

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

LRM NO. 3852

FILE NO: 7

3/20/96

LEGISLATIVE REFERRAL MEMORANDUM

Total Page(s): _____

TO: Legislative Liaison Officer - See Distribution below:
FROM: James JUKES (for) Assistant Director for Legislative Reference
OMB CONTACT: M. Jill GIBBONS 395-7593 Legislative Assistant's line (for simple responses): 395-3454
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SUBJECT: EDUCATION Proposed Testimony on Unfunded Mandate Reform Act of 1995 (P.L. 104-4)

DEADLINE: 12:00 Thursday, March 21, 1996 Firm

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President.

Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: OMB, Labor, and EPA will also testify at this hearing. (See LRM 3847 for OMB and Labor testimony.) We will circulate EPA testimony as soon as we receive it.
The hearing is scheduled for March 22nd before a House Government Reform and Oversight subcommittee.

LEGISLATIVE REFERRAL MEMORANDUM
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7-AGRICULTURE - Marvin Shapiro - 2027201516
25-COMMERCE - Michael A. Levitt - 2024823151
29-DEFENSE - Samuel T. Brick, Jr. - 7036971305
30-EDUCATION - Jack Kristy - 2024018313
32-ENERGY - Bob Rabben - 2025866718
33-Environmental Protection Agency - Chris Hoff - 2022605414
52-HHS - Sondra S. Wallace - 2026907760
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Ellen Seidman
Marilyn Yager
Katie McGinty
Kumiki Gibson
Larry Matlack
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Lisa Fairhall
Jim Murr
OMB\LA

FILE NO: 7

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

DRAFT

**Statement of Jamienne S. Studley
Deputy General Counsel for Regulations & Legislation**

before the

**Subcommittee on Human Resources and Intergovernmental Relations
of the
Committee on Government Reform and Oversight
of the
House of Representatives**

regarding the

Unfunded Mandates Reform Act of 1995

March 22, 1996

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to to outline the Department of Education's state-local-federal partnerships and consultation, and to comment on the ACIR staff draft report.

Enhancing the Nation's Education Partnership

American education has always been a partnership. State, local, and tribal governments and community school boards are responsible for almost all education decisionmaking and funding. The federal government provides leadership, seed money for innovation and coordination, and critical funding for national priorities, including education of disadvantaged and disabled children, job training, teacher training, technology, and access to higher education. The federal government provides assistance and leadership; it does not "regulate" the nation's educational system.

Guided by three dedicated education leaders and former governors, President Clinton, Secretary Riley, and Deputy Secretary Kunin, the commitment to genuine partnership with state and local governments is stronger than ever. And thanks to innovative education reform laws passed with bipartisan support -- Goals

2000, Improving Americas Schools Act, and School-to-Work Opportunities -- the Department has a statutory foundation built around flexibility and partnership with states and localities.

Let me provide some examples of how the Department of Education is working, in the words of the Unfunded Mandates Act, whose anniversary we mark today, "to strengthen the partnership between the Federal Government and State, local and tribal governments."

The Clinton Administration has focused the federal role in elementary and secondary education on supporting state efforts to establish challenging academic standards, with state assessments and accountability geared to those standards. In forty-eight states and 10,000 schools, Goals 2000 funds are being used to develop and implement those academic standards. No new regulations were issued to carry out Goals 2000, to allow maximum flexibility at the state and local levels.

As a result of the Improving Americas Schools Act, states and schools have more independence, and less red tape, than ever before to decide how best to use federal funds. Most dramatically, schools that enroll at least 50% low-income students may combine most of their federal education funds with state and local resources to support schoolwide improvements, without the burden of tracking and recordkeeping requirements.

The School-to-Work Opportunities Act launched a powerful set of partnerships that add businesses and community organizations to the state-local-federal team to improve skills training and effective transitions from school to work. Fifty states have School-to-Work planning grants to develop a comprehensive state plan. Twenty-seven states and 37 local communities are already implementing their partnership programs, consulting with business and community groups and getting technical assistance from us as the federal partner.

The Administration is also working with states and localities to create successful charter and magnet schools. In 1993 the President proposed to provide start-up funds for public charter schools around the nation; today 11 states are taking advantage of these funds. The Department is using its expertise to evaluate what makes for effective charter schools, so that states and localities can increase their chances of success.

Increasing Flexibility and Providing Waivers

One of the clearest indicators of true partnership is trust. The Presidents Regulatory Reinvention Initiative asks all agencies to increase flexibility, reduce regulations, and in general to base our relationships with our partners and customers on trust. If actions speak louder than words, the Department of Educations actions in this area speak loudly indeed.

-- Major new laws, including Goals 2000 and School-to-Work, have been implemented with no new regulations.

-- The Department has eliminated 79% of the regulations (234 pages) affecting its elementary and secondary programs (Office of Elementary and Secondary Education and Office of Bilingual Education). Where regulations are essential (such as when they are required by Congress or necessary to promote educational quality or avoid abuse), the Departments "Principles for Regulating" require us to do so as flexibly, and with as little burden, as possible. Overall the Department has eliminated or reinvented [%] of the regulations we promised the President we would change.

-- Even with fewer and more flexible rules, sometimes the best way to advance our partnership with states and localities is to waive federal requirements that make sense generally but that interfere with a specific state or district educational strategy.

Goals 2000, School-to-Work, and the Improving Americas School Act gave the Secretary of Education unprecedented authority to provide waivers from many statutory and regulatory requirements, and we are using that authority boldly.

