME PREVENTION EFFORTS. AND ON AVERAGE, THE SURVEY FOUND THAT 28 PERCENT OF THE ADDITIONAL RESOURCES WOULD BE USED FOR POLICING AND CRIME PREVENTION.

WHILE THIS SURVEY IS SIMPLY A SNAPSHOT, IT DEMONSTRATES THAT UNFUNDED FEDERAL MANDATES HAVE A DIRECT IMPACT ON THE PRIORITIZATION OF LOCAL SPENDING.

THE SECOND FACT WHICH HAS NOT CHANGED IS THAT OUR LEADER, SENATOR DIRK KEMPTHORNE OF IDAHO, STANDS WITH US TODAY AS HE HAS FROM THE BEGINNING. I MUST SAY THAT WHILE MANY PEOPLE HAVE HAD A HAND IN OUR SUCCESS TO DATE, NONE MATCH THE IMPACT OF THE SENATOR FROM IDAHO. FROM THE DAY HE UNVEILED HIS LEGISLATION AT THE MAYORS MEETING IN

NEW YORK CITY, NO ONE HAS WORKED HARDER TO STOP NEW UNFUNDED FEDERAL MANDATES. AS A FORMER MAYOR, SENATOR KEMPTHORNE TRULY UNDERSTANDS THE IMPORTANCE OF THIS ISSUE AND HAS TRANSFERRED HIS RESOLVE INTO MAJORITY SUPPORT IN THE CONGRESS. HE HAS WORKED TO KEEP OUR EFFORT BIPARTISAN. HE HAS WORKED TO REACH COMPROMISE WHEN NECESSARY WITHOUT LOSING SIGHT OF THE OBJECTIVE OF ENDING UNFUNDED FEDERAL MANDATES. HE HAS WORKED TO ACHIEVE RESULTS, NOT TO SIMPLY ENGAGE IN POLITICAL RHETORIC. AND MOST IMPORTANTLY, HE HAS WORKED IN PARTNERSHIP WITH STATE AND LOCAL GOVERNMENT TO WHOM HE HAS ALWAYS STATED, "THIS IS YOUR BILL."

BECAUSE OF OUR EFFORTS TOGETHER, WE NOW HAVE S. 1. AND YES THIS BILL IS STRONGER THAN WHAT WAS BEFORE THE SENATE LAST YEAR IN THAT IT REQUIRES CONGRESS TO EITHER FUND A MANDATE AT THE TIME OF PASSAGE OR PROVIDE THAT THE MANDATE CANNOT BE ENFORCED BY THE FEDERAL GOVERNMENT IF NOT FULLY FUNDED. BUT THE BILL IS STILL BASED UPON THE CAREFULLY CRAFTED PACKAGE AGREED TO LAST YEAR WHICH PROVIDES A FRAMEWORK FOR STOPPING ACTION ON MANDATES WHICH WILL NOT BE FUNDED.

THIS LEGISLATION WOULD NOT IN ANY WAY REPEAL, WEAKEN OR AFFECT ANY EXISTING STATUTE, BE IT AN EXISTING UNFUNDED MANDATE OR NOT. THIS LEGISLATION ONLY SEEKS TO ADDRESS NEW UNFUNDED MANDATE LEGISLATION. THIS IS NOT TO SAY THAT MAYORS ARE NOT EXTREMELY CONCERNED ABOUT EXISTING MANDATES--THE COSTS OF WHICH HAVE DRIVEN US TO ACTION--BUT WE UNDERSTAND THAT PROBLEMS WITH EXISTING MANDATES WILL BE ADDRESSED THROUGH THE REAUTHORIZATION AND LEGISLATIVE PROCESS.

THIS LEGISLATION WOULD NOT INFRINGE UPON OR LIMIT THE ABILITY OF THE

FEDERAL JUDICIAL SYSTEM TO ENFORCE ANY CONSTITUTIONAL PROTECTION OR CIVIL RIGHTS STATUTE.

THIS LEGISLATION WOULD NOT PREVENT CONGRESS FROM ENACTING NEW MANDATES, ONLY FROM ENACTING NEW UNFUNDED MANDATES. FEDERAL GOALS SHOULD BE FUNDED BY THE FEDERAL GOVERNMENT.

AND THIS LEGISLATION, AS IS THE CASE FOR ALL ACTS OF CONGRESS, CAN BE WAIVED IF A MANDATE IS SO IMPORTANT THAT A MAJORITY OF THE CONGRESS VOTES, ON RECORD, TO DO SO. BUT IF THIS HAPPENS, WE WILL NOW HAVE A MECHANISM TO HOLD OUR ELECTED OFFICIALS ACCOUNTABLE TO THE TAXPAYERS AND TO REQUIRE THEM TO JUSTIFY THEIR ACTIONS.

WHEN WE TESTIFIED LAST YEAR WE WARNED THAT, "A REVOLUTION IS BUILDING IN AMERICA, AND WE ARE HERE TODAY NOT AS THE LEADERS OF THAT REVOLUTION, BUT SIMPLY AS THE MESSENGERS."

THAT REVOLUTION HAS TAKEN PLACE, AND WHILE THERE ARE MANY ISSUES AND MANY REASONS FOR THE VOTERS' ANGER, THE MESSAGE IS CLEAR: IT IS TIME FOR THE FEDERAL GOVERNMENT TO TAKE RESPONSIBILITY FOR ITS ACTIONS. OUR LEGISLATION WILL HELP ACHIEVE THAT RESULT.

IN CLOSING I WOULD LIKE TO THANK THE MEMBERS OF BOTH THE GOVERNMENTAL AFFAIRS AND BUDGET COMMITTEES FOR THE OPPORTUNITY TO TESTIFY HERE TODAY. ON BEHALF OF THE U.S. CONFERENCE OF MAYORS, WE LOOK FORWARD TO WORKING WITH YOU ON THE MANY IMPORTANT REGULATORY AND BUDGETARY DECISIONS BEFORE THE SENATE.

AND WE LOOK FORWARD TO SPEEDY PASSAGE AND ENACTMENT OF OUR LEGISLATION TO END UNFUNDED FEDERAL MANDATES.

Testimony of Justin Dart
before the
Senate Committee on Governmental Affairs
and the
Senate Committee on Budget
January 5, 1995

Accompanied by James J. Weisman
Eastern Paralyzed Veterans Association

I have often inquired of myself, what great principle or idea it was that kept this Confederacy so long together. It was not the mere matter of separation of the colonies from the motherland; but something in that Declaration giving liberty not alone to the people of this country, but hope to the world for all future time. It was that which gave promise that in due time the weights should be lifted from the shoulders of all men, and that all should have an equal chance.

Abraham Lincoln

The paramount goal of the United States was set long ago. It is to guard the rights of the individual, to ensure his development, and to enlarge his opportunity.....Our enduring aim is to build a nation and help build a world in which every human shall be free to develop his capacities to the fullest. We must rededicate ourselves to this principle and thereby strengthen its appeal to a world in political, social, economic and technological revolution.

Canham, Conant, Darden, Greenwalt, Gruenther, Hand, Kerr, Killian, Meany, Pace and Wriston. Report of the Commission on Goals For Americans appointed by President Eisenhower

I agree with you that "this nation is founded on the principle that each human life is sacred and inviolable. People with disabilities have an absolute right and responsibility to participate fully and equally in society, and to maximize their quality of life potential in manners of their own choosing."

Ronald Reagan, January 5, 1984, in a letter to the National Council on the Handicapped commenting on its policy statement recommending full civil rights coverage for Americans with disabilities.

Testimony of Justin Dart
before the
Senate Committee on Governmental Affairs
and the
Senate Committee on Budget
January 5, 1995

Members of the Committees, it is an honor, and a profound responsibility to appear before you at a time when the very nature of American government is being examined. I served as a member of the National Council on Disability and Commissioner of the Rehabilitation Services Administration in the Reagan Administrations, and as chair of the President's Committee on Employment of People with Disabilities under President Bush and, until December 1993, under President Clinton.

I am pleased that the Unfunded Mandate Reform Act of 1995 which is the subject of this hearing, does not apply to laws that prohibit discrimination on the basis of race, religion, gender, national origin or disability status.

This is entirely appropriate. Our adversarial political dialogue has sometimes created the impression that civil rights is a kind of bothersome burden that do-gooders impose on sound business and sound government. History says no.

Civil rights and free enterprise are two sides of the same solid gold cultural currency that has revolutionized the productivity and the quality of human life.

Our forefathers and mothers came to this country because we offered extraordinary legal guarantees of equal opportunity. They got rich and America got rich. Every time we expanded those civil rights guarantees to include another oppressed minority, Americans got richer. With the strongest civil rights guarantees in the world, we have one of the highest standards of living and one of the lowest tax rates among industrial democracies.

America is not rich in spite of civil rights. America is rich because of civil rights. Rich in money. Richer yet in human dignity.

Senators, I am here today as an advocate for the civil rights of all Americans. I contracted polio in 1948, when I was 18. I have been a wheel chair user ever since. It didn't take me very long to discover that people with disabilities are subject to a massive residue of ancient prejudice and obsolete environments. From my first day as a freshman at the University of Houston, until I received my master's Degree, I had to beg passers-by to carry me up and down steps to every single class. After three years as an honor student in the education department, I was told that I would be denied a Texas teacher's certificate because of my wheel chair.

I looked around me. African Americans were not allowed to be students at all. Hispanics were barely tolerated. Women were kept in their place. I became a life long civil rights advocate.

My younger brother Peter, was a top air force jet pilot when, like me, he was disabled by polio. He struggled for more than two decades against hostile attitudes and hostile environments. Finally, six years ago, no longer able to bear the pain of rejection by his beloved nation, unwilling to accept dependency, he took his own life. Thousands have made the same tragic decision.

My father, Justin Dart, Sr., was a fierce Republican and crusader for democracy – a member of the Reagan "kitchen cabinet," which he insisted did not exist. He taught me the importance of public service. He said, "Jus, get into politics as if your life depended on it. It does."

Senators, America has been good to me. For every bad break, I've had ten good ones. I love this country. I'm so proud of America, not because it's perfect, but because it stands for action to make the human dream live.

I was never prouder to be an American than on July 26, 1990, when President Bush signed the Americans with Disabilities Act.

The ADA is a landmark in the evolution of human beings, the first comprehensive civil rights law for people with disabilities in the history of the world.

It is the emancipation proclamation for forty–nine million Americans with disabilities and a shining symbol of hope for almost a billion persons with disabilities in other nations.

There are no words to tell you what it means to me and to millions of Americans with disabilities to be legally recognized as American citizens, as human beings.

And so, it would also be impossible to convey to you the depth of the anger and the terror we feel when we read that our sacred, hard won civil rights law is still characterized by some as a source of unwarranted litigation, a burden to states, communities and businesses, an unnecessary law that should be repealed or amended to meaninglessness.

Senators, the Bill of Rights, the Emancipation Proclamation, the Civil Rights Act of 1964, the Voting Rights Act, the Fair Housing Act have been sources of litigation and expense. But they are not burdens to the nation. They are the power, the majesty, the soul of the nation.

The ADA is not a burden to the nation. It is the most recent landmark on our magnificent march to the promised land where our dream of justice and prosperity will be lived by all.

It is a brilliant blueprint for rational change. It is probably the most cost–effective civil rights law ever passed. It will enable millions of citizens with disabilities to rise from welfare poverty to become workers, customers and taxpayers. According to President Bush, excluding millions of people with disabilities from the productive mainstream costs $200 billion cash annually in public and private funds. The ADA will cost a tiny fraction of the amount it will save.

The ADA provides the proper balance between the civil rights of people with disabilities and the legitimate concerns of state and local governments, employers, and private businesses. It is flexible, allowing different solutions in different situations. It has numerous provisions designed to eliminate undue hardships and undue financial burdens frequently described by those concerned about unfunded mandates.

Attorney General Dick Thornburgh, in 1989 Congressional testimony stated it this way: "This bill is fair, balanced legislation. It builds on an extensive body of statues, case law, and regulations to avoid unnecessary confusion; it allows maximum flexibility for compliance; and it does not place undue burdens on Americans who must comply."

Senators, the section in the ADA applicable to state and local governments is basically one sentence long––it specifies that state and local governments must comply with the very same standards set out in Section 504 of the Rehabilitation Act of 1973. Most state and local governments, as recipients of federal financial assistance, have been subject to Section 504 rules of nondiscrimination for over 20 years.

In other words, those governments that have taken reasonable steps over the past 20 years to eliminate architectural and other artificial barriers in compliance with Section 504, are most likely already in compliance with the ADA. It is those governments that have done the least over this period that are now complaining the loudest.

During the last three years I have personally held at least two forums in each of the fifty states to dialogue with leaders of state and local governments, business, and the disability community about full, harmonious, and cost–effective implementation of the ADA. I would like to share with you what I have found.

First, those communities which have developed formal communications among people with disabilities, government officials and private businesses have had the greatest success in implementing the ADA in a cost–effective manner.

People with disabilities often know the cheapest way to ensure compliance.

For example, an architect might propose redesigning a water fountain to lower its height at a cost of several thousand dollars. On the other hand, a person with a disability would suggest installing a cup dispenser for under five dollars.

Mayor Bob Lanier of Houston has fostered a cooperative implementation of the ADA. A conservative former businessperson, he was re-elected recently with the full support of citizens with disabilities, and 90.9% of the total popular vote. Houston's credit rating is double A.

