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UNFUNDED MANDATES: EXAMINING FEDERALLY IMPOSED BURDENS ON STATE AND LOCAL GOVERNMENT

HEARING

BEFORE THE

SUBCOMMITTEE ON
INTERGOVERNMENTAL AFFAIRS

OF THE

COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTEENTH CONGRESS

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UNFUNDED MANDATES: EXAMINING FEDERALLY IMPOSED BURDENS ON STATE AND LOCAL GOVERNMENT

Wednesday, April 26, 2017

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INTERGOVERNMENTAL AFFAIRS,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:06 a.m., in Room 2154, Rayburn House Office Building, Hon. Gary J. Palmer [chairman of the subcommittee] presiding.

Present: Representatives Palmer, Grothman, Foxx, Walker, Demings, and DeSaulnier.

Also Present: Representatives Meadows, Comer, and Connolly.

Mr. PALMER. The Subcommittee on Intergovernmental Affairs of the Committee on Oversight and Government Reform will come to order.

Without objection, the chair is authorized to declare a recess at any time.

Today, we are examining Federal unfunded mandates and their impact on State and local governments. The issue of unfunded mandates is central to this subcommittee, which is charged with oversight of the relationship between the Federal Government and State and local government partners. In December, the chairman sent a letter to Governors, State legislators, and county and local government officials soliciting feedback on the most burdensome or impactful Federal unfunded mandates. Respondents cited over 645 individual Federal laws and regulations that have taken away the ability of local governments to decide how best to serve their constituencies. Almost a quarter of those laws represented Federal environmental requirements.

Governor Eddie Calvo of Guam reported that the compliance costs for the EPA's enforcement of the Clean Air Act, Clean Water Act, and Safe Drinking Water Act alone equates to almost $10,000 per man, woman, and child, and makes the basic cost of utilities for the median household unsustainable.

Unfunded mandates reported to the committee covered a variety of topics, from labor to housing to transportation to prison administration. This issue does not discriminate. Of the most cited laws, Medicaid was routinely reported to be one of the most burdensome, imposing billions of dollars on communities annually for care that is often not reimbursed.

Higher education institutions in the State of Virginia report spending millions annually on compliance with Federal education laws. The University of Virginia, for example, spends an estimated $20 million a year just to comply with unfunded mandates.

Respondents cited mandates imposing significant administrative costs with no identifiable benefits, mandates requiring standards inconsistent with the needs of the State, and mandates that are simply impossible to achieve. In certain cases, such as implementation of the new National Ambient Air Quality Standards, unfunded mandates reportedly resulted in direct loss of jobs. The corresponding costs of these mandates are directly borne by the taxpayer.

Merely looking at cost, however, is not sufficient. The time and resources that States and local governments take to comply with these mandates demonstrate that current law does not adequately capture the extent of the burden of unfunded mandates. As an example, Speaker Mac McCutcheon from my home State of Alabama shared an unworkable Department of Transportation mandate that requires the State to outline a financial plan for certain projects for up to 30 years without knowing the source of funding that far into the future, making the annual exercise just that, an exercise. What we heard from nearly all the respondents is that the attempt to provide a one-size-fits-all solution effectively strips officials of the flexibility necessary to govern at the State and local level.

Every dollar a State or local government uses to comply with Federal law is a dollar they can't direct to specific needs at their own levels of government. The committee learned that a Federal Aviation Administration policy change resulted in the use of State and local infrastructure funds to pay for flight inspections in Oklahoma. A small rural county in Nevada had to consider closing its sole library, which was its residents' key source of internet access, after the Department of Labor implemented its overtime rule. These tradeoffs are made every day by State and local officials.

I would like to thank each of the witnesses today for taking valuable time out of their schedules to appear here today to testify. You are uniquely situated to provide insight into this issue and where we should go from here.

I now recognize the gentlelady from Virginia, Congresswoman Virginia Foxx, for the remainder of my time.

Ms. FOXX. I thank the chairman for yielding.

Like some of you, I served as an elected official in State and local government, and can testify to the difficulty of balancing a State budget when there are dozens of complicated unfunded Federal mandates that must be taken into account. In 1995, in a model of bipartisanship, Congress passed and President Clinton signed the Unfunded Mandates Reform Act, or UMRA. UMRA was designed to force the Federal Government to estimate and report how much its mandates would cost local and State governments, which was previously not the case. UMRA was not intended to prevent the government from regulating or legislating, but, rather, to ensure that decisionmakers have the best information possible when crafting new policies.

I have always admired the purpose and spirit of UMRA, but weaknesses in the law have been exploited in the intervening dec-

ades, and they need to be addressed. For instance, most independent agencies, like the FCC and the SEC, are not subject to UMRA's requirements for their proposed regulations. Costly changes in conditions of grant aid don't fall within the definition of a mandate, and agencies can skip UMRA cost analyses if they begin rulemaking with a mechanism other than a formal notice of proposed rulemaking. Finally, UMRA measures only direct costs of compliance with mandates, and the law contains no enforcement or accountability mechanisms which allow State and local governments recourse if the process is not followed. It is my hope that this hearing will be a first step toward an improved and more transparent regulatory process that eases the burdens passed onto State and local governments. To that end, since 2007, I have worked on a bill known as the Unfunded Mandates Information and Transparency Act, or UMITA, which seeks to address some of UMRA's shortcomings and will help the law meet its unfulfilled potential. UMITA will ensure public and bureaucratic awareness about the cost that Federal regulations impose on the economy and local governments. It will also make our regulatory apparatus more efficient, effective, and transparent. UMITA has bipartisan DNA, and its purpose is purely about good government, that of openness and honesty about the cost of regulations.

These principles do not belong to either party. That is why my Democratic colleague Henry Cuellar joined me in introducing the bill, and it is why it has passed the House in previous Congresses with overwhelming support from both parties. Republicans and Democrats can agree that every unfunded mandate the Federal Government imposes should be both deliberative and economically defensible.

Thank you for your time, and thank you, Mr. Chairman, for yielding.

Mr. PALMER. The chair notes the presence of our colleagues Congressman Meadows of North Carolina, Congressman Connolly of Virginia, and Congressman Comer of Kentucky. We appreciate your interest in this topic and welcome your participation today.

And the chair recognizes the gentleman from North Carolina, Mr. Meadows.

Mr. MEADOWS. Thank you, Mr. Chairman.

I want to thank my colleague Ms. Foxx for her leadership on this particular issue, for your leadership in bringing forward this hearing.

But I am here today to thank the fine senator from North Carolina, Senator Jim Davis, who is probably the best qualified person to speak on this topic, because when I didn't know what unfunded mandates were, Senator, you as a county commissioner were telling me what it was. You knew all too well those Federal mandates that came down, and we required you to have to pay for it at the county level. You have been an advocate on this, not only as a county commissioner, but now as my State senator and someone I enjoy calling my friend. Thank you for making the special effort. Thank you for your expert testimony.

And, Mr. Chairman, I yield back.

Mr. PALMER. I thank the gentleman.

The chair now recognizes the gentlewoman from Florida, the ranking member, Mrs. Demings.

Mrs. DEMINGS. Thank you so much, Mr. Chairman.

Good morning, everyone.

Let me start by saying I am very pleased, Mr. Chairman, to join you as ranking member of this subcommittee. We have had one joint subcommittee hearing, but this is our first hearing of just the Intergovernmental Subcommittee. I look forward to working with you in a bipartisan manner to conduct rigorous, yet effective, oversight.

I am glad we are having this hearing to examine the impact of unfunded mandates on State and local governments by the Federal Government. As a former chief of police for the city of Orlando, Florida, I am keenly aware of the challenges State and local governments face in managing their local budget and implementing Federal mandates. Right now, I believe the single biggest threat to State and local funding is President Trump's proposed budget. It slashes hundreds of billions of dollars from programs that American families rely on. And if these Draconian cuts go through, the burden will fall on cities, counties, and States.

Here is a brief list of the programs set for elimination. The administration's budget would eliminate funding for the Community Development Block Grant. It would eliminate funding for the HOME Investments Partnership Program. It would eliminate Community Services Block Grants. And it would even eliminate the Low Income Home Energy Assistance Program. The president of the National League of Cities said President Trump's proposed budget, and I quote, "threatens the safety and prosperity of cities around the country." I could not agree more.

What does it all mean? Well, it means low-income American families may go without heat in the winter and air conditioning in the summer. It means that the elderly, children, and people with disabilities will not receive funding that is critical to these vulnerable populations. It means funding for afterschool programs will disappear. And it means that counties and cities will have to divert funds as they are forced to do more with less. It will negatively impact public health and safety across the country, and it will negatively impact budgets nationwide. Regardless of whether you live in rural areas or urban cities, you will be hurt by this budget.

When these cuts to vital programs are proposed, they are packaged as cost-saving efforts. This isn't true. This is cost shifting to someone else, and the, quote, "someone else" is the most vulnerable families in our communities and States and local governments. I look forward to hearing about unfunded mandates facing local governments, but as part of this conversation, we must reject the President's massive budget cuts and the burden they impose on local and State governments.

I understand as well as anyone how Federal mandates can pass costs down to State and local governments that impact the outlook for their budgets. We must distinguish between mandates that assure basic rights and protections and mandates that impose burdens. For example, there are mandates that ensure clean water. All we have to do is look at the crisis in Flint, Michigan, to understand what would happen if these protections were eliminated. As this

committee found, the problem in Flint was not Federal overreach. It was that the Federal Government did not step in sooner to protect the citizens of Flint. And now an entire generation of children will be paying the price as they deal with the consequences of lead poisoning. The solution there is not just to eliminate the mandate; it's to provide adequate funding to comply with it.

Then there are examples of mandates that burden State governments. It's no secret President Trump wants local governments to help with immigration enforcement. At the same time, however, his proposed budget looks to eliminate the State Criminal Alien Assistance Program, which provides reimbursements to State and local governments for incarcerating undocumented immigrants. This is a prime example of States being asked to do the Federal Government's job at their own expense. We cannot lose sight of why we are concerned about the burdens of State and local governments in the first place. It's about doing what is best for Americans everywhere. The funds at this level and the services provided are crucial to Americans across this country. We cannot tolerate irresponsible cuts to these needed programs.

Again, thank you so much.

And, Mr. Chairman, I yield back.

Mr. PALMER. I thank the gentlewoman.

And I also look forward to working with you. And I think we have a lot of opportunities, a lot of good work to do on this committee.

The committee will hold the record open for 5 legislative days for any members who would like to submit a written statement.

We will now recognize our panel of witnesses. First of all, the Honorable Wayne Niederhauser, president of the Utah State Senate, who represents the ninth State senate district in the great State of Utah. The Honorable Gary Moore, judge and executive of Boone County, Kentucky. Mr. Moore chairs the National Association of Counties' Committee on Environment, Energy & Land Use, and is the former chairman of the Opioid Epidemic Task Force.

I got out of order, Mr. Davis. I would also like to recognize Senator Jim Davis of North Carolina's 50th district.

Welcome today.

The Honorable Jermaine Reed, councilman of the city of Kansas City, Missouri.

And I am now pleased to recognize Congressman Connolly from the great State of Virginia to recognize our last witness.

Mr. CONNOLLY. I thank my friend, and I thank the chair and the ranking member for holding this very important hearing.

In fact, when I was chairman of Fairfax County, from which Mr. McKay comes, I actually testified before this committee, when Tom Davis was chairman and Henry Waxman was ranking member, on unfunded mandates.

Unfunded mandates particularly affect local government. In fact, local governments are on the receiving end not only from the Federal Government but from State governments. I notice we have two State senators, one of whom at least was in local government. But it is all too often the practice at the State level to, frankly, slough off burdens onto localities. I know that goes on in my home State

of Virginia, and I know Mr. McKay is on the receiving end of that as a supervisor from Lee district in Fairfax County.

Mr. McKay is a long-time friend of mine for over two decades. We worked together in a myriad of enterprises in transportation, in human services, on the Legislative Affairs Committee, which he now chairs, which I also used to chair. And I know he understands intimately the impact on the budget because he now chairs the Budget Committee for the Fairfax County Board of Supervisors, a county bigger than eight States. So, you know, he is dealing with really large issues, and it's a full enterprise government. So it's everything from human services to a bus fleet. And they know the impact of unfunded mandates, Mr. Chairman.

And I have always said, as a local government official and now up here, if Congress thinks an idea is really worth doing, we should pay for it. It should never be a burden put on somebody else. No Child Left Behind is a great example. You know, maybe good intentions, but it was an unfunded mandate. And that was always my problem.

So I welcome Mr. McKay being here representing a wonderful place, Fairfax County, and I thank him for being willing to spend his time and bring his expertise to this committee.

Mr. PALMER. Welcome to you all.

Pursuant to committee rules, all witnesses will be sworn in before they testify. Please rise and raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth so help you God? Thank you. Please be seated.

Let the record reflect that the witnesses answered in the affirmative.

In order to allow time for discussion, please limit your testimony to 5 minutes. Your entire written statement will be made part of the record.

The chair now recognizes Mr. Niederhauser for his testimony.

WITNESS STATEMENTS

STATEMENT OF THE HONORABLE WAYNE NIEDERHAUSER

Mr. NIEDERHAUSER. Thank you, Chairman Palmer, Ranking Member Demings, and committee members for this opportunity to speak to you today. I am Wayne Niederhauser, senate president of Utah. I represent Sandy, Utah, gateway to Snowbird and Alta ski resorts. It was snowing when I left home yesterday morning. I also have the privilege of working closely with the Council of State Governments, CSG, and I am here in that capacity today.

On behalf of CSG and our leaders throughout the country, I want to thank you for convening this important hearing and for your leadership in exploring ways to improve relationships between the States and the Federal Government. Founded in 1993—1933, excuse me, the Council of State Governments is the Nation's only organization serving all three branches of government. CSG is a region-based, nonprofit, nonpartisan organization that fosters an exchange of ideas that helps States shape public policy. Our new administration, the Vice President and President, have both voiced their strong support for strengthening relationships with State and

local governments. The administration has issued several executive actions. While these executive orders are important steps towards keeping faith with the established principles of federalism, CSG believes Congress should follow suit and consider legislative action to codify processes that ensure adequate State input.