Close to 100 waivers have been granted to states and local partners in the last year. These include a waiver that allows the Fort Worth, Texas schools to target extra Title I funds to overhauling four high-poverty, inner city schools, and to permit the Riverview Consortium in Shippensburg, Pennsylvania to use its teacher training funds beyond math and science to focus on needs identified by member districts.

The most dramatic example of the Departments new flexibility is the Education Flexibility Partnership Demonstration Program ("Ed-Flex") established under Goals 2000. Under Ed-Flex, the Secretary has given six state education agencies the authority to waive certain federal statutory and regulatory requirements to remove barriers to effective teaching and learning. Kansas, Massachusetts, Ohio, Oregon, Texas, and Vermont have been approved as Ed-Flex states, joining the federal government in a unique partnership.

Implementing Title II of the Unfunded Mandates Act

The partnerships I have been describing depend on early, open, and extensive communication among partners. To that end, Title II of the Act requires agencies to develop effective processes to ensure that State, local, and tribal government officials can provide meaningful and timely input on significant Federal intergovernmental mandates, as well as to educate and provide notice to small governments regarding regulatory requirements that significantly or uniquely affect them.

I am proud to say that the Department has an impressive record of successfully communicating and sharing the development of policy with affected persons, organizations, institutions, and governments--including school systems--regarding the full range of the Department's endeavors. We work with our partners to develop and get comment on legislative proposals, regulatory reforms, research priorities, program administration, non-regulatory guidance, and technical assistance.

For example, the Department recently convened more than a dozen workshops across the country with tribal representatives and others to discuss programs, and their regulations, under the Elementary and Secondary Education Act of 1965 that affect American Indians.

The Department regularly convenes meetings for student financial aid administrators, many of whom are State officials, and consulted with over 3,000 parents, educators, and administrators, representing the widest possible spectrum of views, in developing its proposal to reform and reauthorize the Individuals With Disabilities Education Act (IDEA).

The Department has not created a special process for inter-governmental consultation, because its existing outreach has proven effective and because Title II does not require the Department to do so. All of the Department's regulations represent terms and conditions of Federal assistance that are voluntarily assumed, and Title II simply does not apply to such regulations.

With respect to small governments, the Department supplements the regular notice and comment regulatory process with special efforts to advise them of potential requirements and to solicit their recommendations. We do this through meetings across the

nation, visits to grantees, technical assistance, and other forms of outreach. In particular, the Department's Office of Intergovernmental and Interagency Affairs works with small governments through regular meetings with such organizations as the National School Boards Association, the National Association of Counties, and the National Association of Towns and Townships.

Improving the ACIR Draft Report

To be honest, Mr. Chairman, we were very disappointed by the ACIR's draft report for reasons you have already heard discussed, and in particular with its treatment of IDEA. I will summarize briefly the principal causes of our concern.

(1) IDEA should never have been included in the draft report because it enforces the Constitutional rights of individuals with disabilities through the establishment of statutory rights that bar discrimination against such individuals. The Unfunded Mandates Act itself recognizes that such rights are to be given a preferred status. Through IDEA, millions of students with disabilities have been helped to become fully participating members of our society; before IDEA, approximately one million children with disabilities were totally excluded from the public school system, and another four million did not receive appropriate educational services.

(2) Reform of IDEA is a major priority of the Department, and well under way. Yet the draft report does not even refer to the Department's wide consultation with parents, educators, and administrators that led up to the reform proposal, which was presented to Congress on June 30, 1995. Our reform proposal would reduce administrative burden and paperwork for State and local school systems, so they can focus their energies on improving educational results for children with disabilities. In some important respects, we anticipated, and indeed went beyond,

the recommendations in the draft report. For example, the reform proposal would require school systems to offer impartial mediation services to parents who are unhappy with the educational services provided to their children, which would significantly reduce the number of disputes that require costly due process proceedings or litigation.

(3) We are adamantly opposed to the recommendation that any court challenge based on IDEA be brought by a State or Federal agency, not by parents themselves. Depriving parents of these rights is fundamentally inconsistent with the intent of the law to create individual rights in parents and students. As the ACIR's own statistics demonstrate, IDEA does not generate a disproportionate amount of litigation (on average, slightly more than one reported case in the Federal courts for each State in 1994). Denying parents' right of action would substantially undermine IDEA enforcement nation-wide. Further "Federalizing" enforcement--requiring intrusive Federal investigations and Federal versus State litigation--could hardly promote greater intergovernmental harmony and cooperation.

I am pleased to report, however, that there are grounds for optimism that the ACIR's draft report can be turned into a thoughtful and useful document. We have had promising discussions with ACIR staff about our concerns, and have identified several areas of apparent agreement. We look forward to developing further understandings.

Mr. Chairman, this concludes my remarks. My colleagues and I would be happy to answer your questions.

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gibbons_m@a1.eop.gov

Labor and

SUBJECT: Office of Management and Budget Proposed Testimony on Unfunded Mandate Reform Act of 1995 (P.L. 104-4)

DEADLINE: 10:00 Thursday, March 21, 1996

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Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Please Note: There are two separate statements attached. EPA and Education will also testify at this hearing. We will circulate their testimony as soon as we receive it.
The hearing is scheduled for March 22nd before a House Government Reform and Oversight subcommittee.

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If the response is simple and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

Please include the LRM number shown above, and the subject shown below.

