

# THE RESTORING THE PARTNERSHIP ACT

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## HEARING

BEFORE THE

SPEAKER'S TASK FORCE ON INTERGOVERNMENTAL  
AFFAIRS

HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTEENTH CONGRESS

SECOND SESSION

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MAY 17, 2018

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**SPEAKER'S TASK FORCE ON  
INTERGOVERNMENTAL  
AFFAIRS** CHAIRMAN ROB BISHOP

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SPEAKER'S TASK FORCE ON INTERGOVERNMENTAL AFFAIRS

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## CONTENTS

---

Hearing Transcript.....	4
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### APPENDIX

Hearing Notice.....	28
Dr. Cliff Lippard: Prepared Statement.....	29
Dr. John Kincaid: Prepared Statement.....	32
Dr. Carl W. Stenberg, III: Prepared Statement.....	40
Ms. Marcia Hale: Prepared Statement.....	46
Gov. Parris N. Glendening: Prepared Statement.....	49

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Thursday, May 17, 2018

HOUSE OF REPRESENTATIVES,  
SPEAKER'S TASK FORCE ON INTERGOVERNMENTAL AFFAIRS

Washington, D.C.

The Speaker's Task Force met, pursuant to call, at 2:30 p.m., in Room H-313, United States Capitol, Hon. Gerald Connolly [at the request of the Hon. Rob Bishop, chairman of the Speaker's Task Force on Intergovernmental Affairs] presiding.

Present: Representatives Bishop, Connolly, Neal, Palmer, Walker, and Zeldin.

Mr. CONNOLLY. Well welcome everybody. I want to begin by thanking my friend Chairman Bishop for working with us under the auspices of the Speaker's Task Force on Intergovernmental Affairs to convene a hearing on the reconstitution of the U.S. Advisory Commission on Intergovernmental Relations. The U.S. Advisory Commission operated from September 1959 through September 1996. During those 37 years, it was tasked with serving as both a forum for intergovernmental dialogue and a neutral analytical commission that published reports and guidance on how to create partnerships across the different levels of government, much like the Congressional Budget Office, but for intergovernmental relations. The value proposition of functional intergovernmental relations is immense. I know that, having served 14 years in local government. The American federal system demands that these relationships must work. The U.S. Constitution does not give any one level of government absolute power or unlimited jurisdiction over public matters. Therefore, we rely on collaboration across various levels of government to ensure the reliable administration of public services and the protection of the public welfare. A federalism that works and delivers real results for our constituents is as fundamental to our system of governance as are free and fair elections. Without either, confidence in our institutions and working democracy is diminished. The original ACIR comprised 26 members, including executive branch representatives appointed by the President, members of the House and Senate, Governors, state legislators, mayors, and county officials. The Commission generally had a staff supporting its work in regulatory issues, taxes, and other related matters. The commission was defunded in 1996 as part of the push to cut federal agencies. However, in retrospect, the decision to abandon the ACIR might have actually deprived the federal government of useful sources of input and pushback on the encroachment of the federal government into state and local affairs. Without relitigating the rise and fall of the commission, I believe there is a strong case for reestablishing it. The commission had a tangible impact on how the federal government interacts with communities around the country. It was a leading voice in identifying the increasing fiscal burdens placed on state and local governments, and as a result, the commission helped develop the Unfunded Mandates Reform Act, PO 104-4, which actually became law. Additionally, I think we would find bipartisan consensus among membership of this task force on the observation that the intergovernmental

partnership is strained. A county in my district recently, for example, hosted a community dialogue on immigration. U.S. Immigration and Customs Enforcement (ICE) insisted that its contribution to the forum would focus on crimes committed by immigrants. That was not the focus of the local government. When ICE refused to compromise with the county, an ICE representative attended the community meeting, uninvited, and made her contributions by shouting from the audience, not at the table. I cannot imagine a more appropriate image for the breakdown of intergovernmental collaboration than that of a county government official being forced to gavel down the representative of a federal government agency for being disruptive at what should have been a healing community dialogue. Practically, the task of bringing back the commission is not a heavy lift. The underlying statute for the commission is still on the books. Now, I have previously introduced legislation to Restore The Partnership Act, which would largely reinstate the mission, duties, and functions of the original commission with some minor amendments. Today we hope to hear recommendations on how we can improve the original commission and avoid some of the pitfalls that we experienced during its tenure. For the purpose of today's hearing, we have convened a diverse panel, representing a state level ACIR, former staffers and members of the original ACIR, and leading voices on the issue of federalism in the 21st century. We look forward to recommendations from our witnesses on the value of reconstituting the ACIR and how we can improve, in a tangible manner, the intergovernmental process. I particularly want to take note of the presence of Governor Glendening, former Governor of Maryland, a friend, and we're so honored that you -- you volunteered to be here! We didn't even have to ask you, so thank you for joining us here today. And with that I turn to our Chairman of this task force, Congressman Bishop.

CHAIRMAN BISHOP. It was in 1953, the very beginning of his administration, that Eisenhower had this idea of trying to constitute something to help reestablish the concepts and principles of federalism and make sure they were very clear in going through it. It wasn't until the end of his administration that such an organization took place. And the resource committee in which I chair, we spent a lot of time talking about a memorial to Eisenhower that will be very close to the mall. And the proper way of doing it -- perhaps this is -- this discussion of constituting -- some way of constituting his ideas of how you actually can provide and encourage the concepts of federalism working through would be even a better memorial to Eisenhower than the statue that's being proposed for him. It is one of those things that, obviously, something went wrong along the way and it has disappeared. We need to rethink how we would constitute that, how we would reorganize it to make sure it would be meaningful. And I appreciate you guys coming here from distances far away. Some of you had to travel a great deal of distances, and especially with the weather here, it's not been easy. But thank you for being here, thank you for talking to us, and thank you for helping us explore some ideas. In an ideal world we wouldn't even have to talk about this. Everyone would understand what federalism actually means and how it can benefit all Americans. We're not in an ideal world and we have to do something that can give some permanence to helping people remember and reestablish that and maybe even helping members of Congress realize that even though we want to solve all the problems, there are some problems we shouldn't even attempt to solve in the very first place. Thank

you for all being here. Mr. Connolly, thank you for chairing this. I appreciate it very, very much.

Mr. CONNOLLY. I thank my friend and thank you for letting me chair it. I think we found more common ground than maybe we suspected as Republicans and Democrats on the whole issue of federalism and what ought to be proper relations among various levels of government. Again I thank you, my friend, for your leadership and your willingness to --

CHAIRMAN BISHOP. Perhaps, also, before we turn to the witnesses --

Mr. CONNOLLY. Of course.

Chairman BISHOP. I want to thank Mr. Palmer for being here. He's part of the task force. He's also the subcommittee chairman on the Oversight Committee.

Mr. CONNOLLY. And do you have any opening statement, Mr. Palmer?

Mr. PALMER. I do not.

Mr. CONNOLLY. Okay. Thank you so much for joining us here today. So let me proceed to -- I'm going to introduce all of you and then call on Governor Glendening first. So let's see. Dr. Cliff Lippard is the executive director of the Tennessee Advisory Commission on Intergovernmental Relations. Dr. John Kincaid is the former executive director of the U.S. Advisory Commission on Intergovernmental Relations and currently the Robert B. and Helen S. Meyner Professor of Government and Public Service at Lafayette College in Pennsylvania. Dr. Carl Stenberg is a former Assistant Director of the U.S. Advisory Commission on Intergovernmental Relations and is currently the James Holshouser Jr. distinguished Professor of Public Administration and Government at the University of North Carolina Chapel Hill. Marcia Hale is the former Director of the White House Office on Intergovernmental Affairs and currently President of Build America's Future. And then of course, we have Governor Glendening. Governor Glendening is the former Governor of Maryland, currently the President of Smart Growth America's Leadership Institute, and he's also a prolific writer on the issue of federalism and we're honored to have him here today. And why don't we start with you Governor Glendening.

Gov. GLENDENING. Thank you very much friend. Thank you for your kind words and, Mr. Chairman and members, I'm very pleased to be here and

especially with very distinguished colleagues. I want to draw on some comments that I made just recently in a chapter that was in Carl Stenberg's book that was just released and I have appended that chapter for the record as well as some other written thoughts as well. It's clear that most people involved in this discussion understand the rise and the fall of the focus on the intergovernmental relations in our system. And what's especially difficult is the lack of focus on operating as a system, and I've covered that in more detail in my written comments. But when you think about it, it is hard to imagine resolution of the major challenges, conflicts, and crises that are facing this country without a flexible, innovative, and effective intergovernmental system. During my 31 years in elected office, I personally saw the intergovernmental system work, and indeed work very well. I started as a city councilmember in Hyattsville, a small community of about 18,000 right in the suburbs. And I will tell you when you're in a region of 5 million people, it is the intergovernmental alliances and relations that you resolve to make things work. For 20 years I served as the leadership of Prince George's County, including 12 years as County Executive. I'll tell you these personal observations from an intergovernmental perspective are not really just a stroll down memory lane, but they're a framework for understanding why the increasing lack of focus on an intergovernmental system is dangerous and actually produces, I believe, very poor policy outcomes. It was also during this time that I wrote and published a book called "Pragmatic Federalism", which emphasized the pragmatic, flexible, innovative nature of the federal system during the 1960s and 1970s. It was used in over 400 colleges and universities and it was a very optimistic assessment about our future as a federal system. Today, 40 years later, that level of optimism and candor no longer exists. Instead of being pragmatic, the federal arrangement has become increasingly rigid and inflexible. I can tell you though the system can work. I have seen it work both on major projects and on major policies. Just to give you one example of the project and congressman one that you will remember well, but it's the reconstruction of the Woodrow Wilson Bridge I-95: 250,000 cars a day and desperate need of both of rework during my time as County Executive and as governor. We worked with a task force that had 29 federal agencies, two states, the District of Columbia, and several local government. It was also by the way very vigorous debate and differences of opinion about cost, design, even about the future of the metropolitan area because the question became "Would we make that bridge Metro ready for the transit to go over it?" And even things like bump outs so that pedestrians and bicycles could use the bridge and stop and appreciate their capital. It went through three presidents: George H.W. Bush, Bill Clinton, and George W. Bush. It went through an intergovernmental maze. Jane Plank and Marcia were very much involved in resolving this and you see what we have today. It worked and it worked very well. On the programmatic side, just one quick example and that was the intergovernmental success that resulted from President Clinton's administration proposal to make significant changes to the six decades old welfare program. I worked on the welfare reform proposal as governor. We worked with governors, mayors, county executives, and many others, and they're all involved in a very vigorous debate, sometimes even angry. Many meetings were held at the White House with high-level members of the administration. In the end, many people were still unhappy with the legislation. However, I can tell you with certainty that almost all would agree that opportunities were offered for meaningful input and that we did see some modifications in the final program that reflected many of our concerns. An adequate level of intergovernmental conversation, compromise, and

collaboration have been absent from the discussion of many of the key policy issues before us today. Things like tax form, immigration, infrastructure, environmental rule changing—these are taking place on a very unitary basis with almost no input from the local government. I remind people the decisions on the air quality regulations, we on the East Coast have a dramatic impact when air emissions are permitted to increase. Elsewhere, the same when our state Chesapeake Bay protecting the bay. Two weeks ago I was in a panel with the Republican Governor Bob Ehrlich at the University of Maryland Baltimore, where we had a discussion somewhat similar to this and unfortunately reached a rather dark conclusion. I said and I know it's poor form to quote yourself but that's the fastest way to do it, but I said, "The absence of an intergovernmental system which would facilitate communication, coordination, and compromise combined with the extraordinary negatives of current political debate are bad for policy, bad for our politics, and bad for our country." And that is from me a very optimistic person. Let me move to a more optimistic conclusion. In 2013, I was a former president of the Council of State Governments. I was asked to give the keynote and I called for the creation of an intergovernmental relations think-tank. There have been many calls since then and I appreciate the work of the speaker and of this task force about reestablishing some formal manner of intergovernmental relations focusing on the system, including the idea of recreating the ACIR. I do agree with that general conclusion. I would strongly recommend, however, that such an entity should be outside of government itself. It should not even be a quasi government agency. I think it should be a free-sanding think-tank, similar to the CATO Institute or the Brookings Institute or based at a major university or at a consortium of universities. An alternative location might even be in the existing independent organization like the National Academy of Public Administration example. I must and all full disclosure, I make it clear that I am an elected fellow of NAPA and I think Carl is as well and so we have a little bit of a biased on this but I would conclude with the observation: we as a nation really have solved bigger problems in the past than that are facing us today. We were the best to do so, however, if we remember that we are a federal arrangement and depend on a well-functioning intergovernmental system in order to make this work. Thank you very much and I look forward to your questions.

Mr. CONNOLLY. Thank you so much Governor Glendening. Ms. Hale.

Ms. HALE. Thank you. Thank you very much Chairman Bishop, Congressman Connolly, and the other members of the task force. I appreciate the invitation to appear before you today and for the opportunity to discuss the possibility of reconstituting the U.S. Advisory Commission on intergovernmental relations. I commend you for your interest in improving the collaboration between all levels of government and hope that today's hearing will provide some insight and information. During my career, I have worked at various levels of government. A city hall, a county planning commission, a governor's Washington D.C. office, and the U.S. House Senate and White House. Presently I am the president of Building America's Future, a bipartisan nonprofit national infrastructure coalition founded by Mike Bloomberg, Ed Rendell, and Arnold Schwarzenegger. Several years ago we added Ray LaHood as one of our



national co-chairs. Our membership is comprised of state and local elected officials from around the country. We advocate for improving all American infrastructure to enhance our nation's prosperity, economic growth, and international competitiveness. As an assistant to the president and director of intergovernmental affairs at the White House during the Clinton administration, I was a Clinton appointee to ACIR. We found the work of the commission to be very beneficial. Perhaps the most constructive component was having the ability to hear the views of various appointed and elected officials at all levels of government and for them to hear from each other. To truly understand impact of actions taken in Washington on states and localities, it was important to engage with elected officials from across the country. It was also critical that ACIR operated in a bipartisan fashion. I work closely with several of the members of the commission, Democrats and Republicans alike, on issues that we all cared about. There are many issues that a reconstituted ACIR could consider. Finding a way to provide a forum for discussing the coordination of federal programs that impact local governments is important. Those appointed should want to work in a bipartisan and collaborative way to solve problems for ACIR to be effective. Too often in this world we live in today, our first instincts are to go to our partisan corners. As our level of government have no permanent established entity for consensus building, discussion and consensus building amongst Democrats and Republicans at all levels of government might improve our legislative responses. I would like to suggest if you reconstitute ACIR, that you consider working first on issues where there is common ground between the parties, but also where there is a pressing need to legislate solutions for the future. The rapid advancement of technology is impacting every American. The way technology is changing how we commute, travel, and interact with each other might be an appropriate area to focus on. I urge to choose a few issues that haven't become partisan to advance some common-sense solutions. Look at issues within health care, immigration, energy, transportation, or several other areas where new issues have arisen. It will need to be dealt with at all levels of government. Many of these issues will require innovative thinking and bipartisan solutions, informed by the elected leaders who will need to implement them. As a specific example, we are fast approaching a time when autonomous vehicles will be introduced into our transportation system. What safeguards need to be built in our system, how will Washington legislate, and how will local communities respond. How well autonomous cars integrate into our highways and cities—we undoubtedly will have cars with drivers and autonomous cars sharing our roads and highways. What about the transition period? The next 5 to 10 years. And what is needed beyond that? Reaching out to state and local elected officials and working in collaboration with federal elected and appointed officials through a new ACIR could help move solutions. Also as states and cities legislate on these issues, greater cooperation and communication with federal officials would be welcomed as well. Another issue within the infrastructure arena is the standardization of public-private partnerships. We live in a world of scarce resources. We need to streamline the p3 process to enable the private sector to participate more full where appropriate in building and rebuilding our infrastructure. Not all projects lend themselves to private participation, but where it is appropriate, we should simplify the process by bipartisan discussion including all levels of governments and viewpoints could move this public policy issue along. Again, I congratulate you and your willingness to pursue this issue. I believe the country is looking to elect officials across the country to solve our most pressing issues. Citizens are tired of the

endless discussions and arguments. Establishing an entity that allows for greater understanding, collaboration, and definition of the appropriate roles of the various levels of our government could help our discourse. I stand ready to be of assistance and applaud your work.

Mr. CONNOLLY. Thank you so much. Dr. Stenberg. By the way, Dr. Stenberg, I can't help -- you are the spitting image of a British actor. I mean, yes. He was in the Full Monty, but I won't go there.