Second, there is a lot of fear and misunderstanding out there about the costs of compliance with the ADA. This fear is being fueled by lawyers, architects, builders, and self-styled expert consultants whose only interest is to promote profits for themselves.

The fears being raised now about the impact of the ADA are similar to those misgivings that were raised in the first few years following the implementation of Section 504 of the Rehabilitation Act. There were predictions that those covered by the Section 504 regulations would be bankrupted or forced to severely curtail or alter their services. These doomsday predictions were based on ignorance and myth and proved completely false.

Similar misgivings in the area of race discrimination surfaced in 1965 and proved to be equally unfounded.

Doomsday predictions about the ADA have not come true; they will not come true.

I have included a list of typical mis-understandings in appendix 1 of my written testimony. Let me give you some examples.

State and local officials have told me how burdensome it is to require that all public buses be retrofitted with lifts. I tell them that they are misinformed--buses are not required to be retrofitted; only new buses require lifts. Further, the federal government pays a significant portion of the cost of the lift.

State and local officials have complained to me about how they have to make every existing building, every existing entrance way, and every existing bathroom accessible. A local official told me about the burden of installing an elevator in a small rural library.

I tell them someone is selling them a bill of goods.

With respect to existing facilities, the ADA regulation (section 35.150 of part 35 of the Code of federal regulations) includes a standard which is referred to as the "program accessibility" standard. What this means is that the program of services must be made accessible, but not necessarily every building or every floor of every building. In other words, a public entity is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section.

For example, according to the regulations, a public entity can comply through such means as reassignment of services to accessible buildings, assignment of aides to beneficiaries,

home visits, delivery of services at alternative accessible sites, or any other methods that result in making its services, programs or activities accessible.
The regulations also state that the ADA:

–does NOT necessarily require a public entity to make each of its existing facilities accessible;

–does NOT require a public entity to take any action that would threaten or destroy the historic significance of an historic property; and

–does NOT require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.

And the bottom line: the ADA specifically states that no public entity or business can be forced to take any action that would result in undue financial burdens.

In sum, I have found that the more people understand about what the ADA does and does not require, the more comfortable they feel about implementation.

Third, I have also learned that the ADA is frequently used as a scapegoat for local officials who want to renovate a building but cannot muster sufficient local support.

Last year I read in a weekly newspaper that a tiny impoverished West Texas county was going to have a county commissioners' meeting to vote for "renovations to the court house required by the ADA"--an automatic elevator, new bathrooms, all kinds of expensive things I knew they couldn't afford and the ADA did not require.

I called the county judge and offered to come to the meeting and explain that the ADA really didn't require them to spend all that money in a time of budget problems. He said, "Justin, come to the meeting if you want to, but keep your damn mouth shut. I finally got the votes to fix this run–down courthouse right and by God I'm going to do it."

Senators, the ADA may be misunderstood, but it is not a burden. It's a well thought–out, well–written, cost–effective civil rights law. It declares me to be a human being and I thank God for it.

Nothing could be more Republican, nothing could be more Democrat, nothing could be more in harmony with family values, with reforming welfare, with reducing the deficit and with the American heritage than the ADA, which opens the doors of free enterprise opportunity to Americans with disabilities. Every county, city, and state will prosper. Every American will prosper.

What we need is not less civil rights, but more information, and more courage to use it. I respectfully suggest a simple economical solution for the problems of misinformation about the ADA, and the resulting unnecessary expense and the denial of rights. Congress must appropriate a sufficient amount of money to allow the Department of Justice to provide accurate ADA information to state and local communities, to business, and to people with disabilities.

Finally, Senators, the leadership of the 104th Congress has announced an aggressive agenda to dramatically reshape public policy, to examine the very foundations of our federal system.

This is at once a terrifying challenge and a magnificent opportunity. As we approach this historic task, let us not be overwhelmed by frustration with the natural growing pains of democracy. Let us not be tempted by the poll takers' passion for instant, pseudo solutions and easy scapegoats.

Let us ensure that the changes we make are changes of the people, by the people and for the people – all the people.

Let us ensure that the remodeled edifice of democracy rests firmly on the concepts that bind us together as a nation, that have enabled us to create the most just, most prosperous culture in the history of human kind: independence, not dependence, inclusion not exclusion, empowerment, not paternalism, investment in the future, not subsidy for the past, self–disciplined productivity, not spendthrift escapism.

Senators, we of the civil rights community will work with you to create total opportunity America. But we will resist with all our might any effort to divide this nation. We will resist any change that will exclude any American child or adult from a real, practical opportunity to participate in the American dream.

Let us join together, Republicans, Democrats and Independents to make our magnificent dream real in the life of every person.

Thank you for the opportunity to share my views with the Committee. God bless you.

APPENDIX 1

FLEXIBILITY OF THE ADA LEGAL FRAMEWORK

PREPARED BY:

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Jackson Heights, NY 11370-1177

OVERVIEW OF THE ADA LEGAL FRAMEWORK

The landmark Americans with Disabilities Act (ADA) provides comprehensive civil rights protections to individuals with disabilities in the areas of employment, public accommodations, and state and local government services.

The regulation promulgated by the Department of Justice implementing Title II of the ADA (state and local governments) is found in Part 35 of Title 28 of the Code of Federal Regulations.

Most programs and activities of state and local governments are recipients of Federal financial assistance from one or more Federal funding agencies and, therefore, are already covered by Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in federally assisted programs and activities.

Because Title II of the ADA essentially extends the nondiscrimination mandate of Section 504 to those state and local governments that do not receive federal financial assistance, the ADA regulation parallels the provisions of existing Section 504 regulations. This approach is based on Section 204 of the ADA which simply incorporates by reference Section 504 regulations previously issued by the Justice Department.

Definition of "Disability". The ADA defines "disability" to mean, with respect to an individual: a physical or mental impairment that substantially limits one or more major life activities of such individual, a record of such an impairment, or being regarded as having such an impairment. This is the same definition included in Section 504, the Fair Housing Act, and the Air Carriers Access Act.

Employment. Title I (and Title II for state and local governments) specifies that an employer may not discriminate against any qualified individual with a disability in regard to any term, condition, or privilege of employment. The ADA incorporates many of the standards of discrimination set out in regulations implementing Section 504, including the obligation to provide reasonable accommodations unless it would result in an undue hardship on the operation of the entity.

Public Services, including public transportation. Title II of the ADA specifies that no qualified individual with a disability may be discriminated against by a public entity, i.e., state or local government. As explained above, the ADA regulations parallel Section 504 regulations.

The regulations provide that renovations and new construction must be "readily accessible to and usable by" individuals with disabilities. "ADAAG" (Americans with Disabilities Accessibility Guidelines for Buildings and Facilities) standards must be followed unless the Attorney General certifies that state standards provide equivalent access.

With respect to existing facilities, the ADA regulation includes a standard which is referred to as the "program accessibility" standard. What this means is that the program of services must be made accessible, but not necessarily every building or every floor of every building.

For example, according to the regulations, a public entity can comply through such means as reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternative accessible sites, or any other methods that result in making its services, programs or activities accessible.

The regulations also state that the ADA:

- does NOT necessarily require a public entity to make each of its existing facilities accessible;

- does NOT require a public entity to take any action that would threaten or destroy the historic significance of an historic property; and

- does NOT require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.

To the extent structural changes in facilities are undertaken to comply with the "program accessibility" standard, state and local governments are given three years, however, in any event, the changes should be made as expeditiously as possible.

With respect to public transportation provided by public transit authorities, all new fixed route buses must be made accessible unless a transit authority can demonstrate to the Secretary of Transportation that no lifts are available from qualified manufacturers, despite the fact that good faith efforts have been made to locate such lifts, and that a further delay in purchasing new buses would significantly impair transportation services in the community served. There is no requirement to retrofit any existing bus.

A public entity must also provide paratransit for those individuals with disabilities who cannot otherwise use mainline accessible transportation up to the point where the provision of such supplementary services would pose an undue financial burden on the transit authority.

New stations must be designed and constructed in an accessible manner. However, only key existing stations serving rapid rail and light rail systems must be made accessible as soon as practicable but in no more than 30 years where modifications are extraordinarily expensive (with two-thirds of the stations to be made accessible with

20 years).

TYPICAL MISUNDERSTANDINGS ABOUT THE ADA

The ADA provides the proper balance between the rights of people with disabilities and the legitimate concerns of state and local governments. It allows maximum flexibility and it does not place undue burdens on state and local governments to comply.

Unfortunately, there is a lot of fear and misunderstanding by state and local officials about the costs of compliance with the ADA. This fear is fueled by lawyers, architects, builders, and self-styled expert consultants whose only interest is to promote profits for themselves.

Set out below are examples of "myths" versus "realities" about the ADA.

SELF-EVALUATIONS AND SURVEYS

A large county in the Southwest contracted with an architectural firm for a survey of their existing buildings. The firm utilized the barrier removal standards of the ADAAG, which cover alternations and new construction Because this higher standard of accessibility was used (which was the incorrect standard), Title II's more flexible "program accessibility" standard was ignored.

The firm indicated that each existing barrier, in every building, must be removed, which would have cost millions of dollars. The Department of Justice advised the county of Title II's "program accessibility" requirements and provided concrete examples of ways Title II compliance could be achieved with minimal structural changes. In fact, many of the compliance recommendations required no structural changes.

A large county in the Northeast undertook an expensive survey of every building in the county, including not only places where the public received services and participated in programs, but such places as garages where construction equipment and snow plows were stored. Since architectural barriers at employee-only work spaces do not prohibit people with disabilities from receiving the benefit of a public entity's programs, these barriers need not be removed. The employment provisions of the ADA might require barrier removal at employee-only work spaces, but only when barrier removal is used to reasonably accommodate a disabled applicant for employment.

A school district in Troy, New York was advised by a consultant that all schools had to be retrofitted with elevators and that one school with an elevator required a second elevator to shorten an accessible route. The school district was advised that other alternatives could be explored (e.g., classes on ground floor, alternative locations for PTA meetings, etc.).

The City of Albany was advised that all restrooms in city buildings had to be made accessible. They were advised that a targeted retrofit of selected restrooms could satisfy the ADA's access requirements.

A county Health Department north of New York City was about to renovate a building to make it accessible when it was informed that its programs were already accessible since all services were available at convenient, alternative sites.

The Ulster Veterans Office provided inaccessible van service for trips to the VA Hospital in Albany. There were advised to purchase a new accessible van. EPVA told the agency to contract with an ambulette service when necessary.

HISTORIC BUILDINGS

A small county in Pennsylvania housed its Veterans Affairs office in a very small building which is listed on the National Register of Historic Places. Because this

building was not wheelchair-accessible, the Veterans Affairs staff had adopted the practice of conducting interviews and any other necessary business at the homes of clients who used wheelchairs or other mobility devices.

An architectural firm, which had been hired by the county, advised the country to construct a ramp to the building's entrance and to renovate the interior to comply with accessibility standards. The Department of Justice informed county officials that the home visit policy of its Veterans Affairs office complied with the ADA "program accessibility" requirements and no structural changes were necessary. Estimated cost savings were $20,000.

The Cooperstown, New York historic City Hall was advised to install an elevator to hearing rooms on the second floor. They were informed that, when necessary, hearings could be held on the first floor, which was already accessible.

POLLING SITES FOR ELECTIONS

A question was raised whether polling places in existing inaccessible facilities must be made accessible under the ADA. The Justice Department explained that existing polling places are not required to be accessible, provided alternative methods are effective in enabling individuals with disabilities to cast a ballot on the day of the election. A policy of taking the ballot outside to a voter who is unable to enter the polling place is an acceptable method of providing program access.

HEARING ROOMS IN TOWN HALL

A question was raised whether the hearing rooms located on the second floor (which was inaccessible) in Town Hall would have to be made accessible in order to come into compliance with the ADA. In this case, the Town acknowledged that the second floor of the Town Hall could be reached only by ascending a flight of stairs and that the second floor is inaccessible to some people with disabilities. The first floor of

the Town Hall was accessible.

The Justice Department found that the Town was not required to make the second floor accessible because it had adopted a policy that specifies that when people with disabilities need to access a program, service, or activity (including hearings) on the second floor, the Town will relocate it to the first floor.

CURB CUTS

A question was raised regarding the scope of a government's obligation to make streets accessible i.e., curb cuts. The Department of Justice explained that Section 35.150(d)(2) of the ADA regulations states that public entities with responsibility for or authority over streets, roads, or walkways must prepare a schedule for providing curb ramps where pedestrian walks cross curbs. Priority must be given to walkways serving state and local government offices and facilities, transportation, places of public accommodation, and employers, followed by walkways serving other areas. This schedule must be included as part of the transition.

However, the Department also explained, that Section 35.150 does not necessarily require a curb ramp at every intersection. Alternative routes to buildings that make use of existing curb cuts may be acceptable under the concept of "program accessibility", even if an individual with a disability may need to travel a longer route to reach a particular building than would a nondisabled individual.

Further, in residential areas, as opposed to commercial areas, it may be appropriate to establish a procedure for installing curb ramps upon request when an individual with disabilities moves into a neighborhood. Moreover, the fundamental alternation and undue burdens defenses will limit the number of curb ramps required in many cases.

In the case of new construction and alterations, the rules requires that curb

ramps be provided at any intersection having curbs or other barriers to entry from a street level pedestrian walkway.

ATHLETIC FIELDS

A question was raised whether every softball field in the city would have to be made accessible. The city was particularly concerned with the expense of providing access to a field that was built down in a ditch so there were steep walls surrounding it.