☐ Concur
☐ No Objection
☐ No Comment
☐ See proposed edits on pages _____
☐ Other: _____

☐ FAX RETURN of _____ pages, attached to this response sheet

Draft OMB

**STATEMENT OF SALLY KATZEN
ADMINISTRATOR
OFFICE OF INFORMATION AND REGULATORY AFFAIRS
OFFICE OF MANAGEMENT AND BUDGET
BEFORE THE
SUBCOMMITTEE ON HUMAN RESOURCES AND INTERGOVERNMENTAL
AFFAIRS
COMMITTEE ON GOVERNMENTAL REFORM AND OVERSIGHT
UNITED STATES HOUSE OF REPRESENTATIVES**

March 22, 1996

Good morning Mr. Chairman and Members of the Committee.

I am Sally Katzen, the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget. OIRA has specified statutory responsibilities and is charged under various Executive Orders with the task of coordinating and reviewing Executive Branch regulatory policy matters.

I appreciate the opportunity to testify on unfunded Federal mandates on this, the first anniversary of the signing of the Unfunded Mandates Reform Act of 1995. This is a very important piece of legislation for the Administration, and one which President Clinton enthusiastically supports. The Unfunded Mandates Reform Act was a milestone that addressed deep-felt concerns of State, local, and tribal governments about the difficulty of complying with Federal unfunded mandates.

Background

From the inception of this Administration, the President has worked hard on issues involving the relationship between the Federal government and State and local governments. He, and his

- 2 -

Administration, believes strongly that government cannot serve people unless there is cooperation -- a real partnership -- among all the levels of government. The Administration heard early on the concerns of State, local and tribal governments about the difficulty of complying with Federal mandates without additional Federal resources.

To address these concerns, the President signed Executive Order No. 12875 on October 26, 1993. In this Executive Order, the President found that the cumulative effect of unfunded mandates has strained State, local, and tribal budgets. Accordingly, he instructed Federal agencies to:

- not impose nonstatutory mandates unless 1) funds are provided by the Federal Government, or 2) the agency demonstrates to the Office of Management and Budget (OMB) that it has consulted with State, local, and tribal representatives, heard their concerns, accommodated them to the extent possible, and explained why they could not accommodate any remaining concerns; and
- develop an effective process of meaningful and timely communication with State, local, and tribal officials when developing regulatory proposals that contain significant unfunded mandates.

Agency consultations that resulted from this Executive Order led to a number of rules that were improved and made less costly for State, local and tribal governments. For example, the Environmental Protection Agency (EPA) proposed a policy to control combined sewer overflows that occur in older cities when a municipal treatment plant cannot treat both the storm water runoff and domestic sewage during heavy rains. One of the options discussed in EPA's proposal would have cost municipalities as much as \$14 billion per year. As a result of consultation and analysis by EPA, the final policy provided flexibility to municipalities to tailor programs based on the site-specific pollutant reductions achieved and the costs of alternative control options. Because

~~of this~~

of this ^{consultation} ~~tailoring~~ ^{and flexibility} ~~the~~ ^{the final policy} [~~cost~~ will ^{be} ~~cost~~ ... and] was ^{endorsed} ~~supported~~ by cities and states.

- 3 -

But Executive Order 12875 only covered ⁴ non-statutory unfunded mandates. To the extent that mandates resulted from laws over which the agencies ^{have} had no discretion, legislative actions are necessary to address the effects of those mandates, ^{This constrain} and this led to the strong bipartisan support for the Unfunded Mandates Reform Act.

Title I of this Act addresses the legislative branch, and the processes ^{Congress} that it should follow before enactment of any statutory unfunded mandates. Title I went into effect last October, and its effects on pending legislation have not yet been fully borne out.

Title II, however, went into effect upon enactment, one year ago today. Title II built on Executive Order 12875, by establishing consultative and analytical requirements for agencies in developing rules. Title II includes a requirement that OMB report to Congress on agency compliance with the Title, which I am submitting along with my written testimony.

Title III of the Act calls for studies by the Advisory Commission on Intergovernmental Relations (ACIR) on this issue. Many witnesses today are addressing this issue, and therefore let me start there and then speak to agency compliance with Title II.

ACIR Study

Title III asked ACIR to report on a variety of issues, including:

- What is the role of Federal mandates in intergovernmental relations?
- What is the impact of unfunded mandates on the competitive balance between State, local, and tribal governments and the private sector?
- How do unfunded State mandates affect local governments?
- How can the Federal government best provide flexibility to its intergovernmental partners?
- How can the Federal government best reconcile existing and inconsistent mandates?

- 4 -

- How do we properly define and measure the costs and benefits of Federal mandates?

~~Existing these questions~~ These provisions in the Act reflect Congress' recognition that we need better information. The reason for addressing these critical questions was a felt need for information that would contribute to this debate. As a participant in the development of this legislation, I saw that the answers to these questions are neither readily apparent nor easily attainable. Congress set a formidable research task before ACIR -- to take a conceptual as well as practical look at the scope and size of unfunded mandates in this country.

ACIR issued a preliminary staff draft for public review and comment on January 5, 1996. We raised serious concerns with ACIR's staff draft report in a March 1 letter from Marcia Hale, Assistant to the President for Intergovernmental Affairs, ^{to Governor Winter, The Commission's Chair} (I have submitted a copy of this letter for the record). Given the agreement to phase out the Commission later this year as well as limited funding, it is not surprising that ACIR's staff draft report for comment did not meet the ambitious Congressional charge.