We applaud Congresswoman Virginia Foxx for introducing H.R. 50, the Unfunded Mandates Information and Transparency Act, which addresses UMRA's narrow coverage, exemptions, and loopholes. The committee understands the constitutional and foundational role the States play in our Federal system as outlined in the 10th Amendment, which laid the foundation for States to develop innovative ideas and policies to fulfill their roles as laboratories of democracy.

The Utah legislature in this last session passed a resolution outlining several dozen areas of State responsibility that have been assumed by the Federal Government. That resolution will be attached to my testimony. State-based innovation is being stifled by a growing web of Federal policies and regulations, which come in the form of unfunded mandates. Unfunded mandates limit State and local flexibility to address more pressing local problems like crime and education. States are often forced to find money to pay these bills. In addition, these mandates may come in a one-size-fits-all box that can shut down innovative efforts to address problems that involve unique local considerations. Among the most costly mandates are those involved in environmental compliance. The EPA and the Army Corps of Engineers' infamous rule to establish an expansive definition of the Waters of the United States is a prime example of which this committee is well aware. A smaller example is the groundwater rule that requires us to manage a new violation, including site inspections, which forces us to hire new employees that cost us $240,000 a year.

The Perkins Program from the Department of Education is my final illustration. Utah receives a grant of approximately $12 million to support State and administrative costs, professional development. In return for this $12 million, we are locked into a maintenance of effort agreement that now costs the State $241 million. It is not a complete loss of money. Some of those things we would have done regardless. But the lack of flexibility comes at a cost. I am attaching a summary of our Perkins analysis. Goals behind Federal mandates are often admirable, but local governments have admirable goals also, more important to citizens, more likely to be effective, and less expensive. Along with the cost of financing these new mandates, the majority of Federal regulations have been enacted with limited or no input or consultation from local governments. This is what led CSG to start a multiyear initiative focused on improving the role of States in the Federal system. I have included the full list of principles in my testimony.

One size does not fit all. Local governments should be encouraged to provide unique local solutions. Stronger coordination and communication will help reduce conflicts, which far too often end up in court and come with enormous economic and opportunity costs. Cooperative federalism requires the Federal Government to work in good faith with the States as equal partners. The broken system demands Congress to implement changes to the process.

Navigating this relationship between the Federal Government and the States and local government—I believe, with your leadership—will improve. Again, I thank you for this opportunity to appear before you today and look forward to your questions.

[Prepared statement of Mr. Niederhauser follows:]

Statement from Utah Senate President Wayne L. Niederhauser, on behalf of The Council of State Governments

Subcommittee on Intergovernmental Affairs
Committee on Oversight and Government Reform
United States House of Representatives

"Unfunded Mandates: Examining Federally Imposed Burdens on State and Local Governments"

April 26, 2017

Chairman Palmer, Ranking Member Demings, and Members of the Committee, thank you for the opportunity to testify before you today.

My name is Wayne Niederhauser; I am the Senate President of the great state of Utah. I have the honor of serving the citizens of the 9th district of Utah in Salt Lake County, which includes Alta, Draper, and my home town of Sandy.

I also have the privilege of working closely with The Council of State Governments – also known as CSG – and I am here in that capacity today.

On behalf of CSG and our state leaders throughout the country, I want to thank you for convening this important hearing and for your leadership in exploring ways to improve the relationship between our states and the federal government.

Founded in 1933, The Council of State Governments is the nation's only organization serving all three branches of state government. CSG is a region-based, non-profit, non-partisan organization that fosters the exchange of ideas that help state officials shape public policy. CSG has also been a leader in advancing the role of the states in our federal system and working to identify solutions to improve the regulatory process

This hearing comes at an important time. In the first months of the new administration, the President and Vice President have both voiced their strong support for strengthening the relationship with state and local governments.

In fulfillment of their regulatory reform agenda, the administration has issued several executive actions with implications for state and local governments. These actions, which highlight the importance of federalism and thorough cost-benefit analyses, open the door for reforms beneficial to states in the federal rulemaking process.

While these executive orders are important steps toward keeping faith with the established principles of federalism, CSG believes Congress should follow suit and consider legislative action to codify processes that ensure adequate state input. In fulfillment of that objective, CSG has placed a specific emphasis on urging Congress to update the Unfunded Mandates Reform Act, or UMRA, of 1995 to ensure state views are taken into account in the development of proposed regulations and legislation.

We applaud Congresswoman Virginia Foxx for reintroducing H.R. 50, the Unfunded Mandates Information and Transparency Act, which addresses the UMRA's narrow coverage, exemptions and loopholes, and will ultimately make it a more effective instrument to reduce unfunded legislative and regulatory mandates.

This Committee understands the constitutional and foundational role that states play in our federal system, as outlined in the tenth amendment. The tenth amendment states, "the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the state respectively, or to the people." This laid the foundation for states to develop innovative ideas and policies, and fulfill their role as "laboratories of democracy."

My feeling is that the federal government has largely ignored a workable balance of responsibility in favor of a system that is more expensive and less efficient. The Utah legislature passed a resolution outlining several dozen areas of state responsibility that have been assumed by the federal government – that resolution will be attached with my written testimony.

State-based innovation is being stifled by a growing web of federal policies and regulations, which come in the form of unfunded mandates. Mandates themselves are likely an injury of constitutional authority; the fact that they are so often unfunded adds the insult.

In 2015, only 114 laws were enacted by Congress, compared to 3,140 rules that were issued by federal agencies. State leaders are challenged to balance budgets, and these difficulties are compounded by unanticipated economic costs associated with unfunded mandates resulting from federal regulations without adequate state input.

Unfunded mandates limit state and local flexibility to address more pressing local problems like crime and education. States are often forced to retroactively find the money to pay the bills and compensate by foregoing discretionary actions that may be vitally important to citizens locally. In addition, these mandates may come in a "one size fits all" box that can shut down innovative efforts to address problems that involve unique local considerations.

Among the most costly mandates are those that involve environmental compliance. States administer 96.5 percent of all federally delegated environmental programs, but federal grants to states fund only 28 percent of the amount needed to run the programs.

The U.S. Environmental Protection Agency (EPA) and the Army Corps of Engineers infamous rule to establish an expansive new definition of "waters of the United States" for the entire Clean Water Act provides a prime example, of which this committee is well aware. A smaller example, to help round out the picture, is the Groundwater Rule that requires us to manage a new violation type, including site inspections, forced us to hire new employees and costs us $240K per year – out of our pockets, and this is not even our rule.

The Perkins program from the Department of Education is my final illustration. Utah receives a grant of approximately 12 million dollars to support state administrative costs, professional development, and other more local education expenses.

In return for this $12 million, we are locked into a Maintenance of Effort agreement that now costs the state over 241 million dollars per year. The money isn't a complete loss – we would have funded many of these things anyway – but perhaps not in the same way. The lack of flexibility comes at a cost and stifles budget innovation in America's laboratories of democracy.

I've attached a summary of the Perkins situation, from the Utah State Board of Education, for your review.

Goals behind federal mandates are often admirable, but we have our own local goals which are just as admirable, more important to local citizens, more likely to be effective and less expensive.

Along with the cost of financing these new unfunded mandates, the majority of federal regulations have been enacted with limited – or no- input and consultation from state and local governments. Moreover, federal agencies regularly process rules without even conducting an analysis on the potential economic costs – as required by the Unfunded Mandate Reform Act.

For example, the EPA issued a total of 8,733 new regulations from 2000 through 2015, while only producing a formal Regulatory Impact Analysis for 50 of those rules. It is hard to comprehend how none of the other rules would trigger the UMRA's analytical requirements.

This is what led CSG to start a multi-year initiative focused on improving the role of states in our federal system. CSG, along with the Western Governors Association, National Association of Counties, Conference of Western Attorney Generals, and the Pacific Northwest Economic Region, have adopted a set of federalism principles and recommendations.

I've included the full list of principles in my written testimony. Briefly, they focus on the importance of: avoiding pre-emption, avoiding unfunded mandates, promoting state flexibility, and improving the consultation process with state and local governments.

One size does not fit all. Local governments should be encouraged to provide unique local solutions.

Stronger coordination and communication will help reduce conflicts, which far too often end up in the courts which comes with enormous economic and opportunity costs.

Cooperative federalism requires the federal government to work in good faith with the states as equal partners.

We are thankful for organizations like CSG who are our eyes and ears in Washington, but the broken system demands congress implement lasting change to the process.

Navigating the relationship between state and federal governments is no easy task, but I believe, with your leadership, we can take steps to improve the outreach and consultation, and division of responsibilities between our states and the federal government.

Again, thank you and the Committee for the opportunity to appear before you today, and I look forward to your questions.

Mr. PALMER. I thank the gentleman for his testimony.

The chair recognizes Senator Davis from North Carolina.

STATEMENT OF THE HONORABLE JIM DAVIS

Mr. DAVIS. Good morning. Thank you, Chairman Palmer and Ranking Member Demings and members of the subcommittee. I am delighted to be here today. And I appreciate the opportunity to share the impact of unfunded mandates, or what I call federally imposed burdens, on North Carolina's State and local governments. I am here to provide examples of compliance challenges and their associated costs from such mandates.

I serve North Carolina's district 50, which covers the seven westernmost counties in the State. Collectively, these counties contain almost 900,000 acres of Federal land, large tracts removed from development opportunities and the property tax base. As a result, these counties face significant challenges in their ability to provide critical services to their citizens. The added costs of compliance with unfunded mandates exponentially stress these already struggling local governments. On the opposite side of my State, the U.S. Army Corps of Engineers dredges Federal channels and disposes of dredged materials in Federal waters offshore. Coastal counties seeking resources to renourish beaches and to repair from coastal storms often have need of dredged sand. But before any restoration can begin, managers of renourishment and repair projects must navigate the federally imposed bureaucracies of two separate agencies. First, they must secure Federal lease from the Bureau of Ocean Energy Management. Then they must work through the National Environmental Protection Act sediment sampling process for approval to extract sand from Federal waters and place it back on the beach. Delays in these processes are the norm and force local governments to create funding by increasing sales and property taxes on our citizens.

Our North Carolina workforce, and in particular our citizens with disabilities, along with our North Carolina Division of Vocational Rehabilitation and its contracted providers, are being directly and deleteriously impacted by numerous Federal unfunded mandates associated with rules and regulations promulgated in section 4 of the Workforce Innovation and Opportunity Act. These mandates include extension of service obligations. DVR programs are now responsible for services to youth with the most significant disabilities starting at age 14 for up to 4 years, with no additional funding and no previous responsibility. Funding must come from either North Carolina taxpayers or reduction or elimination of services for other citizens.

New mandated allocation of States' DVR Federal grant. Fifteen percent of the total DVR Federal grant money is now mandated for a new responsibility to provide preemployment transitional services to youth starting at age 14. The 15-percent requirement was not graduated for infrastructure ramp up, causing States to forfeit Federal funds. With forfeiture of funds, no additional funding, and no previous responsibility, the money must come from North Carolina taxpayers or a reduction or elimination of services.

While the legislative intent of the Workforce Innovation and Opportunity Act was intended to benefit our workforce and citizens

with disabilities, it was in effect a regulatory overreach, an attempt to legislate through rulemaking, which resulted in noble intentions becoming unfunded mandates, ungrounded in reality. The North Carolina Department of Transportation is rife with examples of the burdens of unfunded Federal mandates. NCDOT is responsible for all modes of transportation in my State. The NCDOT also oversees and helps expand economic opportunities through the North Carolina ports and North Carolina Global TransPark. Federal unfunded mandates impact States that support passenger train services delivered by providers other than Amtrak. There is no Federal funding to support the additional costs associated with this designation. And the total financial impact to North Carolina is over a million and a half dollars per year. Due to a change in the Federal definition of "passenger ferry," base appropriations for North Carolina's ferry system went from 22 million in 2007 to over 31 million in 2008.

And I could list many other Federal mandates that caused our State to either increase taxes or reduce services. But I would like to conclude my testimony with this compelling example from a business owner in my district. His experience is at best a sobering commentary on compliance challenges and associated costs from unfunded Federal mandates. He was told by a compliance officer charged with enforcing EPA guidelines that his boiler system was compliant with current emissions of arsenic; however, he would be required to reduce the emissions from 12 parts per million to 4 parts per million. After spending over $200,000 on consultants, lawyers, and other experts, this business owner learned two things. One, the technology didn't exist to reduce it to 4, and secondly, arsenic occurs naturally in our air at 12 parts per million. Rather than invest $200,000 on needed equipment, employee raises, or profit, the business owner spent his money on efforts to comply with the impossible. Where I come from, $200,000 is real money.

I commend my testimony to you and welcome your questions. Thank you.

[Prepared statement of Mr. Davis follows:]

STATEMENT OF NORTH CAROLINA SENATOR JIM DAVIS BEFORE THE HOUSE OVERSIGHT AND GOVERNMENT REFORM COMMITTEE SUBCOMMITTEE ON INTERGOVERNMENTAL AFFAIRS
APRIL 26, 2017

Good morning, Chairman Palmer, Ranking Member Demings, and Members of the Subcommittee. Thank you for the opportunity to share impacts of unfunded mandates -- **federally imposed burdens** -- on North Carolina's state and local governments. I am here to provide examples of compliance challenges and their associated costs from such mandates.

I serve North Carolina's Senate District 50 which covers the seven western-most counties in my state. Collectively, these counties contain almost 900,000 acres of federal land – large tracts removed from development opportunities and the property tax base. As a result, these counties face significant challenges in their ability to provide critical services to our citizens. The added costs of compliance with unfunded federal mandates exponentially stress these already struggling local governments.

On the opposite side of my state, the U.S. Army Corps of Engineers dredges federal channels and disposes of dredged materials in federal waters offshore. Coastal counties seeking resources to re-nourish beaches and repair from coastal storms often have need of dredged sand. But before any restoration can begin, managers of re-nourishment and repair projects must navigate the federally imposed bureaucracies of two separate agencies. First, they must secure a federal lease from the Bureau of Ocean Energy Management. Then they must work through the National Environmental Protection Act's sediment sampling process for approval to extract sand from federal waters and place it back on the beach. Delays in these processes are the norm, and force local governments to create funding by increasing sales and property taxes on our citizens.