According to the "program accessibility" standard, this field would not have to be made accessible so long as other fields in the city were accessible.

PARKS AND RECREATION

A question was raised by the New York State Department of Parks and Recreation about ensuring access to the seashore. "Would sandy beaches have to be paved." The answer is obviously "no". At Jones Beach State Park, lifeguards unroll a vinyl mat which gives wheelchair users the ability to travel across the sandy beach. Paving the beach is not required because such an approach would "fundamentally alter" the nature of the beach. Fundamental alterations are not required.

In accordance with the "program access" requirement, New York State was not required to make all beaches accessible. However, New York State chose to make all beaches accessible in the manner previously described because of its low cost and ease of administration.

A large city conducted a survey of all of its parks and recreation areas. The architects informed the city that it would cost millions of dollars to make all the parks accessible. Before the contracts were let, the city was informed that the "program accessibility" standard only required that some, but not all, of the parks be made accessible.

A City in Central New York planned to close a municipal pool because officials received an $84,000 estimate to render it accessible. They were advised to relocate a proposed ramp and purchase a portable transfer tier, saving tens of thousands of dollars.

AI-9

APPENDIX 2

ANALYSIS OF THE UNFUNDED MANDATE BILLS

FROM THE PERSPECTIVE OF INDIVIDUALS WITH DISABILITIES

PREPARED BY:

Paralyzed Veterans of America on behalf of the Civil Rights Task Force of the Consortium for Citizens with Disabilities

April 28, 1994

U.S. Department of Justice
Civil Rights Division
Public Access Section

COMMON QUESTIONS ABOUT TITLE II OF THE AMERICANS WITH DISABILITIES ACT (ADA)

1. Q: Do we have to retrofit every existing municipal building in order to meet the accessibility requirements of the ADA?

   A: No. Title II of the ADA requires that a public entity make its *programs* accessible to people with disabilities, not necessarily each facility or part of a facility. Program accessibility may be achieved by a number of methods. While in many situations providing access to facilities through structural methods, such as alteration of existing facilities and acquisition or construction of additional facilities, may be the most efficient method of providing program accessibility, the public entity may pursue alternatives to structural changes in order to achieve program accessibility. For example, where the second-floor office of a public welfare agency may be entered only by climbing a flight of stairs, an individual with a mobility impairment seeking information about welfare benefits can be served in an accessible ground floor location or in another accessible building. Similarly, a town may move a public hearing from an inaccessible building to a building that is readily accessible. When choosing among available methods of providing program accessibility, a public entity must give priority to those methods that offer services, programs, and activities in the most integrated setting appropriate.

2. Q: If we opt to make structural changes in providing program accessibility, are we required to follow a particular design standard in making those changes?

   A. Yes. When making structural changes to achieve program accessibility, a public entity must make those changes in accordance with the standards for new construction and alterations. See question #5.

3. Q: What is the time line for making structural changes?

   A: Any structural changes that are required to achieve program accessibility must be made by January 26, 1995. Each public entity with 50 or more employees was required to complete a transition plan by July 26, 1992, setting forth the steps necessary to complete the changes.

4. Q: Are there any limitations on the program accessibility requirement?

A: Yes. A public entity does not have to take any action that it can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. This determination can only be made by the head of the public entity or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. The determination that undue burdens would result must be based on all resources available for use in the program. If an action would result in such an alteration or such burdens, the public entity must take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity.

5. Q. What architectural design standard must we follow for new construction and alterations?

A: Public entities may choose from two design standards for new construction and alterations. They can choose either the Uniform Federal Accessibility Standards (UFAS) or the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG). ADAAG is the standard that must be used for privately-owned public accommodations and commercial facilities under title III of the ADA. If ADAAG is chosen, however, public entities are not entitled to the elevator exemption (which permits certain privately-owned buildings under three stories or under 3,000 square feet per floor to be constructed without an elevator).

6. Q. Is the Federal Government planning to eliminate this choice and establish one design standard for new construction and alterations?

A. Yes. The Department of Justice is proposing to amend its current ADA Standards for Accessible Design (which incorporate ADAAG) to add sections dealing with judicial, legislative, and regulatory facilities, detention and correctional facilities, residential housing, and public rights-of-way. The proposed amendment would apply these Standards to new construction and alterations under title II. Under the proposed rule, the choice between ADAAG and UFAS would be eliminated.

7. Q: We want to make accessibility alterations to our city offices, which are located in an historic building listed in the National Register of Historic Places. Are we prohibited from making changes? Which rules apply to us? What if these alterations would destroy the historic nature of the building?

A: Alterations to historic properties must comply with the specific provisions governing historic properties in ADAAG or UFAS, to the maximum extent feasible. Under those provisions, alterations should be done in full compliance with the alterations standards for other types of buildings. However, if following the usual standards would threaten or destroy the historic significance of a feature of the building, alternative standards may be

used. The decision to use alternative standards for that feature must be made in consultation with the appropriate historic advisory board designated in ADAAG or UFAS, and interested persons should be invited to participate in the decisionmaking process.

The alternative requirements for historic buildings or facilities provide a minimal level of access. For example —

1) An accessible route is only required from one site access point (such as the parking lot).
2) A ramp may be steeper than is ordinarily permitted.
3) The accessible entrance does not need to be the one used by the general public.
4) Only one accessible toilet is required and it may be unisex.
5) Accessible routes are only required on the level of the accessible entrance.

8. Q: But what if complying with even these minimal alternative requirements will threaten or destroy the historic significance?

A: In such a case, which is rare, the public entity need not make the structural changes required by UFAS or ADAAG. If structural modifications that comply with UFAS or ADAAG cannot be undertaken, the Department's regulation requires that "program accessibility" be provided.

9. Q: Does a city have to provide curb ramps at every intersection on existing streets?

A: No. To promote both efficiency and accessibility, public entities may choose to construct curb ramps at every point where a pedestrian walkway intersects a curb, but they are not necessarily required to do so. Alternative routes to buildings that make use of existing curb cuts may be acceptable under the concept of program accessibility in the limited circumstances where individuals with disabilities need only travel a marginally longer route. In addition, the fundamental alteration and undue burden limitations may limit the number or curb ramps required.

To achieve or maintain program accessibility, it may be appropriate to establish an ongoing procedure for installing curb ramps upon request in areas frequented by individuals with disabilities as residents, employees, or visitors.

However, when streets, roads, or highways are newly built or altered, they must have ramps or sloped areas wherever there are curbs or other barriers to entry from a sidewalk or path. Likewise, when new sidewalks or paths are built or are altered, they must contain curb ramps or sloped areas wherever they intersect with streets, roads, or highways. Resurfacing beyond normal maintenance is an alteration. Merely filling potholes is considered to be normal maintenance.

10. Q: Where a public library's open stacks are located on upper floors with no elevator access, does the library have to install a lift or an elevator?

A: No. As an alternative to installing a lift or elevator, library staff may retrieve books for patrons who use wheelchairs. Staff must be available to provide assistance during the operating hours of the library.

11. Q: Does a municipal performing arts center that provides inexpensive balcony seats and more expensive orchestra seats have to provide access to the balcony seats?

A: No. In lieu of providing accessible seating on the balcony level, the city can make a reasonable number of accessible orchestra-level seats available at the lower price of balcony seats.

12. Q: Is a city required to modify its policies whenever requested in order to accommodate individuals with disabilities?

A: No. A public entity must make only "reasonable modifications" in its policies, practices, or procedures to avoid discrimination. If the public entity can demonstrate that a modification would fundamentally alter the nature of its service, program, or activity, it is not required to make the modification.

For example, where a municipal zoning ordinance requires a set-back of 12 feet from the curb in the central business district and, in order to install a ramp to the front entrance of a pharmacy, the owner requests a variance to encroach on the set-back by three feet, granting the variance may be a reasonable modification of town policy.

On the other hand, where an individual with an environmental illness requests a public entity to adopt a policy prohibiting the use of perfume or other scented products by its employees who come into contact with the public, adopting such a policy is not considered a "reasonable" modification of the public entity's personnel policy.

13. Q: Does the requirement for effective communication mean that a city has to put all of its documents in Braille?

A: Braille is not a "required" format for all documents. A public entity must ensure that its communications with individuals with disabilities are as effective as communications with others.

A public entity is required to make available appropriate auxiliary aids and services where necessary to ensure effective communication. Examples of auxiliary aids and services that benefit various individuals with vision impairments include magnifying lenses, qualified readers, taped texts, audio recordings, Brailled materials, large print materials, or assistance in locating items.

The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the length and complexity of the communication involved.

For example, for individuals with vision impairments, employees can often provide oral directions or read written instructions. In many simple transactions, such as paying bills or filing applications, communications provided through such simple methods will be as effective as the communications provided to other individuals in similar transactions.

Many transactions, however, involve more complex or extensive communications than can be provided through such simple methods and may require the use of magnifying lenses, qualified readers, taped texts, audio recordings, Brailled materials, or large print materials.

14. Q: Must tax bills from public entities be available in Braille and/or large print? What about other documents?

A: Tax bills and other written communications provided by public entities are subject to the requirement for effective communication. Thus, where a public entity provides information in written form, it must, when requested, make that information available to individuals with vision impairments in a form that is usable by them. "Large print" versions of written documents may be produced on a copier with enlargement capacities. Brailled versions of documents produced by computers may be produced with a Braille printer, or audio tapes may be provided for individuals who are unable to read large print or do not use Braille. Brailled documents are not required if effective communication is provided by other means.

15. Q: Does a city have to arrange for a sign language interpreter every time staff members deal with people who are deaf or hard of hearing?

A: Sign language interpreters are not required for all dealings with people who are deaf or hard of hearing. A public entity is required to make available appropriate auxiliary aids and services where necessary to ensure effective communication.

Examples of auxiliary aids and services that benefit individuals with hearing impairments include qualified interpreters, notetakers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDD's), videotext displays, and exchange of written notes.

The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the length and complexity of the communication involved.

For example, employees can often communicate with individuals who have hearing impairments through written materials and exchange of written notes. In many simple transactions, such as paying bills or filing applications, communications provided through such simple methods will be as effective as the communications provided to other individuals in similar transactions.

Many transactions, however, involve more complex or extensive communications than can be provided through such simple methods and may require the use of qualified interpreters, assistive listening systems, videotext displays, or other aids or services.

16. Q: Do all city departments have to have TDD's to communicate with people who have hearing or speech impairments?

A: No. Public entities that communicate by telephone must provide equally effective communication to individuals with disabilities, including hearing and speech impairments. If telephone relay services, such as those required by title IV of the ADA, are available, these services generally may be used to meet this requirement.
Relay services involve a relay operator who uses both a standard telephone and a TDD to type the voice messages to the TDD user and read the TDD messages to the standard telephone user. Where such services are available, public employees must be instructed to accept and handle relayed calls in the normal course of business.

However, State and local agencies that provide emergency telephone services must provide "direct access" to individuals who rely on a TDD or computer modem for telephone communication. Telephone access through a third party or through a relay service does not satisfy the requirement for direct access.

17. Q: Are there any limitations on a public entity's obligation to provide effective communication?

A: Yes. This obligation does not require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of its services, programs, or activities, or in undue financial and administrative burdens.

18. Q: Is there any money available to help local governments comply with the ADA?

A: Yes. Funding available through the Community Development Block Grant program at the U.S. Department of Housing and Urban Development may be used for accessibility purposes, such as installation of ramps, curb cuts, wider doorways, wider parking spaces, and elevators. Units of local government that have specific questions concerning the use of CDBG funds for the removal of barriers should contact their local HUD Office of Community Planning and Development or call the Entitlement Communities Division at HUD, (202) 708-1577, for additional information.

THE NEED FOR A NEW FEDERALISM:
A State-Federal Legislative Agenda for the 104th Congress

George V. Voinovich
Governor of Ohio

November 1994

Note: This document was adopted as part of The Williamsburg Resolve by the Republican Governors' Association on November 22, 1994, in Williamsburg, Virginia.

I. UNFUNDED FEDERAL MANDATES

Introduction

Unfunded federal mandates are placing severe pressure on taxpayers across the country, crippling state, city, and county budgets from Maine to California, and forcing governors and local officials to reorder their own budget priorities. Unfunded mandates are federal programs enacted by Congress, but with one major catch -- they must be financed and implemented with state and local resources.

Activism in government is not always a bad thing, provided that those who advocate such activism are prepared to accept responsibility for its costs. What burdens state and local governments is activism on the cheap, and what outrages state governments is Congress' insistence that new federal policy initiatives be paid out of state budgets.

Through increasing use of this budgetary sleight of hand, Congress compels states and local governments to fund programs Washington cannot because of the persistent budget deficit. The result is trickle-down taxes, an erosion of governmental accountability at all levels, and reduced effectiveness of government programs.

The Scope of the Problem

Mandates have become pervasive in recent years. While state and local governments were forced to comply with only 19 new mandates between 1970 and 1986, since the late-'80s the Congress has passed into legislation some 72 mandates. There is seemingly no end to the burden that Washington is inclined to pass on to state and local governments.

In 1993, Ohio released a comprehensive study identifying the burdens imposed by mandates. This study, the first of its kind nationwide, analyzed the harmful effects imposed by unfunded mandates and determined that federal mandates will cost the State $356 million in 1994 and over $1.74 billion from 1992-95.