Mr. STENBERG. And it's given me no benefit in terms of extra employment on weekends. Tom Wilkinson, yes. I'm Carl Stenberg, not Tom Wilkinson and I'm delighted to be here this afternoon and I appreciate the opportunity to speak. I offer an academic perspective on the subject of restoring the Partnership Act. Prior to my university affiliations, I served for 16 years as an ACIR staff member, as a research analyst, and then Assistant Director for Policy Implementation. And then I moved on to become the Executive Director of the Council of State Governments. Like Governor Glendening and Professor Kincaid, I'm a fellow in the National Academy of Public Administration. I've been there since 1984, the year Congress chartered NAPA. NAPA, I should say, is honored to be among the organizations serving on the advisory council to this task force. And I understand the academy's president, Teresa Gerton, has communicated with Chairman Bishop regarding some of the recommendations from the academy that the task force might address in terms of substantive policy areas along the lines of what Marcia Hale has mentioned. But my remarks today are my personal views and don't represent the position of the academy on the proposed legislation. My judgment to restore the partnership act is a promising point of departure for rebuilding the federal government's capacity to address current intergovernmental issues and emerging challenges. It's important to recognize as we look at the role of the commission -- its structure, and possible functions and membership -- we recognize that the intergovernmental world has changed dramatically over the past 20 years. A number of ways -- very briefly -- so called wicked problems have emerged, like climate change, the opioid crisis, homelessness, infrastructure, and immigration. What's distinctive about them is that addressing these and other challenges requires not just intergovernmental but also intersectoral and interdisciplinary approaches. Problems have become more complex, both vertically and horizontally. Secondly, relationships between and among governments as well as the Big Seven state and local associations have become more contentious. The Chairman mentioned earlier the bipartisan environment gave rise to ACIR, beginning with the Eisenhower Administration and continuing. And that bipartisan environment has been replaced by one that Professor Kincaid has labeled 'coercive federalism'. Third, it's a more competitive and crowded world in terms of policy analysis and think tanks. ACIR was one of the few organizations that gave attention to intergovernmental relations in its hay-day. Now, it's been joined by many in this town -- most of which have a philosophical, if not a political, point of view regarding the policies that they are promoting. So I think in this dramatically changed environment, it's a fair question to ask whether an organization like the proposed national commission on intergovernmental relations could have a positive impact. Would anyone

listen to the recommendations that it offered? But it's also important to consider, perhaps, that this commission is an important first step, but perhaps not the only step, that this task force and others could take to establish a better intergovernmental common ground and finding some ways to convene and collaborate on that work. NAPA has, in her letter, suggested some additional steps that this task force might consider. My frame of reference this afternoon for addressing a question of 'could a national commission on intergovernmental relations be an important addition?'. The point of reference is what both the Governor Glendening mentioned and what he and Professor Kincaid have contributed chapters to. A promising trend noted by the contributors was a resurgence in intergovernmental relations after more than two decades of deinstitutionalization. Many initiatives that are on the policy agenda of Congress call for better collaboration, consultation, and coordination with departments in the federal system as well as non-governmental entities. With help from Professor Kincaid, my co-editor and I framed a number of big questions in the introduction and invited the contributors to comment on them. One of the big questions relates to our afternoon's discussion. How important is the absence of institutions that monitor intergovernmental trends and developments, convene meetings and conduct research to the health of the federal system? Will the need to rebalance the federal government's financial and programmatic roles call for more and sustained attention to intergovernmental management? In response several of the contributors expressed concern about the unraveling of intergovernmental relations that Governor Glendening has mentioned in part due to this void and recommended that the void be filled. But they expressed concern that federal budget reforms, reorganizations, program eliminations, and domestic legislative initiatives have potentially significant impacts on states and localities which are not appreciated and often not even considered in the policymaking and legislative process. An ACIR type organization could further understanding of intergovernmental consequences and impacts and improve program design. In conclusion, we summarize the contributors' views as follows: they recognize there's a need for that capacity but they're skeptical that such an organization similar to the former ACIR could be established in the current political environment. Now, I've reviewed the proposed legislation and in my statement I've offered a few technical suggestions that I'd be happy to address in Q&A time if the members would be of interest but I won't go into them right now. I want to conclude from the standpoint of a former ACIR staff member. Three of the takeaways from the 37 years of ACIR--there are more than three but these are the ones that occurred to me as we're sharing with you this afternoon as you consider moving forward with this legislation. First it's important to find federal members of the National Commission who are committed to and value intergovernmental consultation and engagement. Professor Kincaid has asked in the book chapter, "Who are the champions of intergovernmental relations and federalism in the Congress?" We're reminded of a time back at the formation of ACIR when champions like Representative L.H. Fountain and Senator Edmund Muskie brought the commission to life and steered it in some positive directions. So the federal representation is key to avoiding the body being considered as just another state and local government interest group. Because if there is lackluster federal participation it will be viewed that way and that won't serve its purpose. Second, strong support from the big seven is crucial. And we're pleased that those organizations are also serving on your advisory council. And finally, a lot of it is about the research agenda, assuming that that will be an important part of the work of a national

commission. The challenge here is to identify research subjects that are timely and relevant but not too close to the political fray. For the most part, ACIR was able to do this pretty well. Some of the examples that Chairman Connolly mentioned in his introductory remarks--where do you begin finding the common ground that Marcia Hale has talked about in a policy way? And there are places to go. In addition to the National Academy of Public Administration's suggestions, the advocacy agendas of the big seven organizations provide some clues--there are some common policy areas, one of them being infrastructure and another being workforce development. The third source is U.S. Government Accountability Office reports that have identified program duplication, agency overlap, and high risk management areas but could also serve as a point of departure in looking at management reforms in the grant in aid area. So in closing I want to say again the Representative Connolly's Restore the Partnership legislation is an important step, but perhaps not the sole step, towards this task force increasing intergovernmental coordination and cooperation. Putting ACIR back in governmental relations would send a welcome, symbolic, and substantive message that there is an important connection between the federal government, the states, local governments, and tribes. Thank you for the opportunity to speak this afternoon.

Mr. CONNOLLY. Thank you so much Dr. Stenberg. Dr Kincaid?

Dr. KINCAID. Thank you Representative Connolly and Chairman Bishop for the opportunity to testify for House Bill 534 with some qualifications. I was the Executive Director of the old ACIR from 1988 to mid 1994, so I speak partly from that experience and I certainly endorse all of the comments that have been made so far on the panel here. I think enacting the Restore the Partnership Act would be an important acknowledgement by Congress of the need to repair our dysfunctional federal system. However, except for the bill's addition of two tribal members which I support and one more state legislator and county officer compared to the old ACIR, the bill virtually duplicates the old ACIR. This is a problem, I think, because the old ACIR was born in 1959 in an era of bipartisanship. It operated most smoothly during that era. The rising political polarization, however, has rocked the old ACIR and it really finally scuttled it in 1996. And today we're in a period when polarization is at an all-time high and because virtually all public policy is intergovernmental, I think rebirthing the ACIR with the same mandate is likely to revive polarization on that commission. This I think would miss a great opportunity to think innovatively about a new ACIR. Polarization might be mitigated by restructuring the membership and/or defining a clearer mission. H.R. 354's appointment process ensures that under unified government at least 18, possibly 20, of the 30 members will belong to the president's party. If Congress is controlled by the opposite party at least 16 members will still be of the president's party on a commission for which the bill requires only 13 of 30 members for a quorum. This structure will bypass polarization by allowing party line votes with as few as 13 members. However, I think the legitimacy of the products of such votes would be suspect. A better way perhaps to mitigate polarization would be to define a more focused ACIR mission modeled perhaps after the bipartisan CBO. Such a mission could have five key components. A new ACIR could one:

Advise the executive and legislative branches on improving the intergovernmental operations and waiver processes of the White House and federal agencies, especially their intergovernmental offices, as well as two: Advise those branches and state, tribal, and local governments of the intergovernmental consequences of U.S. Supreme Court rulings which really weren't thought of when ACIR was created in 1959. It also could identify, study, and make recommendations on three: Extant regulations found to be intergovernmentally problematic. The federal government's fourth object would be the federal government's 1,216 grants in aid in the system. And fifth, House and/or Senate bills having intergovernmental impacts. The latter I think is already implied in section 6.3 of H.R. 354. A new ACIR could highlight preemptions, waiver potentials, and intergovernmental administrative issues in pending bills. To give the new ACIR more clout, mechanisms I think should be created to ensure ACIR recommendations are officially incorporated into the legislative process, reviewed by the relevant White House staff and agency head, and even published in the federal register. The size of an ACIR staff and its appropriations will depend on the ACIR's duties. When I left in 1994, ACIR had about 18 full time employees. I believe the old ACIR's highest appropriation ever was \$2.1 million in fiscal 1985, which would be about \$4.9 million today. In fiscal 94, the old ACIR had one of the biggest budgets in its history but that was because in addition to the appropriation it had revenues from state contributions and publication sales. This is a question for the new ACIR. I assume the new ACIR would function only on congressional appropriations, that would probably be best. But Congress mandated that the old ACIR turn to state contributions and selling its publications. My written testimony contains more discrete suggestions. Missing from the bill, for instance, is at least one township representative who could be nominated by the National Association of Towns and Townships--very important general purpose local government. For mayoral appointments I would suggest dropping the population threshold to at least 100,000, if not 50,000 because only 13% of Americans live in municipalities having 500,000 or more people. So I think H.R. 354 presently is overweight in favor of the minority of Americans living in big cities. I also would suggest dropping to one the number of county representatives from counties having at least 50,000 residents. Appointing two from such counties would over represent rural counties. Although most Americans live in small and medium sized communities, they're largely clustered in metropolitan counties. So yeah, I support a new ACIR. I think more thought could be given to how best to make it truly successful, and some of these ideas have already been presented and there are more in my written testimony, so I thank you for listening.

Mr. CONNOLLY. Thank you so much, Dr. Kincaid. And Dr. Lippard?

Dr. LIPPARD. Thank you. Chairman Bishop, members of the task force: on behalf of my chairman Senator Mark Norris, my vice chairman Mayor Larry Waters and the rest of the task members, I appreciate the opportunity to speak with you today. I appear to have brought my allergies with me from Tennessee so I'll try to get through my remarks without collapsing into a heap. As already mentioned my name is Cliff Lippard and I'm the Executive Director of the

Tennessee Advisory Commission on Intergovernmental Relations, or thankfully TACIR for short. We're one of the few remaining state ACIRs, so today I'm going to target my brief remarks towards sharing with you some of the characteristics that have contributed to the prolonged success of TACIR in the hopes that some of those lessons may be useful to efforts to reconstitute a national ACIR in some form. I firmly believe that in this time of shifting priorities and expectations among the federal, state, tribal, and local governments, and the people that they serve, are a constitution of some form of an ACIR as a permanent form for the study and deliberation of intergovernmental issues would make an immeasurable contribution toward better government. First a little background: TACIR was created by the Tennessee General Assembly in 1978 to monitor the operation of federal, state, and local relations in Tennessee and make recommendations for their improvement. And I've included information on the composition of our membership in my remarks, but in short the commission is a permanent bipartisan body representing the executive and legislative branches of the state, as well as city and county governments, and public members. Importantly our members include three statutory members: the Comptroller of the Treasury, the Chairman of our Senate Finance Committee and the Chairman of our House Finance Committee. Also importantly the appointment of most of the local government officials rotates among the governor, the lieutenant governor who's our Speaker of the Senate and the Speaker of the House. The commission's permanence, its bipartisan makeup, and its broad representation across branches and levels of state government are important strengths of the commission and have contributed to its successes. The commission is the only formal venue in the state where all players in the state-local arena can meet in a neutral setting. And the commission's research process and its quarterly meetings provide a forum for other interests beyond local elected and appointed officials to hear their opinions and concerns. So even if their position is not adopted by the commission, stakeholders generally see value in being able to state their positions to government officials in a public forum. By serving as a neutral form informed by professional research, the commission has been able to foster collaboration among state and local officials and has been instrumental in achieving a number of government reforms. In the past year alone, the commission completed studies requested by the legislature or our members on emergency 911 functionality and funding, state prisoners held in county jails, growth policy, boat titling, and local cooperation when approving payments in lieu of tax agreements. These issue-centered studies are completed along with recurring annual studies on local fiscal capacity to fund education and a comprehensive inventory of the state's infrastructure needs. All this is accomplished with the assistance of a small staff and a modest budget. I've included copies of recaps of our achievements over the past two years of the current general assembly in my attachments. Our work on broadband internet access and adoption provides a good example of the collaborative value provided by the commission. In preparing our January 2017 report on this topic, we interviewed or heard testimony from a broad range of federal, state, and local officials as well as from local utility cooperatives, business interests, and community groups. The commission used this input to prepare a series of recommendations that focused on filling coverage gaps in the manner least costly to taxpayers and without expanding the size of state government. These recommendations were widely adopted by the governor in the Tennessee Broadband Accessibility Act, which passed the general assembly in 2017. In

closing, I will add that other factors that have contributed to our success include the active participation of our leadership and members and having a steady revenue source. I'll also add that an important limitation of the commission is that the same structure that supports bipartisan collaboration within and across levels of government also functionally limits the issues it studies to those that are technical and pragmatic. It's unlikely the commission could reach consensus on issues with strong ideological divides and even if it did, taking what could appear to be partisan positions would undercut the perceived neutrality of the commission and reduce its effectiveness. Similarly, because of the commission's recommendations or compromises, not just partisan compromises but more importantly, compromises between the state and its local governments, between city and county governments or between large and small local governments, the changes endorsed by the commission tend to be incremental rather than sweeping. Thank you.

Mr. CONNOLLY. Thank you so much. And we're joined by our colleague and friend Richie Neal from Massachusetts. Thank you, I know you've got a busy schedule today. Thank you for joining us today, Richie. With that, Chairman Bishop why don't you go first? Alright well thank you all so much. Let me begin by saying I really appreciate your comments, Dr. Kincaid, on the composition. Ours is a draft, I mean here's where we left off, let's put it in front of everyone--what do you think? How would we change it? So your comments are absolutely apt. And I hope you'll give us even more detail. Frankly we're agnostic I think about how many members--now we're not agnostic about the point you make, Governor Glendening. In my view, someone who served fourteen years in local government in a county that is bigger than seven states, I helped run it, I was Chairman, and now ten years up here--you have an all-academic commission and it will be put right on the shelf and ignored. Make our lives easy and we'll never deal with it. I'm sorry I think you used the word pragmatic. You've got to have hands-on politicians that are part of that commission. And I take your point Dr. Stenberg that we've got to up that federal participation if it's going to be meaningful. And I'll give you the opportunity to defend it, but I listened to you carefully and I thought that would never work. I can't imagine frankly supporting that approach. As somebody who cares a lot about intergovernmental relations, I mean to make it a think tank or an academic enterprise is the kiss of death in this climate up here. We're actually trying to get our colleagues more interested in the subject matter and take responsibility for it and more engagement. We had a hearing with--was it three governors from the west? Really fascinating discussion about some of the challenges they face with respect to the federal government. I, as a local government person unlike Maryland your home rule state--Virginia is a Dillon rule state, and a lot of my colleagues didn't even know what a Dillon--I mean what is that? You know the problems aren't only about the federal government they're often about the state government. And depending on where you are, you know a thing of terror is for someone to say let's block grant it and go through the states. Well where I live, oh my God we'd rather take our chances with the federal government than Richmond. And so there's a lot of education and so forth. So anyway I gave that reaction, Governor Glendening, and I certainly want to give you the opportunity to respond.

Gov. GLENDENING. Congressman, thank you very much. And I'll tell you some of my colleagues voiced similar discussion. I appreciate not only your perspectives but of course as County Executive in Prince George's County in terms of ... [undiscernible]... and then serving as chairman of the governors association of ... {undiscernible}... state governments and being elected to the County Executive and several other organizations, I understand a lot of the things that you're talking about. The challenge I think is the times. And when I say the times what tore the mission apart in many ways was the perception that some of the commission positions were being used in the emerging partisan debate. And I remember specifically some of the intensity over the unfunded mandates issue. Now the perception was that the commission was part of the government in many ways and tilted and the administration was extraordinarily unhappy with that. And so I would not suggest for a moment that it become strictly a academic or think tank in a way even though I didn't use that word in the way you're talking. I think that perhaps some degree of autonomy though where it's perceived of bringing people together, some type of neutral ability and respect so that it's not immediately--I picture, what's going to add to the benefit to be recognized as a government agency right now? Is it merely an extension of the White House or an extension of Congress with basic knowledge of the House but very crucial issues? Or is it going to be informed or people who are different because if it really comes together and vigorously argue these things out and have deliberations and come up with some modifications and working with Congress, working with the White House, be able to suggest things but not part of the organization.

Mr. CONNOLLY. And I take your point, but I give you an example of—I was in local government when the bill passed. No Child Left Behind, now from a local government point-of-view I helped run the 10th largest school district in America and that was an unfunded mandate. It was very rigid in its application, so you could get some smalls subset of a school fail in one category and the whole school gets scarlet letter. Not quite sure what the point of that was or how that helped anybody, but what struck me about the legislation on the receiving end was well-intentioned but whoever wrote it never ran a school district. You know, I mean, the hands-on part was missing and lots of absolutely noble goals. Full of aspirations but not all that practical and had there been a sounding board, maybe like the ACIR, maybe we could have avoided some of those pitfalls. I don't know, so it has to be a blend and I certainly take your point about that. Ms. Hale, you intrigue me in saying, "start with common ground." I think that's good advice. I put some points on the scoreboard before you start mucking around in big political kinds of things. It's interesting to me, why do we need it—let me give you an example that intrigues me and I'm not making a normative statement one way or the other. But marijuana, we're now in this odd situation where we have a federal law that says it's the most dangerous drug on the planet, that's how it's classified, but almost half the states in this Union have decided otherwise. Some of them are legalizing it entirely for recreational purposes, some have carve-outs for medical marijuana, and other subsets of the same. Well, how can we have a federal law and half of the country is sliding away from it? That's a great example of the breakdown it seems to me of this intergovernmental structure and we have to harmonize that. How are we gonna at the federal level—oh we got to continue to just kind of pretend we don't see anything or hear anything. At the state level, having that federal law unchanged,



that posture that it's the most, it makes protocol difficult, doing research difficult, trying to get to data that one way or the other. It is efficacious or dangerous or not very, very difficult the statewide level. So, to me, that would mean, there are a lot of us up here irrespective of one's philosophical view about it, would agree that this untenable, where we are right now. We have to do something about that. I wonder if you could comment a little bit about, I mean with that kind of and maybe there are some other examples of what would be good categories of that common ground you referred to.

Ms. HALE. Honestly I didn't think about the medical marijuana issue, but now, you bring up a very good point. With that, like the marijuana issue, someone could do a survey of what other issues out there, where there are 10 to 20 states with their own legislation, that is not either contradictory but not complimentary for federal legislation. And then you can work in the mayors and the governors and state legislators to talk about why that happens.

Mr. CONNOLLY. Sure, and you know, by the way, we had a hearing this morning on the opioid crisis affecting so many of our communities. Marijuana is not unrelated to that because it can be an alternative, non-addictive alternative for pain management and again, this conundrum of a federal rule in law versus state rules and laws kind of makes it very difficult to proceed in that regard. Mr. Bishop?

Chairman BISHOP. Okay. let me ask a couple questions here again. Dr. Lippard, let me start with you because you ran, basically we're talking about there on the statewide level. So, just in general, how frequently are the recommendations that your organization makes accepted by local governments?

Dr. LIPPARD. In most cases, our recommendations are implemented through state law, so it's more that the locals on our Commission and who represent broader local governments in the state of Tennessee work through us to reach compromise they're comfortable with. Then it still has to go to the General Assembly for them to ultimately be adopted and a fair number of times they are. Often, of course, through the legislative process, they'll be further amended and further changed and sometimes, it's not immediate. We continue to track every year, past recommendations we've made, to see whether some form of those come back up and we attend committee meetings to comment on those when they ask us to, and sometimes it takes two or three years, sometimes even longer for the recommendations to be adopted, but often, they are in some form another. I will say also, and I think this is equally useful, a number of times our recommendations are used to defeat alternate recommendations. In other words, a bill that goes contrary to what the Commission has recommended, often contrary to what our local members would like to see, they'll bring up our reports, in they being the General Assembly, will bring up reports and committee meetings to counter other legislation.

Chairman BISHOP. So how big is the staff you all have?

Dr. LIPPARD. So our current research staff, full-time research staff, counting myself and our deputy director is 12, though we are hiring, and then we have a support staff of 4, so we have 16 total full-time staff.