Our North Carolina workforce, and in particular our citizens with disabilities, along with our NC Division of Vocational Rehabilitation (DVR) and its contracted providers, are being directly and deleteriously impacted by numerous unfunded mandates associated with rules and regulations promulgated in Section IV of the Workforce Innovations and Opportunity Act (WIOA). These mandates include:

- Extension of service obligations: DVR programs are now responsible for services to youth with the most significant disabilities starting at age 14 for up to 4 years; with no additional funding and no previous responsibility, funding must come from either NC taxpayers or reduction or elimination of services for other citizens.

- New mandated allocation of states DVR Federal grant: 15% of total DVR federal grant money is now mandated for a new responsibility to provide pre-employment transitional services to youth starting at age 14. The 15% requirement was not graduated for infrastructure ramp up, causing states to forfeit federal funds; with forfeiture of funds, no additional funding and no previous responsibility, the money must come from either NC taxpayers or reduction or elimination of services for other citizens.

- New career counseling mandate: DVR is now obligated by WIOA to provide career counseling and guidance, along with information and referral services to 4,200 individuals who receive special minimum wage or commensurate wage per section 14c of the Department of Labor's FLSA. With no additional funding and no previous responsibility, funding must come from either NC taxpayers or reduction or elimination of services for other citizens.

- New DVR service expectation and expansions: DVR Supported Employment services are expanded 33% from 18 to 24 months and include a new expectation to provide career advancement services; with no additional funding and no previous responsibility, funding must come from either NC taxpayers or reduction or elimination of services for other citizens.

- Reduction in resources for personnel training: While personnel training requirements continue, those resources previously provided no longer exist under WIOA; this mandate continues after being unfunded.

While the legislative intent of the Workforce Innovations and Opportunity Act was intended to benefit our workforce and citizens with disabilities, it was in effect a regulatory overreach – an attempt to legislate through rule-making -- which resulted in noble intentions becoming unfunded mandates ***ungrounded in reality***.

The North Carolina Department of Transportation (NCDOT) is rife with examples of the burdens of unfunded federal mandates. NCDOT is responsible for all modes of transportation in my state – highways, rail, aviation, ferries, public transit, and bicycle and pedestrian transportation – as well as the state's Division of Motor Vehicles, Turnpike Authority, and the Governor's Highway Safety Program. The NCDOT also oversees and helps expand economic opportunities through the NC State Ports and NC Global TransPark.

Federal unfunded mandates impact states that support passenger train services delivered by providers other than Amtrak. There is no federal funding to support the additional costs associated with this designation. The total financial impact to NCDOT is $1,650,000.

Federal unfunded mandates impacting public transportation include the migration to a more difficult-to-manage grants making system. Staff and technology required to oversee performance targets cost $5,000,000, $2,000,000 of which is recurring. New reporting requirements and shifting definitions require $500,000 in recurring expenses. Several actions taken by The Safety Management System(SMS) resulted in a recurring $3,200,000 - $8,000,000, the amount depending entirely on how far SMS carries its "Agency Plan".

Due to a change in the federal definition of "passenger ferry", base appropriations for NC's ferry system went from $22,264,811 in 2007 to $31,313,921 in 2008. In addition, Homeland Security mandates resulted in requiring 24 security positions with an impact of $1,095,607.

A federal mandate requires vessels over 400 gross tons to develop a plan for treatment of oil spills in US waters. NC has 15 vessels that meet this requirement that includes annual drills and

training from a third party contractor. All of this is redundant to the requirements already mandated by North Carolina's environmental protection and spill response plans. The estimated cost to the department is $10,000 each year.

Counties are the first responders providing health and human services to the public and, in particular, our nation's vulnerable populations – children, elderly and the chronically ill. Many of these services are mandated by federal law. The populations these programs help serve do not diminish with reductions in, or elimination of, federal assistance, and thus an unfunded mandate is created when counties are forced to make up the difference.
While immigration is a federal responsibility, counties are directly affected by immigration. Federal mandates require counties to provide emergency health, free elementary and secondary education, and public safety to everyone regardless of immigration status. The annual fiscal burden on North Carolina taxpayers from illegal immigration is more than $1 billion.

NC counties own water quality systems and other infrastructure like roadside ditches, stormwater systems, green infrastructure and drinking water facilities. These should be excluded from the U.S. Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (USACE) new "Waters of the U.S." (WOTUS) definition under the Clean Water Act. If left in place as is, this rule will substantially increase the cost of permitting and cause significant harm to farmers, businesses and landowners.

This legislative session, in response to longstanding complaints from North Carolina education systems, a bill was introduced to study the financial costs to the State and local school administrative units of compliance with federal mandates related to the receipt of federal education funding. SB 78 requires the Department of Public Instruction to study, report, and provide any supporting data to the Fiscal Research Division and the Program Evaluation Division (PED) to the General Assembly on the cost of compliance with federal education funding mandates to local school administrative units.

I conclude with this compelling example from a business owner in my district. His experience is at best a sobering commentary on compliance challenges and associated costs from unfunded federal mandates. He was told by a compliance officer charged with enforcing EPA guidelines that his boiler system was compliant with current emissions of arsenic. However, he would be required to reduce the emissions from 12 parts per million to 4 parts per million. After spending over $200,000 on consultants, lawyers, and other experts, this business owner learned two things. One, the technology did not exist to reduce arsenic emissions to 4 parts per million. And two, arsenic occurs naturally in the western North Carolina air at 12 parts per million. Rather than invest $200,000 on needed equipment, employee raises, or profit, the business owner spent his money on efforts to comply with the impossible. Where I come from $200,000 is real money.

I commend my testimony to you and welcome your questions.

Mr. PALMER. The chair recognizes the gentleman from Kentucky, Mr. Moore, for his testimony.

STATEMENT OF THE HONORABLE GARY MOORE

Judge MOORE. Chairman Palmer, Ranking Member Demings, and distinguished members of the committee and subcommittee, thank you for holding today's hearings on unfunded mandates.

I would also like to say hello to Kentucky Representative Comer and, if he is able to join us later, my Congressman Massie, Thomas Massie.

My name is Gary Moore, and I am the elected county judge executive in Boone County, Kentucky, and I am honored to provide testimony today on behalf of the National Association of Counties to share how we can strengthen the intergovernmental consultation process. This issue is so important to counties nationwide as we work to balance our budgets and provide critical services to our constituents, including public safety, health services, fire and rescue, infrastructure development, and much more.

As this committee examines the impacts of unfunded mandates, I would briefly like to share a few points for your consideration. First, the regulatory consultation process between Federal agencies and State and local governments needs to be strengthened. In 1995, Unfunded Mandates Reform Act, UMRA, was instrumental in reducing unfunded mandates in Federal legislation for State and local governments. In fact, CBO periodically and proactively brings together NACo and other State and local organizations to discuss proposed legislation that could result in unfunded mandates. However, the framework it established for the regulatory consultation process has been less effective. It tasked each agency with developing their own internal process, which we found to be inconsistent across and within agencies. We often find that the agencies just want to check a box instead of having meaningful discussion with us as intergovernmental partners before and throughout the rulemaking cycle.

We are encouraged that Congress has been working on legislation to strengthen this process and hopefully curb the number of unfunded mandates. For example, H.R. 50, UMITA, would increase transparency about the cost of unfunded Federal mandates to State and local governments. Similarly, H.R. 1009, the OIRA Insight, Reform, and Accountability Act, would increase levels of consultation and collaboration between agencies and State and local governments.

Time and time again, we see major Federal regulations like Waters of the U.S., the ozone rule, and the Department of Labor's overtime rule finalized with little or no consultation with State and local governments, even though these regulations have major practical and financial implications for counties.

Second, counties face mounting fiscal stress from unfunded mandates. Counties must operate balanced budgets. We often do not have the flexibility in our budgets to pay for new Federal requirements. In fact, 45 States already impose limitation on counties' ability to raise additional revenue. In my home State of Kentucky, the burden of an ever-growing list of Federal and State mandates has resulted in reduced funding for county jails, inmate health

care, infrastructure maintenance, while other funding limitations are affecting our county-run 911 system. Federal policies and programs developed with only the impact on the Federal Treasury in mind put the ability of local governments to fulfill our responsibilities at risk.

Finally, our system of federalism requires a strong Federal, State, and local partnership to achieve our shared goals. Unfortunately, our intergovernmental partnership is often out of balance as Federal agencies impose one-size-fits-all approaches, taking away local decisionmaking. When the Federal agencies do engage in meaningful consultation, they are better able to develop practical rules that accomplish our shared goals.

Mr. Chairman, thank you again for the opportunity to discuss these issues and the major impact of federally imposed burdens on State and local governments. In short, we hope Congress will implement a consultation process across the Federal Government that includes working with State and local partners early and often. I am happy to answer your questions. Thank you.

Mr. PALMER. I thank the gentleman for his testimony.

The chair recognizes Mr. Reed for his testimony.

STATEMENT OF THE HONORABLE JERMAINE REED

Mr. REED. Thank you. And good morning to you, Mr. Chairman, and the ranking members and the members of this committee.

I am Jermaine Reed, a member of the city council from Kansas City, Missouri. And it's an honor to be able to join you on behalf of National League of Cities, the oldest and largest organization representing American cities and towns. City leaders, as you have indicated, are on the front lines of almost every issue. From education, health care, environment, cities and towns are making major strides in these areas because we are in the business of finding solutions to the challenges that face our communities.

But one of the biggest barriers to our progress is the burden of unfunded mandates. All city leaders face tough budget choices in what services we are able to provide, but often the added burden of unfunded mandates is the last straw for straining local budgets. We at the National League of Cities are opposed to unfunded mandates. As has been indicated, with the release of the President's budget proposal, the concerns on whether the Federal Government can reduce or can be eliminated without shifting the costs to local governments has never been greater: the across-the-board proposed cuts to critical funding for programs and services in cities, the new unfunded mandates it would create. And we urge Congress to reject these cuts. Our constituents depend on the success of our Federal-local partnership to ensure that government services are affordable, reliable, and also high quality. To achieve that, I urge the committee to work to eliminate unfunded mandates and other regulatory burdens, support local flexibility and control to avoid taking a one-size-fits-all regulatory approach. The partnership between local, State, and Federal Government works best when our unique powers and responsibilities are clearly defined and respected. Local governments' biggest duty is to provide services, solve day-to-day problems, and respond directly to the needs of our citizens.

As our research at the National League of Cities shows, city budgets are still recovering from the Great Recession. The country's municipal workforce is still at 58,000 jobs below the peak in the mid-2000s, and we are still meeting the needs of our citizens, but there certainly is a very little to—margin of error. In my hometown of Kansas City, we treat every budget approval process as an opportunity to reexamine with our constituents what their needs are to provide. When we are faced with unfunded mandates, my colleagues and I are forced to disregard the will of our voters and divert local tax dollars to meet the standards imposed by Congress.

As explained in my written testimony, the unfunded mandates that we are facing include regulations from the Clean Water Act, the Clean Air Act, and the Americans with Disabilities Act. And right now, I would like to focus on the Clean Water Act and what it takes for cities our size to comply with unfunded mandates it's proposed. In 2009, in order to meet the requirements under the Clean Water Act, Kansas City developed a 25-year plan called the Smart Sewers Program. The program includes 101 separate projects and comes at a cost of nearly $5 billion, financed entirely by wastewater fees. In order to fund these improvements, the city was forced to impose double-digit increases on our residents each year for the past 7 years. The average monthly bill has more than doubled, from $48 in 2009 to nearly $101 today, with major burdens on our elderly and low-income citizens. In addition to the Smart Sewers Program, the city has been mandated to invest in over $800 million in wastewater systems upgrades to meet the population discharge and regulation by the year of 2035.

Now let me be clear that these programs are important and include many benefits to our community. But without the adequate funding and no input from local elected officials, they leave our city helpless to meet the Federal needs and to balance our local budgets. Cities need to have a seat at the table during the rulemaking process to ensure that local consideration and consequences are taken into account.

As I stated in my written testimony, I would like to commend EPA for the significant improved consultation process with State and local governments. And I urge all Federal agencies to learn from their progress. More importantly, on behalf of the National League of Cities, I urge this committee to improve the Federal-local consultation process in a way that local government input and consideration in rulemaking is made. This can be achieved through the consistent consultation guidelines across Federal agencies and the low consultation thresholds, as the EPA example has shown. With more opportunities for local officials to participate in the rulemaking process, we can eliminate unfunded mandates at an early stage and give local governments the flexibility to balance their budget, provide high-quality services, and respond to our constituents' needs.

On behalf of the National League of Cities and the City of Kansas City, Missouri, thank you for the opportunity to submit this testimony on this critical issue, and I look forward to your questions.

[Prepared statement of Mr. Reed follows:]

Statement of

The Honorable Jermaine Reed
Councilmember, City of Kansas City, Missouri

On behalf of the National League of Cities

Before the House Committee on Government Oversight and Reform
Subcommittee on Intergovernmental Affairs

"Unfunded Mandates: Examining Federally Imposed Burdens on State and Local Governments"

April 26, 2017

Good morning, Mr. Chairman and Members of the Committee. I am Jermaine Reed, Councilmember from the City of Kansas City, Missouri. It is my pleasure to be with you today on behalf of the National League of Cities, the oldest and largest organization representing local elected officials in America's cities and towns. NLC represents 19,000 cities and towns of all sizes across the country. I appreciate the opportunity to share the perspective and recommendations of local elected officials on how the federal government can reduce unfunded mandates and unnecessary regulatory burdens on local governments. We believe that by improving the Federalism consultation process and the way local government input is considered this can be achieved.