Our concerns centered around the fact that the staff draft does not address the legislative request in a number of ways, including:

- it does not develop a sufficient conceptual framework for consideration of unfunded mandates;
 - it does not address how State mandates affect local governments;
 - it does not address how we should measure the costs and benefits of mandates; and
- The report fails to address these and other central questions and instead*
- it provides cursory and often misleading analyses of 14 Federal health, safety and environmental laws.

In addition, several Federal agencies that implement the laws which ACIR recommended for revision or repeal with respect to their impact on State and local governments submitted comments. My colleagues on the panel will discuss these specific issues.

it fails to consider the positive impacts on working men and women of Federal mandates, as directed by the Act.

- 5 -

I understand that ACIR received many constructive and critical comments, and will receive more at a public hearing next week. The Administration looks forward to working with ACIR staff and reviewing the Commission's revised draft, which we expect will reflect these important comments and concerns.

OMB Report

Today is not only the first anniversary of the Act. Not coincidentally, it is the due date for our report to Congress on agency compliance with Title II of the Act, called for by Section 208.

This report has given us the opportunity to review Administration activities in light of the Act. As the report sets forth, agencies have given serious thought to, and established real processes for, intergovernmental consultation involving both unfunded mandates as defined by the Act, and issues affecting State local and tribal governments generally. These consultation processes built on Director Rivlin's September 21, 1995 guidance to agencies called for by Section 204 of Title II, which discussed several general themes that agencies should consider as they develop their consultation processes and engage in discussions consistent with those processes:

- intergovernmental consultations should take place as early as possible, beginning before issuance of a proposed rule and continuing through the final rule stage, and should be integrated explicitly into the rulemaking process;
- agencies should consult with a wide variety of State, local, and tribal officials.
- the scope of consultation will necessarily vary with the cost and significance of the mandate being considered -- effective consultation, however, requires significant and sustained attention from all who participate, as well as a degree of trust to allow for frank discussion, focus on key priorities, and clear and unambiguous communication; and

- 6 -

- agencies should seek out State, local, and tribal views on costs, benefits, risks, and alternative methods of compliance, as well as whether the Federal rule will harmonize with and not duplicate similar laws in other levels of government.

The consultation processes that have been established in light of these general lessons are quite varied. As our report discusses, some agencies do not generally issue regulations with intergovernmental effects, like the Departments of Defense and State. Even these agencies, however, have committed to consultations when developing rules or considering policies or programs that involve other levels of government.

Several other agencies -- notably, the Environmental Protection Agency, the Labor Department, and the Energy Department -- issue many rules with intergovernmental effects and have done a superb job in setting up effective avenues of communication with State, local, and tribal governments. These are outlined in detail in Chapter 1 of our report.

The report also demonstrates that the Administration's commitment to involve State, local, and tribal governments as early as possible goes beyond rules covered by the Act. We take seriously our responsibility to consult with other levels of government on all rules and significant policy or program decisions that may effect them. While we have and will continue to meet the consultative and analytical requirements of the Unfunded Mandates Reform Act, we also believe that consultations should not be limited to unfunded mandates covered by the Act. Our report illustrates a myriad of examples where agency activities benefitted from hearing the views of their intergovernmental partners, and incorporating those views into their decision making.

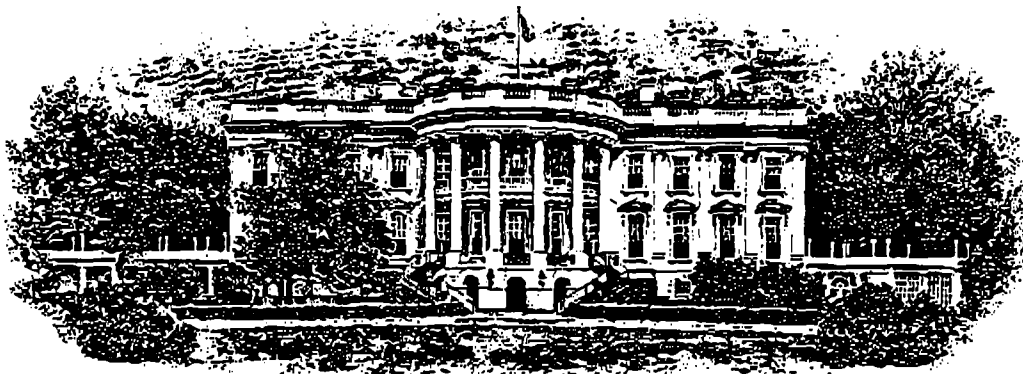
The report also shows that these processes are not just paper-driven exercises. Two rules in the last year met the Act's \$100 million expenditure threshold for State, local and tribal governments. Both were promulgated by the Environmental Protection Agency. Chapter 2 of the report contains lengthy description of the processes used, which most importantly demonstrate agency ascertainment of concerns and accommodation of those concerns to the extent possible.

*the many changes
made to accommodate
those concerns.*

- 7 -

The EPA experiences discussed in our report illustrate what the Unfunded Mandates Reform Act is all about. No one wants to stop regulation with important benefits for health, safety and the environment from going forward. At the same time, we strongly agree that the Federal government needs to hear the concerns of our intergovernmental partners, react to those concerns, and incorporate them into the analyses that inform our decision making so that costs to all parties affected by the rule -- and especially to State, local, and tribal governments -- are minimized.

I appreciate the opportunity to appear here today before you, and to unveil our report. I look forward to your response to it, and am happy to answer any questions you may have.