Chairman BISHOP. So let just go one more—take one instance you mentioned, a couple of you in 9/11 boat—let's say boat titling. Do the boat titling issue, so what do you all do?

Dr. LIPPARD. Okay, so on the boat titling, we go through a fairly detailed research process for every project and I will say boat traveling was one of those “so finally a simple project”—no, there's no such thing as a simple intergovernmental project. So what we'll do, it usually starts with a proposed legislation or an idea from one of our commission members. In this case, it was proposed legislation to create a system of boat idling in Tennessee which currently we have registration but no titling required. So we'll start with the legislation, we'll speak to the sponsor, we'll look at past legislative attempts to do something similar, and then we'll go out and meet with our representatives of local governments. In this case, we met with the county clerks as well as local mayors because the clerks are the ones who implement titling for other vehicles in Tennessee. We'll meet with other state agencies. We do an extensive study of the literature for best practice but probably most importantly, we look at all 50 states to see what best practices are in other states and how they do the same thing. Then, we'll bring that back to our Commission and we'll have panelists from different groups come and speak to them and work our way through to us.

Chairman BISHOP. Who picks the topics you discussed?

Dr. LIPPARD. Most of our topics are referred to us by the General Assembly and we have a protocol where we only guarantee to take a study if it's sent to us by public chapter or requested by both chambers, both the Senate and House. Because in the past, we've become kind of a summer study dumping ground. We're just one subcommittee of where one chamber would send us something because as a way to save face, remember? So we've tried to reduce the number of studies coming to us, still those that they're seriously interested in the boat chambers or seriously interested in doing something or a number of our studies come to us from our commission members themselves. Everything is put up to a vote of the commission at our May meeting or spring meeting which is after the General Assembly is normally left and then the Commission votes on what issues they're going to pursue that year.

Chairman BISHOP. So Miss Hale, you also talked about kind of the idea that there needs to be some kind of an entity that could determine not necessarily

what the issues are because that's what you're talking about one of the problems that came with the old mission, but necessarily like who makes the decision, what level of government should be making those decisions? How would you go about picking those topics?

Ms. HALE. That the Commission should take up?

Chairman BISHOP. Yeah, on which levels they should make a recommendation?

Ms. HALE. Well I think you get together a representative group of the federal level. The cabinet officials that were involved in ACIR were very helpful because they were activists, at least while I was there, one was then Secretary of Education Riley. And they brought issues forward. Then Mayor Rendell, Governor Leavitt, Victor Ashe—they would all bring forward some ideas, at least to us, maybe John got her in a different way, of the types of issues they would like to look into.

Chairman BISHOP. So basically the organization was self selecting on where they went, as opposed to being given assignments from a legislative body?

Ms. HALE. I may have gotten it at a different access point than you did, but I got a lot of over their transom. This is what we'd like to talk about. Unfunded mandates was a huge issue. It was a mammoth issue and very important to then the President of the United States, having been a governor and many of the mayors and governors that were on the panel on the Commission. So that was something they had no—

Chairman BISHOP. Funded mandates ain't that much better. Dr. Stenberg, can I ask you—I mean one of the things you've said is "Who would actually listen?" Let's take this issue, just like a consultation for example, the law does require consultation between federal—in many areas—between federal government and local governments; or interest groups. But in no way do we actually define what constitutes consultation. How would you handle that kind of a situation?

Dr. STENBERG. Consultation is defined in many different ways—legislation, executive orders, the administrative procedures and the like, and it's not well defined. What do you mean by consultation? I think what we mean by consultation is, we talked about this legislation, it's not a top down sort of process, where the federal government sends out a notice of rulemaking or a meditative advisory committee—and okay we're here to listen to you and then we're going to go and pretty much do what we wanted to do in the first place. We're talking about finding ways to have genuine intergovernmental

consultation where the representatives around the table are listening to one another or debating with one another—they're showing mutual respect for one another regardless of their politics, regardless of their level of government or their role in that government. I think that's an ideal. That's something ACIR from time to time, we as a staff, we felt we were getting there. It's not an easy thing to do, it's not a pretty process, but you can set up a mechanism to engage. For example, the previous question about how do you select a research topic. Well that's a consultation process at various times with ACIR, we not just as staff asked the Commission members, you know, "What are some of your top issues back home that you feel deserve kind of an attention in a body like ACIR?" We would convene sessions, I think we call them thinker sessions, to come in and tell us about not just current issues but what's coming down the pike that we should be concerned about and alert the members of the intergovernmental community around. And so, from time to time, there were legislative directives to conduct a study or there were requests from the administration to embark on a, let's say grant management simplification project as was done during the Carter Administration, but it's a multi-faceted process that we're looking at -- not just top down.

Chairman BISHOP. I'm making an assumption that the Tennessee process, you are responsible to report to the General Assembly state legislature?

Dr. LIPPARD. That's correct.

Chairman BISHOP. The ACIR we used to have -- to whom were they to report to, to whom were they were responsible?

Dr. STENBERG. We're responsible to Congress and every five years mandated to prepare and submit a report and appear before the oversight subcommittees and committees to talk about the record every five years.

Chairman BISHOP. Every five years?

Dr. STENBERG. Every five years.

Dr. KINCAID. Yes, but the problem was there was no formal mechanism for getting the attention of Congress so the recommendation sort of went out there which is why I was suggesting it would be good to build into the new bill some formal mechanisms to get it into the legislative process, the administrative process, and so on.

Chairman BISHOP. Five years is...you miss an entire administration that way!

Dr. STENBERG. Although if I could pick up on Cliff's point and respond to your question about well, what's your impact, what have you guys actually done? You've spent a fair amount of time, resources, you've addressed problems... what difference have you made? That's a really tough question to answer and we would get that from the committees and we could point to areas. For example, the Commission was involved very much in looking at federal anti-recession fiscal assistance, which led to the passage of the State and Local Fiscal Assistance Act general revenue share in 1972. Was ACIR responsible? No, it was one of several organizations that kind of moved the ball down the field, if you will, and the Unfunded Mandates Reform Act is another good example where ACIR was an important player. It provided kind of the substantive research and analysis around why are unfunded mandates a problem and to what degree and what are some of the options for dealing with them, but others really were very much at the table and moved the ball down the field, so it's really hard to discern that impact.

Chairman BISHOP. So you said, in closing I will like in Tennessee, the bulk of what you're doing is technical and pragmatic.

Dr. LIPPARD. I would say so, yes.

Chairman BISHOP. If we were to ever reinstitute an ACIR process, would that have to be a process we do on a federal level? Would it be more effective if it was technical and pragmatic in nature, as opposed to the ideological approaches?

Dr. KINCAID. To my recommendation, you know, looking very specifically at issues and pending legislation, regulations that are already intergovernmental problematic, we don't need to take on—the ACIR doesn't need to take on the whole marijuana issue, but there are very important issues within there that I think could be dealt with very pragmatically. And so, my view is that would be a good direction, maybe thinking of CBO is kind of a rough model along bipartisan lines.

Mr. NEAL. I've taken too long. You have questions and I don't want to just dominate.

Mr. CONNOLLY. Can I interrupt just one second Ritchie?

Mr. NEAL. I mean I think you're going to.

Mr. CONNOLLY. You now have sort of three different levels of government represented here. Ritchie was mayor of his city, I was chairman of my County, and you are in the state government, so we bring a certain perspective to what we're doing. Excuse me.

Mr. NEAL. Thank you. Overwhelmingly, the members of Congress, as you know, come from state legislatures, which in and of itself starts with a certain bias I think, and for those us who came from local government, you're more interested in problem-solving. And in my time, which is now a long time in Congress, the other part of it that I have found is important—you know there really is terrific information the Federal Reserve Board puts out. There's terrific information that CBO puts out, joint tax, puts out—I mean these are really substantive reports and I find that there's a greater tendency here all the time to kind of reject much of the data and information if it doesn't square with the ideological purity both sides have now become more and more inclined to embrace. And the other phenomena that has occurred during my time, it's the alleged think tanks. And look, we're all grateful for that information but we haven't the opportunity to go back to them on both sides and say well this what so-and-so says and we document it on that basis. But oftentimes, you'll see the op-ed pieces, you'll see the interviews that they do, and you have to concede almost immediately that they begin with a conclusion and then go looking for the documentation. I mean it's really changed things here substantially and I write as one of -- as an academic background that has an interest in really discerning information. What strikes me about it is they get to present themselves as fellows of these respective think tanks. But they're very good at advertising themselves by the way, very clever as to how they get their messaging out. So I have found that there's plenty of reliable information. I'm not so sure it's rewarded anymore by both sides and you know, Barney Frank used to have a funny line when he was here. He used to say that anybody who proposed a study had to pass an exam on it in six months. And I think that also happened -- that there's a tendency for Congress, as you know, to farm out its responsibility for a study. It's just hard to bring it back and then confirm a finding that you don't like. So I think it's invaluable and then I will tell you that I thought that the National League of Cities and towns during my time as mayor, the U.S. Conference of Mayors, because you have to work together, you just have to, there's no Democratic position, there's no Republican position on those reports that they document. They were urban positions. So I thought they were very, very good to work with over the years, so there is some precedent I think for honest advocacy still.

Gov. GLENDENING. Can I make a quick observation? Several of the very insightful chemistry, I think there are two things we're talking about: One is the serious research that goes on and the issues and things like this add a lot of that, chairman you're absolutely correct, did end up on shelves and all. As a young academic at the time by the way, I used a lot of the research and data that was gathered by the ACIR in my publications and things like that. I very rarely saw

any member of Congress or the White House standing arms where the ACIR said that this tax reform is where we should be headed, but it was excellent research and excellent material. My concern is and it goes back little back to this issue here: if Congress is perceived as being very strongly ideologically one way or another, and the White House is, and maybe concurrently altogether, as current political situation, then there's this has become another ideological expression of the positions. And there's a second rule beyond the research now, is this a form in which you can truly bring together with different opinions, representing different things, who will build some bit of a consensus within of those groups, because the issues that we're looking at, they're not going to be resolved unless we can start moving some of the major groups toward a consensus. I'm looking at some of these issues like the proposals, and I'll put that word in quotation because they're not refined yet, on infrastructure. But there's a great deal of debate going out there in state and local right now and stay in local contrasts the national and some of the other issues and I thought the comments about marijuana were really appropriate. I've seen through other issues come up, in which for example, marriage rights for gay communities and things of this type, in which eventually enough states adopted something that starts to change the national policy and it's something that has to be emerged and come together. So I think there are two rules. One is very legitimate research rule, but if the research is perceived only as an extension of the political powers of theirs and the second rule, which I personally consider to be more important, is there's no form now to come together with diverse people with the governors in Congress and the White House and the county executives that say, "Hey man, we've got to do something with this infrastructure. Our nation has fallen apart and as long as we're locked into an ideological battle, we're not going to be able to do so." That's what I'm looking for and the question becomes okay, how do you do that in believable way and I understand that especially given the current political. Can I have one footnote by the way? The state ACIR at one time, more than half, I think almost 65% of the states, had little ACIRs they were called, and they served these functions and they actually met nationally, all the little ACIRs would meet and earned this meeting of the ACIR, that's U.S. ACIR. It was actually very productive in terms of bringing ideas back to the states and bringing state ideas up to the national level and that was a role, if something gets going, I hope it stimulates a similar outburst of models of this type back in those years.

Dr. LIPPARD. If I can add a footnote to the footnote, the late Richard Cole did a study in 2010 or 2011, I think it was, of the 27 state-level ACIRs. By that point, there were only 10 left. I went back and tried to track down those 10 this past week. I found mine and I found a very active organization in Indiana and I found some evidence of organizations into other states and that's all I could find.

Ms. HALE. Can I just say one other thing? Just state the obvious, who gets picked for new ACIR, is what will make all the difference in the world. Who the personalities are and do they really want to work in a bipartisan fashion? Because, and as you as outlined and as it was before, the different organizations picked the people, so I would suggest a strong emphasis on going to those organizations and saying we really want this to work. We really only want

people who want to work on these issues and have some kind of success. The last thing I would say is every single White House, whether you're Democrat or Republican, becomes extremely congress centric. Everything in that building starts to revolved around which phone call comes from which chairman or senator or whatever, so bringing in the state and local community is more important than ever and it's a gap in our process these days.

Mr. CONNOLLY. Well, I was going to ask you, Dr. Lippard, a follow-up to one of the questions. Dr. Kincaid warned us that the composition of the Commission could disproportionately lead to an ideological or partisan dominance just by virtue of which party controls whatever. How have you avoided that or have you avoided that in Tennessee?

Dr. LIPPARD. We have mostly. Of course we are bipartisan by statute, both in our legislative members and our local members. Though in Tennessee that becomes more and more difficult to have members from both aisles as we get a bigger supermajority, have gotten a bigger supermajority over the years. But the other thing that we've done I think that's helped prevent any kind of single control of the Commission is we rotate the appointment of these local government members, so they rotate between like I said in my remarks between the governor, the lieutenant governor, and the Speaker of the House. By rotating those members, you tend to get not—if all three of those individuals are at the same party, you might still have a tendency towards nominating from one party but you get different power bases in different positions. You have people from different parts of the state and I think that's an important thing to bake into the structure, some kind of mechanism to ensure that you're not getting everybody from the same region or from just large cities or what have you.

Mr. CONNOLLY. You know, I was thinking about your opening statement Governor Glendening and when you talked about unfortunately the federal government's approach to federalism you said was rigid and inflexible. Any of us who run government at any level have certainly experienced that and I'm thinking the silver line here going out to Dulles Airport. I was intimately involved in it and I remember we wanted to make an amendment to our NEPA process. Well we literally were just moving it a few feet from the center line because of land-use issues. Everything had already been approved under the NEPA process and it was a big debate about whether we had a foul a brand-new NEPA. I think but nothing has changed—nothing has changed! There's no endangered species, there's not a single tree that will be involved, we're literally just moving it three feet this way instead of that way. I think we had to do in the EIS or maybe they finally let us do an amendment, but it was a big deal. It was emblematic of the problem with it's going to cost a gazillion dollars for us to do to comply with this whatever you require of us, and it's going to delay the project further. I mean frankly this one is pretty clear cut and so trying to make the government work better for us without you know, trying to circumvent the intent behind the legislation, I think it's a real challenge but I do think that an ACIR at the federal level could help us identify some of those opportunities and I know we heard it at our previous hearing for the Western Governors. I was



amazed at how much common ground we actually had when I listen to them. I mean there's an ideological political thing but a lot of what they were talking about was just hands on governance and more pragmatic approach to trying to make government work for everybody.

Chairman BISHOP. As we go forward with this, I see the pitfalls of trying to reorganize something if I'm going to reorganize something that's merely academic, it's merely coming up with advisory opinions for policy issues. We're replicating what the committees already do but I also see some need in having something that goes beyond specific topics to more structural issue as to who should be making some kind of decision. How should they be interacting with the other people? And I would like one last question for Dr. Kincaid. You mentioned in there that if you're going to have something, it needs to have clout—I think that's the word you used. How do you do that so it doesn't face the same process of the old ACIR faced?

Dr. KINCAID. The focus is more clear on the issues that it's addressing and it's addressing very specific points within policy areas, would be a way to do that rather than use very broad subjects. You know, research on very broad topics probably going to end up being academic and maybe ideologically polarized but the kind of guy and around that I sensed you felt with the governors , you probably had a number of issues where you could all kind of agree that seems to me the type of thing a new ACIR could focus on. That I think would need to be defined a bit more clearly in a new statute.

Chairman BISHOP. It would have to be very tightly, I'm assuming very tightly tied to the Congress where it goes and what areas of responsibility are asked to then to whom you actually communicate those rich decisions.

Dr. KINCAID. But not overly tightly—if the Commission is going to consist of prominent elected officials including governors and so on, they have to have some autonomy so they're not going to come just for a technical task. So I think there's a fine line to be drawn here. They have to feel they're engaged in something important and part of that importance would be some kind of process whereby you know, their recommendations are actually going to be paid attention to by something and if not, then I think the commissioners is going to run into difficulties.

Mr. CONNOLLY. There is precedent for that, I mean I'm on the Oversight and Government Reform Committee. GAO reports to us. They have a high risk report every year mandated by law and we're mandated to have a hearing on it. We know that every time we do that they're going to remind us how many of their top 50 recommendations we act on. So it's a scorecard for ourselves as well as for them. It works pretty well, that particular model. We have relationships with inspectors general, who come up with reports and

recommendations and we've got to receive them and act on them. We have jurisdiction over that so there is some precedent for doing that. I agree with Mr. Bishop—reporting every five years whether you need it or not—not going to work, if it ever worked, it won't work until they see it. That's a recipe for no accountability if I could see you smiling governor. Dr. Stenberg, last comment.

Dr. STENBERG. Yes sir, it's more than just accountability to Congress and perhaps the executive branch. I think there is an accountability to the appointing authority. I mentioned the importance of the big seven sending their A team to sit on a national commission and what I don't think has happened very much, as kind of a connection between that representation and their policy processes and agendas of the respective organizations, I think that would be a different type accountability. But again from the standpoint of the members of the Commission feeling that their time and talents are valued, not just in Washington with their appointing authorities, could be another tweak of the legislation. It might be worth considering.

Mr. CONNOLLY. I invite you all to take another look at it and give us your best shot at how we might change it or modify it or start over even because we want to try to get this right and we want it to be as bipartisan as ever, recognizing that we need that form you were talking about. That platform for us to have this discussion, this dialogue, and try to protect ourselves from becoming captive of any particular point of view or ideology. We want it to be Governor Glendening word pragmatic, practical. So thank you all so much, my friend Mr. Bishop thank you so much for allowing us to have this session today. Very thoughtful.

## APPENDIX

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HEARING NOTICE & MATERIAL SUBMITTED FOR THE RECORD

**HEARING NOTICE**  
**SPEAKER'S TASK FORCE ON INTERGOVERNMENTAL**  
**AFFAIRS**  
**U.S. HOUSE OF REPRESENTATIVES**  
**WASHINGTON, DC 20515-6128**

**TO: MEMBERS OF THE SPEAKER'S TASK FORCE ON  
INTERGOVERNMENTAL AFFAIRS**

You are respectfully requested to attend an OPEN hearing of the Speaker's Task Force on Intergovernmental Affairs in H-312 of the U.S. Capitol Building:

**DATE:** Thursday, May 17, 2018

**TIME:** 2:30 p.m.

**SUBJECT:** "Restoring the Partnership" (The Task Force will explore the reconstitution of the U.S. Advisory Commission on Intergovernmental Relations)

**WITNESSES:** Dr. Cliff Lippard  
Executive Director  
Tennessee Advisory Commission on Intergovernmental Relations

Dr. John Kincaid  
Former Executive Director of the U.S. Advisory Commission on Intergovernmental Relations  
Robert B. and Helen S. Meyner Professor of Government and Public Service  
Lafayette College

Dr. Carl W. Stenberg, III  
Former Assistant Director of the U.S. Advisory Commission on Intergovernmental Relations  
James E. Holshouser Jr. Distinguished Professor of Public Administration and Government  
University of North Carolina at Chapel Hill

Ms. Marcia Hale  
Former Director of White House Office on Intergovernmental Affairs  
President  
Build America's Future

Gov. Parris N. Glendening  
Former Governor of Maryland  
President  
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Statement from Cliff Lippard, Executive Director, Tennessee  
Advisory Commission on Intergovernmental Relations

Speaker's Task Force on Intergovernmental Affairs

May 17, 2018

Chairman Bishop and members of the task force, I appreciate the opportunity to testify before you today.