This is just the tip of the iceberg. Barring serious reform, other states and local governments, and their taxpayers, can expect similar burdens from Washington in the years ahead. To be sure, unfunded mandates will cost the nation's cities and counties nearly $88 billion over five years, consuming about one-quarter of all locally raised revenue by 1998.

Federal mandates also interfere with one of the most fundamental tasks of government -- setting priorities. Perhaps the most glaring example for states is the forced trade-off between Medicaid and education funding. In the past five years, education declined as a share of state spending at a time when nearly everyone acknowledges that improving our schools is one of government's highest priorities. Many states cannot spend a greater share of tax dollars on education because new Medicaid mandates consume more and more state resources -- about one-third of states' budgets.

There is an implicit assumption in Washington that all states need to address specific problems in specific ways. One glaring example of this "one-size-fits-all" mentality is in the area of substance abuse programs. The Congress requires that 35 percent of the money allocated to substance abuse must be spent on alcohol abuse services and 35 percent must be spent on drug abuse services. But of the 35 percent spent on drug programs, a least half must be spent on programs for intravenous drug users. States that do not have a large problem with intravenous drug users are still forced to spend money on these programs or face the loss of all federal aid. In effect, important decisions for the states are being made by a vast, arrogant bureaucracy in Washington.

While most mandates may reflect well-intentioned policy goals, many impose excessive costs without any discernible benefit. For example, recent federal highway law requires states to use a scrap tire additive in highway pavement, a mandate that by 1997 will cost the states $1 billion. Incredibly, this mandate was enacted without any assessment of its effects, and experts have real questions about the durability, recyclability, and potentially harmful environmental effects of rubberized asphalt.

In case after case, states and local communities have developed affordable, effective programs that meet local needs only to face orders from Washington that require questionable changes to conform to federal guidelines. For example, while some states have developed thorough, comprehensive solid waste management plans, they are still required to change most of their landfill rules to comply with federal standards that in some respects are weaker than the states'. To make matters worse, state regulators increasingly are being forced to spend time fulfilling burdensome federal paperwork requirements, inhibiting their ability to clean up and close landfill sites that pose environmental risks.

City and local governments, in particular, are heavily burdened by environmental mandates. Columbus, Ohio determined that 14 environmental mandates will cost the city $1.6 billion during the coming decade -- that represents $856 per year for every household for 10 years. This figure obviously does not include additional mandates that Congress might decide to impose in the future.

The Safe Drinking Water Act, which is responsible for many of these costs, requires the federal Environmental Protection Agency to identify 25 new substances every three years that local systems must test for in their water supply. Cities from coast to coast are now forced to bear the costs of testing their drinking water for substances that have literally been banned for decades.

States and local governments are also forced to fulfill public policy responsibilities that are largely federal in nature. For example, while the federal government readily acknowledges that illegal immigration is a national responsibility, the states are nonetheless forced to pay for failed federal immigration policies. The State of California has determined that the cost of educating illegal immigrants in California public schools in fiscal years 1994-95 is $1.5 billion. The cost of providing emergency health care to this same population is $395 million over those years. Mandates associated with illegal immigration are only part of the burden on California taxpayers. The State has estimated that federal mandates on California in the current fiscal year is nearly $8 billion.

As the burden of unfunded mandates worsens each day, the overall relationship between Washington and the states continues to erode. In addition to mandates, a spate of new regulations and administraive rules on state and local governments over the past decade have caused countless problems for both government and business. Virtually every state or local official is painfully aware of the simple fact that while regulatory relief has been enacted in certain areas, these minor successes are counterbalanced by new federal requirements that do nothing but place added burden on the American taxpayer.

In the final analysis, the debate over federal mandates is not about the environment, health care, entitlement programs or any other single issue. It is about our government's structure and the interaction of its various pieces. And today the argument for federal micromangement of state and local affairs is weaker than ever before.

Towards a Solution

Governors, mayors, county officials, and state legislators are working together to fight mandates and to pool their lobbying clout in Washington. The restoration of this state-local partnership has significant implications for resolving a broad array of challenges that result from federal encroachment of state and local responsibilities.

A majority of the House and Senate cosponsored mandate relief bills introduced in the 103rd Congress. President Clinton, himself a former governor, has repeated his intention to work with governors and local officials to end the proliferation of mandates.

However, past congresses have continued to pass, and President Clinton continues to sign, legislation that imposes unfunded mandates. Over the past two years more than a dozen mandates were enacted that impose new cost burdens on states and local governments, including several the President claimed as major accomplishments during his most recent State of the Union address.

The new state-local partnership led to the introduction of the Federal Mandate Accountability and Reform Act of 1994. Slightly different forms of this legislation were passed by clear and overwhelming majorities of the Senate Governmental Affairs Committee and the House Government Operations Committee. Despite near-universal support, this legislation was denied consideration on the House and Senate floors by a coalition of special interests and the congressional Democrat leadership.

The bill requires the Congressional Budget Office to prepare an estimate of the costs of new mandates to states and local governments if the total cost exceeds $50 million. It also erects a series of impediments that both discourages and makes Congress more accountable for imposing new mandates. In effect, the bill requires the Congress to go on record in support of imposing specific mandates. These mechanisms would allow state and local officials to enhance their political and procedural leverage to defeat unfunded mandate proposals.

While this bill is the toughest, most effective mandate relief bill ever considered by Congress, it is clear that states and local communities would like future legislation to be even more far-reaching. Given the prevailing sentiment of the 104th Congress, passage of meaningful mandate relief legislation should be one of the top legislative priorities in 1995 of the new congressional leadership.

The bottom line is that a firm commitment from Congress and the President is necessary to end this irresponsible practice. No longer can the nation afford the trickle-down tax burden and service reductions necessary to fund programs dictated by Washington. After two centuries of change and progress, the constitutional vision of a true federal-state partnership must be restored.

II. A LEGISLATIVE BLUEPRINT FOR THE 104th CONGRESS

Restoring balance in state-federal relations is perhaps the most important national reform that could be undertaken by the 104th Congress.

The following proposals represent a blueprint for attaining mutual goals of empowering states and local governments and the efficient, orderly reduction of the federal government.

A. BLOCK GRANTS

Responding to the demands of various special interest groups, there are more separate streams of funding to states and localities than ever before -- 578 separate grant programs. There are 154 federal job training and employment service programs alone, each with its own set of requirements and bureaucrats.

While it is necessary to maintain separate programs to protect vulnerable populations, consolidating many duplicate programs would increase states' flexibility to meet local needs while reducing red tape and needless bureaucratic costs.

In 1991, President Bush proposed consolidating several federal grant programs to states and merging them into an omnibus block grant. Block grant consolidation made sense then, and it makes sense now.

B. BUDGET REFORM

Governors agree that congressional action is needed to reduce the federal budget deficit. However, randon, across-the-board application of these reforms could have significant, burdensome implications for states.

Entitlement Caps

The imposition of federal caps to restrain the growth of entitlement spending would constitute the single most burdensome unfunded mandate on already strained budgets.

Well-reasoned, systematic reforms undertaken in partnership with states to provide maximum flexibility are necessary to curb funding for entitlement programs to avoid simply transferring the cost burden from the federal budget to state ledgers.

Balanced Budget Amendment

Federal support for state and local grant programs would be a certain casualty under a constitutional amendment to require a balanced budget unless accompanied by companion reforms. Simply reducing assistance in the absence of a fundamental reordering of state and federal responsibilities would cause substantial disruptions and reductions in necessary government services.

As partners in implementing most federal funded programs, the federal government should work with states on a new covenant determining the appropriate level of government to be responsible for delivering government services.

C. WELFARE REFORM

National reforms should not be financed by increasing state burdens. For example, states should not be forced to develop massive public service employment programs that will be costly, administratively burdensome, and possibly ineffective. Similarly, terminating federal assistance for certain vulnerable populations, such as unwed teenage mothers, would saddle the states with billions of dollars in new costs.

Within a reformed welfare system, participation rates must be realistic, and no reform strategy should be financed through federal caps on assistance programs. Excess costs of programs such as emergency assistance would simply be passed on to the states.

Time limits must be carefully structured, and state consultation will be needed to craft a program that addresses challenges to implementation.

Waivers

Preserving and enhancing flexibility to experiment is the first priority of states with regard to welfare reform. The 1115 process for welfare waivers must be protected and streamlined. Unfortunately, rather than streamlining waiver consideration, the Clinton Administration has recently added a number of requirements for approval of welfare waivers. Several reforms that currently require waivers, such as expanding earned income disregards, should be available through the simpler state option process.

Food Stamps
States need flexibility to innovate in order to reduce welfare rolls. Proposals to impose strict limits on states' ability to experiment with the food stamp program are counterproductive to this overall goal. Limitations on the number of states permitted to implement food stamp cashout demonstration projects should be lifted.

The Clinton Administration is encouraging states to implement electronic benefits transfer (EBT) systems to deliver food stamps and other benefits more efficiently. However, efforts to move forward have been hampered by the Federal Reserve's decision to apply cumbersome regulations. These regulations would change current policy by making states responsible for replacing federal benefits claims as lost. Application of this regulation will cost states an estimated $800 million yearly.

D. HEALTH REFORM

Because states provide health care to millions of Americans through the Medicaid program, and because as much as one-third of states' budgets are spent on health care services, decisions made in the context of national health reform will have an enormous impact on states.

Waivers
Currently, states can experiment with Medicaid innovations through the 1115 waiver process. That process must be streamlined to remove burdensome obstacles to innovations that improve the health care delivery system and increase access to services.

Entitlement Caps
Several reform proposals call for caps on federal Medicaid spending. If the federal government decides to limit its Medicaid exposure, states must be similarly protected, or billions of dollars in excess costs will simply be shifted. Before caps are considered, states would like to fully explore managed care and other cost control options.

Managed Care
In order to run Medicaid managed care programs, states must apply for federal waivers which must be renewed every two years. Managed care should be made possible through a simple state plan amendment.

Market Reform and ERISA
The Employee Retirement Income Security Act preempts all self-insured health plans from state regulations, preventing states from implementing reforms including minimum benefits packages, standard data collection systems, and uniform claims forms. ERISA flexibility would dramatically expand state health reform options and allow states the ability to develop and implement their own health reforms.

Boren Amendment
Court decisions have interpreted the amendment in such a way that unrealistic Medicaid reimbursement rates are required for hospitals and nursing homes. States support changing the legislation to control Medicaid institutional rates.

E. FEDERAL RULEMAKING

Cost Benefit Analysis
Recent studies have found that federal regulations impose hundreds of billions of dollars in costs on the national economy on an annual basis, all too often with negligible benefits.

Excessive federal regulations not only burden state and local governments, they impose an unacceptable drag on our nation's economic competitiveness, inhibiting job creation, investment and innovation.

Congress should undertake a systematic cost benefit study on federal regulations to make recommendations for eliminating or modifying regulations that impose undue cost burdens relative to their benefit to society.

Federal Advisory Committee Act
States and local governments are severely disadvantaged during the federal regulatory process as a result of the Federal Advisory Committee Act.

This legislation essentially treats states and local governments as special interests, despite the fact that they have the responsibility of implementing most federal programs and enforces federal regulations.

State and local governments should be given special consultative opportunities before federal regulations are issued in order to enhance efficiency and reduce burdensome regulatory mandates.

F. ENVIRONMENT

With federal and state resources becoming more limited, it is critical that states have the ability to prioritize risks, assess costs and have the flexibility for implementing federal requirements by using innovative programs to meet those requirements.

Risk Assessment-Cost Benefit Analysis
This is essential for setting priorities and allocating resources to solve serious safety, health and environmental problems. It would require EPA, when making final rules, to estimate a regulation's impact on human health or ecological risk, compare the rule to other risks to which the public is exposed and estimate the costs of implementation.

Risk assessment-cost benefit analysis would be a common-sense approach to addressing environmental standards in a cost-effective manner, ensuring that they are based on sound scientific analysis.

For example, U.S. EPA currently is reviewing the Great Lakes Water Quality Initiative. An independent study estimated direct compliance costs for Great Lakes states between $500 million and $2.3 billion -- without contributing to meaningful toxic reductions. Given these findings, EPA should take advantage of the flexibility contained in the law to issue policy guidance, not prescriptive new rules.

In another area, EPA should be required to use risk assessment when selecting new contaminants for regulation. Currently EPA is required to regulate 25 new contaminants every three years, making local water systems test for substances that are not utilized in that region, which imposes costly, unreasonable burdens on many communities.

Clean Water Act
While these programs are important for our waterways, there is a large gap between the funding needed to run effective programs and available federal assistance.

Given the increasing share of state dollars needed to carry out federal mandates, we must strike a better balance between state and federal roles and provide less prescriptive measures for states to implement programs.

States also need more flexibility to carry out federal requirements, such as use of the State Revolving Fund and voluntary nonpoint source program. These have proven to be successful, innovative and efficient measures to meet Clean Water Act goals.

Safe Drinking Water Act

Small communities bear a tremendous financial burden from Safe Drinking Water Act mandates for increased monitoring and treatment.

State and local governments need relief through a change in the standard-setting process, allowing EPA to consider public health risk reduction benefits as well as costs when setting standards. Currently, EPA is required to set standards at the level achieved by the very best technology affordable to large water systems. This change alone could save hundreds of millions of dollars a year, while protecting public health.

Superfund

Superfund law should be restructured so that fewer resources are utilized determining liability and more on actual cleanup.