**THE WHITE HOUSE
OFFICE OF CABINET AFFAIRS**

**Room 160 OEOB
Washington, D.C. 20500
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Facsimile: (202) 456-6704**

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28 Feb. '96

TO:

Liz Dye + Marcia Hale

PHONE:

6270

FAX:

FROM:

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(Including Cover Sheet)

PRIORITY:

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MESSAGE:



U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
400 Seventh Street, S.W.
Washington, D.C. 20590

OFFICE OF THE ASSISTANT SECRETARY FOR TRANSPORTATION POLICY

Number of Pages including this page: 6

Date: 2/23/96

TO: White House Cabinet Affairs
FAX: 456-2983

FROM:
FRANK E. KRUESI
ASSISTANT SECRETARY FOR TRANSPORTATION POLICY
(202) 366-4544
FAX: (202) 366-7127

FAX MESSAGE:

Please see attached.



U.S. Department of
Transportation

Office of the Secretary
of Transportation

Assistant Secretary

400 Seventh St., S.W.
Washington, D.C. 20590

To: White House Cabinet Affairs

From: Frank E. Kruesi *fr*
Assistant Secretary for Transportation Policy

Date: February 23, 1996

Re: USDOT Comments on U.S. Advisory Commission on Intergovernmental Relations
Report on *The Role of Federal Mandates in Intergovernmental Relations*

In response to the request for comments on segments of this report, which we received at the end of yesterday, DOT offers the following:

Overall Comments

- Federal mandates generally flow from statutory requirements. ACIR's report should make this point clearly.
- The Administration already has taken tremendous strides in regulatory reform through the National Performance Review, and its response to this report should highlight this fact.
- On page 3, ACIR refers to over 200 identified Federal mandates. It would be useful for ACIR to list of the items it considers to be mandates, perhaps in an appendix to the report.
- On page 4 (item 3), ACIR describes state governments as "sovereign governments." This is incorrect, but DOT trusts the Justice Department will address the legal implications arising from this statement.
- On page 5 (item 4), ACIR recommends a prohibition on lawsuits by anyone other than the Federal government to enforce legal mandates. DOT defers to the Justice Department to provide a more detailed comment on this issue, but recommends that the Administration address the adverse implications of this limitation in its comments on this report.

DOT has been asked to specifically address the issues of Drug & Alcohol testing, Metric Conversion, and Crumb rubber. In addition, DOT has provided comments on ADA, the

Clean Air Act and Davis-Bacon

Drug & Alcohol Testing

ACIR's Recommendation: Repeal of drug and alcohol testing for state and local government employees.

DOT Response:

- DOT strongly disagrees with ACIR's recommendation, and believes that this recommendation should be withdrawn from the final report.
- From a transportation safety perspective, it makes no difference who employs the person driving a large vehicle. A motorist is in just as much danger from an impaired state or local employee driving a large truck as from a private company's employee.
- The objective of drug and alcohol testing is prevention, it is a deterrent program. A deterrent program does not fail, as ACIR suggests, because few people test positive.
- Drug and alcohol testing is not inconsistent with the treatment of law enforcement and emergency personnel — in many, if not all cases, local governments already apply their own drug and alcohol testing requirements to these personnel.

Metric Conversion

ACIR Recommendation: Repeal requirement for metric conversion for plans and specifications as a condition of receiving Federal aid.

DOT Response:

- ACIR's recommendation appears to be based on an incorrect understanding of current conditions.
- The statutory deadline for conversion of October 1, 1996, has been extended to October 1, 2000, under the recently enacted National Highway System Designation Act of 1995.
- A national survey recently conducted by AASHTO indicated that the vast majority of states have opted to retain September 30, 1996, as their target date for full conversion. FHWA estimates that 82% of the states will have completed conversion by that date.

- As the American Association of State Highway and Transportation Officials (AASHTO, representing state departments of transportation) has stated, "the time to stop conversion was in 1990, not in 1996...". To repeal the requirement at this time would only create confusion for states and American drivers.

Americans with Disabilities Act

ACIR Recommendation: Increase Federal funding for state and local compliance, modifying deadlines to permit compliance within state and local fiscal constraints, creating a single Federal agency for ADA implementation and enforcement, and eliminating the private right of action for suing state and local governments.

DOT Response:

- As noted above, DOT believes that the elimination of the private right of action for the enforcement of Federal mandates has adverse consequences, which the Administration should address in its comments on this report.
- Federal transportation funds already are available to help states and local governments meet ADA transportation requirements.
- Existing ADA provisions already provide extensive flexibility to state and local governments to spread out compliance over a period of years, when financial constraints are present.
- ACIR's report should point out that as a nondiscrimination statute, ADA is not subject to scrutiny under the Unfunded Mandates Act.

Clean Air Act

ACIR Recommendation: Permit state to develop their own approaches to air quality compliance, and eliminate financial penalties if states are making a good faith effort to comply.

DOT Response:

- Many of the mandates and timetables faced by the states were specifically required in the statute. Legislation would be required to implement this recommendation.

- Much of the challenge and cost of compliance can be traced to the fact that air quality standards must be achieved under extreme event, worst case conditions. Greater flexibility in schedules for attainment would reduce the burdens on states.
- EPA and DOT have worked closely with states in revising the regulations regarding the "Conformity" of state transportation plans with air quality requirements to ease the burdens on states.
- The proposal to eliminate financial penalties based on such a low threshold or standard as "good faith efforts" could run the risk of significantly weakening enforcement of national air quality standards.