My name is Cliff Lippard, and I am the executive director of the Tennessee Advisory Commission on Intergovernmental Relations (TACIR), one of the few remaining state ACIRs. At the height of the intergovernmental movement, over half of the states had ACIRs, all modeled to some degree on the old US ACIR. In my brief remarks, I will share with you some of the characteristics that have contributed to the prolonged success of TACIR, in the hopes that some of those lessons may be useful to efforts to reconstitute the US ACIR. I firmly believe that in this time of shifting priorities and expectations among the federal, state, tribal, and local governments, and the people that they serve, the reconstitution of the ACIR as a permanent federal forum for the study and deliberation of intergovernmental issues would make an immeasurable contribution toward better government.

First, a little background. TACIR was created by the Tennessee General Assembly in 1978 to monitor the operation of federal-state-local relations in Tennessee and make recommendations for their improvement. I've included information on the composition of our membership as an attachment to my remarks, but in short, the Commission is a permanent, bipartisan body

representing the executive and legislative branches of the state, county, and municipal governments, as well as the public. Our members include three statutory appointees—the Comptroller of the treasury and the chairs of our Senate and House Finance Committees. The appointment of most of the local government officials rotates among the Governor, Lieutenant Governor (our Speaker of the Senate), and House Speaker.

The Commission’s permanence, its bipartisan makeup, and its broad representation across branches and levels of state government are important strengths of the Commission and have contributed to its successes and survival. The principal state agency committed to the study and deliberation of state and local government issues, it also creates the only formal venue in the state where all players in the state-local intergovernmental arena can meet in a neutral setting. The Commission’s research process and its quarterly meetings provide a forum for other stakeholders—beyond just elected and appointed officials—to air their opinions and concerns. Even if their position is not adopted by the Commission, stakeholders generally see value in being able to state their position to government officials in a public forum. This perceived value goes a long way toward not “burning bridges.”

By serving as a neutral forum informed by professional research, the Commission has been able to foster collaboration among state and local officials, and has been instrumental in achieving a number of government reforms. In the past year alone, the Commission completed studies requested by the legislature or our members on emergency-911 functionality and funding, state prisoners held in county jails, growth policy, boat titling, and local cooperation when approving payments in lieu of tax (PILOT) agreements. These issuecentered studies are completed along with recurring annual studies on local fiscal capacity to fund education and the state’s public infrastructure needs. All of this is accomplished with the assistance of a small staff and a modest budget. I’ve included copies of recaps of our achievements over the two years of the just completed 110<sup>th</sup> General Assembly in my attachments.

Our work on broadband internet access and adoption provides a good example of the collaborative value provided by the Commission. In preparing our January 2017 report *Broadband*

*Internet Deployment, Availability, and Adoption in Tennessee*, the Commission interviewed or heard testimony from a broad range of federal, state, and local officials, as well as from local utility cooperatives, business interests, and community groups. The Commission used this input to prepare a series of recommendations that focused on supporting and coordinating existing broadband initiatives and on addressing any remaining coverage and adoption gaps by working with the private sector—both for-profit and non-profit—to fill remaining gaps in the manner least costly to taxpayers and without expanding the size of government. These recommendations were widely adopted by the Governor in his Tennessee Broadband Accessibility Act, which passed the General Assembly in 2017.

In closing, I will add that other factors that have contributed to our success include the active participation of our leadership and members. I'll also add that an important limitation of the Commission is that the same structure that supports bipartisan collaboration within and across levels of government also functionally limits the issues it studies to those that are technical and pragmatic. It is unlikely the Commission could reach consensus on issues with strong ideological divides. And even if it did, taking what could appear to be partisan positions would undercut the perceived neutrality of the Commission and reduce its effectiveness. Similarly, because many of the Commission's recommendations are compromises—not just partisan compromises but also compromises between the state and its local governments, between city and county governments, or between large and small local governments—the changes endorsed by the Commission tend to be incremental rather than sweeping.

Thank you chairman Bishop and Representative Connolly for the opportunity to testify for House Bill 534, with qualifications.

My name is John Kincaid. I am the Robert B. and Helen S. Meyner Professor of Government and Public Service at Lafayette College. I was Executive Director of the old ACIR from 1988 to mid-1994.

Enacting the Restore the Partnership Act would be an important acknowledgment by Congress of the need to repair our dysfunctional federal system. However, except for the bill's addition of two tribal members, which I support, and one more state legislator and county officer compared to the old ACIR, the bill virtually duplicates the old ACIR.

This is a problem because the old ACIR was born in 1959 in an era of bipartisanship. It operated most smoothly during that era. Rising political polarization, however, rocked the old ACIR, finally scuttling it in 1996. Polarization is now at an all-time high. Because virtually all public policy is intergovernmental, rebirthing the ACIR with the same mandate will revive polarization. This would miss a great opportunity to think innovatively about a new ACIR.

Polarization might be mitigated by (1) structuring the membership and/or (2) defining a clearer mission.

H.R. 354's appointment process ensures that under unified government, at least 18, possibly 20, of the 30 members will belong to the president's party. If Congress is controlled by the opposite party, at least 16 members will still be of the president's party on a commission for which the bill requires only 13 of 30 members for a quorum. This structure will bypass polarization by allowing party-line votes with as few as 13 members. However, the legitimacy of the products of such votes will be suspect.

A better way to mitigate polarization would be to define a more focused ACIR mission modeled perhaps after the bipartisan CBO. Such a mission could have five key components. A new ACIR could (1) advise the executive and legislative branches on improving the intergovernmental



operations and waiver processes of the White House and federal agencies, especially their IGR offices, as well as (2) advise those branches and state, tribal, and local governments of the intergovernmental consequences of U.S. Supreme Court rulings. It also could identify, study, and make recommendations on (3) extant regulations found to be intergovernmentally problematic, (4) the federal government's 1,216 grants-in-aid, and (5) House and/or Senate bills having intergovernmental impacts. The latter is already implied in Section 6 (3) of H.R. 354. A new ACIR could highlight preemptions, waiver potentials, and intergovernmental administrative issues in pending bills.

To give the new ACIR more clout, mechanisms should be created to ensure that ACIR recommendations are officially incorporated into the legislative process, reviewed by relevant White House staff and agency heads, and even published in the *Federal Register*.

The size of an ACIR staff and its appropriations will depend on the new ACIR's duties. When I left in 1994, ACIR had about 18 full-time employees. I believe the old ACIR's highest appropriation ever was \$2.1 million in FY 1985, which would be about \$4.9 million today. In FY 1994, the old ACIR had one of the biggest budgets in its history, but that was because, in addition to the appropriation, it had revenues from state contributions and publication sales. I assume a new ACIR would function only on congressional appropriations.

My written testimony contains more discrete suggestions. Missing from the bill, for instance, is at least one township representative, who could be nominated by the National Association of Towns and Townships. For mayoral appointments, I would suggest dropping the population threshold to at least 100,000, if not 50,000, because only 13 percent of Americans live in municipalities having 500,000 or more people. H. R. 354 is over-weighted in favor of the minority of Americans living in big cities. I also would suggest dropping to one the number of county representatives from counties having less than 50,000 residents. Appointing two from such counties will overrepresent rural counties. Although most Americans live in small and medium-size communities, they are largely clustered in metropolitan counties.

Again, I support a new ACIR, but more thought could be given to how best to make it truly successful. I thank you for listening.

#### Further Comments on H.R. 354

The new ACIR's Declaration of Purpose is virtually the same as that of the old ACIR. Purposes (1), (2), and (3) have nearly the same wording as Purposes (1), (2), and (3) in P.L. 86-380. Purpose (4) of the new ACIR was purpose (5) of the old ACIR. Purpose (4) of the old ACIR has become Duty (3) of the new ACIR, and purposes (6) and (7) of the old ACIR have become duties (4) and (5) of the new ACIR.

The purposes and duties are laudable, but in today's politically polarized environment, there is ample reason to worry that polarization will hobble a new ACIR consisting of members of both political parties. The old ACIR functioned rather smoothly during the era of bipartisanship but was increasingly buffeted and weakened by rising party polarization after 1980.

Let me offer potential examples. Duty (5) of the new ACIR, which was purpose (7) of the old ACIR, is to "recommend methods of coordinating and simplifying tax laws..." Although the old ACIR produced many tax reports and recommendations, it had very little impact on the intergovernmental dimensions of taxation and no impact on the 1986 Tax Reform Act. Big federal tax laws, such as the 2017 Tax Cuts and Jobs Act, are driven by political forces much stronger than any influence mustered by an ACIR. Consider, too, how an ACIR in 2017 would have split internally over such issues as the deductibility of state and local taxes.

Purpose (4) of the new ACIR, which was purpose (5) of the old ACIR, would require the new ACIR to encourage discussion and study of emerging intergovernmental issues. One such major issue now is state and local taxation of remote mail-order sales. No matter how the U.S. Supreme Court rules in *South Dakota v. Wayfair*, there will be a need for congressional action. But how would a new ACIR handle this issue when some members of Congress and some powerful interest groups oppose such taxation altogether? Even if a new ACIR addressed this issue, there would be conflict over whether local governments that levy sales taxes

should get what they regard as their fair share of remote sales-tax revenues. There might also be conflict over whether the sales-tax situs should be the customer's location or the retailer's location.

How would a new ACIR handle environmental protection in an era when Democratic state AGs sue the U.S. EPA when Republicans are in control and Republican state AGs sue the U.S. EPA when Democrats are in control?

These examples illustrate why polarization would disable a new ACIR. In order to function at all, a new ACIR might have to steer clear of the really important intergovernmental issues facing the country.

Perhaps using CBO as a model, the new ACIR could be given a more focused mandate. Although CBO is structured quite differently than the proposed new ACIR, and it has a more technical mandate, giving the new ACIR a more pragmatic and focused mandate could elicit what the federal, state, tribal, and local representatives on the new ACIR would have in common.

Along CBO lines, it would be useful for a new ACIR to advise the executive and legislative branches on the intergovernmental responsiveness of the White House and federal agencies and viability of their IGR offices. This might be workable because, presumably, state, tribal, and local officials from both parties have a common interest in well-functioning federal agencies. Even so, there would likely be some sniping and grandstanding from ACIR commissioners who belong to the party that does not control the White House.

Because the U.S. Supreme Court has become a major player in the federal system, a new ACIR could study Supreme Court rulings affecting the federal system and make recommendations when necessary on how the federal legislative and executive branches, as well as state, tribal, and local governments, might best address the intergovernmental consequences of such rulings.

Given that both parties claim concern about excess regulation, a new ACIR also could identify, study, and make recommendations to improve extant regulations that are intergovernmentally problematic.

The new ACIR also could study and recommend improvements in the grants-in-aid system. It should be recognized, though, that the old ACIR repeatedly recommended that federal grants be reduced in number through consolidations and block grants; however, the number of grants continued to proliferate from 132 when ACIR began operations to 633 when ACIR ceased operation. As of 2016, there were 1,196 funded categorical grants and 20 funded block grants. The old ACIR also made recommendations to give state and local governments more flexibility to coordinate different grants to meet state and local needs.

A further complication is that Medicaid alone now accounts for more than two-thirds of all federal aid to state and local governments. Hence, the remaining 1,215 grants account for only one-third of federal aid.

Fifth, a new ACIR could identify, study, and make recommendations on House and/or Senate bills that have, or should have, intergovernmental implications. This is already implied in Section 6 (3) of H.R. 354. CBO only examines intergovernmental fiscal impacts and mandates. It only occasionally examines preemptions. A new ACIR could highlight preemptions, waiver potentials, and intergovernmental administrative issues in pending bills.

A more focused mission along these lines might mitigate polarization. Further, these four missions lend themselves to staff analyses. Like CBO, it should be possible to recruit and retain a non-partisan ACIR staff that could frame recommendations for commission approval.

Purposes (2) and (4) envision the new ACIR as a forum for discussion. How will this work? The new ACIR is authorized to hold public hearings and the like. Will it also be expected to publish hearing transcripts, reports, and recommendations? If so, in what forms? The old ACIR issued many reports, all of which were distributed free to libraries and individuals until about 1987, when Congress required the ACIR to charge prices for its reports. If the new ACIR were to issue reports only electronically, it would avoid paper-report costs.

Would the new ACIR be authorized and even expected to conduct some or all of its research through contracts with external researchers?

During my years at ACIR, ACIR increasingly contracted out research for two reasons: (1) it was less expensive than full-time employees, and (2) full-time research staff do not have all the expertise needed to cover changing topics of commission inquiry over the years. A full-time ACIR researcher who is an expert on Medicaid, let's say, will not be of much help when the ACIR turns its attention to highways or environmental protection. Using external researchers under contract seems to be implied in Section 7 (d) (2).

Would the new ACIR be authorized or expected to issue informational reports along the lines, for example, of the old ACIR's annual *Significant Features of Fiscal Federalism*? Many of the old ACIR's reports were solely staff-produced information reports.

During staff preparation of reports and recommendations, the old ACIR hosted small-group "critics' sessions" to which relevant experts and interest-group representatives were invited to critique the drafts and offer revision suggestions. I found most of these sessions to be very informative and productive.

Regarding ACIR membership, one recurring problem encountered by the old ACIR was slow presidential appointments. After the 1992 election when I was executive director, ACIR had ten commissioner vacancies, including the chair. President Clinton did not fill the vacancies until October 1993—although he did meet with the Commission in December 1993 to help reboot it.

As a practical matter in today's polarized environment, NGA will likely recommend governors vetted by the DGA and RGA; hence, the gubernatorial commissioners could be quite partisan.

Having tribal members is a good idea, but why are they appointed directly by the Secretary of the Interior rather than by the President? Would it not be more prestigious for the commissioners from Indian Country to be appointed by the President?

Under Section 4 (b) (5), I would recommend dropping the population threshold to at least 100,000, if not 50,000, because only about 13 percent of Americans live in municipalities having 500,000 or more people. Also, the 2012 Census of Governments reported 19,619 municipalities. Only 33 municipalities have populations of 500,000 or more, and only 307 municipalities have populations of 100,000 or more. The majority of Americans have always lived in cities having 50,000 or fewer residents. So, the proposal for the new ACIR is over-weighted in favor of the minority of Americans living in big cities.

Under Section 4 (b) (6), I would suggest dropping from two to one the number of county representatives from counties having less than 50,000 residents. Appointing two from such counties will overrepresent rural counties. Although most Americans live in small and medium-sized cities and townships, these jurisdictions are largely clustered in metropolitan counties.

It should be noted that the National Association of Towns and Townships, founded in 1976, agitated for seats on the old ACIR. Census reported 16,360 townships in 2012 (compared to 19,519 municipalities). Only about 20 states have townships, but in many of those states such as New Jersey, New York, and Pennsylvania, townships are full-fledged general-purpose municipal governments. I believe they are also treated as such for federal grant purposes.

Under Section 5 (b), will a commission consisting of new appointees be able to choose a chair and vice chair effectively?

Under Section 5 (c), a quorum of 13, which is the same as the old ACIR, will mean that, because the new ACIR will have 30 members, state legislators and local and tribal members only could constitute a quorum. If the new ACIR functions similarly to the old ACIR, the most sporadic attendees will be members of Congress, members of the executive branch, and governors.

The quorum rule should be at least 15, if not 16, members present for a 30-member commission, or 17 for a 31-member commission.

Does the proposed bill need a section on compensation similar to Section 7 of the old ACIR statute?

A new ACIR is much needed, but more innovative thought should be given to making a new ACIR more effective and durable than the old ACIR.

John Kincaid

Robert B. & Helen S. Meyner Center for the Study of State and Local  
Government

Lafayette College

May 17, 2018

**Statement by Carl Stenberg**  
**James E. Holshouser Jr. Distinguished Professor**  
**School of Government, University of North Carolina at Chapel Hill**  
**Before the Speaker’s Task Force on Intergovernmental Affairs**  
**House of Representatives, Congress of the United States**  
**May 17, 2018**

Good afternoon. I am Carl Stenberg, and I appreciate the opportunity to speak on behalf of proposals to reconstitute the concept of the U.S. Advisory Commission on Intergovernmental Relations, and in particular the “Restore the Partnership Act.” I offer a “pracademic” perspective on this subject. Prior to my university affiliations I served for 16 years as an ACIR staff member – as a research analyst and then assistant director for policy implementation – followed by six years as executive director of the Council of State Governments.

I also have been a Fellow with the National Academy of Public Administration since 1984, the year Congress chartered the organization. NAPA offers trusted advice to government leaders on critical management challenges. The Academy’s Intergovernmental Systems Standing Panel has worked to promote better understanding of intergovernmental issues and solutions. NAPA is honored to be among the organizations serving on the Advisory Council to the Task Force, and I understand that the Academy’s President, Teresa Gerton, has communicated with Chairman Bishop regarding recommendations for substantive areas that the Task Force might address. My remarks today are my personal views and do not represent a position of the Academy on the proposed legislation.

In my judgment the “Restore the Partnership Act” is a promising point of departure for rebuilding the federal government’s capacity to address current intergovernmental issues and emerging challenges. It would establish a successor to the former Advisory Commission on Intergovernmental Relations, which for most of its existence was regarded as the preeminent bipartisan, independent organization in the field.

Some federalism observers would likely agree that the time has come to take action to “Restore the Partnership” through a National Commission on Intergovernmental Relations, as I will point out in a moment. In view of changes in the political environment since ACIR’s demise in 1996, others argue that the time for such a body has come and gone and are skeptical regarding its legislative prospects and impact.



## Intergovernmental Relations in Transition

The intergovernmental world has changed dramatically over the past 20 years in at least four ways.