As cities across America are at the front lines implementing and leading on programs from education to healthcare and the environment, we look to our partners in Washington to offer support for coordinated and substantive results. As you will hear from me today, cities have come a long way in tackling issues around clean water, clean air and accessibility, to name a few, but we have also been burdened by unfunded mandates associated with these actions. As city budgets struggle to recover from the Great Recession, many of us are making touch choices about the services and maintenance that we can afford and in some instances taking actions to borrow and finance funds to addresses critical needs. Moreover, proposed federal budget cuts to critical programs would further reduce our ability to meet the everyday needs of our community, as well as add to the burden that unfunded mandates have on our city. This is not a sustainable situation and we urge Congress to reject the proposed cuts put forth by the Trump Administration. Additionally, with more opportunities for cities and local elected officials to be a part of the federal policy and rulemaking process, we hope that unfunded mandates and other

regulatory burdens can be identified and eliminated at an early stage. We look forward to an intergovernmental partnership that supports local flexibility and authority, provides the necessary resources, and avoids a "one-size-fits-all" approach.

Federalism Principles and the Intergovernmental Partnership
The intergovernmental partnership, through federalism, involves a cooperative partnership among local, state and federal governments, and must be strengthened through all levels of government. The principles of federalism require acknowledgement of the respective roles, duties, and responsibilities for each level of government. Federalism is promoted when boundaries of authority and responsibility are identified, delineated, and respected by all the partners of government.

Within the intergovernmental partnership, local governments are principally responsible for providing services, solving day-to-day public problems, and responding directly to the needs of citizens. Unfunded mandates impose additional disproportionate responsibilities on local governments, and increased uncertainty and financial liability, without regard to the fiscal impact of those policies. As such, their impact on the division of power within the intergovernmental partnership ultimately moves us further from our foundational principles of federalism.

Federalism, ultimately, is the constitutional relationship between state governments and the federal government. Cities are not mentioned in the U.S. Constitution and, instead, derive their powers from their respective state governments. For much of the early portion of American history, federal policy did not interfere with local government. Only since the 1930s has there been an active and direct federal-city relationship. This relationship has been largely defined by the power of the purse, meaning the federal government has used funding to induce cooperation from local governments. Unfunded mandates, however, distort this *quid pro quo* relationship by removing the federal government's end of the bargain.

Furthermore, it is important to note that the capacity of city government to respond to federal demands is limited. While Kansas City has access to earnings, sales, and property taxes, most cities have access to only one or two streams of revenue. Additionally, states or voters in many areas have imposed caps on the revenues cities are able to raise, often by limiting increases in the property tax. NLC's annual *City Fiscal Conditions*[1] survey research shows that city government revenues have not fully recovered from the Great Recession. The recovery of city finances has been protracted—10 years out, general fund revenues are still below pre-Recession levels. Cities have responded by making tough decisions to reduce services and lay off employees. As of this month, local government payrolls are still 58,600 jobs below their pre-Recession high.

Unfunded Mandates Reform Act and Executive Order 13132: Federalism
Cities saw a major victory on the unfunded mandates front in 1995 through a renewed focus on federalism. At the time, cities were seeing a rise in regulatory or "coercive federalism" through regulations, mandates and preemptions and a decline in fiscal federalism. In the half-century between 1945 and 1995, the number of federal mandates on state and local governments

[1] National League of Cities, "City Fiscal Conditions 2016," October 16, 2016. Available at http://www.nlc.org/resource/city-fiscal-conditions-2016

increased from less than 10 to more than 100. Since the late 1970s, the federal government's share of local government general revenue has declined from about 15 percent to 4 percent.[2]

Today, as was true in 1995, fundamental questions about the roles and responsibilities of government are at the forefront of policy discussions—how to streamline the government, balance the federal budget, and shift policy responsibilities to states and local governments, and the private sector. Today, as was true in 1995, cities are concerned about whether federal programs can be reduced or eliminated without shifting the costs to local governments in the form of unfunded mandates. With the release of the President Trump's 2018 budget proposal, this question becomes a clear reality. With across-the-board proposed cuts to critical funding for cities through programs such as Community Development Block Grants (CDBG), Transportation Investment Generating Economic Recovery (TIGER) grants and 21st Century Community Learning Center grants for afterschool programs, just to name a few, the elimination of federal funding support and the resulting transfer of full responsibility for continuation of these programs to states and local governments would create new unfunded mandates.

The Unfunded Mandates Reform Act of 1995 (UMRA) aimed to address this burden by requiring federal agencies to assess the costs and benefits of a final rule that may result in the expenditure by state, local, and tribal governments, in the aggregate, of $100 million or more. Under UMRA, this threshold amount also triggers the required intergovernmental consultation process between regulatory agencies and elected officials.

In 1999, President Clinton issued Executive Order 13132: Federalism (Executive Order) to "further the policies of the Unfunded Mandates Reform Act" and to "insure that the principles of federalism established by the Framers guide the executive departments and agencies in the formulation and implementation of policies." In addition to enumerating the basic principles of federalism, the Executive Order directed federal agencies to set up a consultation process "to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications."

Since 1997, the Congressional Budget Office (CBO) has assessed whether legislation considered by Congress contains unfunded mandates and whether any unfunded mandate costs exceeds the UMRA threshold. According to CBO, in the 19 years since UMRA became effective, there have been 13 laws with intergovernmental mandates that had costs estimated to exceed the statutory threshold, the last of which was enacted in 2010.[3] Examples include increases in the minimum wage; minimum standards for issuing drivers licenses, identification cards and vital statistics documents; and requirements on rail and transit owners and operators.[4]

While this process is working in some agencies and for some programs, it remains clear at the local level that there is still a long way to go to ensure that input by local officials is a meaningful part of the regulatory process, and not merely a check of the box.

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[2] U.S. Census, State and Local Government Finances 2014 data, December 9, 2016. Available at https://www.census.gov/govs/local/

[3] Congressional Budget Office, "A Review of CBO's Activities in 2014 Under the Unfunded Mandates Reform Act," March 31, 2015. Available at www.cbo.gov/publication/50051.

[4] Ibid.

The Kansas City Experience
According to data from the U.S. Census Bureau, Kansas City is the 37th most populous city in the United States with over 460,000 residents. However, Kansas City is part of a bi-state metropolitan area of 2.1 million people that includes 172 cities and 15 counties. The city, with 319 square miles, has the 11th largest land area in the country among cities not consolidated with counties. Kansas City has been recognized nationally not only as a wonderful place for barbeque, but also as a place for small business and startup incubation and for having one of America's best downtowns. We are proud of our city, its residents and its programs.

Last month, my colleagues and I in the Kansas City Council approved a $1.59 billion 2017-2018 budget, which takes effect on May 1 and has a strong focus on public safety and city services. While the budget increases services in some departments, we are very conscious of the uncertainty of federal funding support for cities in the coming years. In partnership with Mayor Sly James, we are thinking long and hard about how to build efficiencies while simultaneously maintaining our infrastructure and supporting our residents. To help us meet our maintenance needs, the city put forward an $800 million General Obligation bond to the voters on April 4 to support critical deferred infrastructure maintenance, including sidewalk repairs, flood control improvements and building renovations and upgrades to satisfy ADA requirements. This package was approved by voters and we are hopeful that this will help us in addressing several billion dollars' worth of maintenance backlog that the city has been unable to address up to this point.

As with many cities, budgets are carefully considered to reflect the priorities and needs of our residents. This year's budget is no different and reflects the changing needs and demands of our growing city. That process, however, is upended each time we face an unfunded mandate. As these federal mandates arise, we are forced to choose between raising taxes, cutting services or delaying needed infrastructure projects. Is it right to choose between these mandates and fixing a necessary sewer line or cutting services to critical city programs? Each time we get an unfunded mandate, it requires locally-elected officials to disregard the will of our voters to meet the standards imposed by Congress or the Administration. The federal government must not initiate laws, rules and regulations, or take other actions and activities that will mandate action on the part of local governments. But, if they do, reimbursement funds must be provided to compensate local governments for such mandates.

The following are examples of unfunded mandates that Kansas City is facing in the areas of clean water, clean air and accessibility. As I mentioned earlier, we are not a small city, so we have the benefit of financial resources that smaller cities and towns are not afforded when faced with these same challenges. However, even with the benefit of size, Kansas City struggles at times to adapt to the changing regulations and laws that come without resources.

Clean Water
Our nation's aging water infrastructure is an issue of national concern. The U.S. Environmental Protection Agency (EPA) estimates that each year more than 850 billion gallons of combined sewer overflow is discharged into local streams and rivers.[5] To address this public health

[5] U.S. Environmental Protection Agency, "Report to Congress: Impacts and Control of CSOs and SSOs," August 2004. Available at https://www.epa.gov/sites/production/files/2015-10/documents/csossortc2004_full.pdf

concern, EPA estimates a total investment of $57 billion dollars (2004 dollars) is needed to reduce combined sewer overflows (CSOs) across 772 communities. For the communities impacted by these CSOs, the burden of this and other unfunded mandates established under the Clean Water Act is great.

To meet our requirement under the Clean Water Act, in 2009, Kansas City developed a 25-year plan, the Smart Sewer Program, to reduce our combined sewer overflow volume from 6.4 billion gallons annually to 1.4 billion gallons annually. The program represents Kansas City's largest existing infrastructure investment and the first federal consent decree to incorporate green infrastructure solutions to improve water quality.

Our Smart Sewer Program includes 101 separate projects and will cost the city between $4.5 and $5 billion. The program is funded solely through wastewater revenues. As a result, we are significantly raising our wastewater rates and Kansas City customers are facing significantly higher bills. Residents in Kansas City have already faced seven years of double-digit rate increases, which have more than doubled the average monthly bill for consumers from $48 in 2009 to $102 per month today. The city must continue to raise rates annually to meet the requirements of our consent decree.

In addition to the requirements of Kansas City's consent decree, the city must also meet other unfunded mandates set forth under the Clean Water Act, including obligatory investments as part of the National Pollution Discharge Elimination System (NPDES) and Municipal Separate Storm Sewer System (MS4) permit requirements. Kansas City must invest another $800 million in wastewater system upgrades to meet future NPDES regulations by the year 2035.

An area of concern that would threaten the effectiveness of an already modest revenue stream and frustrate the flexibility intended for MS4 systems is the Total Maximum Daily Load (TMDL) program. To be clear, the TMDL program is an important part of the Clean Water Act, especially when the TMDLs are developed in accordance with sound science and are implemented in a manner reflective of real world conditions. However, Congress, EPA and the states must take care to ensure that TMDLs do not erode the practicality of the MS4 legal standard, impose strict numeric effluent limits or mandate expensive infrastructure retrofits in order to achieve compliance.

Aside from the absence of revenue to meet unfunded mandates, we must consider a fundamental measure of appropriateness in asking one generation of taxpayers to remedy the infrastructure issues created by multiple generations. This is especially critical for communities like Kansas City where citizens are already dealing with affordability concerns connected with funding Clean Water Act programs and aging infrastructure.

Clean Air

When the Clean Air Act passed in 1963, it's safe to say that cities across America needed federal support to control air pollution on a national level and in our communities. Since that time, federal and state standards and programs have helped the Kansas City region significantly reduce our emissions and improve our air quality. Programs such as Congestion Mitigation Air Quality

(CMAQ) funding, the Diesel Emissions Reduction Act, and air quality planning, multipurpose, and research grants for air, climate and energy are instrumental to improving air quality in the Kansas City region. Without these programs, we jeopardize the progress made in both environmental quality and public health over the last fifty years.

Through early replacement or retrofitting of school buses, rail engines and other heavy-duty diesel vehicles, our air quality has improved around our schools and in our neighborhoods, protecting the health of those most vulnerable to adverse impacts of pollution. Additionally, bi-state coordination of air quality planning efforts has resulted in one of the nation's most robust air quality public education programs, as well as the EPA Clean Air Excellence Award for our Clean Air Action Plan, a voluntary plan to reduce emissions and improve public health adopted and endorsed by public and private partners in the Kansas City region.

Ozone levels in Kansas City are dependent upon local emissions, ozone concentrations in air masses moving into our area, and local weather conditions. Since the early 2000s, monitoring of compliance for regulations was taken over the State of Missouri and the Mid-America Regional Council. The regional planning agency for Greater Kansas City continues to assess the region's compliance with the National Ambient Air Quality Standards and implement the region's Clean Air Action Plan.

Looking forward, our city and region are planning for the possibility of a non-attainment designation when the national ground-level ozone 70 parts-per-billion standard goes into effect. If Kansas City falls out of attainment for air quality standards, it could be costly to implement changes to our Clean Air Action Plan and could discourage companies from locating or building in Kanas City because of the more stringent regulations.

Accessibility

When the Americans with Disabilities Act (ADA) was passed in 1990 and the first ADA Standards for new construction and renovations to existing buildings were implemented in 1991, most facilities were not ADA compliant. In Kansas City, many structures were never renovated to ADA compliance and, unfortunately, some renovations and some new construction was completed that was also not ADA compliant. As a result, the city found itself in the position of having to correct more than two decades of ADA violations with no set budget for the corrections and improvements.

The City of Kansas City entered into a Settlement Agreement with the U.S. Department of Justice (DOJ) in July 2012, under Project Civic Access (PACX), becoming the 200th city to enter in to such an agreement. The agreement called for many things, but the primary objective was to make the city ADA compliant within a six-year time frame. This includes all policies, buildings and programs, websites, curb ramps, etc. Complying with this vital civil rights legislation is of critical importance to our city and a large effort is underway to meet our Settlement Agreement and our obligations under the ADA.

Now nearly five years into the Settlement Agreement, we will be negotiating more time to complete the necessary upgrades as both the timeline for completion and its cost have become a burden. During the assessment of city assets, approximately 40,000 ADA violations were

discovered throughout all our facilities. This number includes each violation individually, such as every door pressure reading, each door knob, etc. Every violation was documented with photography and recorded. The assessments and recording of the violations alone took months. The city has remedied thousands of violations to date, but is currently completing its transition plan and will be requesting several additional years to bring our remaining facilities into full ADA compliance.

The cost of this work is estimated to be over $100 million. To date, approximately $25 million has been spent. The city's latest bond package, which was approved by voters on April 4, will provide an additional $24 million for ADA improvements, but that is only a portion of our ADA obligations. There is still much to do and the funding has yet to be identified for these expenses. There is no easy solution and there is no single-size solution.