Davis-Bacon Act

ACIR Recommendation: Option 1 makes no significant changes in current law. Option 2 repeals provisions of the act making compliance with Davis-Bacon a condition of receiving Federal aid. Option 3 revises the threshold and other provisions of the act to reduce administrative, record keeping and reporting requirements for small contracts.

DOT Response:

- In general, DOT believes that any proposed changes must be closely coordinated with the Department of Labor.
- Under Option 1, there are changes which could reduce the burden of administering Davis-Bacon on Federal-aid construction projects, for example, regarding the submission of payrolls and compliance reviews.
- Under Option 2, DOT would be concerned with the non-uniform application labor standards to transportation projects. For example, in the Washington, D.C. area, a National Park Service highway contract (direct Federal funding) would be subject to labor requirements, while a highway contract administered by the D.C. Department of Public Works would not (Federal aid).

Crumb Rubber

ACIR Recommendation: Repeal requirement.

DOT Response:

- As the ACIR report indicates, the crumb rubber legislative requirement already has been eliminated by the National Highway System Designation Act of 1995.
- Several recycled materials have been used, or have potential for use, in highway construction. Each material should be evaluated on its own merits, through research, engineering assessments and cost evaluations.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 21 1996

OFFICE OF REGIONAL OPERATIONS
AND STATE/LOCAL RELATIONS

MEMORANDUM

SUBJECT: EPA Concerns on ACIR's Preliminary Report: The Role of Federal Mandates in Intergovernmental Relations FEB 21 1996

FROM: Shelley H. Metzenbaum
Associate Administrator

TO: Marcia L. Hale, Director of Intergovernmental Affairs

Kathryn Higgins, Cabinet Secretary

Kathleen McGinty, Chairman
Council on Environmental Quality

Carol H. Rasco, Director of Domestic Policy Council

Below is a brief list of our preliminary concerns about the ACIR report. We are still working on an analysis and will provide you with a fuller assessment soon, but I wanted to get over to you now a sense of our serious concerns with this document.

We have several specific concerns about the way the report is written. As you know, we at EPA are strongly committed to and are aggressively reinventing the way we work with state and local governments, but we also feel that it is time to move from a rhetorical discussion of unfunded mandates to a more helpful explication of the strengths and weaknesses of mandates. Because the report as currently written focuses primarily on the problems associated with mandates, the resultant tone is negative and implies federal mandates are always bad public policy.

We obviously take issue with that. The ACIR is supposed to be the nation's intellectual leader in sorting out intergovernmental issues. The report as now written fails to meet this challenge.

A few key suggestions on the general content of the report follow:



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contains at least 50% recycled fiber

For each of the fourteen statutes reviewed:

- The report needs to address why the federal mandate was passed in the first place. For example, the Clean Air Act and Clean Water Act were enacted because voluntary standards had failed; a federal mandate was necessary.
- The report needs to show benefits resulting from that mandate.
- The report needs to reflect what innovations have been implemented over time to make mandates more flexible and to avoid "one-size-fits-all-problem."
- Where specific problems are raised in the report, verification is needed. For example, EPA is frequently mocked for requiring Midwestern states to monitor for pesticides currently used primarily on pineapples. The story is very misleading. The pesticide which can cause male sterility was used on a wide variety of crops in the Midwest and is still present in groundwater today.
- Specific recommendations of the report need to be changed or, alternatively, the report should include a range of options.

A few preliminary suggestions and concerns about the specific recommendations in the report follow:

- Citizen Suits: We oppose the report's recommendation that citizen suits against state and local governments be eliminated. Citizen oversight is a key accountability mechanism in many of our laws, and is an invaluable compliance incentive for all levels of government (including the federal level). The public has a right to participate in ensuring environmental compliance, and citizen enforcement may be less costly in many instances.
- Clean Air Act Financial Aid Penalties: We do not support removing financial aid penalties under the Clean Air Act. In the past, when sanctions were discretionary, compliance deadlines were not met. Now that sanctions are mandatory, compliance deadlines, with a few exceptions, are being met, although we have almost never actually imposed a sanction.
- Single Agency Designation: We question the recommendation that a single agency be designated to coordinate the implementation of each mandate and make binding decisions.
- Health and Safety Standards for States and Localities: It is not fair to have different standards for state and local governments than those applied to private industry and the federal government. Furthermore, extension of this principle to environmental laws could affect health and safety protection for state and local employees, lower health and safety standards for state and local facilities serving the general public, and possibly distort healthy private sector competition with local governments.

- Clean Water Act Cost-Sharing and Timetables: We believe the statement about cost-sharing is factually inaccurate. We already share costs, but also believe that those who contaminate the water should pay to clean it up. It is essential to a sound incentive structure. Also, we do not support blanket elimination of timetables for standards.
- Safe Drinking Water Act: We agree that amendments similar to those enacted by the Senate are appropriate, but strongly oppose establishing a long-term goal of returning to the states full responsibility for imposition and implementation of those standards.

We at EPA remain committed to working with our state, local and tribal government partners to ensure strong environmental protection, while allowing and encouraging flexible and innovative approaches to achieve that objective.

cc: Carol M. Browner
Fred Hansen



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE GENERAL COUNSEL

To: Ann McGuire
Office of Cabinet Affairs

From: Jamienne Studley *JBS*
Deputy General Counsel for Regulations and Legislation

Subject: ED Comments on ACIR Report

Date: February 21, 1996

Attached, in response to Cabinet Affairs' request for agency comments on the ACIR draft report, are talking points developed by ED on the Individuals with Disabilities Education Act section and recommendations. We provided these to Marcia Hale's office last week.