States have demonstrated that they are very effective in cleaning up contaminated sites. And because states are contributing increased resources into the Federal Superfund program, they need more flexibility and authority for selecting sites for cleanup, selecting remedies and conducting cleanup activities.

States clean up approximately twenty times more contaminated sites than the federal government does under Superfund. Mandating increased state investments in the federal Superfund program is counterproductive. Such proposals will only serve to limit the number of sites that are cleaned up nationally under the voluntary program.

Clean Air Act

The states, local governments and industry have worked vigorously to implement the Clean Air Act at considerable cost. However, many rules promulgated under the Clean Air Act Amendments of 1990 have questionable legal or statutory basis, are inflexible in their design and enforcement, needlessly bureaucratic and often of dubious environmental value. U.S. EPA regularly delays issuance of rules and guidance, yet still prescribes unrealistic compliance deadlines. These rules have had a profound, unneccessarily harmful impact on state environmental planning and on private sector economic development efforts alike.

States are opposed to needlessly punitive Clean Air enforcement actions, such as the withholding of states' federal highway funds.

EPA rules must provide maximum flexibility to states and industry in implementing workable Clean Air programs while minimizing their cost of compliance.

U.S. EPA's revised Title V permitting program rules for industrial sources provide an excellent illustration of states' and the private sector's frustrations with federal Clean Air rules. In August 1994, EPA issued permitting regulations that contradicted the two-year old EPA guidelines upon which many states had designed their federally-mandated permit programs.

The revised Title V rules are far more complex and far-reaching, will be infinitely more difficult for states and industry to administer and will not benefit the environment significantly. Proposed Title V changes would triple the permitting burden of industry and states for such "minor modifications" as adding a single spray paint nozzle in a factory.

Absent more flexible, constructive federal Clean Air Act implementation policies, states must weigh the possibility of statutory relief, either through litigation or by requesting that the Act be reopened in the 104th Congress.

T E S T I M O N Y

Statement of
George V. Voinovich
Governor of Ohio

before the

Committee on the Budget
and
Committee on Governmental Affairs
United States Senate

on

S. 1, Unfunded Mandate Reform Act of 1995

on behalf of

The National Governors' Association

January 5, 1995

NATIONAL GOVERNORS' ASSOCIATION
Hall of the States • 444 North Capitol Street • Washington, DC 20001-1572 • (202) 624-5300

Thank you Chairman Roth, Chairman Domenici, Senator Glenn, Senator Exon, and members of the Budget and Governmental Affairs Committees.

I have made the issue of unfunded federal mandates a top priority throughout my career in public service. In fact, 8 years ago, in a speech to the National Archives volunteers on the 200th anniversary of the Constitution, I said:

> "Over the past 20 years, we have seen the expansion of the federal government into new, non-traditional domestic policy areas. We have experienced a tremendous increase in the proclivity of Washington both to preempt state and local authority and to mandate actions on state and local governments. The cumulative effect of a series of actions by the Congress, the Executive Branch, and the U.S. Supreme Court have caused some legal scholars to observe that while constitutional federalism is alive in scholarly treatises, it has expired as a practical political reality."

We thought it was bad 8 years ago. It's even worse today. I can't tell you how glad I am to be with you today.

Enactment of this legislation is critical to the nation's governors. On behalf of the National Governors' Association, the governors strongly and unanimously support S. 1 without any weakening amendments.

Let me say at the outset that we would not be here today without the leadership of Senator Kempthorne. Senators Roth and Glenn, who met with the Governors last January, helped launch this process when we all agreed to work with Senator Kempthorne and state and local government organizations to draft a mandate relief bill that would get through the Senate and achieve passage in the House. I would also like to thank Senator Domenici for his contribution to strengthen the enforcement mechanisms in the bill.

Last year the members of this panel -- and every state and local elected official throughout the country -- were encouraged that a mandate relief bill seemed destined for passage.

The end result obviously was very disappointing -- the bill we worked so hard to draft and pass through Congress died in the final hours of the last session.

But we were heartened with the announcement in November by Senate Majority Leader Dole that this would be the very first Senate bill.

This is testament to Senator Dole's commitment -- and the commitment of all the members of your committees -- to respond to the plea of state and local governments to restore balance to our relationship as envisioned by the framers of the 10th Amendment.

As the mayor of Cleveland for 10 years, and as Governor of Ohio for the last 4, I know first-hand the frustration and alarm faced by state and local officials because of unfunded federal mandates.

This is why my first order of business as Ohio Governor was to make mandates a top priority within the National Governors' Association. We've come a long way since then.

Mandates force us to cut vital services and raise our taxes. Mandates also rob our citizens and their elected representatives of perhaps the most fundamental responsibility of government -- prioritizing government services.

With all due respect, Mr. Chairman, the federal government is bankrupt. And the Congress is on its way to bankrupting state and local governments.

In my Inaugural Address 4 years ago, I said:

> "Gone are the days when public officials are measured by how much they spend on a problem. The new realities dictate that public officials are now judged on whether they can work harder and smarter and do more with less."

Mandates are making this goal more difficult each day. Washington, which believes it has all the answers, is tying our hands with one-size-fits-all solutions.

This command-and-control attitude by Congress runs contrary not only to what our Founding Fathers envisioned, but is also inconsistent with the total quality movement that is sweeping our country. This movement empowers and invites those closest to the people -- be they in government or on the factory floor -- to improve efficiency and solve problems.

Two years ago, I decided to get the real facts, to find out how bad the mandate problem was in real dollars. We released a study -- the first of its kind by any state -- that concluded unfunded federal mandates will cost Ohio more than $1.74 billion between 1992 and 1995.

As my fellow panelists will tell you, the problem is even more acute for local governments. Last year 12 percent of city and county revenues were consumed by mandates. By 1998, existing mandates will cost local governments $88 billion -- one-quarter of all their revenues.

As I said in our report, in the past five years, education has declined as a share of state spending nationally at a time when nearly everyone acknowledges that improving our schools is one of government's highest priorities

Yet many states cannot spend a greater share of tax dollars on education because new Medicaid mandates consume more and more of our resources. They account for 70 percent of Ohio's mandate costs -- nearly one billion dollars over 4 years. Medicaid was 19 percent of Ohio's budget in 1982 -- it represents one-third today.

I won't disagree that most mandates are well-intentioned. But, in reality, they actually can do more harm than good and often have unintended consequences.

Let me give just two examples.

The most recent federal highway law forces states to use scrap tires in highway pavement.

I'm not sure why the Congress thought this was a good idea, especially since not a single state transportation agency supported it. In fact, many national experts have real doubts about whether it is more durable, and many others have grave concerns about its potentially harmful environmental effects.

In terms of the cost, we've estimated that this mandate will require $50 million a year in scarce highway resources. For the same cost, Ohio could repave nearly 700 miles of rural highways or rehabilitate 137 aging bridges.

Unfunded mandates also preempt important state initiatives and reduce state and local flexibility and innovation.

For instance, despite that Ohio has developed a comprehensive solid waste management plan, we are still required to change most of our landfill rules to conform to federal standards that in many respects are weaker than our own.

The net effect is that our regulators are forced to spend time fulfilling federal paperwork requirements, which reduces their ability to clean up and close landfill sites that pose environmental risks.

All of us on this panel agree -- The public is not well-served when Congress unilaterally passes on new mandates that prevent mayors from providing the police protection their citizens rightfully demand or prevent governors from pursuing the reform in education that our children need.

I firmly believe that the two basic questions for all public officials should be:

- What should government do? and,
- What level of government should do it?

It's long past time that we restore balance in the partnership between federal, state, and local governments. Ultimately, this is the issue we are considering today.

Senate Bill one provides much needed reform toward restoring accountability in government:

- It make members of Congress accountable for passing mandates.
- It forces a recognition that mandates impose costs on taxpayers.
- It strongly encourages Congress to fund new mandates.
- And it erects political and procedural barriers to passing new mandates.

Let us also be clear about what this bill will not do:

- First, it does not eliminate any existing statute or mandates, though we will continue to work with Congress to eliminate or modify those that burden state and local governments. As our study points out, more than 174 mandates have been passed by Congress since the mid-1970s.

- Second it does not undermine any civil or constitutional right.

- And, finally, it does not prohibit the enactment of new mandates. Instead, Congress must work with state and local governments as partners to establish national standards when needed.

This bill represents the first step in a new, long-awaited process of Congress treating states and local governments as equal partners, not as special interests.

The bottom line is that state and local governments should not be treated as special interests. We are elected by the same people who elect you and pay our salaries and pay for the programs we enact.

As a former local official, I am committed to restoring the state-local partnership on federal issues. At a meeting last month, the leaders of the organizations of all state and local government elected officials agreed to coordinate our work with the Congress so that we can more effectively serve the taxpayers of this country.

During the 104th Congress, we will continue to work with you to offer recommendations to give states and local governments the flexibility we need in such areas as health, human services, and the environment.

I think we can all agree that our collective goal is to deliver more effective, streamlined government. Working together I'm convinced that we will move mountains.

Mr. Chairman, enactment of S. 1 -- without weakening amendments -- is the single most important step Congress can take to begin restoring the balance in federal, state, and local relations.

Mr. Chairman, and members of the committees, I can assure you that what you do with this legislation will have a major impact on our support of a Balanced Budget Amendment, which we expect you to pass.

Thank you very much

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Unfunded Federal Mandates and the Need for a New Federalism

by George V. Voinovich

Unfunded federal mandates are placing severe pressure on taxpayers across the country, crippling state budgets from Maine to California, and forcing governors to reorder their own budget priorities. In reality, unfunded mandates are federal programs enacted by Congress, but with one major catch — they must be financed and implemented with state and local resources. Through increasing use of this budgetary sleight of hand, Congress compels states and local governments to fund programs Washington decides it wants but cannot pay for because of the persistent budget deficit.

Throughout its recent fiscal crisis, the federal government has been able to continue expanding domestic services, primarily by forcing others to foot the bill. While this practice permits Washington to take credit for creating programs to resolve national problems, it saddles states and local governments with a whole host of challenges, eroding governmental accountability.[1] Aside from enormous cost burdens, unfunded mandates impose "one-size-fits-all" programs on communities around the nation, destroying local and state leaders' ability to set priorities in response to the needs and preferences of their own constituents. These federal mandates also necessitate local tax increases and service reductions, while taxpayers remain uncertain about who is responsible. There has to be a better way, and there is. Simply, we need to free states and

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[1]Alice Rivlin, **Reviving the American Dream**, The Brookings Institution, Washington, D.C. (1992), p. 107.

local governments from federal fiat and enhance flexibility necessary for them to devise local solutions that respond to local problems.

The Scope of the Mandate Problem

Last summer, the State of Ohio released a study, the first of its kind nationwide, analyzing the harmful effects imposed by unfunded mandates. Our study determined that federal mandates will cost the State of Ohio $356 million in 1994 and more than $1.74 billion from 1992 to 1995.[2] This is just the tip of the iceberg. Barring serious reform, other states and local governments, and their taxpayers, can expect similar burdens from Washington in the years ahead. According to two recent surveys, unfunded mandates will cost the nation's cities and counties nearly $88 billion over five years, and by 1998 they will consume about one-quarter of all locally raised revenue.[3]

Simply, we need to free states and local governments from federal fiat and enhance flexibility necessary for them to devise local solutions that respond to local problems.

Federal mandates interfere with one of the most fundamental tasks of government — setting priorities. Perhaps the most glaring example for states is the forced trade-off between Medicaid and education funding. In the past five years, education declined as a share of state spending at a time when nearly everyone acknowledges that improving our schools is one of government's highest priorities. Many states cannot spend a greater share of tax dollars on education because new Medicaid mandates consume more and more state resources, increasing from $185 million for Ohio in 1992 to nearly $263 million in 1995.

Medicaid costs literally have exploded over the past decade, partly as a result of increasing mandates imposed by the Congress. In 1982, Medicaid accounted for 19 percent of Ohio's General Fund budget. Today, it consumes nearly one-third. Nationally, Medicaid will be a $200

[2]*The Need for a New Federalism: Federal Mandates and Their Impact on the State of Ohio*, August 1993. This article is largely based on this study.

[3]*The Burden of Unfunded Mandates*, National Association of Counties and Price Waterhouse, October 1993 and *Impact of Unfunded Federal Mandates on U.S. Cities*, U.S. Conference of Mayors and Price Waterhouse, October 1993.

billion program by 1995 according to the National Association of State Budget Officers. Medicaid mandates account for approximately 70 percent of Ohio's mandate burden. As lawmakers consider health care reform in the coming months, they must be particularly sensitive to the impact of proposed reforms on states and local governments. Medicaid costs already consume such a large percentage of state budgets that any new expenditures mandated by a health reform package would be impossible for state governments to absorb without further cutbacks in other crucial state programs. Not only will additional federal health care mandates be costly, they also will reduce the freedom of states to implement innovative solutions to local problems in health care access and affordability.

Perhaps the most glaring example for states is the forced trade-off between Medicaid and education funding. In the past five years, education declined as a share of state spending at a time when nearly everyone acknowledges that improving our schools is one of government's highest priorities.

While most mandates may reflect well-intentioned policy goals, many impose excessive costs without any discernible benefit. For example, the Intermodal Surface Transportation Efficiency Act (ISTEA) imposes a series of new unfunded mandates on states, increasing transportation mandate costs to Ohio taxpayers from $18 million in 1994 to nearly $56 million in 1997. ISTEA contains one of the most egregious and questionable mandates from a public policy standpoint. It requires states to use a scrap tire additive in highway pavement starting in 1994. By 1997, when the requirement is fully implemented, this mandate will cost Ohio more than $50 million a year in scarce highway resources because early tests show that rubberized asphalt is two to three times more expensive than conventional pavement.