First, so-called “wicked problems” have emerged like climate change, the opioid epidemic, homelessness, infrastructure, and immigration. What is distinctive about them is that addressing these and other challenges requires not just intergovernmental, but intersectoral and interdisciplinary approaches. What has not changed is the programmatic “silo” approach that characterizes federal grant-in-aid programs, much like a picket fence metaphor. So the complexity of problem-solving—horizontally and vertically—has increased substantially.

Second, relationships between and among governments—as well as the “Big 7” state and local associations—have become more contentious. While there has always been a degree of friction between the intergovernmental partners, the dynamics of their world have become more polarized, partisan, and personal. As my colleague on the panel today John Kincaid has observed, we have been in a period of “coercive” federalism.

Third, the number of policy “think tanks” in Washington DC has exploded. Many of these organizations have a philosophical or political point of view, and are less interested in neutral, balanced research and analysis than in finding political support for their positions on issues. The intergovernmental policy field has become more crowded.

Fourth, the role and reputation of governments at all levels have come under the spotlight as citizens point to the failure of these units to perform to expectations. Confidence in governments has steadily declined, and some believe that government is the problem, not the solution. There are no simple or technical answers to basic questions such as Who does what? Who pays the bill? Who is accountable?

In this environment, it is fair to ask whether an organization like the proposed National Commission on Intergovernmental Relations could have a positive impact. But it is also important to recognize that a new commission is only one step—albeit an important one—toward establishing intergovernmental common ground and finding ways to convene and collaborate on that work. NAPA President Teresa Gerton’s letter presents some recommended additional steps that the Task Force might consider.

My frame of reference for addressing this question is a book I co-edited on *Intergovernmental Relations in Transition* that was published by Routledge in March. Two of the contributors—Governor Parris Glendonning and Professor

John Kincaid—join me on this panel. A promising trend noted by several contributors was the “resurgence” of intergovernmental relations after more than two decades of “deinstitutionalization.” At the national level, among the examples were the establishment of the Department of Homeland Security, financial responses to the Great Recession such as the American Recovery and Reinvestment Act, and enactment of high profile domestic legislation like the No Child Left Behind Act and the Affordable Care Act. These and other domestic initiatives call for better consultation, collaboration, and coordination among the partners to enhance efficiency, effectiveness, and equity in program development and delivery. So how can this be done?

With help from Professor Kincaid, my co-editor and I framed a number of “Big Questions” in the introduction and invited the contributors to respond. One of the “Big Questions” was: “How important is the absence of institutions that monitor intergovernmental trends and developments, convene meetings, and conduct research to the health of the federal system?” Will the need to rebalance the federal government’s financial and programmatic roles call for more and sustained attention to intergovernmental management?” In response, several of the contributors expressed concern about the “unraveling” of intergovernmental relations, in part due to this void, and recommended that it be filled. They expressed concern that proposed federal budget reforms, reorganizations, program eliminations, and domestic legislative initiatives have potentially significant impacts on states and localities, which are not well appreciated and often not even considered in the policy-making and legislative processes. An ACIR-type organization could further understanding of intergovernmental consequences and impacts, and improve program design. In the conclusion we summarized the contributor’s views as follows: “They recognize that there is a need for such capacity...although they are skeptical that an organization similar to the former ACIR could be established in the current political environment...While the creation of a Task Force on Intergovernmental Affairs....and appointment of ‘Big 7’ representatives to an Advisory Council was encouraging news, whether this body will be successful in filling the intergovernmental consultation void remains to be seen.”

### [Restore the Partnership Act](#)

With respect to the proposed legislation, much of the bill reflects the mission, organization, and functions of the former ACIR. I have a few questions and suggestions to offer for the Task Force’s consideration.

**Section 3:** The four charges to the National Commission are important and distinctive purposes. With respect to (2), perhaps consideration should be given to adding “regulations.”

**Section 4:** The expanded membership, to include two tribal officers as well as a fourth state legislator and county official, gives majority representation on the National Commission to non-federal members with appropriate political and geographical composition balance factors in (b). Tribal representation on ACIR was advocated for several years but not implemented. These additional members together with those from state and local governments, would help ensure grassroots representation but could risk the Commission being labeled as a “state and local lobby group,” as was done in ACIR’s waning years when there was lackluster participation by the federal representatives.

**Section 5:** The rationale for the National Commission’s membership designating a Chairman and Vice-Chairman, instead of the President, could be reexamined. As a practical matter, the time involved with members becoming acquainted, building trust, and demonstrating meeting management skills could delay the selection process. Also, if Commission designation of the leadership remains in place, should there be provision for rotation among the different categories of membership?

**Section 6:** The Commission’s duties are important and wide-ranging and the amount of attention to be devoted to each is flexible. One possible missing duty, however, involves improving the management and performance of federal aid programs, which was one of the main focus areas of ACIR for several years (see *The Intergovernmental Grant System: An Assessment and Proposed Policies* series). Of course, both OMB and GAO work in this area, but with a federal not necessarily intergovernmental perspective.

**Section 10:** It is not clear from this language whether the National Commission may accept funds from federal agencies. This was an important source of financial support for the ACIR from time-to-time that enabled hiring of additional staff and consultants to enrich and accelerate the pace of research projects, such as the above series.

### Lessons Learned from ACIR

In closing, I would like to share some thoughts on three lessons learned from ACIR’s 37-year record which might be helpful in moving forward should the “Restore the Partnership Act” be enacted.

First, the federal members of the National Commission should be committed to and value intergovernmental consultation and engagement.

Professor Kincaid has asked who are the federalism “champions” in Congress and how could serving on a body such as the National Commission be valued by Representatives and Senators who likely will receive no political credit for their service? Outside of the members of this Task Force, attention should be given to identifying “champions,” perhaps former state or local elected officials now serving in Congress, and what message should be delivered about the value-added by their active participation. A key factor responsible for the success of ACIR’s start-up was the engagement of congressional representatives like Representative L.H. Fountain and Senator Edmund Muskie.

Second, strong support from the “Big 7” is crucial. Five of these organizations nominate representatives for appointment. It is essential that they be high quality candidates who appreciate bipartisanship and collaboration, and who can think and act outside of their respective jurisdictional and programmatic silos. Another reason for the demise of ACIR was lack of support from the “Big 7.” Including these organizations on the Task Force’s Advisory Council was a wise decision, and it sends an important message that they are not just another special interest group.

Third, a key factor for the success and perhaps survival of the National Commission will be the research agenda that it undertakes. The challenge is to identify research subjects that are timely and relevant, but not too close to the political fray. For the most part, ACIR was able to do this well – such as its research and policy recommendations on counter-cyclical federal fiscal assistance, which led to General Revenue Sharing; and on block grants, substate regional coordination of grant applications, and federal aid simplification and management improvements, which supported OMB Management Circulars; and on federal preemption and unfunded mandates, which strengthened the case for the Unfunded Mandate Reform Act. Also important were information reports (without recommendations) on *Significant Features of Fiscal Federalism* and on the numbers of categorical grants, which were unavailable elsewhere and were highly valued by ACIR’s stakeholders. In addition to the National Academy of Public Administration’s suggestions, the advocacy agendas of the “Big 7” reveal some common policy areas such as infrastructure and workforce development. A third source is GAO reports that have identified program duplication, agency overlap, and high risk management areas that could serve as a point of departure for consideration of intergovernmental remedial actions.

All three of these factors influenced the decision to defund ACIR as part of a Congressional effort to reduce costs by eliminating small agencies.

Undertaking a politically sensitive research project (even at the behest of Congress) like federal mandates reform aroused special interest group opposition. Coupled with the lack of support for continuation from the Clinton administration and the “Big 7” created a “perfect storm” for deinstitutionalization.

In closing, I want to share a quote from our book on the state of intergovernmental affairs by Donald Borut, former executive director of the National League of Cities: “The challenge for those representing state and local governments is the apparent disinterest, lack of understanding, and diminished priorities members of Congress have for intergovernmental relations and the direct and indirect consequences of their decisions on states and localities. Federalism does not appear to be a lens through which legislation is considered.”

Representative Connolly’s Restore the Partnership legislation is an important but not sole step for increasing intergovernmental cooperation and coordination. “Putting the ‘R’ back in IGR” would send a welcome symbolic and substantive message that there is an important connection between the federal government, states, local governments, and tribes.

Testimony of Marcia L. Hale  
President, Building America's Future  
Before the Speaker's Task Force on Intergovernmental Affairs  
Restoring the Partnership  
May 17, 2018

Good afternoon, Chairman Bishop, Congressman Connolly, and members of the Task Force. Thank you for the invitation to appear before you today and for the opportunity to discuss the possibility of reconstituting the U.S. Advisory Commission on Intergovernmental Relations. I commend you for your interest in improving collaboration between all levels of our government and hope that today's hearing will provide you with some helpful information and insight.

During my career, I have worked at various levels of government – a city hall, a county planning commission, a Governor's Washington DC office and the U.S. House, Senate, and White House. Presently, I am the president of ***Building America's Future***, a bipartisan, non-profit, national infrastructure coalition founded by Mike Bloomberg, Ed Rendell, and Arnold Schwarzenegger. Several years ago, we added Ray LaHood as a national co-chair. Our membership is comprised of state and local elected officials from around the country. ***BAF*** advocates for bringing about a new era of investment in infrastructure to enhance our nation's prosperity, economic growth, and international competitiveness. We are working to advance common-sense ideas and policies to address the challenges facing the country in terms of building and rebuilding our infrastructure. We believe we need to identify and implement long-term and sustainable funding sources and embrace advances in technology that will make our infrastructure more efficient and resilient.

As Assistant to the President and Director of Intergovernmental Affairs at the White House during the Clinton Administration, I was a Clinton appointee to ACIR. We found the work of the Commission to be very beneficial. Perhaps the most constructive component was having the ability to hear the views of various appointed and elected officials at all levels of government. To truly understand the impact of actions taken in Washington on states and localities, it was always important to listen to elected officials from across the country. It was critical that ACIR operate as a bipartisan organization. I would stress that it would have not worked otherwise. I worked closely with several of the members of the commission, Democrats and Republicans alike, on issues that we all cared about.

There are many issues that a reconstituted ACIR could consider. Finding a way to provide a forum for discussing the coordination of federal programs that impact local governments is important. Obviously, appointing the right membership is crucial. Those appointed should want to work in a bipartisan and collaborative way to solve problems for ACIR to be effective. Too often in the world we live in today our first instincts are to go to our partisan corners, as our levels of government have no permanent established entity for consensus building. However, discussion amongst Democrats and Republicans – and at all levels of government – might improve our legislative responses to serious issues the country is facing.

I would like to suggest, if you reconstitute ACIR, that you consider working first on issues where there is common ground between the parties, but also where there is a pressing need to legislate solutions for the future.

The rapid advancement of technology is impacting every American. The way this is changing how we commute, travel, and interact with each other might be an appropriate area to work on in the near-term. I urge you to choose a few issues where we haven't (yet) gone to our partisan corners and try to advance some common-sense solutions. Look at issues within health care, immigration, energy, transportation or several other areas where new issues have arisen and will need to be dealt with at all levels of government. Ask Mayors and Governors what problems they would most like to become a topic of discussion. For example, we are facing challenges over the next several years regarding autonomous vehicles, drones, and numerous other infrastructure and transportation related issues. Many of these issues require new thinking and bipartisan solutions informed by the elected leaders who will need to implement policies in their cities and states.

To expand upon that, and as a specific example, we are fast approaching a time when autonomous vehicles will be introduced into our transportation system. What safeguards need to be built into our systems? How will Washington legislate and how will local communities need to respond to this legislation or regulation? How will autonomous cars integrate into our highways and cities? We will undoubtedly have cars with drivers and autonomous cars sharing our roads and highways. What about the transition period – the next 5-10 years? And what is needed beyond that? Imposing federal solutions on Mayors and Governors without their input is likely to cause friction and inefficiencies. But the reverse is also true. Reaching out to state and local elected officials and working in collaboration with federal elected and appointed officials through a new ACIR could help move solutions that are beneficial to all. As states and cities legislate on potentially contentious issues, greater cooperation and communication with federal officials would be beneficial.

Another issue within the infrastructure arena is the standardization of public-private partnerships. We live in a world of scarce resources. We need to streamline the PPP process to enable the private sector to participate more fully – where appropriate – in building and rebuilding our U.S. infrastructure. Not all projects lend themselves to private participation, but where it is appropriate, we should simplify the process. A bipartisan discussion including all levels of governments and viewpoints could move this public policy issue along.

An interesting example of bipartisanship at the mayoral level is instructive. Mayor Steve Benjamin (Columbia-SC) and Mayor Bryan Barnett (Rochester Hills, MI), the Democratic president and Republican vice president respectively of the U.S. Conference of Mayors, have agreed to a two-year bipartisan strategy – the first time in decades that this has happened. The two mayors decided on a joint platform and announced they intend to work in a bipartisan manner as they implement a shared agenda. A change in the Conference leadership next year should not slow the progress on important issues. Both mayors, and one assumes the entire membership of USCM, believe this is a better way to advocate for the issues they are most concerned with when they come to the Congress and the White House.

Again, I congratulate you on your willingness to pursue this issue. I believe the country is looking to elected officials across the country to solve our most pressing issues. Citizens are tired of the endless discussions and arguments. Establishing an entity that allows for greater understanding of the impact of federal legislation on cities and states could help our discourse.

Asking Mayors and Governors to participate in the shaping of federal legislation will advance consensus and cooperation. I stand ready to be of assistance and applaud you for your work on improving the intergovernmental relationships in this country.





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To: Chairman Rob Bishop and Representative Gerald Connolly, Speaker's  
Task Force on

Intergovernmental Affairs

From: Parris N. Glendening, President, Smart Growth America's  
Leadership Institute

Date: May 17, 2018

Re: Hearing on "Restoring the Partnership"

Chairman Bishop and members of the Speaker's Task Force on Intergovernmental Affairs, thank you for the invitation to offer some observations about restoring the partnership in the intergovernmental system. More importantly, thank you for the Speaker's and your attention to this very important issue.

I am pleased to be here with my panel colleagues, some of whom I have worked for over 50 years on the academic study and the practice of intergovernmental relations.

My comments are based on my chapter in the Stenberg and Hamilton book *Intergovernmental Relations in Transition*, and on a panel discussion on this topic just two weeks ago at the University of Maryland, Baltimore. To assist the Task Force and staff I have submitted a copy of the complete chapter as back up testimony.

The American federal system is one of the great contributions to the philosophy and practice of human governance. Over the course of the last 225 years the debates, struggles, and even battles over the federal arrangement have been many. It was only with the emergence of the many New Deal programs of the 1930s designed to overcome the Great Depression that discussion moved from a predominately philosophical,

constitutional, and legalistic study of American federalism toward an understanding of policy and process. Questions about how our brand of federalism actually worked, how it could work better, how policy is formulated and implemented, and how we could solve the great challenges of not just our federal arrangement but also and more urgently, the problems facing our nation started to dominate the conversation.

By the 1980s there was a broad array of organizations working to study and to facilitate the operations of the intergovernmental system. This included, among others, the White House Office of Intergovernmental Affairs (renamed over time), the Office of Management and Budget's Division of Federal Assistance, the General Accounting Office's Intergovernmental Relations Unit, the House and Senate Subcommittees on Intergovernmental Relations, and offices of intergovernmental relations at almost every major government agency. First among these organizations was the U.S. Advisory Commission on Intergovernmental Relations (ACIR).

The rise and fall of the ACIR (1959 to 1996) reflected the level to which intergovernmental relations was thought of as a system. The real emphasis on intergovernmental discussions and analysis, coordination, and implementation was mirrored in the vitality and then decline of the ACIR and the many similar organizations in the national government.

It is hard to imagine resolution of major challenges, conflicts, and crises facing this country without having a flexible, innovative, and effective intergovernmental system. Think about the challenges of growing income inequality, major climate disasters, extraordinary infrastructure needs, a broken health system, and an income expenditure system that is totally out of balance. The solutions to many of these "mega challenges" require the resources of our national government through a well functioning intergovernmental system. That is, a system that facilitates communication, coordination, compromise, and partnered program implementation.

During my 31 years in elected office I personally saw the intergovernmental system work — and work well. First elected in 1973 to the Hyattsville City Council, I quickly learned that a town of only 18,000 people in metropolitan area of 5 million meant that Hyattsville's success is very much dependent on intergovernmental alliances. For 20 years, including 12 as elected County Executive, I helped lead Prince George's County, MD, where public policy was a series of intergovernmental conversations, compromises and agreements. Most visible was the completion of the Metro subway system in Maryland and Prince George's County. It was during those years that I actively

participated in and led many of the intergovernmental organizations that helped make government successful and effective, including chairing NACo's Large Urban County Coalition and the National Council of County Executives.

In 1994, I was elected for the first of two terms as Governor of Maryland. As the intergovernmental part of my life grew, there was also a noticeable change. Intergovernmental interactions moved more from collaboration, conciliation, and defensive struggles to being much more combative and frequently very partisan. During this period the ACIR and many similar organizations were either phased out or abruptly ceased existence.

It was in this challenging time for intergovernmental relations that I assumed leadership in a number of national organizations, including Chair of the National Governors Association (2000-2001), President of the Council of State Governments (2001-2003), and a number of more specialized groups such as the Southern Governors Association and the President's Homeland Security Advisory Council (2002-03), which was chaired by my partner in many intergovernmental activities, Department Secretary and former Pennsylvania Governor Tom Ridge.

I outline this intergovernmental perspective from my more than 30 years in elected office not as a stroll down memory lane but as a framework for understanding why the increasing lack of focus on an intergovernmental system is dangerous and produces very poor policy outcomes. Most importantly, that lack of focus increasingly makes it difficult to implement fundamental changes that are needed to address the biggest problems facing our nation.

In 1977, Mavis Mann Reeves, my co-author of *Pragmatic Federalism*, a widely used college text book on intergovernmental relations, and I wrote:

"... American federalism is pragmatic. We believe that the intergovernmental relations within the system are constantly evolving, problem solving attempts to work out solutions to major problems on an issue-by-issue basis, efforts that produce modifications of the federal and intergovernmental system... As each shift or level or modification of program occurs adjustments are made to accommodate to it, thereby creating more change. The elasticity of the arrangements helps to maintain the viability of the American system. In other words, it is pragmatic." (Glendening and Reeves, 1977, vii)

Today, 40 years later, that level of optimism, in all candor, no longer exists. Instead of being pragmatic, the federal arrangement has become rigid and inflexible. The intergovernmental system is increasingly weak

and unable to address many key issues. Economic disparities continue to increase to dangerous levels as the federal system fails to offer relief on a collective basis, and state and local governments are often unable to do so individually. The revenue system has become so flawed that even the simplest task of road and transit maintenance becomes undoable.