Cities and the Federal Government Should be Partners in the Rulemaking Process
While 2010 was the last time CBO identified a law as creating an unfunded mandate on local governments, many other unfunded mandates stem from the rulemaking process. As partners in the intergovernmental process and often serving as co-regulators, cities should be at the table when rules are being crafted to provide an important perspective on ensuring that rules are effective, implementable, offer local flexibility, avoid a "one-size-fits-all" approach, and avoid an unfunded mandate. The feedback and input that local elected officials provide during the federalism consultation process should be considered in such a manner that it can truly help shape and inform the rulemaking so that issues as I just detailed in Kansas City do not continue to be created.

Example: U.S. Environmental Protection Agency
Under UMRA and the Executive Order, each federal agency adopted guidance for consulting with state and local governments on federal regulatory actions, but the consultation processes differ by agency, and as a result the Executive Order is applied inconsistently across the federal government. While many unfunded mandates stem from the EPA, the Agency should be commended for improving the consultation process with state and local governments.

In 2008, EPA undertook a review of its Federalism guidance and, with NLC's urging, lowered the intergovernmental consultation threshold to $25 million in the "spirit" of federalism to improve the way the Agency defines, conducts and makes regulatory decisions. Since this time, NLC and the other state and local government groups have been consulted with on over 20 different rulemaking procedures. By comparison, since the Executive Order was issued in 1999 through 2008, only two EPA regulations were found to have aggregate costs to state and local governments above the $100 million threshold for triggering the intergovernmental consultation process. While EPA has one of the most robust state and local government consultation processes, rulemakings are often done in silos, but there is a cumulative effect of each of the Agency's individual rulemakings at the local level where elected officials have to look holistically and make tough decisions about where to invest their limited financial resources.

Moreover, there are times when we believe the Agency falls short in the consultation process, as well as in conducting the fiscal analysis that accompanies rulemakings. Over the past several years, NLC has identified several rulemakings where we believe EPA has not engaged in a

"meaningful and timely" consultation process or where the Agency has underestimated or not fully considered the actual cost to local governments.

Recommendation: Improve the Federalism consultation process and the way local government input is considered.

The federalism consultation process could be improved through consistent guidance across federal agencies that requires early analysis and consultation with state and local leaders during the rulemaking process, as well as a lower consultation threshold, as implemented by EPA for example. With more opportunities for cities and local elected officials to be a part of the rulemaking process, potential unfunded mandates and other regulatory burdens could be identified and eliminated at an early stage.

For this process to be successful, the federal government must fully evaluate and consider the full range of impacts of regulations on local governments, including a complete cost-benefit and risk assessment of proposed rules early in the regulatory process, and use the feedback and input from local governments in a way that can inform that work. Federal policies and rules must provide states and local governments with sufficient time for implementation and maximum flexibility in the administration and maintenance of federal programs. As we've seen in Kansas City, it isn't a "one-size-fits-all" at the local level, and by involving leaders from cities in the process together we can avoid unnecessary budgetary burdens and unfunded mandates while simultaneously achieving strong outcomes.

While the federalism consultation process can be improved, it is an essential component of the intergovernmental process, and local elected officials value the opportunity to provide direct input into the rulemaking process before rules are even drafted. This early feedback and input helps the federal government develop rules that are effective, reasonable, and implementable at the local level. We continue to urge the federal government to listen to and consider the perspective of local governments early and often during the rulemaking process.

In conclusion, working together, cities and the federal government can craft laws, policies and rules that meet our mutual goals of protecting the health, safety and welfare of our citizens, while reliving the pressure of unfunded mandates on local governments.

On behalf of the National League of Cities and the City of Kansas City, I thank you for the opportunity to submit this testimony on this critical issue. I look forward to your questions.

Mr. PALMER. Thank you for your testimony.

The chair now recognizes Mr. McKay for his testimony.

STATEMENT OF THE HONORABLE JEFF MCKAY

Mr. MCKAY. Good morning. Thank you, Chairman Palmer, Ranking Member Demings, Representative Connolly, members of this subcommittee. Thank you for the opportunity to testify today.

My name is Jeff McKay, and I serve as chairman of both the Budget and Legislative Committees on the Fairfax County Board of Supervisors. I also serve on the Board of Directors of the Virginia Association of Counties. Many of you are probably familiar with Fairfax County, from Tysons Corner mall to the Springfield Town Center to Wolf Trap to Mount Vernon, we have transformed from a rural farming community into the largest jurisdiction in the Washington, D.C., area and the largest jurisdiction in the Commonwealth of Virginia with a highly diverse population of over 1.1 million people. We hold a coveted AAA bond rating and among the most highly educated populations in the Nation.

We have a strong partnership with the Federal Government, with 54.7 billion in total defense spending in fiscal year 2014. Nearly 30,000 defense personnel are located in Fairfax County, Virginia, in addition to many other Federal employees. We value the close relationship we have with the Federal Government and are even seeking to expand it with the potential relocation of the FBI headquarters in Springfield, Virginia. We very much are your partners, and we are proud of that relationship.

Though Fairfax is often described as a wealthy community, we have many individuals and families who are struggling, including approximately 70,000 people living in poverty. Nearly 51,000 students in our public school system qualify for free and reduced-price lunch. Only five school divisions in Virginia have more total students than we have on just free and reduced-price lunch in Fairfax County.

As has often been said, local government is the level of government that is closest to the people. We are where the rubber hits the road. Unfortunately, we are also the level of government with the fewest revenue options, making it even more difficult to address an increasing list of Federal and State mandates. In Fairfax County, we estimate the county spent approximately $1.4 billion on Federal and State mandates in fiscal year 2016, with a net fiscal impact of $834 million.

Of course, we often support the policy goals the mandates seek to achieve, but mandates often prescribe not only we must do, but how we must do it, though they rarely include sufficient funding to carry out those requirements. In Virginia, localities are even more limited than in many other States, as Virginia has a strict adherence to something called Dillon rule, a doctrine of limited authority for local governments. As a result, we have very limited revenue authority, leading to an overreliance on property taxes. Virginia also provides less funding to localities than many States, ranking 38th nationally in State per-pupil funding for K-through-12 education.

The challenges we face would be exacerbated if the recent budget proposal by the Trump administration were enacted. Dramatic re-

ductions in Federal operations could lead to dramatic consequences for us. A recent study by George Mason University illustrates them. A decrease of 20,000 to 24,600 Federal jobs in the D.C. region, removing 2.3 billion to 2.7 billion in Federal salaries from our economy. A decrease in 800 million to 1.2 billion in Federal procurement spending in our region.

The Trump budget proposal also raises concerns about critical programs and services we provide with Federal funding, eliminating the Community Development Block Grant and HOME Program, funding restoration for the Chesapeake Bay, and funding for Impact Aid in our schools, which partially offsets the costs of federally connected children in our school system. That program is already significantly underfunded in Virginia. Consideration of such massive cuts is alarming. As we point to many successes where Federal contributions were integral, our transportation proposed to be reduced by 13 percent, some excellent projects that have happened in Fairfax County could not happen under this budget proposal.

As I mentioned earlier, most mandates come with insufficient funding, but they are also overly prescriptive. If such mandates were eliminated, we in Fairfax County might address the same issues but in a totally, completely different way. We would still need appropriate contributions from our Federal and State partners. We also need to be empowered with the tools to diversify our revenues and strike the appropriate balance for our communities.

Conversely, some requirements must be maintained, and it is correctly the Federal Government's role to set priorities for overarching issues of national importance. Localities are struggling to meet increasing needs with decreasing revenues. In Fairfax County, we continue to try to find creative solutions to problems, to leverage the funds that we have, but demands are beginning to outstrip our means. We already do more than is required in areas the State does not provide essential funding and services. We cannot also step into the Federal Government's shoes and backfill the substantial loss of Federal funds. Keep in mind that, unlike the Federal Government, we are required by Virginia law to annually balance our budget, a task made more difficult by Federal underfunding and unfunded mandates from both the State and Federal level.

Thank you again for the opportunity to testify on behalf of Fairfax County, Virginia, today, and I look forward to your questions.

[Prepared statement of Mr. McKay follows:]

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JEFFREY C. MCKAY
LEE DISTRICT SUPERVISOR

Testimony of Supervisor Jeffrey C. McKay
Fairfax County Board of Supervisors
Before the House Committee on Oversight and Government Reform's
Subcommittee on Intergovernmental Affairs
"Unfunded Mandates: Examining Federally Imposed Burdens on State and Local Governments"
Wednesday, April 26, 2017

Good morning, Chairman Palmer, Ranking Member Demings and Members of the Subcommittee. Thank you for the opportunity to testify today to discuss the challenges facing local governments as a result of unfunded mandates.

My name is Jeff McKay, and I serve as both the Budget Committee Chairman and the Legislative Committee Chairman on the Fairfax County Board of Supervisors. I would like to begin by telling you about Fairfax County. Many of you are probably familiar with us because of the time you spend in the National Capital Region, and some of you may even live in Fairfax County. You may shop at Tyson's Corner Mall or Springfield Town Center, attend concerts at Wolf Trap, dine at Reston Town Center, visit historical sites like Mount Vernon or see the Space Shuttle Discovery at the Smithsonian's National Air and Space Museum's Udvar-Hazy Center. Though we were once a farming community, today Fairfax County is the largest jurisdiction in the Washington, D.C. area and in the Commonwealth of Virginia, with a highly diverse population of 1.1 million. Fairfax County Public Schools (FCPS) is consistently rated among the best school systems in the nation, and we are home to several Fortune 500 companies, as well as businesses of all sizes.

We also have a strong partnership with the federal government – in a recent U.S. Department of Defense (DOD) report, the Commonwealth of Virginia ranked first in defense spending, with a total of $54.7 billion in FY 2014 (including $38 billion in contract spending and $16.6 billion in defense payrolls). Within the Commonwealth, Fairfax County is the top defense spending location, with $19.1 billion in defense expenditures. Nearly 30,000 defense personnel are located in Fairfax County, in addition to many other federal employees. We value the close relationship we have with the federal government, and are even seeking to expand it with the potential relocation of the FBI Headquarters to Springfield – a top priority for me personally, as that site is located in the Lee District which I represent. We are very much your partners, and we are exceedingly proud of that relationship.

However, our needs are great as well. Fairfax County is often described as a wealthy community, and it is true that we are very fortunate. But we also have many individuals and families who are struggling. We have approximately 70,000 people living in poverty, and our average monthly caseload for Food Stamps is over 24,000 (a 109 percent increase since FY 2008). This school year, nearly 51,000 students in our public schools qualify for free and reduced lunch, and we have 45 schools where 50 percent or more of the student body qualifies for free and reduced lunch. Only five school divisions in Virginia have more total students than our free and reduced lunch population. These are truly sobering numbers, and ones we grapple with as we try to meet the funding needs of our community.

As has often been said, local government is the level of government that is closest to the people. We directly impact the daily lives of our residents. They share their thoughts with us in the grocery store, at neighborhood parks or libraries, when we are taking our children to school, and increasingly, through social media. We address issues big and small – from funding our public schools and keeping our communities safe and healthy to ensuring that streetlights are operating properly or that residents have the appropriate permit for the deck they are building in the backyard – because even the seemingly small issues are important. A lack of functioning streetlights can be dangerous for drivers and pedestrians and can make a neighborhood look unkempt, driving down property values and increasing crime, and that deck could be built incorrectly, potentially causing severe injuries in the case of a collapse. The decisions we make and the services we provide are critically important to our residents.

Unfortunately, we are often also the level of government with the fewest revenue options, making it even more difficult to address an increasing list of federal and state mandates. In Fairfax County, we estimate that the County's total expenditures on federal and state mandates were approximately $1.4 billion in FY 2016, with a net fiscal impact to the County of $834 million (reflecting the portion of the mandates unfunded by the federal and state governments). Of course, we often support the policy goals the mandates seek to achieve, from limitations on class sizes to following clean air standards and providing services to the most vulnerable residents in our communities. But mandates often prescribe not only what we must do but also how we must do it, though they rarely include sufficient funding to carry out those requirements.

In Virginia, localities are even more limited than in many other states, as Virginia is a strict adherent to something called the Dillon Rule, a doctrine of limited authority for local governments and derived from the writings of John Forrest Dillon (a 19th century judge and lawyer). As a result, Fairfax County (and all other Virginia local governments) only has those powers granted expressly by the General Assembly, which includes very limited revenue authority and leads to an over-reliance on property taxes to fund government services. This creates substantial difficulties, as our housing market has not fully recovered from the national recession that has been slow to recede. Virginia also provides much less funding to localities than many other states, ranking 38th nationally in state per pupil funding for K-12, relying on localities to fill the gaps – in Fairfax County the state provides only 23 percent of the funding for our public school system, while we

contribute approximately 72 percent through local dollars. Virginia also ranks near the bottom of states in funding for the social safety net, particularly in the area of Medicaid eligibility and services offered, and addressing those deficits further strains our local revenues. Local governments in Northern Virginia also contribute heavily to the Washington Metrorail system – while we strongly support efforts to improve safety and reliability at Metro, we simply do not have the resources at the local level to dramatically increase our investments while also maintaining the level of financial support Metro needs to strengthen and restore its overall system.

The challenges we face as a result of unfunded mandates would be exacerbated if the recent budget proposal put forth by the Trump Administration were enacted, further limiting our ability to meet the needs of our residents. To begin with, as I mentioned, Fairfax County is strongly connected to the federal government – what affects you ultimately affects us. Dramatic reductions in federal operations could lead to dramatic consequences. A recent study by the Stephen S. Fuller Institute at George Mason University has projected a decrease of 20,000 to 24,600 federal jobs in the Washington region, removing between $2.3 billion and $2.7 billion in federal salaries from the economy. The study also projects a decrease of $800 million to $1.2 billion in federal procurement spending, resulting in a loss of up to 12,000 private sector contracting jobs. Our local economy, which has been so slow to recover, could not absorb such losses and the effects would likely be catastrophic.