Please let me or Frank Holleman know if you want additional information or comments on the rest of the report or on the strategy for ACIR activities.

cc: Frank Holleman
Judy Heumann
Jack Kristy
Suzanne Sheridan

TALKING POINTS: ACIR and IDEA

The Individuals with Disabilities Education Act (IDEA) was particularly unsuited for ACIR's review because (1) a much more thorough, comprehensive and careful review was done by the Administration in developing its reauthorization proposal, and (2) there is a very close relationship between the IDEA and civil rights laws and constitutional protections that establish the basic individual right to the educational services and procedural protections that the IDEA helps States and localities provide.

The Department of Education's reauthorization proposal: (1) drew upon a comprehensive review of current law and the oral and written comments of over 3,000 parents, educators, and administrators, representing the widest possible spectrum of views; (2) has among its basic objectives reducing administrative burden and paperwork for State and local school systems and promoting the resolution of disagreements between parents and schools through mediation rather than litigation; and, (3) is being used by both the House and the Senate as the basis for their respective legislative vehicles (expected to move through Congress in the Spring of 1996), thereby ensuring that a substantial portion--perhaps 70%--of the Administration's reform program is likely to be enacted.

With respect to the specifics of ACIR's draft recommendations:

(1) Increase Federal Funding to 40% Level. While in principle it would be desirable to increase the level of Federal funding, any dramatic increase--much less the five-fold increase called for by ACIR--is simply not realistic in light of current budget stringencies.

(2) Relieve States From Administrative Mandates. Many of the provisions of the Administration's proposal are designed to reduce burden and paperwork at the school, school district, and State level and re-direct those energies into improving educational outcomes for disabled children.

(3) Require Alternative Dispute Resolution Practices. The Administration's proposal would, for the first time, require States to offer impartial mediation to parents as a no-cost optional means of settling disputes between them and the school district regarding services provided to their disabled child. The Department considered, and rejected as impractical, requiring parents to avail themselves of mediation, based in part on the comments of State administrators with experience in the operation of mediation systems.

(4) Require Any Court Challenge Be Brought By State or Federal Agencies, Not Parents. The Administration is strongly opposed to ACIR's fourth recommendation, to require that any

court challenge based on IDEA be brought by State or Federal agencies, not parents.

-- Depriving parents and students of the ability to vindicate their rights under IDEA in court, if necessary, is fundamentally inconsistent with the intent of the law to create individual rights in those parents and students, and would call into question the nature of the "rights" created.

-- While one of the objectives of the Administration's proposal is to promote non-litigative means of settling disputes between parents and school systems, it cannot be said that the amount of litigation spawned by IDEA is disproportionate: IDEA serves each year approximately 5.4 million disabled children in approximately 14,000 school districts across the country; according to ACIR's study, there were 61 reported cases in the Federal Courts under IDEA in calendar year 1994--slightly more than one in each State.

-- Without correspondingly large increases in funding for Federal enforcement staff (e.g., investigators, resolution experts, and litigators)--an unlikely result in today's climate, and not called for by ACIR--IDEA enforcement would be substantially undermined. Even if additional Federal resources were available, it is hard to see how "Federalizing" the enforcement function, of necessity involving intrusive investigations and Federal versus State litigation, would promote intergovernmental harmony and cooperation.

-- As a practical matter, because the rights conferred on disabled students and their parents by IDEA are rooted in the non-discriminatory principles of other Federal laws (e.g., section 504 and the Equal Protection Clause), it is unlikely that such parents and students could be kept out of Federal Courts in any event.

-- There is no significant political support for divesting disabled students and their parents of their rights under IDEA to seek redress in the courts.



U.S. Department of
Transportation

Office of the Secretary
of Transportation

400 Seventh St. S.W.
Washington D.C. 20590

TELECOPIER COVER SHEET

DATE: 2-22-96

THE FOLLOWING 6 PAGES (INCLUDING COVER SHEET) ARE FOR:

NAME: Chris Balderson

ORGANIZATION:

PHONE:

FAX: 456-6704

THE FOLLOWING PAGES ARE FROM: BARBARA LEACH, DIRECTOR
OFFICE OF INTERGOVERNMENTAL AFFAIRS

PHONE: (202) 366-1524

FAX: (202) 366-7907

COMMENTS: Attached are draft copies of our first two issues. Bullets and final copy for both these and others (Cremb rubber, metric, Clear Air) follow.

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL THE ABOVE
NUMBER PROMPTLY.

DRAFT

Mr. Phillip M. Dearborn
ACIR
Suite 450 South
800 K Street, N.W.
Washington, D.C. 20575

Dear Mr. Dearborn:

The Department of Transportation wishes to comment on the Advisory Commission on Intergovernmental Relations (ACIR) preliminary report concerning the Americans with Disabilities Act (ADA). Most of the discussion of the ADA in the report concerns matters for which the Department of Justice (DOJ) is primarily concerned, and we join DOJ's comments on these matters. However, we have some observations from the Department's perspective that we believe will contribute to the discussion.

First, as you know, the ADA, as a nondiscrimination statute, is not subject to scrutiny under the Unfunded Mandates Act. This is a point that ACIR's final report should emphasize for the discussions and lists of the ADA and other nondiscrimination statutes. Second, with respect to the costs of transportation provisions of the ADA, as they affect state and local governments, Federal funding is already available. Federal Transit Administration financial assistance can be used by state and local transit authorities to help pay the costs of purchasing accessible vehicles and providing paratransit and other accessible services. Federal Highway Administration financial assistance can be used by state and local governments to make accessibility improvements (e.g., curb ramps) as part of Federally-assisted highway projects.