Much of this is the outcome of dramatic changes in the American political process. A portion of the cause of this collapse of the system, however, is the increasing lack of a focus on the intergovernmental system itself. With no ongoing forum for debate or resolution of issues that require intergovernmental consideration, and a lack of serious analysis of the intergovernmental implications of major decisions, it is not surprising that the pragmatic federalism of just a few years ago is rapidly disappearing.

The system can work! I have seen it work both on projects and programs. My most extensive experience in an intergovernmental project was the Woodrow Wilson Bridge reconstruction. The bridge carries roughly 250,000 vehicles per day across the Potomac River as a portion of Interstate 95. As both County Executive and Governor, I was deeply involved in the reconstruction process. The intergovernmental actors included 29 federal agencies working through an Interagency Coordination Group. In addition to the U.S. Department of Transportation and its agencies, entities as diverse as Fish and Wildlife, the Coast Guard, and the Environmental Protection Agency worked with Maryland, Virginia, the District of Columbia, and the impacted local governments.

Meetings were often complicated, tough and personal. Much more was at stake than the normal questions of who was paying what share. The very vision for the future of the Washington area was on the table. Being “Metro ready,” access for pedestrians and bicyclists, and design features like “bump outs” were hotly contested by Maryland and Virginia. Three presidential administrations (George H.W. Bush, Bill Clinton, and George W. Bush), helped move the project through the intergovernmental maze with the help of heads of White House Offices of Intergovernmental Affairs — Jane Plank and Marcia Hale, the latter with us here today.

Another success of the intergovernmental system on the program side was the proposal during the Clinton Administration to make significant changes to the six decades old welfare program. I worked on the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Welfare Reform). Governors, mayors and county executives were all involved in the vigorous debate. Many of the meetings were at the

White House with high-level members of the Administration. In the end many people were still unhappy with the legislation. Most, however, would agree that opportunities were offered for meaningful input and that we saw modifications in the final program reflecting many of our concerns.

An adequate level of intergovernmental involvement has been absent from discussion of many key policy issues before us today. Witness the unitary decision-making on environmental rule changes, tax reform, immigration policies and infrastructure proposals to name just a few.

Two weeks ago on a panel on intergovernmental relations with former Maryland Governor Bob Ehrlich, I summed up my comments with this rather dark statement: “The absence of an intergovernmental system, which would facilitate communication, coordination, and compromise combined with the extraordinary negatives of current political debate are bad for policy, bad for our politics, and bad for our country. And this from a normally very optimistic person!”

Moving today to a more optimistic conclusion, I find it necessary to reaffirm a call I made in 2013 to the Council of State Governments — a call for the creation of an intergovernmental relations think tank. It has been recommended in several recent reports that we backfill with advisory panels and organizations that are intergovernmental in nature, or perhaps create a new Advisory Commission on Intergovernmental Relations. While agreeing with the general conclusion, I strongly recommend, however, that such an entity be outside of government — not even a quasi-government agency. It should be an independent, freestanding “think tank” similar to the Cato Institute or the Brookings Institution or based at a major university or a consortium of universities. An alternative location might be at an existing independent organization like the National Academy of Public Administration (NAPA). For full disclosure, I am an elected Fellow of NAPA.

As an eternal optimist, I affirm that we are a strong nation. We will solve our problems. We have collectively faced bigger challenges in the past than those before us now. We faced those challenges and emerged an even stronger country.

We will best do so. However, if we remember that we are a federal system and depend on a well functioning intergovernmental system. Thank you.

## 15 American Federalism without a System of Intergovernmental Relations

*Parris N. Glendening*

The American federal system is one of the great contributions to the philosophy and practice of human governance. The debates, struggles, and even battles over the federal arrangement have been many. This discourse has continued unabated for more than 225 years, and the temper has surged or lagged depending on the crisis of the moment.

It was only during the 1930s with the emergence of the many New Deal programs designed to overcome the Great Depression that discussion moved from a predominately philosophical, constitutional, legalistic study of American federalism toward an understanding of policy and process. Questions about how our brand of federalism actually worked, how it could work better, how policy was formulated and implemented, and how we could solve the great challenges of not just our federal arrangement but also and more urgently, the problems facing our nation started to dominate the conversations.

Born of these discussions was a brand new field of study: American intergovernmental relations. What emerged was not just a new area of academic study. It was an opportunity to understand both how the system worked and how it could be improved. How could our nation implement policies to address the great issues facing America and still maintain the strength and innovation that came from our constitutional structure?

So extensive did the studies on the process of the intergovernmental system become that recent writings are less likely to start as I did for this essay by noting the contributions of the "American federal system." Instead it is far more common and appropriate to note: "The American intergovernmental system was one of the great inventions of the country's Founding Fathers," as colleagues and I observed in 2013 (Rosenbaum, Glendening, Posner, and Conlan 2013).

This massive body of research and literature on American intergovernmental relations is well referenced by others in this book and elsewhere and need not be repeated here. As important as this great collection of academic research and insights was, the real change was the growth of new institutions, organizations, and centers all set up to make the intergovernmental system better.

By the 1980s there was a broad array of organizations working to study and to facilitate the operations of the intergovernmental system. This included, among others, the White House Office of Intergovernmental Affairs (name differed over the years), the Office of Management and Budget Division of Federal Assistance, the General Accounting Office intergovernmental relations unit, the House and Senate Subcommittees on Intergovernmental Relations, and offices of intergovernmental relations in almost every major government agency. First among these intergovernmental centers was the U.S. Advisory Commission on Intergovernmental Relations (U.S. ACIR). The rise and fall of the ACIR (1959 to 1996) reflected the level to which intergovernmental relations was thought of as a *system*. The real emphasis on intergovernmental discussions and analysis, coordination, and

implementation was mirrored in the vitality and then decline of the ACIR and the many sister organizations in the national government (Kincaid and Stenberg 2011; McDowell 2011).

During this time, more than half of the states organized state commissions on intergovernmental relations, "little ACIRs," as they became known. These commissions not only worked on intergovernmental relations within their state and relations with the federal government but also often met with sister commissions from other states. The U.S. ACIR urged the establishment of a network of state commissions, the first meeting of which was held in Charleston in 1983. The network subsequently met once or twice a year often concurrently with a U.S. ACIR meeting.

Both the network and the state intergovernmental relations commissions shared the fate of the national intergovernmental relations organizations and slowly faded away, often the result of increasingly hostile and very partisan struggles. A 2010 study by the Council of State Governments—a strong supporter of the state commissions and of creating the network—concluded that the "dynamics of intergovernmental relations today, especially at the state and local level, have shifted from what might be described as coordination and cooperation to competition and adversity . . . In such a climate, the value of the perspectives that commissions contribute to the intergovernmental area is greatly diminished" (Wall 2010). Today there are only 10 such commissions still in operation.

This chapter focuses on American federalism without a system of intergovernmental relations. The implications are important and far-reaching. They are important not only from an academic and research perspective. They are far more important from a policy perspective as we try to address the urgent and significant issues confronting us today.

It is hard to imagine resolution of the major challenges, conflicts, and crises facing this country without having a flexible, innovative, and effective intergovernmental system. Think about the following: Growing income inequality and inequity with unacceptable numbers of citizens in real poverty at a time wealth continues to be concentrated at an unprecedented rate; racism and the explosive conflicts between authority and community; and a continuing deterioration of the environment with the certainty of increasingly violent and frequent climate change-produced disasters necessitating unprecedented mitigation and resiliency efforts. To this list could easily be added: the concerns about an immigration system that neither protects fully the security of the country nor insures the future of our newest arrivals; a revenue system that is so dysfunctional it cannot produce the funds to meet the most basic services and instead finds solutions in passing on costs to other levels of government and/or future generations; and the alarming lack of investment in infrastructure to the point that the nation's roads and transit, water and waste water treatment, etc. are rapidly falling behind much of the developed world.

The solutions to many of these "mega challenges" call out for the resources of the national government and nationwide regulation, enforcement, and compliance. In other areas the decentralized work of a smoothly functioning federal system can bring about needed innovation, experimentation, and diversity of policies. In most instances, it will be a combination of both approaches that works best.

### **Personal Observations on the Disappearance of the Intergovernmental System**

The following are personal observations from my roles as an academician, elected official, and non-profit environmentalist about the rise and fall of the focus on an intergovernmental *system*

and some thoughts about a future without that focus. The observations are based not on traditional rigorous academic research but instead on personal real world experiences. The importance lies not in specific events or individual experiences, but rests in understanding what has happened to the study and operation of the intergovernmental system. What are the implications for our federal arrangement and for policy-making and problem-solving in the United States today?

For a young political scientist entering the profession in the late 1960s and early 1970s academia was an exciting place, particularly if you had a deep interest in American federalism and intergovernmental relations, as I did. It was a time of insightful new analysis and models, of serious scholarship that stood on the shoulders of encyclopedic works like W. Brooke Graves' *American Intergovernmental Relations* (Graves 1964) and the emergence of centers and journals devoted to intergovernmental studies. In a burst of enthusiasm, my new-found University of Maryland colleague and co-author, Mavis Mann Reeves, and I proceeded to write a leading textbook on federalism and intergovernmental relations, *Pragmatic Federalism* (Glendening and Reeves 1977) and to author dozens of articles and conference papers on the subject.

The academic research and writing were quickly enhanced and understandings deepened by my appointment and subsequent re-election to the Hyattsville, MD City Council in 1973. Hyattsville is a small (18,000) Washington, DC community nested among dozens of similar municipalities in the suburbs of the nation's capital. I learned quickly that being only 18,000 people in a metropolitan area of 5 million meant that the City's success is very much dependent on intergovernmental alliances.

The following year I was elected to the first of two four-year terms to the Prince George's, MD County Council and then to 12 years as elected County Executive. This extraordinarily diverse county of about 700,000 was in a constant series of intergovernmental conflicts, initiatives, and innovative experiments during these 20 years. Major examples included ending federal court ordered forced "bussing" designed to desegregate the public schools, insuring the completion of the "Metro" subway lines in the County at a time when the federal government and the region appeared to be moving away from finishing construction, and the ongoing violence resulting from the crack cocaine drug wars of the 1980s and the resulting conflict with both federal agencies and the District of Columbia. In many ways, it was a challenge of surviving and prospering when Prince George's, the region's poorest and most racially diverse suburb, was bounded by two of the wealthiest, most prosperous counties in the Nation—Montgomery County, MD and Fairfax County, VA.

It was during those years that I actively participated in and led many of the intergovernmental organizations that helped make government successful and effective. At the national level I served on the National Association of Counties (NACo) Board of Directors and on a number of key task forces and committees. As County Executive I served as Chair of the NACo Large County Coalition and then as President of the National Council of Elected County Executives (now called County Executives of America).

Intergovernmental relations had an overwhelming presence in my daily activities during this period. I not only served as the President of the Maryland Association of Counties (MACo), but also participated actively on many key state commissions, task forces, and study groups, including those on education funding, election law revision, and block grants among others. As an active regional leader, I headed a number of regional organizations such as the Metropolitan Washington Council of Governments, the Chesapeake Bay Commission (3 Bay states, DC and the U.S. Environmental Protection Agency), and the Critical Areas Commission (MD Chesapeake Bay



front local governments and the State). Significant regional environmental collaboration was achieved through careful intergovernmental negotiations among these groups.

In 1994 I was elected for the first of two terms as Governor of Maryland. The intergovernmental part of my life heated up even more. There was, however, a noticeable change. Intergovernmental interactions moved more from collaboration, conciliation, and defensive struggles to being much more conflictual with often-intensive bitter battles, frequently very partisan. During this period the U.S. ACIR and many like organizations were either phased out or abruptly ceased existence.

It was in this very challenging time for intergovernmental relations that I assumed leadership in a number of national organizations. Among these were the most visible players for state-focused intergovernmental relations, such as National Governors' Association (Chair, 2000–2001), Democratic Governors' Association (Chair, 2001–2002), and the Council of State Governments (President, 2001–2003). I was also an active participant in many other more specialized intergovernmental organizations during this time of extraordinary change in the processes of our federal system. Examples include the Southern Governors' Association, the Education Commission of the States, Southern States Energy Board, Southern Regional Education Board and, shifting focus considerably, completed my elected office tenure serving on the President's Homeland Security Advisory Council (2002–2003). The Council was chaired by former Pennsylvania Governor Tom Ridge, my Republican ally in protecting the Chesapeake Bay.

I outline this intergovernmental perspective of my more than 30 years in elected office not as a "stroll down memory lane" but as a framework for understanding why the increasing lack of focus on an intergovernmental system is dangerous and produces very poor policy outcomes. Most importantly, that lack of focus increasingly makes it difficult to implement fundamental changes that are needed to address the biggest problems facing us, most pointedly for this discussion:

- growing economic inequality and inequity;
- crumbling infrastructure; and
- continuing decline of the environment.

Here I offer a link between observations as a young academic student of federalism and intergovernmental relations and a veteran of many intergovernmental struggles. In 1977 Mavis Mann Reeves and I wrote a very optimistic assessment of how our system worked:

We write from a point of view—the view that American federalism is pragmatic. We believe that the intergovernmental relations within the system are constantly evolving, problem-solving attempts to work out solutions to major problems on an issue-by-issue basis, efforts that produce modifications of the federal and intergovernmental system . . . As each shift of level or modification of program occurs adjustments are made to accommodate to it, thereby creating more change. The elasticity of the arrangements helps to maintain the viability of the American system. In other words, it is pragmatic.

(Glendening and Reeves 1977: viii)

Today 40 years later that level of optimism no longer exists. Instead of being pragmatic, the federal arrangement has become rigid and inflexible. The intergovernmental system part of it is increasingly weak and unable to address many key issues. Economic disparities continue to increase to dangerous levels as the federal system fails to offer relief on a collective basis and state and local

governments are often unable to do so individually. The revenue system has become so flawed that even the simplest task of road and transit maintenance becomes undoable.

Much of this is the outcome of dramatic changes in the American political process. A portion of this collapse of the system is the increasing lack of a focus on the intergovernmental *system* itself. With no ongoing forum for debate and resolution of issues that call out for intergovernmental resolution and lacking a serious analysis of the intergovernmental implications of decisions it is not surprising that the pragmatic federalism of just a few years ago is rapidly disappearing.

### Where Are We and How Did We Get Here?

From the beginning of the Republic there has been constant debate about the proper roles for the central government and the states. At times, philosophical and constitutional, at other times descriptive and analytical, and almost always highly political and partisan, Americans have argued and fought over the limits of national power and the role of the states. Our governance arrangement moved from the state dominance of the federal system in the early years of the Republic and again during the 1920s to the great centralization of the New Deal in the 1930s. So abrupt were the changes in the 1930s that many observers expressed sentiments similar to scholar and policy leader Luther H. Gulick's assessment:

Is the State the appropriate instrumentality for the discharge of these sovereign functions? The answer is not a matter of conjecture or delicate appraisal. It is a matter of brutal record. The American State is finished. I do not predict that the States will go, but affirm that they have gone.

(Gulick 1933: 420)

Although the focal point of power swung back and forth like a giant centralization/decentralization pendulum, inexorably it moved toward greater central power during the next 50 years. Driven by the pressures of new programs to end the Depression, protect Civil Rights, provide senior health care (Medicare), the demands of a federal urban policy and the War on Poverty, the beginning of national environmental programs, the constant international crises of World War II, the Korean and Vietnam Wars, the emergence of the Cold War and the Nuclear Age, and the ongoing struggle against terrorism, it seemed to many that perhaps Luther Gulick's assertions would be realized.

It was in the 1980s, and continuing into the 1990s, that the constant growth of federal presence and power began to lessen. Limits on national government growth in recent years have moved to the point that historical arguments of "States Rights" are increasingly used to justify opposition to programs as far-ranging as clean air regulations, the Affordable Care Act (Obama Care) or high speed rail construction. Some rhetoric became so heated that in the 2008 presidential campaign candidate Governor Rick Perry gave a near endorsement of Texas leaving the Union.

Discussion of the proper role of different levels of government and which government should have primary concern for a particular function are legitimate and, indeed, expected and healthy for the system. A key concern here, however, is the erosion, in some ways the disappearance, of a focus on the intergovernmental *system*.

Starting with the Reagan Administration, national programs were reduced, eliminated, devolved to states and local governments, or transferred to the private sector. This pace has continued,

even accelerated. As these changes were made most of the mechanisms of the intergovernmental relations *system* were also set aside.

As programs were reduced, ended, or transferred and the research, data centers, and discussion forums were closed, the academic study of intergovernmental relations declined dramatically. This, however, is not the real loss. Far more important is the absence of an ongoing forum or process to discuss intergovernmental issues. As John Kincaid and Carl Stenberg (2011: 158) noted, "Intergovernmental deinstitutionalization occurred across the board during the 1980s and 1990s." In many ways, the intergovernmental part of major crises facing the country today and the programs advanced to resolve them are as great and even more complex than ever.

Three major issues discussed below—the growing economic inequality in the nation, the challenge of meeting our infrastructure needs, and the urgent need to solve or at least mitigate our many environmental crises—are all at their heart intergovernmental issues. Most the current discussions about the resolution of these challengers are totally devoid of any real intergovernmental analysis. Solutions are advanced at one level of government without any serious consideration of the impact on other levels of the federal partnership. Programs and costs are routinely off-loaded to other governments or left to future generations to solve and finance. In many areas no solution is advanced while fingers point to others to blame.

It is almost as if in the heat of policy debates it is temporarily forgotten that America is a federal system and that major policy decisions by one level of government often impact other levels. An increase or decrease in taxes at one level of government is often felt by other parts of the federal system. Cut expenditures to balance budgets and the fiscal offload is quickly felt elsewhere. In some instances like during the Great Recession, private sector job growth was offset by public sector job loss. This offloading is almost always done without deliberate intent or malice. In fact, even worse, it is generally done without analysis or foresight. It is as if other federalism partners were invisible.

In this debate there is no real forum for intergovernmental discussions. There are increasingly few institutions that undertake objective analysis of intergovernmental implications. There is no public voice for the advancement of needed federal and intergovernmental changes.

My over 30 years of elected office give me a reference point to note just how weakened the intergovernmental focus has become. It was not always this way. I recall clearly during my terms as County Executive and Governor there were some really bright spots in intergovernmental leadership at all levels of government, most notably from the White House.

One of the best examples of serious intergovernmental working relationships among officials at all levels was during the Clinton Administration. Clinton sought to prioritize intergovernmental cooperation by revitalizing ACIR, seeking increased funding from Congress, and placing a White House staffer, Marcia Hale, on the Commission (Warshaw 2009). Just three years later Congress eliminated the ACIR, with the President even withholding his prior strong support after disagreements with the Commission over the issue of unfunded mandates (McDowell 1997).