The Trump budget proposal also raises serious concerns about the critical programs and services we provide with essential federal funding. For example, the proposed elimination of both the Community Development Block Grant (CDBG) and the Home Investment Partnerships (HOME) programs would cost Fairfax County approximately $6.4 million per year. That funding supports vital community services and rental subsidy programs that allow low-income and moderate-income individuals to live in Northern Virginia, where the cost of living is very high. Such cuts could also reduce the amount of affordable housing available for people striving to escape homelessness – in Fairfax County we believe that permanent housing, combined with supportive services, is the first step in helping people achieve self-sufficiency more quickly, and affordable housing is an intrinsic part of that strategy. The President has also proposed eliminating funding for restoration of the Chesapeake Bay – the largest estuary in the United States and the third largest in the world – jeopardizing the on-going efforts and investments made by all levels of government to clean up the Bay. This national treasure is home to 3,600 species of plants and animals, as well as 18 million people who live in the Chesapeake Bay watershed, and the Bay and its tidal tributaries have more miles of shoreline than the entire U.S. west coast (11,684 miles). Also eliminated would be funding for the Impact Aid program, which seeks to offset the costs to communities for federally connected children in our public school system – such an action is particularly upsetting as that program is already significantly underfunded and certainly does not adequately provide for the more than 18,000 federally connected children we serve in Fairfax County Public Schools. To illustrate the problem, in FY 2017 Fairfax County Public Schools expects to receive approximately $3.2 million in Impact Aid, which

covers only 11 percent of the costs of educating such children (if this program were fully funded, we would receive an additional $21.9 million in FY 2017).

Consideration of such massive cuts is alarming, as we can point to so many successes where federal contributions were integral. For example, in the area of transportation, which is proposed to be reduced by 13 percent, some excellent projects would not have been possible without our federal partners. One of the largest transit projects in the nation, construction of the 23-mile Metrorail Silver Line, will connect Dulles Airport to the regional Metro system. Phase 1 opened nearly three years ago and runs through Tysons into Reston, and Phase 2 is tentatively scheduled to open in 2020, which will complete the project by connecting Dulles Airport and Loudoun County to the system. This $6 billion project received $975 million in federal funds, including $900 million in New Starts for Phase I – funding which may no longer exist under the Trump budget proposal – and a $1.9 billion Transportation Infrastructure Finance and Innovation Act (TIFIA) loan for Phase 2. Federal funding also played a key role in funding improvements for the Fairfax County Parkway – a major County roadway that directly serves Fort Belvoir. This important road improvement project, undertaken in part to prepare for the transfer of 13,000 Department of Defense (DOD) employees to Fort Belvoir as part of 2005 recommendations by the Defense Base Closure and Realignment Commission (BRAC), received substantial federal funding for two phases, which were completed with $60 million from the American Recovery and Reinvestment Act (ARRA). Another critical partnership project that is currently underway is the widening of U.S. Route 1, which is literally the gateway to Fort Belvoir, an installation twice the size of the Pentagon. These improvements are necessary to improve traffic flow and access to a new Army Hospital located on the base; $180 million for this project was appropriated under the Defense Access Roads program administered by the DOD Office of Economic Assistance (OEA). Finally, the Passenger Rail Investment and Improvement Act of 2008 (PRIIA) authorized federal support of $1.5 billion for Metro over ten years to address the system's urgent capital and safety needs, with an equal share provided by the region – continuation of that federal funding is critical to improving Metro, which is such a vital mode of transportation for many federal employees. I hope we can all agree that now is not the time to pull back on our funding commitment to Metro, but rather it is time to develop a serious plan, which must include adequate funding, to restore a transit system that is fundamentally important to this region.

As I prepared my testimony for today's hearing, I thought a great deal about the concept of unfunded mandates. As I mentioned earlier, many of the mandates we struggle with come with insufficient funding to carry them out, but they are also often overly prescriptive in terms of what we are required to do to satisfy them. If such mandates were eliminated there may be many similar concepts that we in Fairfax County would choose to continue to pursue as the right thing to do, because providing our children with a high quality education, protecting our environment, keeping our community safe and providing essential services to our most vulnerable residents are all high priorities for us. However, the way in which we would carry out those activities might be completely different, and that could vary from community to community – my suburban, densely populated locality may find solutions that are different than those that

would work in a more rural, less populated area, which is as it should be. But solutions without funding are destined to fail, and it is essential that we receive appropriate contributions from our federal and state funding partners, while also being empowered with the tools we need to diversify our revenues and strike the appropriate balance for our communities. Conversely, some requirements must be maintained – it is correctly the federal government's role to set priorities for overarching issues of national importance. The decision to protect and preserve our environment and conserve our natural resources, for instance, should not be optional, because success cannot be achieved if we do not each do our part. Such priorities require all of us to work together to create a better legacy for generations to come. The playing field should be level and fair, but it should also be collaborative and should allow for local innovation and creativity.

A 2016 report by the National Association of Counties (NACo) encapsulates the challenges faced by local governments throughout the nation, stating: "In some cases, the state seemingly demands the impossible: fulfillment of the mandates while prohibiting counties from even developing revenue streams to pay for these mandates on their own. Adding further complexity to these pressures are the oft-incongruent demands of the electorate; the clamor for more expansive services occurs simultaneously with an insistence for a lightened tax burden." These are the trials I confront everyday as I try to serve my community, and your willingness to examine these issues and help us find solutions is much appreciated. Thank you again for the opportunity to testify here today.

Mr. PALMER. I thank the gentleman for his testimony.

I will now recognize myself for 5 minutes for questions.

Senator Niederhauser, I think it has been consistent in what we have heard is the lack of coordination between the Federal Government and State and local government in regard to these unfunded mandates. What kind of assurances do the States and local governments need that the Federal Government will seriously consider their input?

Mr. NIEDERHAUSER. I think that improving the Unfunded Mandates Reform Act would be a great place to—I think that's one area that could be worked on. The idea that there is noncompliance with that in the administration I think is a problem. Reaching out to organizations like the Council of State Governments, National Council of State Legislatures. There's other organizations like ALEC. These are all legislative organizations that will give some really good input and State view on issues.

And then I think that there ought to be a question asked before you go down the road on any mandate whether that is something the Federal Government ought to be addressing or the State Government. Let me just give you an example. It was probably about 2008–2009; I was chair of the Health System Reform Task Force in Utah. And we were going down the path of health reform. We were one of the first States to create an exchange. Utah, a red State, we created an exchange, a health exchange. We were already on this path, and then we felt like we were preempted by the ACA, the Affordable Care Act. And then we were playing defensive, trying to figure out what that meant for us. And so I think there ought to be that question asked before you even begin the discussion of some laws and especially regulations, because I think what happens is these—the regulators kind of lose—take laws beyond what they were ever intended to address. And Congress, I believe, needs to be more involved in making those decisions rather than an administration so that we have some more consistency and we have the voice of the people involved.

Mr. PALMER. I want to come back to that. But just, in general—and each one of you can answer yes or no, or you can elaborate a little bit if you would like—but based on your experiences, do you believe the unfunded mandate regulatory act's requirement for consultation between State and local governments is effective in its current form? I think you have already answered that, that it needs to be reformed. Mr. Davis?

Mr. DAVIS. I agree that it does need to be reformed. But I think a lot of it has to do with the cost associated with it and rather than the product. I think it is very important that, when we look at these mandates from the Federal Government, that we are looking for a goal, and we are not just concentrating on how much it costs us to get this goal.

Mr. PALMER. Mr. Moore?

Judge MOORE. Mr. Chairman, I believe that UMRA has worked well on the legislative side. Where it has not worked well is on the regulatory side. We, as local and State officials, elected officials, if we are involved in the process on the regulatory side, we can improve the process. We can often I believe avoid some of the pitfalls we see with some of the bureaucracy that we see from the Federal

Government. So I would suggest that the successes from the legislative side be more strictly applied to the regulatory side.

Mr. PALMER. Mr. Reed?

Mr. REED. Mr. Chairman, I echo the comments of my fellow witnesses. You know, we are asking that, if you have a seat at the table in the beginning, then it will really help eliminate some of the costs that we are finding with our citizens, who are bearing the burden of a lot of the mandates that we have to pay.

As I indicated in my testimony, you know, from 2009 and the water bills that continue to be increased, you know, if there was a way that we could actually figure out ways to pay for these items before we actually have to increase the budget, it would help eliminate a lot of the burden that many of our citizens are experiencing.

Mr. PALMER. Mr. McKay?

Mr. MCKAY. Thank you. I associate myself with the comments of Mr. Moore as well. I think local government's seat at the table is critical. We are closest to the people. And in terms of interaction with the Feds and State, you know, it's very easy for the States to take Federal unfunded mandates and just push them right down to the county level. And so that's certainly the process that takes place in Virginia. And, you know, there doesn't seem to be the consultation at all with local governments in terms of what impact that has; just a simple legislative act by the States to push down to the lowest level.

Mr. PALMER. There is something that is consistent in all of your testimony and I think evident in your answers to that question. That is, is that the process would work much better if we left the implementation of the regulations in the hands of State and local government, even to the degree of perhaps sending the funding down with the regulations. For instance, the EPA mandates. They are writing the regulations, but they're—I think in Mr. Niederhauser's testimony—I think it was your testimony. You said 96.5 percent of the environmental regulations are implemented or administrated at the State level. So it seems to me it would make more sense not only to have this collaborative process where they are getting input from you, but if you are going to do—if the mandates, the regulations need to be implemented, that they allow you the flexibility to implement them. Does that make more sense to you?

Nodding is appropriate, but for the record, that indicates an affirmative to the question.

I want to come back to some of this and some other areas as well. But at this point, the chair recognizes the ranking member from Florida, Mrs. Demings, for 5 minutes.

Mrs. DEMINGS. Thank you so much, Mr. Chairman.

And, again, to our witnesses, thank you so much for being with us today as we discuss this very important topic.

Mr. McKay, Fairfax County, like many other counties across the country, relies on Federal funding for its residents. In your testimony, you did express concern, though, about President Trump's budget. How would his proposed cuts impact Fairfax County? If you could just elaborate a little more on how you would be directly impacted.

Mr. MCKAY. Sure. I appreciate the question. First, there's impacts to actual programs that I mentioned in my testimony, significant impacts. As I mentioned, there are 70,000 people in Fairfax County living in poverty. So obviously reductions in the HOME Investment Partnerships, CDBG funding are significant. In terms of our school budget, the reductions in Impact Aid, which is already grossly underperforming what is actually needed to educate our students in Virginia, would be a huge hit for us. And funding for the restoration of the Chesapeake Bay is in jeopardy.

I think, though, fundamental to your question, what concerns us the most is what's happening with our Federal workforce. So there are a lot of Federal programs that would affect Fairfax if they are not funded, but as I mentioned, we are home to a significant Federal employee population. And some of the things that are happening under the Trump administration with regard to Federal employee freezes and things of that nature have a significant economic effect on the residents of Fairfax County, Virginia. So we are one of the jurisdictions that has to watch this from multiple levels, not just the cuts to programmatic things and things that our residents rely on, but also cuts to, you know, the Federal workforce and the economic impacts of those.

We also are very concerned about some of the impacts to transportation. We are sitting here in the Nation's Capital, many of your staffs rely on Metro to get to and from work. And without Federal support of Metro, we remain very concerned about the funding that's going to be necessary to sustain the Metro system. So we're watching this from many different angles, not just programmatic, but also in terms of the impact to the finances of the very people that live in our county.

Mrs. DEMINGS. If the budget cuts did move forward, how do you believe State and local governments would be able to make up the difference?

Mr. MCKAY. I don't believe that we could, to tell you the truth. We in Fairfax long have a history, unfortunately, of having to make up where the State and Federal Governments do not adequately fund programs. But we cannot sustain that. As I mentioned in my testimony, we do not have the revenue sources at the county level to be able to expand. We are left with property taxes, which is a very regressive tax on people in a very high-income but high-cost-of-living area. And so I don't believe that we can sustain the type of Federal cuts that are in this budget, and I don't think that local governments will be able to make that amount up.

Mrs. DEMINGS. Thank you. Judge Moore, your organization, the National Association of Counties, supports the Low Income Home Energy Assistance Program. Is that correct?

Judge MOORE. The association, I believe, does, yes.

Mrs. DEMINGS. President Trump's proposed budget calls for the elimination of that program. Is that correct?

Judge MOORE. I am not familiar with that component.

Mrs. DEMINGS. So you believe the association does, but you do not have any direct knowledge that the association that you are a part of supports that program?

Judge MOORE. The association supports the program. I am not familiar with the budget cut.

Mrs. DEMINGS. Okay.

Judge MOORE. What I am here to talk about really is the unfunded mandate process.

Mrs. DEMINGS. What I am here to talk about, since we are talking about unfunded mandates, are the proposed cuts by the Trump administration also is taking money away from local and State and county governments. Are you familiar with the Low Income Home Energy Assistance Program?

Judge MOORE. I am.

Mrs. DEMINGS. Okay. So let's say that that program was eliminated. Your association, I believe you said your particular county has seen tremendous growth. Is that correct? Tripled over the last 30 years. How do you feel a cut to that program will directly impact members that you represent as a part of the association?

Judge MOORE. If I answered this as my county and the people that I am elected to represent, I believe that, in that particular case, we would be called upon as local government to either find a way to fund the program or the program would go away.

What we do object to is a mandate that says we have to continue the program without funding.

Ms. DEMINGS. What would be some alternatives for you to find a way to fund that particular program?

Judge MOORE. As my colleagues have testified today, local governments are very limited in how we can raise revenue. So it would be very difficult.

Mrs. DEMINGS. Thank you.

I am out of time. Thank you, Mr. Chairman.

Mr. PALMER. The chair now recognizes the gentleman from Kentucky, Mr. Comer, for 5 minutes.

Mr. COMER. Thank you, Mr. Chairman.

And I want to recognize Judge Moore. It is good to see you here, Judge. He represents and has been the leader in Boone County for a long time. And there are 120 counties in Kentucky, and Boone County consistently is one of the fastest growing counties in the State. And you have done a great job there overseeing tremendous growth. And Boone County, as I have said many times, is a real economic development success story in Kentucky.

Judge Moore, you discussed in your testimony the importance of early consultation with local governments in the Federal rulemaking process and note that in fact the EPA outright refused to consult counties prior to the proposed Waters of the U.S. rule's publication despite repeated requests to do so. My first question, did the EPA and Army Corps provide a reason as to why they did not consult with counties on this rule?

Judge MOORE. No, they did not give us any reasons.

Mr. COMER. Would this rule have imposed a significant cost on counties and local stakeholders?