When fully implemented, this mandate will consume approximately 8 percent of Ohio's federal highway budget, forcing cancellation of needed and long-planned infrastructure improvements.[4] To put this $50 million figure in perspective, for the same costs Ohio could re-pave 667 miles of rural highway or rehabilitate 137 aging bridges. Incredibly, this mandate was enacted without any assessment of its effects, and experts have real questions about the durability, recyclability, and potentially harmful environmental effects of rubberized asphalt. Although Congress recently voted to delay implementation of this provision, this is one mandate that should hit the road permanently.

[4] Transportation Secretary Federico Peña estimates the national cost is roughly $1 billion

Unfunded mandates also preempt important state initiatives and reduce state and local flexibility and innovation. States have far surpassed federal efforts to innovate and develop effective responses to social and economic challenges. More important — and in direct contrast to the federal record — states have been able to respond to these challenges while maintaining fiscal discipline. In Ohio, we developed a thorough, comprehensive solid waste management plan, yet we are required to change most of our landfill rules to conform to federal standards that in some respects are weaker than our own. Ohio regulators increasingly are being forced to spend time fulfilling federal paperwork requirements, inhibiting their ability to clean up and close landfill sites that pose environmental risks.

In Ohio, we developed a thorough, comprehensive solid waste management plan, yet we are required to change most of our landfill rules to conform to federal standards that in some respects are weaker than our own.

While environmental mandate costs in Ohio today are nearly $27 million, $10 million more than just two years ago, city and local governments are even more heavily burdened. Last year a Columbus, Ohio analysis found that environmental mandates will cost nine Ohio cities $2.8 billion over 10 years. The Safe Drinking Water Act, which is responsible for many of these costs, requires the Environmental Protection Agency (EPA) to identify 25 new substances every three years that local systems must test for in their water supply. Because EPA arbitrarily must identify a set number of substances — without any assessment of local conditions or health risk — local communities must bear the costs of testing their drinking water for pesticides and other substances that have not been used for well over a decade.

These experiences clearly point to the need for greater flexibility and cooperation in developing environmental standards. Although there is a need for less federal intervention in state and local affairs, there are many valid reasons for the federal government to remain involved in matters of local policy. For instance, federal guidance on environmental

issues is essential. Naturally, air and water flow across borders. They do not belong solely to one city or state. The national interest clearly is not served if one state fails to implement programs that produce measurable results in improving environmental quality and preventing identifiable threats to the public health. But, states also need the flexibility to be able to tailor programs to local concerns and conditions.

Federal initiatives should build on existing state programs, not preempt them. States need the flexibility and resources to enforce environmental laws absent compelling justification for federal involvement. The bottom line is, if the federal government is to dictate programmatic efforts to improve the environment, it should pay the bill. Setting standards is the easy part when the Congress does not have to worry about how to fund these new initiatives. As former New York City Mayor Ed Koch said, "My concern is not with the broad policy objectives that such mandates are meant to serve, but rather with what I perceive as the lack of comprehension by those who write them as to the cumulative impact on a single city, and even the nation."[5]

Congressional Relief

Clearly, a good first start would be passage of federal risk assessment legislation currently under consideration in the Congress. This legislation, which was overwhelmingly passed in the Senate last year, has been blocked by the House leadership. It would require the Environmental Protection Agency to justify that new regulations are worth the costs they impose and force them to set priorities to determine which environmental concerns require immediate attention and the most remediation resources.

For example, under the risk assessment provision, if EPA wants to phase out the use of chlorine and its compounds, a step currently under consideration, the agency would have to indicate how many cases of cancer or other illnesses the regulation might prevent as well as study whether there are more serious risks that should be addressed instead. Furthermore, it would have to show that costs imposed on industry to change the way their products are made and used would not outweigh the intended benefits of the rule. This mechanism would make environmental standards less arbitrary. EPA would have to demonstrate that new regulations are cost-effective and provide measurable safeguards from environmental conditions and contaminants that jeopardize public health.

[5]Edward I. Koch, "The Mandate Millstone," *The Public Interest*, Fall 1980.

Local taxpayers are beginning to understand the tax burdens mandates impose on them, and governors, mayors, county officials, and state legislators are doing a better job fighting mandates. In January, the National Governors' Association (NGA) approved a resolution spelling out specific legislative remedies to stop Congress from piling more mandates on states and local governments. This policy urges enactment of mandate relief legislation that includes four major components.

First, it calls for legislation that provides states and local governments with real permanent relief from the mandate burden. It also calls for enactment of federal law reimbursing states and local governments for the costs of implementing mandated programs. This approach is consistent with a number of bills currently under consideration in the Congress that would not compel compliance with future mandates unless federal funds are appropriated to reimburse states and local governments for the costs of implementing the mandate.

The bottom line is, if the federal government is to dictate programmatic efforts to improve the environment, it should pay the bill.

Second, NGA policy proposes a fiscal note mechanism that would require the Congressional Budget Office (CBO) to report on the costs imposed by unfunded mandates in legislation prior to any committee action and prior to floor consideration. Under current law, CBO is required to analyze and report on the costs federal legislation imposes on states and local governments, but because of a number of loopholes in the law, cost estimates are the exception, not the rule. A list of such exceptions under which CBO does not have to submit a cost analysis includes the following: amendments made after full committee consideration; legislation that is expected to cost states and local governments less than $200 million a year; cases where analysis cannot be provided in a timely manner; and, finally, cases in which the mandate is included in a reconciliation or appropriations bill.[6] Consequently, information is rarely available during congressional debate on the cost of the bill to states and local governments as a whole, let alone the costs to a Member's home state or constituent local governments. As a result, many mandates are approved

[6]Most mandates on states, incidentally, are found in reconciliation bills.

by Congress without any information about their true costs. At a minimum, Members of Congress should be aware of the fiscal impact legislation has not only on the federal budget but on state and local budgets as well. After all, the taxpayer is required to foot the bill one way or the other.

Third, Congress should extend the principle of pay-as-you-go, revenue neutral requirements, now used for federal entitlement programs, to any new mandate. This means that if Congress approves a new mandate, it must be revenue neutral for states and local governments and lawmakers have to find ways to reduce our financial responsibility for other mandates to offset these new costs. If this principle is sound for controlling federal entitlement costs, it should be extended to states and local governments to control their costs as well.

Finally, our policy proposes to allow a point of order to be made against the fiscal note, reimbursement, and pay-go requirements. The point of order is essentially a way of using parliamentary procedures to raise an objection to a proposal that violates congressional rules. A vote of three-fifths of the Members of the House or Senate would be required to override the point of order and allow debate on the proposal to proceed. Congress often waives legislation that it finds uncomfortably constrains its own options. This provision merely makes it more difficult for Congress to ignore anti-mandate restrictions yet permits the passage of mandates when a super-majority believes it is appropriate.

Representatives of the state and local organizations, governors, state legislators, mayors, and county and city officials are coming together to present a united front in this battle, and fortunately, Washington is beginning to take notice. Members of Congress, many of them former state legislators and local officials,[7] are recognizing that unfunded mandates cause budgetary havoc outside of Washington. This recognition has resulted in increased sensitivity to the mandate problem as evidenced by the introduction of numerous bills in both Houses of Congress that would give states and local governments varying degrees of relief from unfunded mandates. Support for mandate relief legislation has varied by bill, but generally has been very strong. Even Senate Majority Leader George Mitchell acknowledged the problem recently, saying, "I believe we can no longer impose mandates on states and local governments without providing the resources to meet those mandates."[8]

[7]Almost 70 percent of the Members of the freshman class of the 103rd Congress are former state legislators or local officials.

States had high hopes for better relations with the federal government with the inauguration of a former governor who had promised "a new reality and partnership with state and local government." During the campaign, then-Governor Clinton pledged to local officials, "I'm going to stop handing down mandate after mandate without giving you any money to pay for it. As a governor, I've had to deal with that problem for the last decade, and I know we can do better."[9] During his tenure as Arkansas Governor, Bill Clinton was the chairman of the National Governors' Association and was a long-time member of its Executive Committee. NGA has a long and distinguished record of opposing federal preemption and unfunded mandates, which then-Governor Clinton strongly supported. As President, Bill Clinton has repeated his intention to work with governors to end the proliferation of mandates and he even signed an Executive Order this past October intended to reduce regulatory mandates.

There have been two periods of great expansion in the scope of the federal government in this century — during the Great Depression and the Great Society years....While the situation has changed dramatically since the last period of federal expansion, our system of governing has not.

Despite these good intentions, Congress continues to pass, and the President continues to sign, legislation that imposes unfunded mandates. The past session of Congress witnessed enactment of no fewer than 13 bills that impose new costs on states, including several — The Family and Medical Leave Act, the Motor Voter Bill, and the Brady Bill — the President actively supported and claimed as major accomplishments during his recent State of the Union address.

We can no longer afford vague promises from Washington. We need a firm commitment from Congress and the President to end this irresponsible practice. No longer can the nation afford the local tax burden and service reductions necessary to fund programs dictated by Washington. The time has come for a true partnership to restore the balance in state-federal relations that our Founding Fathers envisioned.

8"Rural Governments' Coalition Supports New Infrastructure Grant," *NADO News*, May 22, 1992, p.3.

9Letter from Bill Clinton to local elected officials, October 1992, "Elections '92 and the Cities," *U.S. Mayor*, vol. 59, October 26, 1992, p. 8.

The Need for a New Federalism

The issue of unfunded mandates is just one of many areas of state-federal relations that argues convincingly for a redefinition of the roles of federal, state, and local governments to make government more responsive to today's challenges. Several scholars have noted that there have been two periods of great expansion in the scope of the federal government in this century — during the Great Depression and the Great Society years. During these periods, state governments were viewed as unresponsive to the pressing problems of the day, with neither the will nor the resources to address societal needs — economic recovery in the first case and the war on poverty and racism in the second.

While the situation has changed dramatically since the last period of federal expansion, our system of governing has not. State agency officials are more professional, and states have become the great innovators or the "laboratories of democracy," responding to a broad array of social and economic challenges while maintaining fiscal discipline. The federal government, on the other hand, is too centralized and broke, and is viewed largely as unresponsive to many national concerns.

"Thirty years ago, a bias for federal action made sense. Today, bias for state and local action makes sense," argues David Osborne in *Mandate for Change*.[10] Yet, this natural bias for state and local action regularly is circumscribed by congressional mandates that preempt effective state and local programs.

Today the argument for federal micromanagement of state and local affairs is weaker than ever. Collectively, the states have made impressive strides in improving the delivery of needed services and in developing innovative solutions to local problems. The federal government, for its part, still has the will to remain involved in local issues, but no longer has either the resources or the justification for prescribing the top-down solutions to national problems. As President Reagan said, "while much of the 20th century saw the rise of the federal government, the 21st century will be the Century of the States."[11]

[10]David Osborne, "A New Federal Compact: Sorting out Washington's Proper Role," in **Mandate for Change**, ed., Will Marshall and Martin Schram, Berkley Books, New York (1993), p. 241.

[11]Ronald Reagan, "Flattening Hierarchies in the American Federal System," *Intergovernmental Perspective*, Fall 1988, p. 6.

States also are justifiably concerned that the unfunded mandate problem will be aggravated by the federal budget deficit unless immediate action is taken. Any serious effort to reduce the budget deficit is likely to produce two phenomena that will increase the states' burden. First, necessary reductions in federal expenditures will require significant changes in federal grant funding to state governments. Some programs probably will be consolidated, others will be terminated. States almost certainly will receive less assistance from the federal government as domestic discretionary funding is reduced.

Second, recent history has proven that Congress has looked more and more to states and local governments to fund the provision of what they believe are necessary services when budget considerations have inhibited the creation of new domestic programs. As David Osborne and Ted Gaebler point out in *Reinventing Government*, "[A]s the federal deficit widened, Congress increasingly turned to mandates — in essence, categorical programs *without* the funds."[12] The combination of these two phenomena, reduced federal assistance and an increasing number of unfunded mandates, would place states under severe pressure to respond to local problems or create their own initiatives while maintaining balanced budgets, which in the vast majority of cases are required by law.

Decisions on how states spend scarce dollars should be made by state government officials who are elected by and accountable to state voters.

A more effective division of governmental responsibilities is essential. States need more flexibility because they have demonstrated conclusively over the past decade that they are capable and ready to handle these new responsibilities. President Clinton has expressed sympathy. In a 1993 meeting with the nation's governors, he said, "My view is that we ought to give you more elbow room to experiment." A reordering of responsibilities would enhance governmental accountability and responsiveness. Governors and the people who live in their states, however, need more than sympathy. They need real reform.

[12]David Osborne and Ted Gaebler, **Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector**, Addison-Wesley Publishing Company, Inc., Reading, Massachusetts (1992), p. 276.

The responsibility of managing state government has become increasingly challenging as budget and revenue decisions have become more difficult each year. Unfunded mandates and other decisions in Washington significantly compound these difficulties. Success in managing states increasingly depends on an effective partnership with the federal government. Decisions on how states spend scarce dollars should be made by state government officials who are elected by and accountable to state voters. In the final analysis, government would be more effective at all levels if federal and state leaders could work in true partnership. We need action on the Governors' recommendation for change. These needed changes will not be possible without the commitment of the President and congressional leadership. We need their help and we need it soon.