As governor, I worked on the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (welfare reform). Governors, mayors, and county executives were all involved in a vigorous debate over significant changes in the six-decades-old welfare program. Many of the meetings were in the White House with high-level members of the Administration. In the end many people were still unhappy with the legislation. Most, however, would agree that opportunities were offered for meaningful input and that we saw modifications in the final program reflecting

many of our concerns. Such a level of intergovernmental involvement has not been part of the discussion of many of the most important policy issues before us today.

Another example involved the adoption of Executive Order 13132, which prohibited federal agencies from promulgating new regulations unless they provided funds for direct compliance and unless they consulted prior to adoption directly with state and local elected officials or their representatives or their national organizations. On first blush this Executive Order appeared to help state and local governments in the on-going battle against mandates, preemptions, and other excessive actions by the central government. In fact, it was a substantial weakening of a much stronger Executive Order (12612) signed by President Reagan in 1987. After a bitter political battle outlined in Donald Borut's chapter, major modifications were made that, while lessening Reagan's strong state-oriented federalism, still provided some of the protections and processes sought by state and local governments' organizations. I am not certain there was a dramatic change in agency behavior from either executive order nor did they appear to carry through very well to future administrations. At the time, however, they were important statements about state-centered federalism and about intergovernmental cooperation with other federal partners. This vigorous debate and "big picture" view of how the system should operate is largely missing in recent decades.

It was not only programs like welfare reform or processes like Executive Orders 12612 and 13132 that showed an intergovernmental *system* working well and fundamental principles of federalism being debated. The same intergovernmental system was key for number of huge "mega" public work projects in the Washington, DC area—projects that reshaped the future of the nation's capital. Most notable among those were the construction of the Washington Beltway (1961–1964), the "Metro" subway (1969–ongoing), and the reconstruction of the Woodrow Wilson Bridge (1999–2008). These were complicated, multi-billion dollar projects that involved decades of coordination among dozens of local governments, two states, the District of Columbia, and the national government.

As noted earlier, I was involved in struggles at the end of construction of the first stage of the subway to make sure that Prince George's County received its promised lines. My most extensive participation in the intergovernmental side of this type of project, however, was with the Woodrow Wilson Bridge reconstruction. This bridge carries about 250,000 vehicles per day across the Potomac River as part of Interstate 95 linking Maryland and Virginia. It originates on the Maryland side in Prince George's County.

Serious planning, design, and negotiations started in the early 1980s during my first term as County Executive and continued through my first term as Governor until 1999 when construction started. The intergovernmental actors included 29 federal agencies working through an Interagency Coordination Group. In addition to the numerous U.S. Department of Transportation entities, agencies as diverse as Fish and Wildlife, the Coast Guard, and EPA were involved. Also participating were the most impacted local governments (e.g., Prince George's and Alexandria, VA), the two states via their many state agencies, and the District of Columbia.

Meetings were often complicated, tough, and personal. At stake was much more than the normal questions of who was paying what share or route locations. Many other issues that at their heart involved differing visions about the future of the region. Maryland, for example, insisted that the bridge be constructed "Metro ready" (i.e., constructed with extra lanes and to standards that would bear the weight and vibrations for future expansion of the subway system across the bridge to further connect the capital region by rail transit). Maryland further insisted on wide

pedestrian and bike lanes with "bump outs" for walkers and bikers to enjoy the views of the nation's capital and extensive landscaping on the bridge's approaches.

Virginia's two governors during the critical 1994 to 2002 period were strongly opposed to all of those proposals, looking instead to a much more traditional concrete and steel interstate construction that would save several hundred million dollars. Much of the paralysis of the intergovernmental system today is a result of excessive partisanship and ideology. The Woodrow Wilson Bridge project, however, was an example of the system working well on a bipartisan basis. Three presidential administrations (George H. W. Bush, Bill Clinton, and George W. Bush) kept the project moving to completion.

Some of the most interesting conflicts about the bridge overcame expected partisan outcomes. As mentioned above, two Virginia governors tried to block the additional federal funds for what they considered unnecessary "add-on costs." Former Ohio Republican Governor George Voinovich, having been elected to the Senate, was serving as the ranking member of the Appropriations Committee's Subcommittee on Transportation and Housing and Urban Development. I worked with him when he was Chair of the National Governors' Association (NGA), and he was very helpful in securing the additional federal funding even over the objections of his fellow Republican governors. George Voinovich is the only person to date to have served as the Chair of the NGA and President of the National League of Cities, giving him a broad perspective of the importance of having a working intergovernmental system. Today the Woodrow Wilson Bridge stands as a model urban bridge with pedestrian and biker lanes, viewing "bump outs," and ready for a transit line in the future. It is also a model of the intergovernmental relations system functioning.

The same successes were visible on a more horizontal level often without regard to partisan differences. Pennsylvania Republican Governor Tom Ridge, for example, on several occasions supported proposals advanced by Democratic colleagues from Maryland, DC, and the Administrator of the U.S. EPA to protect the Chesapeake Bay over the objections of more conservative Republican governors from Virginia. This reflected added leadership by Governor Ridge considering that Pennsylvania is the only state member of the Chesapeake Bay Commission that is not Bay front.

These two examples of intergovernmental leadership by Senator Voinovich and Governor Ridge demonstrate a working system overcoming partisan differences. Today, the opposite is more often true. An ideological divide and excessive partisan and personal politics have made functioning intergovernmental relations very difficult. Add to this the dismantling of those organizations designed to facilitate a smooth flowing intergovernmental *system*, like ACIR, and we should not be surprised that a "go-it-alone" or "fend-for-yourself" federalism dominates our governance today.

### **Solving Major Policy Challenges with a Broken Intergovernmental System**

There are several very critical and complex issues facing America today. Almost all of these demand intergovernmental discussions and negotiations, intergovernmental solutions, and an effective intergovernmental system for implementation. The challenges of inequality, infrastructure renewal, and environmental protection are very real examples of extreme partisanship, ideology, and major policy differences limiting the effective functioning of an intergovernmental system. Meeting these challenges will mean, of course, a major restructuring of the intergovernmental revenue structure.

### *Income Inequality*

The growing and serious income inequalities in this country matter. This matters because of the growing concentration of wealth and power in a small minority that becomes increasingly isolated geographically and culturally from the rest of society. It has potentially serious repercussions to our political system, our policy-making process and our intergovernmental system.

Any approach to lessen these growing inequalities would have repercussions on our federal system of government. One approach would be to increase taxes on higher incomes. Tax hikes could focus on just the wealthiest or could adjust the graduated structure so that those earning more pay more. Changing the income tax structure would have major impacts on the intergovernmental revenue structure. Many state income tax structures are piggy-backed on the federal income tax structure. State adjustments would need to be made. Also, it would undoubtedly provide more money that could be used for intergovernmental transfers or programs that would affect state and local priorities and service expansions.

Another approach would be to support and expand the many services and safety nets for struggling individuals and families. They include a range of services—public education, housing assistance, low fare transit availability, medical support, childcare, and so on. Some of these “income add-ons” are relatively minor, sporadic, and often not even thought of as a means of lowering income inequalities. Free neighborhood parks and libraries, senior center breakfasts and school lunches, and community mental health or dental centers all are examples of small scale but essential “other sources” of income. From a larger, more systemic, perspective the great importance of “big picture” revenue sources such as social security, Medicare and Medicaid, extended unemployment benefits, or food stamps as major sources of “income” cannot be overlooked and could be adjusted to address the income inequality. Again, most of the services indicated are state and local but would require federal dollars in order to add or expand them.

Adding to the concerns about growing income inequalities is the reduction of revenue resources for what is often called “safety net services.” Most of the changes in other relatively minor safety net services are the result of a localized decision by a governmental or quasi-governmental entity. When the transit agency increases fares 10 cents per trip, or the community college increases tuition by 4 percent, or the local water utility adds a new \$10 a month “distribution fee” to each residential water bill, those most pressed by the growing income inequalities suffer.

These decisions are almost always justified as necessary because “the feds have cut back support for transit,” or “the state reduced support for community colleges,” or “with the sequester pressure on the budget, we can no longer subsidize individual users for luxuries like fishing licenses.” Almost never is the discussion about the increasing inequality impact of these decisions or about the intergovernmental ripple effect that one decision creates. The problem is just “handed off” to another participant in a very complex governmental arrangement. The worker who decides transit is too expensive to get to work or the student who can no longer afford the community college tuition for job required skills are examples of people who drop out of the job market and switch to the unemployment set of supports. The challenge of low-income and of inequality has not been resolved. It has just been transferred to another agency and another level of government.

The third broad resolution of income inequality is to focus on the minimum wage. With the safety net supports and revenues frozen or being reduced and adjustments in the tax structure that would help reduce inequality increasingly unlikely to be approved, it is not surprising that major efforts would focus on changing the wage scale, most particularly the minimum wage.

The federal minimum wage started in 1938 at 25 cents per hour. The whole issue of having a minimum wage has truly been an intergovernmental debate and experiment from the beginning. Massachusetts adopted the first American minimum wage law in 1912, quickly followed by 13 other states and the District of Columbia. The U.S. Supreme Court consistently struck down these and other state and local initiatives as well as a number of federal minimum wage efforts.

The last time the federal wage was increased was in 2009 to \$7.25. This has led to an on-going and very bitter political battle. President Obama made an appeal to the nation in his 2014 *State of the Union* message for an increase in the minimum wage. He noted that in the year since he requested congressional approval of an increase, five states (CA, NY, CT, RI, and NJ) had increased their state minimum wage level. The president's plea to his state and local counterparts was: "to every mayor, governor, state legislator in America, I say, you don't have to wait for Congress to Act; Americans will support you if you take this on" (Wogan 2014). Similar appeals were made almost immediately thereafter directly to the governors at the 2014 National Governors Association dinner at the White House. It was as if the president was advancing a unique version of "go it alone" federalism.

These entreaties produced vigorous debate and interesting actions in the federal system. There are currently 29 states that have minimum wages higher than the federal level. Much of the change is occurring locally, in most cases with minimum wages far greater than the national standard *or* the state level. Santa Fe and San Francisco in 2003 became the first cities to have their own minimum wage distinct from their states. A steady stream of local governments adopted their own wage standards in following years.

In June 2014 Seattle adopted a phased-in (by 2017) \$15 minimum wage. Los Angeles quickly followed at the same level and other cities (e.g., Chicago and Washington, DC) are rapidly moving in that direction.

In the face of inaction at the national level and in many states, an even more complicated inter-governmental picture has been painted by strategies designed to create a large, multi-jurisdictional area with a higher minimum wage. Led by San Francisco and Oakland, a small group of cities in the South Bay area are coordinating efforts to make the regional local minimum wage \$15 per hour. This effort has popular support and is being approved by city and county councils and by popular referenda. Oakland voters, for example, gave an 81 percent approval endorsement. Other coordinated efforts have even crossed state boundaries. Prince George's and Montgomery Counties, MD joined with the District of Columbia in 2014 to adopt an identical new minimum wage for the three jurisdictions (\$11.50 by 2016 and then indexed for inflation) that, as the *Washington Post* (2013) noted, created "a contiguous region with 2.5 million residents and a minimum wage higher than any of the 50 states."

Even as these local intergovernmental agreements are adopted, a number of states have pushed back against the higher local government minimum wages and related employee benefits. Fifteen states have enacted preemption laws that prohibit local governments from having wage setting powers. Eleven states have preempted local governments from mandating sick days for private employees. These state-local intergovernmental battles have become increasingly bitter.

### ***Infrastructural Renewal***

Since the start of the Republic the central government has been involved in and often the leader of efforts to build a truly national infrastructure. While the Founding Fathers viewed a limited

role for the national government in the post-Revolutionary arrangement, they quickly realized the demand for unifying, nation-building infrastructure, or "internal improvements" as it was called then.

The principal of federal support for national infrastructure projects quickly became accepted for an expanding number of investments including lighthouse and harbor improvements, canals, bridges and roads, especially "post roads" to promote the delivery of mail. After the 1830s railroads became a major focal point of federal support, often with major land grants.

Major and historic expansion of federal infrastructure investment occurred under Presidents Franklin Roosevelt, Dwight Eisenhower, and Barack Obama. Roosevelt's New Deal approach was in significant part a massive public works construction undertaking designed to lessen the impact of the Great Depression. The Works Progress Administration (WPA) alone employed more than 8 million Americans, and other alphabet organizations of the 1930s employed millions more. The sheer scope of the WPA projects still staggers the imagination: The Triborough Bridge, LaGuardia Airport, and Lincoln Tunnel in the Northeast; the TVA dams and power distribution system, the Blue Ridge Parkway (NC to VA), and the Overseas Highway in the FL Keys dominated the Southern projects; to the West there was the Hoover Dam, the first freeway in LA, and the Golden Gate Bridge, to name just a few. These were matched with hundreds of schools, courthouses, hospitals, and libraries in communities across the nation.

President Eisenhower, stressing the need for a defense highway system that could rapidly move military personnel and equipment as well as evacuate cities if a nuclear attack threatened, started the Interstate Highway system in 1956. This massive road construction program, almost 50,000 miles, had a dramatic impact on America's post World War II land use development, opening the suburbs and creating a car-dependent society and contributing to the "flight" from many of our largest cities. It is important to note that the Interstate and Defense Highway Act was the beginning of large-scale federal/state/local cost-sharing programs for infrastructure. It became the model for hundreds of infrastructure programs during the following decades.

The Interstate Highway Program, as it evolved over decades, stands as the strongest and most consistent use of a strong intergovernmental *system* for infrastructure investment. While specific projects were often very political, bitterly contested, and the cause of many community and environmental battles, the program used the intergovernmental process for over 50 years investing for billions of dollars in interstate highways, bridges, tunnels, and related projects. There were other major intergovernmental initiatives during this period, e.g., Lyndon Johnson Administration's many urban redevelopment and anti-poverty programs, but none had the consistent intergovernmental administration, magnitude, and impact as the Interstate Highway Program.

The third big burst of federal infrastructure investment was the American Recovery and Reinvestment Act (ARRA) popularly referred to as the Stimulus Program or the Recovery Act proposed by President Obama. This \$787 billion (later revised to \$831 billion) was a Keynesian economic theory response to the Great Recession of 2008. Designed to save jobs, put the unemployed to work, and help state and local governments deal with major fiscal crises, it offered a broad array of relief and stimulus programs. Included were significant tax incentives (\$288 billion), support for Medicaid and other healthcare (\$155 billion), education (\$100 billion), and aid to low income workers and the unemployed (\$82 billion).

Continuing the long history of national government support for infrastructure investment, the Act included \$105 billion for infrastructure. About one-half of that amount went to transportation projects through the very popular Transportation Investment Generating Economic Recovery



(TIGER) grants. Twenty-eight billion dollars was allocated for traditional highway and bridge construction projects. Reflecting changing infrastructure needs, \$18 billion was allocated to support transit, including intercity passenger rail, especially high-speed rail, new transit projects and Amtrak.

The other half of the Act's infrastructure funding went to a broad range of needs: water, sewage, and environment (e.g., rural drinking water and waste disposal projects and hazardous waste cleanup at Superfund sites); government buildings (e.g., child development centers and housing for service members); and energy (e.g., modernize the electrical grid and smart grid and for power transmission system upgrades). Reflecting modern infrastructure needs, there were significant investments for renewable energy, weatherizing low-income homes, biofuel, and solar and wind projects.

With the exception of the 2009 Stimulus program, there has been a major decline in the dollar value of intergovernmental infrastructure investment. Even the 2009 stimulus was advanced as a one-time expenditure to deal with the economic crisis.

With the stimulus program, there was no real intergovernmental discussion as leaders at all levels of government rushed to avoid a "free fall" of the economy. The surprising thing was how little the states and the governors had been involved in structuring the program. It was understood that this was an emergency and there was a great need to act quickly, and yet most of the states received the first hint of how the stimulus would work only at the time of grant application requests.

There are many reasons for the significant decline in national infrastructure investments. Among them was the 2005 "Bridge to Nowhere" controversy concerning the proposed "earmarked" funding for a \$400 million bridge from Ketchikan to Gravina Island, Alaska. The Island's population was about 50 people. This led to a number of anti-earmark efforts in Congress resulting in a general ban on the process by 2010. Not surprisingly the enthusiasm for other capital projects declined sharply after members became unable to direct such funding to their own state or district.

The second big change was the adoption of the Sequester Process (Budget Control Act of 2011). First implemented in 2013 the Act calls for automatic cuts of \$1.2 trillion between 2013 and 2021 to be evenly divided between domestic and defense spending. Exempting large entitlements like Social Security and Medicaid insured a major annual reduction in discretionary spending. Budget cuts ranged between 7.6 percent and 9.6 percent for most agencies. Since capital projects are the easiest to cut without causing long-term agency disruption, many reductions impact infrastructure investment.

Last is the major change in the partisan make up and the political philosophy of Congress. Democrats controlled both Houses in 2009. Republicans held majorities in both chambers by 2015. It was not just a change of party. The new majority is fiscally very conservative, vehemently anti-tax, and strongly committed to reducing the size and cost of the national government. The "low hanging fruit" for budget decisions based on this philosophy are often discretionary intergovernmental infrastructure expenditures. Witness the consistent effort to reduce federal aid for local transit construction and operation.

There are currently calls by the White House for "huge" infrastructure investments but the details are still unclear. It is almost certain that the approach will not be utilizing the intergovernmental system, as the Trump Administration's first budget called for dramatic reductions in infrastructure spending.

### *Environmental Protection*

The focus on protecting our environment is a relatively new governmental function at any level of our federal system. For most of our history it was simply not a public issue. If there was a problem, expectations were that the community acting collectively but not through government, or the private sector including individual landowners would deal with it.

Land conservation and site preservation were the main focus of national environmental protection up until the mid-1960s when national legislation still centered on conservation but gave a much broader interpretation of what "conservation" meant and created more aggressive tools to achieve those ends. Major examples included the Wilderness Preservation Act (1964), the National Wild and Scenic Rivers Act (1968) and the Endangered Species Preservation Act (1966). These laws previewed the much broader and more aggressive environmental legislation of the 1970s.

Environmental protection at the state level largely reflected the federal emphasis on conservation and preservation. For example, in 1885 New York business, sportsmen and conservationists came together to create the first state major forest preserve. Designed to both protect forest and the source of clean water for downstate, 715,000 acres of forestland were permanently preserved. This later became the Adirondacks State Park, serving as a model for similar efforts at the state level, especially in New England and the West. These programs set the scene for much broader state environment programs in the twentieth century.