Judge MOORE. Absolutely. Probably the best example of that is that we also are under a consent decree, as some others have testified, with combined sewer overflows, sanitary sewer overflows. And we are continuing to raise our sanitary sewer and storm water fees substantially to be able to meet those requirements. We are nearing the affordability threshold of the amount of increase that we can put upon our ratepayers. So, if we were at the table consulting

with the Corps and with Federal agencies during this process, we would have some potential solutions on how to deal with that in a more efficient way.

Mr. COMER. Good. You mentioned the new administration has started a State and local consultation process on this rule. Have you been able to provide feedback to the EPA and Corps through this process?

Judge MOORE. I did meet with our State secretary of the environment and energy cabinet who has a regular dialogue with the Federal agencies. And we have talked about some potential solutions. One example would be that we have a payment-in-lieu program when we are developing new property if we impact a wetland or a stream. Those funds are not used efficiently. And environmentalists as well as others would agree that there is a better use for those funds to use those to help eliminate combined sewer overflows and sanitary sewer overflows rather than the projects that are being done now. We are hopeful that our State secretary of environment, working with the Federal agencies, will be able to help us in that situation.

Mr. COMER. All right. Have the agencies indicated what they intend do with the feedback that they are supposed to be getting?

Judge MOORE. Not that I am aware of.

Mr. COMER. All right. Next question, Judge Moore, you also shared that the Department of Labor did not adequately consult with State and local governments to assess the impact of its recent overtime rule. Did the agency provide any justification for its failure to cooperatively consult with counties on this rulemaking?

Judge MOORE. No, not that I am aware of.

Mr. COMER. Do you believe it's a good use of your time as an official of local government to have to make repeated requests for meaningful consultation every time the Federal Government decides to act?

Judge MOORE. I have a lot of other things I would prefer to do. And it would be refreshing to see elected officials involved in that process rather than non-elected.

Mr. COMER. Right. Well, hopefully, help is on the way. I believe this new administration has a more commonsense approach to doing business, and hopefully, we can address the unfunded mandate issue that you are always faced with and the Federal Government. And I know that there are a lot of issues that each of you that testified have, and hopefully, we can work together to try to bring some relief for the great jobs you are doing in each of your States.

Thank you. I yield back.

Mr. PALMER. The chair now recognizes the gentleman from Virginia, Mr. Connolly.

Mr. CONNOLLY. I thank the chair, and I thank your courtesy.

Just for another point of view, I don't know that, at least where I come from, we think help is on the way coming from this new administration. Maybe that's a welcome message in Kentucky. It's not a welcome message in Virginia. Because we are looking at the Trump budget, as Mrs. Demings pointed out, and it looks to me like it is a road map for a whole bunch of additional unfunded mandates.

So, for example, Mr. McKay, if we completely defund the Chesapeake Bay Commission, do the requirements to clean up the bay go away?

Mr. MCKAY. They do not.

Mr. CONNOLLY. And isn't it true that already the overwhelming financial burden on the cleanup is on the local and State governments?

Mr. MCKAY. It is.

Mr. CONNOLLY. So the little piece the Feds provide financially is that commission. So, if it goes away, we lose that guidance; we lose that assistance. But the burden remains on all of the States in the Chesapeake Bay estuary. Is that correct?

Mr. MCKAY. Absolutely correct.

Mr. CONNOLLY. That's a pretty expensive mandate to try to clean up the Chesapeake Bay. And, of course, we face the same thing on the Great Lakes and Puget Sound. Their respective commissions are also zeroed out in this budget—that apparently is—help is on the way. I don't know what help that would be in that regard.

But CDBG, Community Development Block Grants, to local governments. Mr. Reed, are they helpful at all, CDBG?

Mr. REED. They are extremely helpful. And I will tell you that a number of our community organizations depend on them. If you are thinking about Meals on Wheels or you are thinking about senior citizen homes or what have you, they are dependent on CDBG. And we have seen significant decreases in CDBG in the past several years. And it is one of those Federal funds that many of those organizations who continue to come to us every year as we are looking for appropriations for that, asking for more, and they are doing more with less.

Mr. CONNOLLY. So, again, you have got both State and Federal mandates in terms of the provision of mental health, disabilities, senior citizen needs and the like. They don't go away——

Mr. REED. No.

Mr. CONNOLLY. —even if the Federal funding does. Is that correct?

Mr. REED. Correct.

Mr. CONNOLLY. Mr. McKay, I noticed Kentucky, of course, did expand Medicaid pursuant to the Affordable Care Act. Virginia did not. And so we have got sort of a healthcare mandate offering funding, but the State chose not to accept the funding. So it is in some ways the State of Virginia choosing politically to undertake an unfunded mandate, isn't it?

Mr. MCKAY. That is correct. And Fairfax County has strongly supported the expansion of Medicaid for the very fundamental financial reasons that you mentioned. It would be a significant influx of funding to the Commonwealth of Virginia to provide health care for people who need it but also to relieve the burdens that local governments face to provide some of that same health care without any reimbursement today.

Mr. CONNOLLY. Transportation. So the Federal Government, as you pointed out, has a big stake in the future of Metro since a third of the Federal workforce uses Metro to get to work every day. And I guess 40 percent of the total ridership every day is Federal employees. And if Metro shuts down, so does the Federal Government.

There are four members to the compact, three of which provide operating subsidies. Is that correct?

Mr. MCKAY. That is correct.

Mr. CONNOLLY. So the fourth one, who is that that does not provide any operating subsidies?

Mr. MCKAY. The Federal Government.

Mr. CONNOLLY. And does the Federal Government nonetheless provide oversight and mandates to Metro in terms of how it operates, safety, things like that?

Mr. MCKAY. They do all of the above. And they even have seats on the Metro Board of Directors.

Mr. CONNOLLY. And, in fact, recently, this administration, help-on-the-way administration, actually withheld Department of Transportation funding for lots of other unrelated transit projects throughout the Commonwealth of Virginia because of an unrelated issue having to do with Metro and the oversight, safety oversight trilateral commission. Is that correct?

Mr. MCKAY. That is correct.

Mr. CONNOLLY. That's interesting. So, at the end of the day—one final thing, a lot of us talk loosely up here about State and local like they are the same. And, of course, we know they are quite different. And a lot of us talk loosely, especially those of us who have no experience in local government, about "let's just block-grant everything, send it to the State, and their tender mercies will see to it that localities do well." What's the problem with that thinking from your perspective vis—vis Richmond?

Mr. MCKAY. There are significant problems with that, some of which I mentioned in my testimony. As the Dillon rule states, the hands of the counties are tied in terms of how they can generate revenue to pay for some of these things. Richmond has a very different political philosophy than Northern Virginia in terms of our Federal partners and how these programs trickle down at the local level. Richmond is very good at just transferring the authority and the requirement to do certain things to local governments but not sending the funding attached to it.

More importantly, these things are very prescriptive. And so, in many cases, they are laudable goals; there are things we would certainly do at the county level, and we would do them a whole different way than the prescriptive way. The way we are told how to do these things is particularly concerning. But our relationship with the State in Virginia is unique. As a Dillon rule State, our hands are tied in terms of raising additional revenue. And the State politically and philosophically disagrees with us in many cases. And the one you gave with Medicaid expansion is probably the most egregious one. We are losing, as a county, millions of dollars in Federal support because of the State's inability to support the expansion of Medicaid. So they essentially have our counties in financial shackles.

Mr. CONNOLLY. Thank you.

And, Mr. Chairman, thank you for your courtesy.

Mr. PALMER. I thank the gentleman. It's interesting the direction that the hearing has gone. We've gone into federalism. We've gone into the budget, and now we've gotten into State constitutions and

home rule and the Dillon rule. So certainly an interesting conversation.

The chairman will now recognize the vice chairman of the subcommittee, Mr. Grothman of Wisconsin, for 5 minutes.

Mr. GROTHMAN. Thank you.

We anticipate a big infusion in infrastructure later this year, and I assume a lot of that will be sent to the States and local units of government. It's been my experience that frequently highways or other infrastructure projects become much more expensive once Federal money is involved. I'm not going to ask you to deal with Davis-Bacon, because we've all heard about Davis-Bacon. But could any of you comment on perhaps anecdotal evidence or other examples in which you feel you've had to spend more for roads or other projects once Federal money is involved?

Judge MOORE. Mr. Vice Chair, I could address a portion of that. In Kentucky, recently, prevailing wage was repealed. I know that the Federal level did not—has not——

Mr. GROTHMAN. Just don't deal with Davis-Bacon.

Judge MOORE. Okay. I won't deal with that.

Where we could see improvement is in the NEPA process. Time is money. And in a growing community like ours, getting a project to completion is very important. We have to wait, usually, a season in the fall for the leaves to leave the trees so that we can do an assessment for the Indiana bat, for instance. That delays us a full season in many cases.

I do believe there are items within the NEPA process where, if local governments were involved with the regulatory process, as we're speaking today, through UMRA and other acts, it would improve the process. It could bring projects to completion sooner and less costly.

Mr. GROTHMAN. Okay. Any of the others.

Do you have a comment on that, Mr. Reed?

Mr. REED. Thank you. I will mention, as I indicated in my written testimony to the committee, is that, recently, in Kansas City, Missouri, we had an $800 million general obligation bond, which we put forward to our voters, that would deal with three items: one would be transportation; two being flood control; and three being the ADA and also public facilities.

The reason why we had that is because of the very question that you were asking in terms of how can we backfill many of the items that we have to get done. And so we asked our voters to be able to help us with that to help fill those backfills that we have.

And it was passed overwhelmingly. But I can tell you it's something that will be a real burden to our citizens over a period of 20 years as we have it.

Mr. GROTHMAN. Thank you.

Another question I have for you—and I don't need to call this a mandate, but I can think of examples in Wisconsin where maintenance of effort resulted in people doing things they wouldn't do at all otherwise or were stuck—I'll let you go with that, though. Any of the four of you have any comments on maintenance of effort in which you maybe feel you are forced to do things you wouldn't do otherwise or think is outright a complete waste of money?

Mr. NIEDERHAUSER. I mentioned the Perkins Program, the Perkins grant with education. And I think that's a perfect example: $12 million mandating $241 million of State funding. While we would do some of that already, the flexibility and efficiencies of crafting those things on our own—we're there on the ground. We're where the rubber meets the road, maybe not quite as much as the local governments. But I know that we can get the outcomes, because I think that's what we're missing here, is focusing on what the outcomes are. And let's not have regulation that's making us do something that is not getting the outcomes. I can—we have a list of those things—and focus on clean air, clean water, getting our children educated. But we waste and we burn money with regulation that really doesn't have an impact on the bottom line.

Mr. GROTHMAN. I think of TANF funds. For both of the guys on the State level, do you ever feel that you're getting money that you don't need?

Mr. NIEDERHAUSER. Yes. We have unspent TANF money in Utah.

Mr. GROTHMAN. Right. So you're in a position—maybe you can give us an example—in which you maybe have to make up something to do just to sop up the Federal money.

Mr. NIEDERHAUSER. I think that that happens. No question.

Mr. GROTHMAN. Can you give an example of what you do in Utah when you have a bunch of money sitting around that you really don't want to use, but the Federal Government says you got to use it.

Mr. NIEDERHAUSER. I think that's obvious. You start to create programs and spend it where it's really not necessary.

Mr. GROTHMAN. I don't want to embarrass any programs, but do you find the same thing in North Carolina, Mr. Davis.

Mr. DAVIS. Yes, sir, we do. And I'm—this session, I'm the new chair of Transportation Policy and Appropriations. And I've—2 weeks ago, I spent my spring vacation visiting the Outer Banks and looking at the issues that they have to deal with out there. And I haven't seen any money in transportation that we couldn't use yet, but I sure have seen a lot of unfunded mandates. And particularly what we're working with is environmental assessments when we have a transportation project to deal with these environmental regulations that delay the completion of these projects and add exponentially to the cost.

Mr. GROTHMAN. Okay. Can I just still get one comment from Mr. Niederhauser? I would like if you could get something together because we have an Appropriations Committee that I hope I can trust—but we don't know yet—who might be under the impression we have to keep TANF at the current level. If you could give us something in writing that we could forward to these guys so they can realize—I know Wisconsin also does things that we—just throwing away money because we have a maintenance of effort on this stuff. But thank you.

Mr. NIEDERHAUSER. Thank you.

Mr. PALMER. I thank the gentlemen.

The chair recognizes the ranking member, Mrs. Demings, for additional questions.

Mrs. DEMINGS. Thank you so much, Mr. Chair.

Councilman Reed, the administration's proposed budget would cut 482 million from the EPA's categorical grant programs that aid State and local governments in protecting human health and the environment. Your testimony indicates that cutting categorical grant programs that serve State and local governments is a step in the wrong direction. Is that correct? And why do you feel that way?

Mr. REED. Well, we feel it's a cut—as I believe I even mentioned earlier—is that these would be, unfortunately, ways that we would have to try to figure out, where do we get funding from? And so we feel that it would be a step in the wrong direction.

Mrs. DEMINGS. According to the National League of Cities, another quote is, "Measures requiring cities to use local law enforcement resources to enforce Federal immigration laws are unfunded mandates that impose additional disproportionate responsibilities on local law enforcement, increase financial liability on local governments, and ultimately move us further from our fundamental principles of federalism," which Mr. Niederhauser spoke so eloquently about in his opening statement.

Mr. McKay, do you share the concerns of the National League of Cities that measures requiring local law enforcement to enforce Federal immigration laws are unfunded mandates?

Mr. MCKAY. I do. I think they're the mother of all unfunded mandates. Not only would they cost us money, but they would permanently damage the relationship that law enforcement in Fairfax County has with our community and further endanger our citizens. Bottom line is our police prevent crime and solve crimes. And without a robust conversation with a community that feels comfortable talking to law enforcement, we think it would have a significant impact on our ability to solve crimes, protect victims, and seek proper prosecution.

We do cooperate with ICE when we have an opportunity to. But asking local governments to take on a massive Federal responsibility, such as immigration enforcement, we think is damaging not only as a mandate but also damaging to the fabric of our community.