THE WALL STREET JOURNAL MONDAY, JANUARY 31, 1994

Federal Mandates Crush States

By George V. Voinovich

Unfunded federal mandates are placing severe pressure on taxpayers nationwide, crippling state budgets from Maine to California. These mandates are federal programs enacted by Congress, but with a catch—they must be financed with state and local resources. Through this sleight of hand, Congress compels states and localities to fund programs Washington cannot because of the persistent budget deficit.

This summer, Ohio released a study analyzing the effects of unfunded mandates. We determined that federal mandates will cost Ohio $356 million in 1994 and more than $1.74 billion in 1992-95.

Federal mandates interfere with a fundamental task of government—setting priorities. Perhaps the most glaring example is the forced trade-off between Medicaid and education. In the past five years, education declined as a share of state spending at a time when educational improvement should be one of our highest priorities. Many states cannot spend a greater share of tax dollars on education because new Medicaid mandates consume more and more state resources, increasing to $263 million for Ohio in 1995 from $185 million in 1992.

While most mandates may reflect well-intentioned policy goals, many impose excessive costs without any discernible benefit. For example, recent federal highway law requires states to use a scrap-tire additive in highway pavement. By 1997, this mandate will cost Ohio more that $50 million a year because early tests show that rubberized asphalt is two to three times more expensive than conventional pavement. (The national cost is roughly $1 billion.) To put this $50 million figure in perspective, for the same cost Ohio could repave 667 miles of rural highways or rehabilitate 137 bridges. Incredibly, this mandate was enacted without any assessment of its impact, and experts have real questions about the durability and environmental effects of rubberized asphalt.

Unfunded mandates, also pre-empt important state initiatives. In Ohio, for example, we developed a comprehensive solid waste management plan, yet we are required to change most of our landfill rules to conform to federal standards that in some respects are weaker than our own. Ohio regulators are also increasingly being swamped by federal paperwork requirements, inhibiting cleanup of landfills that pose environmental risks.

Cities and localities in particular are heavily burdened by environmental mandates. Last year a Columbus, Ohio, analysis found that environmental mandates will cost nine Ohio cities $2.8 billion over 10 years. The Safe Drinking Water Act, responsible for many of these costs, requires the Environmental Protection Agency to identify 25 new substances every three years that local systems must test for in their water supply. Because EPA arbitrarily must identify a set number of substances—without any assessment of local conditions or health risks—cities nationwide must bear the costs of testing their drinking water for pesticides used only in Hawaii to protect pineapple crops.

Governors, mayors, county officials, and state legislators are working together to fight mandates and to pool their clout in Washington. But Congress continues to pass, and the president continues to sign, legislation imposing unfunded mandates. The past session of Congress enacted no less than 13 bills imposing new costs on states, including several the president claimed as major accomplishments during his State of the Union address.

Congress and the president must end this irresponsible practice. The nation can no longer afford the local tax burden and service reductions necessary to fund programs dictated by Washington.

Mr. Voinovich, a Republican, is governor of Ohio.

How unfunded mandates will haunt Washington

The Washington Times

NOVEMBER 8, 1994

By George V. Voinovich and E. Benjamin Nelson

The public is becoming increasingly disillusioned with government — government at all levels. More and more, they are questioning levels of taxation, spending priorities and the efficiency and accountability of government.

Look no farther than the polls to find evidence of this frustration. Fed up with government, at the local level, citizens are voting down bonding initiatives. At the state level, they are adopting term limits. And at the federal level, they are swept up in a strong anti-incumbent sentiment that today may lead to the largest turnover in the House of Representatives in more than 20 years.

This broad frustration comes amid increasing budget pressures on government. In recent years, budgets have been affected by slow revenue growth and by increased spending on big-ticket programs like health care and corrections. These costly and needed programs have come to the forefront so quickly that there is little revenue left to meet other demands — such as investments in education, training and infrastructure — or to fund the urgent reforms needed to overhaul welfare, control crime and provide services to children. In some instances, cash-strapped governments have turned to the often politically unpalatable solution of financing services by raising taxes, which only adds to voters' frustrations.

State and local governments have banded together to take a strong first step against unfunded mandates.

The federal government, on the other hand, has figured out how to have it both ways: Provide the services the voters want and avoid paying for them. The federal solution comes in the form of unfunded mandates: simply requiring state or local governments to provide the services, making them spend their own money on the ideas and programs concocted inside the Beltway. That merely adds to the budget pressures on state or local governments, which are then forced to drastically reduce services or raise taxes — all to meet someone else's priorities. As revenues stagnate and demands on government services increase, this trickling down of responsibility from the federal level to the state and local levels turns into a torrent. And in the end, the citizens foot the bill for these trickle-down taxes.

In truth, states have used the same philosophy in the past to impose mandates on local governments without providing funding sources. But that practice has changed. Some 15 states, sensitive to local budget pressures, now have policies precluding such mandates. At the federal level, however, this trend toward imposing mandates on state governments (primarily related to health-care requirements) and on local governments (largely related to the environment) shows no sign of abating.

The public has caught on to the practice, which is now a major issue of government efficiency and accountability. Although the issue of unfunded mandates was not among the top three campaign issues this fall, the practice — and its impact on citizens — clearly was important in a number of congressional races.

State and local governments, tired of having mandates dumped in their laps, have banded together to take a strong first step against unfunded mandates. The National Governors' Association — along with the National Conference of State Legislatures, the National League of Cities, the National Association of Counties and the U.S. Conference of Mayors — worked with Sens. Dirk Kempthorne and John Glenn and Reps. John Conyers Jr. and William F. Clinger Jr. in pushing hard for passage of legislation that would have required the Congressional Budget Office (CBO) to provide Congress with cost estimates early in the legislative year for every executive or legislative proposal carrying a mandate to spend more than $50 million. It also

Ohio Gov. George V. Voinovich, a Republican, and Nebraska Gov. E. Benjamin Nelson, a Democrat, are active in National Governors' Association efforts to promote federalism.

would have allowed lawmakers to raise points of order against legislation that does not have a CBO fiscal note or that does not identify a funding source to pay for the mandate. And, perhaps most important of all, the legislation would have provided for roll call votes on proposed mandates both in committee and on the floor — a scorecard of sorts — to help voters see whether lawmakers voted for or against any new costs imposed by Congress on state and local governments and, inevitably, the taxpayers.

State and local groups realize there is no easy solution to mandates, no simple constitutional way to stop mandates through legislation. But passage of these bills would have made Congress accountable: every time a member voted "yea" on a mandate, his or her constituents would have known. That would have been ultimate accountability.

Both of the bills were ready for floor action, but the full Congress never had a chance to consider them. The Senate measure made it to the floor only to be quickly pulled after the first non-germane amendment, and the House bill never came up for a vote. The strategy of the House and Senate leadership, under heavy lobbying from some high-profile, well-financed labor and environmental groups, was to allow the bills out of committee, but not to allow them to be enacted. By its actions, it is clear that the leadership did not want Congress to be held accountable through something as simple as a roll-call vote. It's no surprise the electorate is frustrated: Every time Congress should stand up for good government, it ducks instead.

If Congress continues to take the easy way out, bending to special-interest groups who oppose mandate relief rather than working with their state and local government partners, look for a crisis ahead. Congress must enact this legislation early in the next session. Otherwise state and local officials, tired of cutting other spending and raising taxes to pay for federal mandates, may well be calling for a constitutional convention to reassert their role in the federal system. Given the mood of the electorate, such a call could catch on like a prairie fire across the country — and might teach members of Congress a hard lesson about what happens when they fail to listen to the citizens for whom they work.

Governor George V. Voinovich
Actions to Combat Unfunded Federal Mandates

Since he took office as Mayor of the City of Cleveland, Governor Voinovich has been active in fighting unfunded federal mandates. As Member of the Board and President of the National League of Cities in the 1980s, Governor Voinovich was a national leader in this effort. At his first National Governors' Association conference shortly after his inauguration, Governor Voinovich raised this issue as a priority for the association. As a member of NGA's Executive Committee and Lead Governor for Federalism, Governor Voinovich has continued to lead the Governors' efforts on this issue.

February 1993 - In a luncheon meeting, Governor Voinovich asks the Ohio Congressional Delegation to make opposing unfunded federal mandates a priority and provides specific examples of how mandates impose burdens on the State.

February 1993 - As Chairman of the Republican Governors Association, Governor Voinovich leads a meeting of Republican governors, Senator Bob Dole and Congressman Bob Michel to discuss the need for relief from unfunded mandates and a variety of other legislative concerns.

May 1993 - Governor Voinovich writes to the Ohio Congressional Delegation urging their support for mandate relief legislation and alerting them to the upcoming release of a state study on the scope of the mandate problem in Ohio.

August 1993 - Governor Voinovich releases The Need for a New Federalism: Federal Mandates and Their Impact on the State of Ohio, the first comprehensive analysis nationwide illustrating the negative impact of unfunded federal mandates on a state. The study determines that unfunded mandates will cost the State of Ohio $389 million in 1995 and $1.74 billion from 1992 to 1995.

August 1993 - At the National Governors' Association (NGA) Annual Meeting in Tulsa, Oklahoma, Governor Voinovich sponsors an amendment to the Governors' permanent policy outlining the association's official policy on unfunded mandates. The policy urges the Congress to oppose and the President to veto any new mandate legislation. The Governors unanimously support the amendment.

August 1993 - Governor Voinovich is named lead Governor on federalism issues for NGA along with Governor Bruce Sundlun of Rhode Island. They agree to pursue a vigorous anti-mandate agenda.

October 1993 - Governor Voinovich participates in National Unfunded Mandates (NUM) day events in Columbus with Lt. Governor Mike DeWine, Ohio General Assembly leaders, Mayor Greg Lashutka, and other local officials to protest unfunded mandates and call attention to the need for national reforms.

January 1994 - Governor Voinovich, accompanied by Mayor Lashutka, meets with representatives of seven organizations representing state and local governments in Washington to urge the formation of a coalition to fight unfunded federal mandates. It is agreed that the organizations would draft a joint statement of principles and that Governor Voinovich would approach Senator John Glenn and Senator Bill Roth of Delaware, Chairman and Ranking Republican of the Senate Government Affairs Committee, to obtain their commitment to a formal process for discussing potential legislative remedies to the mandate problem.

February 1994 - *The Wall Street Journal* publishes an article by Governor Voinovich summarizing the mandate problem and presenting examples of the cost burdens on Ohio.

February 1994 - At the National Governors' Association Winter Meeting in Washington, D.C., Governor Voinovich leads a discussion with Senators Glenn and Roth and the nation's governors to request immediate discussions with other state and local organizations on mandate relief legislation. Senators Glenn and Roth agree.

February 1994 - At the NGA conference, Governor Voinovich offers new permanent policy on unfunded federal mandates that lays out specific legislative remedies to combat this problem. The resolution is accepted unanimously by the Governors.

March 1994 - *Commonsense*, a quarterly publication of the National Policy Forum, publishes an article by Governor Voinovich, "Unfunded Federal Mandates and the Need for a New Federalism," detailing the burdens mandates impose on state and local governments and arguing for a more reasonable balance in federal-state relations.

March 1994 - Governor Voinovich meets with Senator Glenn, Senator Kempthorne and representatives of state and local organizations to discuss the need for mandate relief legislation and potential mechanisms to achieve the goal. Senator Glenn agrees to try to pass mandate reform legislation during the 103rd Congress.

April 1994 - Governor Voinovich writes to President Clinton asking for his support in enacting mandate relief legislation during the 103rd Congress.

April - June 1994 - Governor Voinovich's Washington Office, the Big 7 state and local government organizations, Senator Kempthorne, and Senator Glenn engage in a series of extensive discussions that lead to agreement on a mandate relief bill.

June 1994 - The Senate Governmental Affairs Committee approves S. 993, the Federal Mandate Accountability and Reform Act of 1994.

July 1994 - Governor Voinovich and representatives of six other state and local government organizations write to Rep. Edolphus Towns, Chairman of the House Human Resources and Intergovernmental Relations Subcommittee, to urge him to introduce and mark up federal mandate relief legislation. They urge him to use S. 993 as the foundation for House legislation.

July 1994 - Governor Voinovich addresses the National Governors' Association Annual Meeting in Boston to update the Governors on his efforts to pass mandate relief legislation. Voinovich is reappointed NGA's lead governor for federalism issues.

July 1994 - Governor Voinovich meets in Washington with Rep. Newt Gingrich and several Republican House members to discuss mandate relief legislation in the House. It is agreed that because of restrictive House rules, provisions will have to be added to provide parity with the Senate bill.

July-August 1994 - Governor Voinovich's Washington Office and the Big 7 state and local government organizations hold a series of meetings with Rep. Rob Portman and Rep. William Clinger, Ranking Republican on the House Government Operations Committee. Agreement is reached on several legislative mechanisms for achieving parity with the Senate bill.

August 1994 - The House Government Operations Committee's Subcommittee on Human Resources and Intergovernmental Relations approves H.R. 4771, the House companion to S. 993.

August 1994 - Governors Voinovich, Dean, Thompson, and Sundlun write to Senate Majority Leader George Mitchell urging him to schedule a floor vote on S. 993 as soon as possible.

August 1994 - Governors Voinovich, Dean, Thompson, and Sundlun write to their fellow Governors to update them on progress toward enacting mandate relief legislation and to urge them to lobby their congressional delegations and the House and Senate Democrat Leadership in support of S. 993 and H.R. 4771.