At the local level the early work for the environment centered on clean drinking water, raw sewage removal, and public health especially disease prevention in overcrowded urban slums. New York City created the first local health department in 1866. The other notable and important local environmental forerunner was the emergence of a major system of urban parks.

This, then, was the state of environmental protection efforts in America for the first 175 years. Noteworthy not just because of the singular focus on conservation, preservation, and parks, but also because most initiatives were done by one level of government with very little help from or interaction with other levels. There was occasional cooperation and some financial support, but for the most part there was no meaningful intergovernmental actions or programs for environmental protection.

The situation changed dramatically in the 1960s and especially the 1970s as a large number of urgent and comprehensive laws gave birth to a very complicated intergovernmental system of environmental regulations and programs. The new environmentalism did not occur in a vacuum. In 1892 naturalist John Muir formed the Sierra Club. That organization experienced phenomenal growth in the 1960s and 1970s, as did the National Wildlife Federation, which was started in 1935. The Sierra Club grew from 230,000 members in 1960 to 819,000 by 1970 (Dictionary of American History 2017). These organizations were joined by dozens of new comers the 1960s and 1970s, e.g. League of Conservation Voters, Friends of the Earth, Environmental Defense Fund, Natural Resources Defense Council, and Greenpeace, among many others. Hundreds of similar advocacy groups sprung up at the state and local level all across the country.

Very quickly the environmental movement shifted from land conservation programs to an urgent focus on pollution, especially chemical pollution of our air, water, and habitat, solid waste disposal, and pesticide poisoning. The latter became a major national concern as a result of the intense and widespread reaction to Rachel Carson's *Silent Spring*. Even pop music focused on these issues. Recall Joni Mitchell's "Big Yellow Taxi": "They paved Paradise, put up a parking

lot" is the most famous line from that song, but her reference to DDT in the song alludes to Carson's book.

With this backdrop the first Earth Day was held April 22, 1970. More than 20 million Americans, marched, protested, held sit-ins and teach-ins, and demanded change in environmental policy and laws. The tumultuous decade ended with widespread coverage of the Love Canal disaster in which a community in Niagara Falls, NY was discovered to have been built on top of a 70 acre landfill of toxic wastes from the 1940s and 1950s causing a range of major health problems for the residents.

The unprecedented focus by the press, especially television, on major environmental disasters helped generate many significant environmental laws and programs in the 1970s that built on those passed in the 1960s. Among the most important were:

- President Richard Nixon created the Environmental Protection Agency (EPA) to enforce environmental laws and regulations (1970).
- The Clean Air Act regulated air emissions and gave the EPA power to set air quality standards (1970).
- The Noise Control Act authorized EPA to regulate noise pollution (1972).
- The Clean Water Act placed a limit on the flow of raw sewage and other pollutants into lakes, rivers and streams and gave the EPA power to set standards and to enforce them (1972).
- The Endangered Species Act empowered the U.S. Fish and Wildlife and the National Marine Fisheries Service to list and protect all endangered species (1973).
- The Safe Drinking Water Act protected drinking water against pollutants (1974).
- The Toxic Substances Control Act (1976) required EPA to track and ban chemicals that pose a threat to the environment or to human health (Hartman undated).

In addition, in 1975 Congress authorized EPA to set standards for tail-pipe emissions to reduce automobile produced air pollution. At the end of this extraordinary 10 years of environmental initiatives Congress created and funded the Superfund program to help clean up hazardous waste sites. As one study of this time of great change noted: "During the decade of the 1970s alone, more than twenty major federal environmental laws were enacted or substantially amended, giving EPA and other federal agencies enormous regulatory responsibilities" (Percival 1995).

In two short decades, environmental protection moved from being largely a single focus issue of land conservation implemented by independent levels of government to being the center of a very controversial, bitterly fought, and constantly changing part of the intergovernmental system. Because environmental protection is so complex EPA has used many different approaches during its almost 50 years of existence.

Many programs were primarily voluntary and incentive driven such as the Coastal Zone Management Act. Education, financial incentives, and cost sharing are all tools used for many EPA programs. The other approach is very much a command-and-control use of regulations often resulting in fines or other penalties. The Clean Air Act and Clean Water Act and those programs designed to protect the public such as the Toxic Substances Control Act rely heavily on regulatory enforcement with penalty potential. Many environmental protection policies rely on concurrent enforcement, such as the Endangered Species Program.

Adding to the challenges of environmental protection in an intergovernmental system is the reality that some issues may be purely local, impacting one state or locality, while others are

nation-wide. Many are regional, requiring the creation of intergovernmental bodies such as the Great Lakes Commission (8 states and 2 associate member Canadian Provinces) or the Chesapeake Bay Commission, (MD, VA, PA, DC, and EPA).

Environmental policies often pit one state or local government against neighboring jurisdictions with the intergovernmental system responding slowly and ineffectively or not at all. West Virginia's mountain top removal for coal mining has both water and air impacts on surrounding states. I recall a conversation with the then Governor of West Virginia and a personal friend about the problem. His response was "Sorry, but in this State coal mining is King." A decade later the efforts for an intergovernmental solution to that problem continue.

The supply of water is an increasing source of inter-jurisdictional disputes. Georgia as an example has been in a long-running legal and political battle with Florida and Alabama about the amount of water Atlanta takes from the Chattahoochee and Flint rivers "posing a threat to the ecological system" of its two neighbors (Atlanta Journal-Constitution 2017). While Georgia recently scored a major legal victory the problem, made increasingly worse by continuing droughts and water consumption by greater Atlanta's sprawling, growing population, is far from over. Other legal and congressional challenges are certain.

The intergovernmental system has been particularly stressed because of the constantly changing politics of environmental protection. State or local governments often side with significant polluters against the EPA or other regulatory agencies. Siding with major local businesses like a large power company or local paper mill, or trying to protect a major polluting industry, such as coal mining or big chicken farming corporations, often pits the combined resources of states and private industry against enforcement. These struggles frequently end up as multi-year court cases that even challenge the constitutional or legal basis of enforcement (Percival 1995).

Changing political philosophies and ideologies have regularly caused great uncertainty for environmental protection efforts. Ronald Reagan as a candidate for President claimed that President Carter's clean air regulations were responsible for closing many plants and coal mines. Referring to the Clean Air Act of 1970, candidate Reagan speaking in Youngstown, Ohio said: "these 1970 rules have helped force factories to shut down and cost workers their jobs . . . and they will certainly slow the use of coal" (Washington Post 1980).

His appointee as EPA Administrator, Anne Gorsuch, consistently tried to weaken the Clean Air Act and the Clean Water Act as well as end the Superfund cleanups (Little 2004). Her cabinet colleague Interior Secretary James Watt went to extraordinary efforts to increase drilling, mining, forest cutting, and commercial use of federal lands and water. Watt and Gorsuch put a significant brake on the flood of new environmental initiatives and the enthusiasm for environmental protection that had dominated the 1960s and especially the 1970s. Greg Wetstone, then Director of Advocacy for the Natural Resources Defense Council, noted that "Never has America seen two more intensely controversial and blatantly anti-environmental political appointees than Watt and Gorsuch (ibid.).

President Reagan, in the name of reducing the cost and presence of the federal government, made significant reductions in EPA personnel, budget, and enforcement efforts. Gorsuch, claiming to be a follower of the "New Federalism" who would return responsibilities to the states, reduced the EPA budget by 22 percent before resigning under pressure after being cited for contempt of Congress.

The U.S. EPA had several very good administrators from both parties since that controversial period of cutback and weakened mission. However, they could not recapture the innovation,

enthusiasm, and level of broad bipartisan support that dominated the environmental protection efforts of the 1960s and 1970s. It was during this time that the idea of a strong intergovernmental *system* largely faded from existence.

### Three Concluding Thoughts

America has always been a nation of innovation, experimentation, and change. Over the years, we change as we debate the role of the private sector versus government, or of individual rights versus collective norms, or of the role of the national government versus the states. In this time of extraordinary social, economic, demographic, and political change both in the United States and around the world it should not be a surprise that our federal arrangement and our intergovernmental system will adapt and be modified. It must do so.

As Mavis Mann Reeves and I noted 40 years ago in *Pragmatic Federalism*:

The most dominant pattern emerging from intergovernmental change is that of pragmatic intergovernmental relations within the federal system—a constantly evolving, problem-solving attempt to work out solutions to major problems on an issue-by-issue basis, resulting in modifications of the federal and intergovernmental systems . . . The very elasticity of the arrangement helps to maintain the viability of the American system.

(Glendening and Reeves 1977: 21).

Individually we may not like the direction of current changes in our system of governance. Or, indeed, we may applaud them. Many individuals and groups will welcome less government, hoping that means less taxes, and/or more functions transferred to the state level. Others will call for a stronger collective intervention by the national government, with its greater revenues and powers. This on-going debate is a reflection of the political system dealing with the great challenges of the day.

The magnitude of the 2016 election results notwithstanding, those changes are still being sorted out. One thing is certain. Our federal system will change dramatically during the course of the next decade or two.

Within this context, I advance three concluding thoughts about a state-centric federalism, the impact of the Trump Administration, and the need for an intergovernmental relations “think tank.” Brief references are made to some of the thoughtful “Big Questions” advanced earlier in this book.

#### *State-Centric Federalism*

There was a great expansion of the national government’s size and powers as the nation responded to the Great Depression and international wars during the more than two decades of the Roosevelt-Truman Administrations. The centralization pattern continued for more than 25 years through four presidencies: Eisenhower (interstate highway program), Kennedy/Johnson (Civil rights, Medicare/Medicaid, and the War on Poverty), and Nixon (EPA and major environmental laws). The centralization of these years was amplified by continuing international wars and crises (World War II, Korean and Vietnam wars, and the Cold War). The Ford/Carter years were relatively quiet transition years on the question of the role of the federal government.

The seismic shift in modern federalism started with President Ronald Reagan's New Federalism. His goals were straightforward: cut taxes; reduce federal spending; and return power to the states. As he stated clearly in his first inaugural address (1981):

It is my intention . . . to demand recognition of the distinction between the powers granted to the federal government and those reserved to the states or to the people . . . All of us need to be reminded that the federal government did not create the states; the states created the federal government.

(*CQ Researcher* 1981).

The four presidents following Reagan either did not want to expand the federal role or were constrained from doing so for fiscal reasons or by political opposition. Even a liberal chief executive like President Obama was limited in further expansion of the national government's role. His anti-Great Recession stimulus program (AARA) was tightly limited and rapidly phased out by a conservative Congress, and his health insurance initiative (Affordable Care Act) is still a matter of great debate. Neither had the centralizing impact of Roosevelt's New Deal.

These presidents were constrained in many ways by the "four d's" of debts, deficits, demographics, and defense. Barring a very unlikely major increase in federal revenues, this decentralization trend will continue.

Although he was probably elected for several other reasons, Donald Trump's presidency is a strong continuation of the same Reagan principles: reduce taxes and federal revenues; limit the size of government; and return powers and programs to the states. President Trump has shown no explicit awareness of the Constitutional arrangement or of the complexities of our intergovernmental system. His initial proposals, however, would continue significantly the movement to a state-centric federalism.

Both Presidents Reagan and Trump denied strongly that their efforts to return programs to the states was really an effort to reduce the role of government at all levels. Without additional major revenues, that is almost certain to be the outcome given the fiscal challenges that most states already face.

There will be other major changes in the intergovernmental system if some of the current Administration's proposals advance. Many environmental challenges, notably air and water pollution, do not recognize state boundaries. There will be increased state and local multi-jurisdictional efforts to solve these problems. Most immediately there has been a growth in collective resistance to many of these programs by state and local leaders. For example, eight Mid-Atlantic and Northeastern states have joined together to fight air pollution from nine Mid-Western states. Without successful EPA intervention, this will become a protracted legal and political battle for years to come. State and local governments are also organizing in a variety of coalitions to implement the Paris Agreement climate change provisions even if the national government does not do so.

Because of the intense debate on a number of major social issues, state-centric federalism will generate a range of new conflicts between the states and the federal government and between the states and their local governments. Note the battles over Sanctuary Cities, or the coalition of big cities trying to enforce the higher Paris Agreement environmental standards, or the efforts by many states to restrict local adoption of minimum wages that are higher than the state's.

State-centric federalism will have challenges with political, legal and fiscal battles to be sure. We should remember, however, as Mavis Reeves and I said 40 years ago: "In the long run it will

be the states' resilience and viability that will maintain the federal bargain and protect against excessive centralization" (Glendening and Reeves 1977: 323).

### *The Impact of the Trump Administration*

The new Administration is a continuation of the decades long political movement for a state-oriented federal system and specifically to a smaller, less intrusive central government. At this early date, it is hard to tell the full, long term-impact of the Trump Administration. A series of political controversies, scandals, and apparent lack of knowledge about how the government process and especially the intergovernmental system work has hindered implementation of any of the President's campaign proposals. The changes in the tax system, the health program replacement, and the extraordinary infrastructure investments for which President Trump advocates would have a significant, even historic, impact on the federal and intergovernmental systems.

Certain impacts, however, are clear from the President's early actions. The new Administration has moved to repeal many of the environmental regulations and to end or reduce many EPA programs. His opposition is based on the same view that Ronald Reagan had about a relationship between these regulations and jobs. As President Trump has stated repeatedly: "I will cancel job-killing restrictions on the production of American energy, including shale energy and clean coal, creating millions of high-paying jobs" (Washington Post 2016).

Further echoing President Reagan's appointments of Anne Gorsuch as EPA Administrator and James Watt to head the Department of the Interior, President Trump appointed Ryan Zinke to be Interior Secretary and Scott Pruitt to be EPA Director. Both are climate change deniers, although each of them modified their positions during Senate confirmation hearings. When asked on CNBC about the relationship of carbon dioxide increasing global warming, Mr. Pruitt responded: "I think that measuring with precision human activity of the climate is something very challenging to do and there's tremendous disagreement of impact, so, no, I would not agree that it's a primary contributor to the global warming that we see" (New York Times 2017). Secretary Zinke has advocated for energy development and mining on public lands and waters as well as further commercial development of federal lands.

Both appointments and the changes they are implementing, especially at the EPA, are already having impacts. States and even whole regions are increasingly pitted against others based on coal burning plants' impact on their states water and air quality. They have generated considerable partisan battles over the wisdom of moving away from environmental protection enforcement. The level of community and political activism around the issue of protecting the environment has not been this strong and widespread since the 1960s and 1970s.

Some states and local governments have vowed to move on their own to continue those protections. Just days after the U.S. withdrew from the Paris Agreement, an alliance of states and local governments announced that they would continue to meet the goals of the Agreement. Former New York Mayor Michael Bloomberg, speaking in Paris after meeting with French President Macron, said: "The American government may have pulled out of the agreement, but the American people remain committed to it—and we will meet our targets" (Los Angeles Times 2017).

Another impact is occurring in the area of infrastructure funding, particularly for mass transit. The President has not yet advanced his often-touted huge new program for infrastructure investment. Preliminary discussions suggest it will not be good policy for state and local governments. Their representatives do not appear to be having any input to the program's early deliberations.

The politics of “no new taxes under any circumstances” appears to have paralyzed national efforts to invest in any meaningful way in new transportation infrastructure. The federal gasoline tax was last raised in 1993. Inflation from 1993 to 2015 was a little over a compounded 64.6 percent, greatly reducing the buying power for the Transportation Fund. States are increasingly moving on their own in this area. Twenty-nine states have legislatively increased the gas tax or otherwise raised new fees to support their transportation needs. In addition, there has been a surge in support for local referenda to raise new taxes for mass transit. For the last decade, the approval rate for these referenda has been just under 80 percent. In the 2016 election, when the President was running on a reduced taxes approach, voters approved \$200 billion in local tax increases for transit; \$150 billion of that amount was for Seattle and Los Angeles. The latter voted 70 percent in favor of an additional half a cent sales tax on top of the half a cent already used for transit. These approvals are taking place in Republican dominated states as well. Atlanta, Raleigh (Wake County), and Indianapolis voted to increase local taxes to support transit. Ironically, the Indianapolis vote for a local income tax increase was authorized by legislation signed by now Vice President Pence (Davis 2016).

The bottom line is that many state and local governments are moving forward in transportation and especially transit funding as the national government remains paralyzed by a rigid anti-tax philosophy, a strong anti-transit bias, and an excess of partisan rhetoric. An informal “divide the job” systematically as proposed by President Reagan in 1981 may be incrementally taking place now. Unfortunately, there is no real on-going discussion about the intergovernmental impact of this change.

Lastly, it is important to note that while we do not know the details of President Trump’s proposed tax cuts, every indication is that it will further the income inequity in America, especially if combined with some of the proposed health care changes. States will not be able to respond in an effective way with changes to their tax codes. Therefore, the most likely solution will be a surge in efforts to increase minimum wages, family leave, etc. This will produce another round of preemption battles as conservative state governments try to block more progressive urban areas from making these changes.

#### *Need for an Intergovernmental Relations Think Tank*

As I think through the events of this chapter, I find it necessary to reaffirm a call I made several years ago for the creation of an intergovernmental relations Think Tank (Glendening 2013). While America faces some very serious challenges, we are a strong country. The solutions to many of these challenges are for all of us—citizens, policy and academic leaders, and elected officials—to pull together in a cooperative, intergovernmental, and less partisan approach.

The second part of the solution is to remember that we are a federal system dependent on a smoothly functioning intergovernmental system. Proposed policies, debates, and deliberations and implementation must all recognize the intergovernmental nature of our governance system. As the National Academy of Public Administration memorandum cited above concluded:

In order to strengthen the federal system emerging needs for public services and public deficits must be addressed; intergovernmental tax reform should be undertaken in a collaborative manner; a means to an institutional framework for the improvement of intergovernmental policy must be initiated; and much work must be done to rationalize that system.

(Rosenbaum, Glendening, Posner and Conlan, 2013)



To the last couple of points, it has been recommended in several recent reports that we backfill with advisory panels and organizations that are intergovernmental in nature, maybe even create a new Advisory Commission on Intergovernmental Relations. I strongly recommend, however, that it be outside of government—not even a quasi-governmental agency. It should be an independent, freestanding “think tank” similar to the Cato Institute or the Brookings Institution, or based at a major university or a consortium of universities.

As an eternal optimist, I affirm that we are a strong nation. We will solve our problems. We have collectively faced bigger challenges in the past than those before us now. We faced those challenges and emerged an even stronger country.

We will best do so, however, if we remember that we are a federal system and depend on a smooth functioning intergovernmental system.

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