Mrs. DEMINGS. At the same time, the administration's budget proposal cuts the State Criminal Alien Assistance Program, a grant program to reimburse States and local governments for incarcerating undocumented immigrants, which would appear that counties would then—or local governments would then incur millions of dollars in unreimbursed expenses each year in housing undocumented individuals that violate State and local laws.

Do you believe that cutting programs such as this leaves local government then holding the bag?

Mr. MCKAY. It absolutely would leave us holding the bag.

Mrs. DEMINGS. Thank you so much.

Mr. Chair, I yield back.

Mr. PALMER. Thank you.

I have a few additional questions.

Senator Niederhauser, you mentioned in your testimony that State-based innovation is being stifled because of Federal mandates. I've been involved in this area for a number of years, going all the way back to the passage of the Unfunded Mandates Relief

Act. The thing that I've seen is that, particularly with the EPA and other Federal agencies, they've gotten outside of what the original intent was. Originally, it was designed to operate within a framework of what we called cooperative federalism where the—let's just use the EPA as an example. They would write the regulations. Congress would pass the law. The EPA would write the regulations. But it would be up to the States—they were given broad latitude and flexibility to implement the regulations as long as they met the objectives. In your experience in the State of Utah, is that intent still being complied with?

Mr. NIEDERHAUSER. Well, we want clean water, and we want clean air. Those are good outcomes. But we feel like we're tripping over a bunch of regulation that's costing us a lot of money, creating inefficiencies and burning State tax.

Mr. PALMER. Let me ask it this way. Does the State of Utah have the ability to effectively partner with the Federal Government, whether it is the EPA or another Federal agency, to implement Federal regulations.

Mr. NIEDERHAUSER. No. It's a top-down approach to government.

Mr. PALMER. But do you think you have the ability within the State of Utah to implement these guidelines if given the flexibility and the latitude to do so.

Mr. NIEDERHAUSER. Yes. Absolutely.

Utah has shown through a number of different policies that we can innovate, that we can do things and have outcomes and save tax dollars.

Mr. PALMER. Do you believe that you can do it in a more cost-effective manner and accomplish the same objectives than within the current framework that you're having to operate under.

Mr. NIEDERHAUSER. Absolutely. No question.

Mr. PALMER. Senator Davis.

Mr. DAVIS. Thank you, Mr. Chairman.

I'd love to speak to this issue. I think that the presumption that all wisdom and knowledge emanates from our Nation's Capital or our State's capital is an erroneous one. Some of the most creative and innovative ideas that I've ever seen are from local government. As a matter of fact, I use them as a resource. Unfortunately, many of them tell me that "nobody from the State has ever asked me how to accomplish this." And for that reason, I strongly support block-granting a lot of things to the State and to the local government. Hold them accountable. Tell them what the goal is and what the end product that you want. But get rid of a lot of needless regulations. Those people on the ground, they know what they are. Just release them.

Mr. PALMER. To your point, I'd like to point out that if you look at the data—and it's government data—improvements in air quality, water quality, and land use, that sort of thing, most—and, obviously, it was the low-hanging fruit—but most of the improvements, the biggest improvements, occurred when we operated under the concept of cooperative federalism.

Judge Moore, does Boone County have the ability to carry out these mandates without it being a top-down, inflexible approach?

Judge MOORE. No. We need to be at the table during the process.

Mr. PALMER. You don't think you can, or do you agree that you could carry this out if you're a partner in this?

Judge MOORE. If we're a partner and we have a voice in the process, many times, I think we can. There may be some situations we cannot.

An example, with the Clean Water Act and with the payment-in-lieu fees for impacts to streams and wetlands, I mentioned we have combined sewer overflows and sanitary sewer overflows. We're not allowed to use these mitigation fees to clean up our streams in the same watershed. Instead, those revenues are pulled to another watershed, usually in another county, and we never see the revenue again.

We do agree with the environmentalists in our area, a better use of those funds would be to use them in the same watershed to eliminate SSOs and CSOs. That would be a perfect example of not spending more money at the Federal level but receiving a better outcome if we're part of the process.

Mr. PALMER. Mr. Reed—and I realize that there's certain programs, particularly at the local level, that would be outside your expertise. But you mentioned health care and the burdens of Medicaid that are being imposed on you. If given the ability to have more flexibility in the administration of these programs, do you think you could do that effectively and efficiently.

Mr. REED. Well, I didn't in my testimony mention—I believe it was one of my other partners here on the dais who mentioned the health care. But I think I share, of course, the same example, is that if we have to carry these out, we, of course, as a community, will. But the relief that we need is, of course, having the opportunity to address these items in the beginning, and having a seat at the table to talk about ways that we can actually pay for it is most important to us.

Mr. PALMER. Mr. McKay, you've been nodding your head.

Mr. MCKAY. Yeah. I agree entirely with what's been said. The flexibility in so many of these things is important at the local level. One size does not fit all. And many times, Federal regulations don't recognize the local environments under which they're being applied. And the only way to realize that is to have local officials at the table and a good, cooperative relationship.

So, while I agree with many of the Federal requirements, certainly of the EPA, and want clean air and clean water, we would like to see more flexibility in how those are applied; a recognition, particularly, of local governments' ability to pay and absorb these regulations; and, frankly, more flexible timelines, less punitive actions and more cooperation, especially with the jurisdictions who are making attempts to do the right thing. There doesn't ever seem to be a recognition of that when the Federal Government is looking at these.

And so one size does not fit all in the ground-level application of these regulations. We need that flexibility.

Mr. PALMER. Well, I ask these questions in the spirit of—I believe it was another Virginian who had this observation that the government that governs best governs closest to the people. And I think you have more transparency. You have more accountability. But you also have the ability to innovate.

One size does not fit all. That's particularly important, I think, in the area, for instance, of Medicaid and giving the States the flexibility to innovate, and I think it eliminates a lot of the problems we have with improper payments of Medicaid. We sent out $36.3 billion last year in improper payments on Medicaid.

Same thing is true of going back to the original intent of the EPA and cooperating with State and local government and allowing State and local government to implement Federal regulations with broad latitude as long as you meet the standard, because the objective, as Senator Niederhauser has mentioned several times, is we want clean air, clean water. We want wise land use. We want to preserve the environment for the future. But those are not inconsistent with allowing the States more latitude in carrying out these regulations. And I think the situation that we find ourselves in right now with these unfunded mandates makes that extremely difficult for you and extremely costly and diverts resources away from other programs that really need the money and makes it—and particularly at the local level because you've got so little ability to generate revenues to meet some of these mandates.

I now recognize the vice chairman, Mr. Grothman of Wisconsin, for 5 minutes.

Mr. GROTHMAN. I just want to give you guys one more chance, because I can think of so many ways that—constantly, constantly ran into situations where States are doing something that is sometimes a complete waste of money and sometimes even counterproductive to meet Federal mandates.

Particularly for the State guys, Mr. Niederhauser and Mr. Davis, do you have any experience on problems with education because of Federal mandates, things where your schools are maybe doing something they wouldn't have to do otherwise?

Mr. NIEDERHAUSER. Well, there's a lot of examples. One was just—it's been several years ago—how school lunches changed, mandated by—well, that was an administration issue. They were working fine in Utah, but the new requirements—actually, my wife works at the elementary school across the street. She found that children were eating less. Even though some of those were intended to—some of those mandates were intended to help nutrition, the outcomes were not there. In fact, it was the opposite. So that's just one. There's——

Mr. GROTHMAN. Could you give us some others?

Mr. NIEDERHAUSER. Yeah. For example, I mentioned the Perkins Program in my testimony. But just the thing that really we struggle with in Utah is—education is a big deal.

Mr. GROTHMAN. Uh-huh.

Mr. NIEDERHAUSER. And 91 percent of the money comes from State assessments, taxes. But yet 9 percent of the money coming from here in Washington is driving the ship. And the outcomes that we could accomplish without those regulatory burdens and the desire we have for every dollar that—those are all precious dollars. So we don't want to give up any of them, and, consequently, we allow Washington to dictate a lot of what we do.

Mr. GROTHMAN. Right.

Okay. Mr. Reed, it looks like you've had problems—we've had problems too. Nobody argues with the idea that we should help

people with disabilities. But sometimes when you hear about the Federal mandates, they require things that you wonder who they're really helping, other than the construction companies. You had some problems with the Americans with Disabilities Act. Do you care on elaborating about that?

Mr. REED. Thank you.

I appreciate the opportunity to elaborate a little further.

You know, I think one of the things is the time constraints for our resources in directing how much work has to be done and when it has to be done. We want to make sure that we're meeting the terms and the agreements as part of our settlement. But a longer timeframe and also additional flexibility for priority of the projects also benefit our city and our citizens, allowing a more efficient plan of how we think the resources should be used.

As I mentioned earlier, too, about our general obligation bond, which we passed, I mean, we want to make sure we're compliant. We want to make sure we're providing places where many of our citizens are able to get in and out of facilities and have the access that they need and deserve. But we also need to do it within a good timeframe that allows for us to do it in a way that the resources are actually there.

Mr. GROTHMAN. Do you ever find you're being asked to do things that cost more money that you look at and you wonder, who are you even benefiting.

Mr. REED. Sure. I mean—yeah.

Mr. GROTHMAN. It's horribly designed. The Federal Government ought not be involved in this stuff or should be much less involved. I'll put it that way.

The Clean Air Act, I guess, is a problem for Kansas City, right? The Ozone Standard?

Mr. REED. Correct. Yes.

Mr. GROTHMAN. And this is something, I take it, the Federal Government may make it much more expensive to operate manufacturing facilities in Kansas City. Is that right.

Mr. REED. Yeah, it is. You know, it's one of the things that I mentioned even in my testimony earlier and also in my written testimony, that it is a problem. I mean, it's 70 parts per billion that we continue to see. And our State, local government, and also our Mid-America Regional Council has been working to kind of find ways to—forward. And we've got to figure out how to fix it.

Mr. GROTHMAN. You lived in Kansas City a long time.

Mr. REED. Born and raised.

Mr. GROTHMAN. Wow. Did you feel unhealthy living in Kansas City 30 years ago.

Mr. REED. Say that again.

Mr. GROTHMAN. Did you feel unhealthy living in Kansas City 30 years ago.

Mr. REED. Well, I wouldn't recall 30 years ago.

Mr. GROTHMAN. Okay. We have an ozone problem in the Wisconsin area. I felt quite healthy growing up, and now they've got a lot stricter things.

But as we fight for jobs for our cities, there are—and I know there are people who—you know, I don't know how they expect big cities to thrive without manufacturing jobs, but apparently people

do. But you do feel that you're putting manufacturers in Kansas City at a competitive disadvantage with other areas around the country as well as other countries? Do you feel that way?

Mr. REED. Yeah, we do. And it's how do we provide that relief is what's most important as well.

Mr. GROTHMAN. Well, I hope you let everybody in Kansas City know it's the Federal Government who is making it more difficult to get these manufacturing jobs, and we'll see what we can do about making that part of Mr. Trump's Drain the Swamp initiative.

Thank you very much.

Mr. PALMER. I would like to thank the witnesses for taking the time to appear before us today.

Mr. Niederhauser, I think there was a request for additional information on your TANF program in Utah, which if you provide that, appreciate if you provide it to the subcommittee, and we will provide that to Vice Chairman Grothman.

Mr. PALMER. If there are no objections, with that, the subcommittee stands adjourned.

[Whereupon, at 11:37 a.m., the subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

Opening Statement of Chairman Gary Palmer

Today we are examining federal unfunded mandates and their impact on state and local governments. The issue of unfunded mandates is central to this subcommittee, which is charged with oversight of the relationship between the federal government and state and local government partners.

In December the Chairman sent a letter to governors, state legislators, and county and local government officials soliciting feedback on the most burdensome or impactful federal unfunded mandates. Respondents cited over 645 individual federal laws and regulations that have taken away the ability of local governments to decide how best to serve their constituencies. Almost a quarter of those laws represented federal environmental requirements. Governor Eddie Calvo of Guam reported that compliance the costs for EPA's enforcement of the Clean Air Act, Clean Water Act, and Safe Drinking Water Act alone equates to almost $10,000 per man, woman, and child, and makes the basic cost of utilities for the median household unsustainable.

Unfunded mandates reported to the Committee covered a variety of topics, from labor to housing to transportation to prison administration. This issue does not discriminate.

Of the most cited laws, Medicaid was routinely reported to be one of the most burdensome - imposing billions of dollars on communities annually, for care that is often not reimbursed. Higher education institutions in the State of Virginia report spending millions annually on compliance with federal educational laws. The University of Virginia, for example, spends an estimated $20 million dollars a year just to comply with unfunded mandates.

Respondents cited mandates imposing significant administrative costs with no identifiable benefits, mandates requiring standards inconsistent with the needs of the state, and mandates that are simply impossible to achieve. In certain cases, such as implementation of new National Ambient Air Quality Standards, unfunded mandates reportedly resulted in the direct loss of jobs. The corresponding costs of these mandates are directly borne by the taxpayer. Merely looking at cost, however, is not sufficient. The time and resources that states and local governments take to comply with these mandates demonstrate that the current law does not adequately capture the extent of the burden of "unfunded mandates".

As an example, Speaker Mac McCutcheon from my home State of Alabama shared an unworkable Department of Transportation mandate that requires the state to outline a financial plan for certain projects for up to 30 years, without knowing the source of funding that far out into the future, making this annual exercise just that. An exercise.

What we heard from nearly all of the respondents is that the attempt to provide a "one size fits all" solution effectively strips officials of the flexibility necessary to govern at the state and local level. Every dollar a state or local government uses to comply with federal law is a dollar they can't direct to the specific needs at their own levels of government. The Committee learned that a Federal Aviation Administration policy change resulted in the use of State and local infrastructure funds to pay for flight inspections in Oklahoma. A small rural county in Nevada had to consider closing its sole library, which was residents' key source for internet access, after the Department of Labor implemented its overtime rule.

These tradeoffs are made every day by state and local officials. I'd like to thank each of the witnesses today for taking valuable time out of their schedules to appear here today to testify. You are uniquely situated to provide insight into this issue and where we go from here. I now recognize the gentle lady from Virginia, Congresswoman Virginia Foxx, for the remainder of my time.

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