August 1994 - Governors Voinovich and Sundlun write to Senator Kempthorne thanking him for his efforts in support of mandate relief legislation, and once again endorsing S. 993.

September 1994 - Governor Voinovich and other national state and local government leaders write to House Government Operations Committee Chairman Conyers and Congressman Bill Clinger, Ranking Republican on the committee, to urge passage of mandate relief legislation with a series of amendments to achieve parity with the Senate bill.

September 1994 - Governor Voinovich writes to Congressman Newt Gingrich to urge Republican support for the state-local mandate relief bill.

September 1994 - In order to expedite House and Senate consideration of mandate relief legislation, Governor Voinovich speaks with on numerous occasions with congressional leaders and Congressmen Newt Gingrich, Rob Portman, Bill Clinger, and Deborah Pryce; Senators Dole, Kempthorne, Glenn, and Chaffee; senior White House officials; and numerous governors.

September 1994 - Governor Voinovich and national state and local government leaders write to all members of Congress urging that Congress not adjourn until state and local mandate relief legislation is enacted.

November 1994 - *The Washington Times* publishes an article by Governor Voinovich and Nebraksa Governor Ben Nelson discussing the failure of the 103rd Congress to pass mandate relief legislation and warning Congress that it ignores the mandate issue at its peril.

November 1994 - At the Republican Governors Association (RGA) conference in Williamsburg VA, Governor Voinovich leads calls for immediate passage of mandate relief legislation in the early days of the 104th Congress. Governor Voinovich's white paper, *The Need for a New Federalism: A State-Federal Agenda for the 104th Congress*, is adopted as part of *The Williamsburg Resolve* by Republican Governors.

December 1994 - At a White House meeting with President Clinton and other governors, Governor Voinovich discusses mandate relief legislation and ongoing efforts to strengthen the bill in the 104th Congress.

December 1994 - Governor Voinovich chairs a meeting of elected representatives of the Big 7 state and local government coalition to discuss the state-local mandate relief bill and coordinate strategy for the 104th Congress.

January 1995 - Governor Voinovich testifies before a joint Senate Governmental Affairs Committee and Senate Budget Committee hearing to urge immediate passage of mandate relief legislation (S.1).

MEMORANDUM

Date: January 6, 1994
To: Senator Dole
From: Alec Vachon
RE: YESTERDAY'S HEARING ON UNFUNDED MANDATES (S. 1)

* Three members raised disability issues during their oral remarks at yesterday's joint Budget/Government Affairs hearing on S. 1. McCain asked the lead witnesses--Kempthorne and Rep. Portman--to "reassure the disability community." (Although, as you know, disability rights legislation is exempted from S. 1 and CONTRACT WITH AMERICA). McCain is, of course, a big supporter of disability interests. Cohen, however, referred to ADA as an unfunded mandate.

* Dodd noted he tried (unsuccessfully) to increase special ed funding (under the 1975 Individuals with Disabilities Education Act--IDEA) during budget resolution consideration last year. Although Dodd did not call IDEA an unfunded mandate, a witness from the National Association of School Boards did.

  (Whether IDEA is an "unfunded mandate" is debateable. IDEA offers States special ed funding in return for following specified procedures to ensure parents participate in writing an educational plan for their child. If there was no IDEA, states should till have to educate children with disabilities--but with no federal money. The rub comes in because Congress sets an authorization level of 40% of the excess costs of educating disabled children in 1975--but only pays 7%. States often feel shortchanged by this big, fat, empty promise. You warned about the size of this commitment during the floor debate in 1975.)

* In the last panel, Justin Dart gave testimony on behalf of the disability community--full of grand, soaring phrases about the rights and mistreatment of people with disabilities--but little substance. His written testimony was better--pointing out that the requirements of ADA are often misinterpreted and ADA has been even used as a scapegoat for public officials who want a new building but can't get voters to pay for it. The disability community has been advised to craft their message to Republicans--e.g., how ADA protects states and local communities as well as helping people with disabilities--but they don't get it.

cc: Dan

File

MEMORANDUM

Date: December 30, 1994
To: Senator Dole
From: Alec Vachon AV
Re: PERSPECTIVE/IS ADA AN UNFUNDED MANDATE? WHO SAYS? LIFE WITHOUT 504 AND ADA COULD BE A LOT TOUGHER FOR STATES AND CITIES IF THE COURTS STARTED FINDING CONSTITUTIONAL RIGHTS TO EQUAL ACCESS FOR PEOPLE WITH DISABILITIES. AND CONGRESS PROVIDES SUBSTANTIAL ACCESSIBILITY FUNDS.
OR
WHY ADA AND 504 MIGHT BE CALLED: "THE STATE & LOCAL GOVERNMENT DISABILITY RELIEF AND FLEXIBILITY ACT."

SUMMARY OF KEY POINTS

* Some complain that ADA (and its predecessor, section 504 of the 1973 Rehabilitation Act) is an "unfunded mandate" on State & local governments. As described below, few people seem to realize that ADA and 504 provide real protections to State & local governments from excessive burdens of making accommodations for people with disabilities that Federal courts might otherwise impose under the U.S. Constitution. State & local governments would be well advised to think carefully before asking for any changes in these laws.

* Also, "unfunded" is a bum rap--Congress provides substantial funds for accessibility. The U.S. Conference of Mayors estimates 5-year ADA implementation costs (1993-98) at $1.4 billion. However, in FY 1994 Congress appropriated $4.4 billion for Community Development Block Grants (CDBG)--which can be used for ADA purposes. If cities believe ADA is a burden, maybe Congress should earmark the CDBG appropriation for accessibility.

* Both the Kempthorne unfunded mandates bill (S. 993) and CONTRACT WITH AMERICA's unfunded mandate provisions exempt disability rights laws from their provisions--including any future disability rights legislation. DAVID TAYLOR INDICATES THIS EXEMPTION WILL LIKELY TO CONTINUE IN ANY NEW BILLS. (However, the Senate report to Kempthorne called ADA an "unfunded mandate.")

HOW 504 AND ADA PROTECT STATE AND LOCAL GOVERNMENTS

* In the late 1960's and early 1970's, Federal district courts found a constitutional right to education for students with disabilities under the 14th Amendment ("equal protection of the laws") and the 5th Amendment ("due process of law"). Basically, the courts said that no State or local government had to educate any child under the Constitution, but if it chose to provide education, then it must provide it equally to all children, including those with disabilities. (These

decisions were never appealed, so the Supreme Court never ruled on these claims.) By extension, if a state or local government provides a service, then it must be equally available to all citizens, including those disabled.

* Litigation asserting constitutional rights to equal access to State & local government services by disabled persons were generally abandoned as lawyers found it easier to make their cases under Federal disability rights laws (or in some cases, State laws)--section 504 of the 1973 Rehabilitation Act, the 1975 special education law, etc.

* 504 and ADA contain 2 big, big protections for State & local governments:

1. **Both 504 AND ADA ARE PROGRAM ACCESSIBILITY LAWS, NOT ARCHITECTURAL ACCESSIBILITY LAWS.** State & local governments are only required to make their services accessible, not every public building. In fact, architectural changes in existing buildings are only required where there is no other feasible way of making a service accessible. (Of course, a public meetings must be held in an accessible building.) THIS GIVES STATE & LOCAL GOVERNMENTS TREMENDOUS FLEXIBILITY (WHICH SOME PEOPLE MISINTERPRET AS VAGUENESS.)

   (KANSAS EXAMPLE: In Scott County, the commissioners moved the courtroom from the inaccessible second floor to the accessible first floor, so people in wheelchairs could attend court sessions and other public meetings. County offices were moved to the second floor. There is a buzzer on the first floor, and when pressed a clerk comes downstairs to handle any business on the second floor for anyone who can't make it upstairs.)

2. **BOTH LAWS CONTAIN AN "UNDUE BURDEN" DEFENSE.** The regs to 504 and ADA specifically exempt any "public entity" from having to take any action that would result in "undue financial and administrative burdens."

WHAT MIGHT HAPPEN IF ADA AND 504 WERE REPEALED? POSSIBLE BAD NEWS FOR STATE & LOCAL GOVERNMENTS.

* People with disabilities would litigate under the U.S. Constitution. It seems inconceivable that any court would not require States or cities to make accessible voting, public meetings, public transportation, etc.

* In fact, Federal courts tend to be unsympathetic about costs of civil rights enforcement--SOME MIGHT REQUIRE STATE & LOCAL GOVERNMENTS TO MAKE THEIR BUILDINGS ARCHITECTURALLY ACCESSIBLE, FAR MORE EXPENSIVE THAN "PROGRAM ACCESSIBILITY." STATES AND CITIES WOULD NOT HAVE AN "UNDUE BURDEN" DEFENSE.

WHAT DOES ADA COST CITIES? WHAT KIND OF FINANCIAL ASSISTANCE DOES CONGRESS PROVIDE?

* The U.S. Conference of Mayors estimates that total cost of ADA implementation for the five years, 1993-1998, will be $1.4 billion. The Mayors do not specify how much of these cost are only one time--for building alterations, curb cuts, etc.--but we should assume a big percentage.

* CONGRESS PROVIDES SUBSTANTIAL FINANCIAL HELP TO PAY FOR ACCESSIBILITY COSTS. The Community Development Block Grant (CDBG) program, created in 1974, has provided over $29 billion in aid to State & local governments since 1985. This money can be used for a variety of purposes, including removal of architectural barriers and other disability-related activities. Between 1985 and 1992, $136 million was spent to remove architectural barriers.

* **N.B. ADA costs for the next 5 years are less than one-fourth of the CDBG appropriation of $4.4 billion in 1994. MAYBE CONGRESS SHOULD EARMARK CDBG MONEY FOR ADA PURPOSES -- AND SEE WHAT STATE & LOCAL GOVERNMENTS SAY.**

CONCLUSION: IS ADA REALLY AN UNFUNDED MANDATE?

* Although ADA does result in financial costs on state & local governments, on the flipside it protects them. Congress would be unable to turn back the clock by passing a 504 or ADA-type law if there had been adverse court decisions establishing more demanding Constitutional claims to accessibility. **THIS IS WHY ADA AND 504 MIGHT BE CALLED: "THE STATE & LOCAL GOVERNMENT DISABILITY RELIEF AND FLEXIBILITY ACT."**

* State & local governments would be well advised to be cautious about asking for changes to 504 or ADA. I HAVE HEARD NO SUCH REQUESTS BY STATE OR LOCAL GOVERNMENTS--IN KANSAS OR ELSEWHERE. IN FACT, ACCORDING TO PRESS REPORTS, THE U.S. CONFERENCE OF MAYORS HAS SPECIFICALLY ASKED ADA BE EXCLUDED FROM ANY UNFUNDED MANDATE RELIEF.

* For private businesses, ADA is an unfunded mandate, and requires defense on other grounds.

ATTACHED ARE TALKING POINTS FOR "FACE THE NATION" FOR JANUARY 1, 1995 ON ADA--THESE HAVE BEEN INCLUDED IN YOUR PRESS BRIEFING BOOK.

MEMORANDUM

Date: December 30, 1994
To: Senator Dole
From: Alec Vachon
Re: TALKING POINTS FOR "FACE THE NATION" ON ADA

SENATOR, SOME PEOPLE THINK ADA IS A BURDEN TO STATE AND LOCAL GOVERNMENTS, THAT ADA IS AN UNFUNDED MANDATE. WHAT DO YOU HAVE TO SAY TO THAT?

* Think of this another way--what would happen if ADA were repealed? In the U.S. Constitution, there is something called the 14th Amendment, which says people are entitled to "equal protection of the laws." That means if a State or local government provides any service, then it must make it available on an equal basis to all people, including those with disabilities.

* Let's remember what we are talking about here--voting, getting a license, zoning permits, attending public meeting, paying taxes--basic rights and responsibilities.

* In my view, ADA protects State and local governments from excessive burdens. All ADA says is that state and local governments have to figure out some way to make their services available. Architectural changes in existing buildings are only required where there is no other way of making a service accessible. Of course, public meetings must be held in an accessible place.

  KANSAS EXAMPLE: In Scott County, the County Commissioners moved the courtroom from the inaccessible second floor to the accessible first floor, so people in wheelchairs could attend court sessions and other public meetings. They then moved county offices to the second floor. There is a buzzer on the first floor, and when pressed a clerk comes down to take care of business for anyone who can't make it upstairs.

* Also, ADA says if making a service accessible is an undue burden, State and local governments don't have to do it.

* If you think ADA is tough, just try the Federal courts. Courts might require full architectural accessibility--and that could be very, very expensive. And forget about an "undue burden" defense.

* In fact, you might call ADA "The State and Local Government Disability Flexibility and Relief Act."

* Also, I take exception to the "unfunded" label. Since 1985, Congress has provided State and local governments with $29 billion in Community Development Block Grants (CDGB). They have used about $136 million for handicapped access. They could use more, that is their choice.

* Also, you should know that there is very little new in ADA that has been required by the Federal government since 1973 as a condition of receiving Federal funds. The Federal government made the commonsense requirement that any program that uses Federal funds should be available to all people, including those with disabilities. Frankly, many State and local governments looked the other way for a long time.

* One last point--remember, people with disabilities are taxpayers, too. I have not heard anyone say people with disabilities should not have to pay taxes.

cc: Dan
Shula
David T.
Nelson
Dennis Shea
Dawes