Third, it does not make sense, in our view, to attempt to combine all ADA enforcement and assistance functions into a single agency. One of the main goals of DOT implementation of the ADA is to make nondiscrimination on the basis of disability and accessibility a regular part of our programs and of the programs of the entities we regulate. Placing responsibility for implementing the ADA further away from the Department and its regulated entities, as the ACIR proposal would do, is counterproductive. Our ADA responsibilities do not overlap those of the Equal Employment Opportunity Commission or Federal Communications Commission, and transportation providers and consumers would not gain anything in speed or helpfulness of response from dealing with an agency that also deals with employment and telecommunications issues. Excess centralization is not a virtue in today's government.

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Fourth, we would note that, while some parts of ADA compliance can, indeed, be expensive for state and local governments, the ADA and existing ADA rules provide substantial flexibility for state and local governments who have funding problems meeting the requirements. Oddly, while the staff paper attached to the recommendation inaccurately complains that the ADA is too rigid, the ACIR report itself appears to object to this flexibility, complaining that concepts like "undue burden" are insufficiently prescriptive. It is in fact the intentionally broad provisions of the ADA that give state and local governments exactly the latitude the staff paper supports (e.g., "the opportunity for state and local agencies to spread out the expense" of program accessibility modifications of facilities).

Finally, we strongly object to the recommendation to eliminate the ability of state and local governments to sue for violations of the ADA.

DRAFT

Mr. Phillip M. Dearborn
ACIR
Suite 450 South
800 K Street, N.W.
Washington, D.C. 20575

Dear Mr. Dearborn:

The Department of Transportation strongly disagrees with the Advisory Commission on Intergovernmental Relations (ACIR) preliminary report's recommendation to repeal provisions of the Omnibus Transportation Employee Testing Act of 1991 that subject safety-sensitive state and local employees who drive large motor vehicles to alcohol and drug testing. The recommendation is based on significant misunderstandings of the purpose and scope of the program.

The main purpose of drug and alcohol testing in the motor carrier safety program is to foster safety on our nation's highways by deterring the misuse of alcohol and the use of illegal drugs by "safety-sensitive" drivers. These are drivers who drive large vehicles (i.e., those heavier than 26,001 pounds), vehicles that carry hazardous materials, or passenger vehicles with a capacity of 16 or more persons. From a safety perspective, there is no rational distinction that can be drawn between drivers of these vehicles who are employed by state and local governments on one hand and private companies on the other.

If a person's car is hit by a large truck operated by a driver whose skills are impaired by drugs or alcohol, it is not likely to matter much to that person whether the driver was a private, state, or local employee. There are likely to be few parents who believe that it makes sense to deter substance abuse by drivers of private intercity buses, but not the drivers of their children's school buses. In the absence of a Federal requirement, there may be some state and local government agencies, and there may be some private companies, that take the initiative to create effective deterrent measures, but a patchwork of some effective, some ineffective, and some nonexistent private and public programs could not amount to adequate protection of travelers on the highways.

The report asserts that the law is "inconsistent" because it includes public works and other drivers but "excludes law enforcement and emergency workers" from testing requirements. This assertion is incorrect. Most law enforcement and emergency services personnel are not "safety-sensitive" drivers who are covered

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by the drug and alcohol testing rules in the first place. This is because the vehicles they drive, such as police cars and ambulances, are not big enough to trigger testing requirements for drivers. Neither are other public employee drivers of smaller vehicles subject to testing.

States can exempt law enforcement and emergency personnel from the entire array of Federal motor carrier safety requirements (e.g., the requirement to have a commercial driver's license(CDL)). Such employees are typically significantly better trained than other drivers, and often work under quasi-military discipline. If a firefighter who drives a large fire truck works in a state that has taken advantage of this "opt-out" provision, then that firefighter would be exempt from drug and alcohol testing as well as other CDL-related requirements. An exemption that states may (but need not) take advantage of, that is not focused on drug and alcohol testing, and that would apply only to a narrowly-drawn subset of employees otherwise subject to testing, does not provide a persuasive rationale for repealing a significant safety program as it applies to all public employees.

The report also asserts that, for small rural employees and transportation systems with few employees, the rules "create situations where costs of compliance are disproportionately high relative to potential findings." Since the motor carrier safety drug and alcohol testing rules became applicable to employers with fewer than 50 covered drivers on January 1, 1996, it is doubtful that the assertion can rely on any empirical evidence from state and local agencies with small numbers of drivers. Certainly neither the report nor the associated "staff working paper" (which is dated December 1, 1995) makes any attempt to cite actual evidence that this assertion is true.

Besides being unsupported by evidence, this assertion is conceptually flawed. In the minds of the drafters of the assertion, it is "potential findings" (i.e., positive test results, as the staff working paper's reference to "detecting a violation" makes clear) that would have to reach a certain, unspecified level, to make costs of compliance "proportional." This fundamentally misunderstands the nature of a deterrent program. The intent of the program is to stop drug and alcohol misuse by safety-sensitive drivers before it starts. We are buying prevention, not positive tests. A deterrent program does not fail because too few people violate it.

The staff working paper also makes a number of erroneous assertions concerning testing costs, the alleged inflexibility of the rules, and payment for testing. If only one or two employees are tested in a year, the infrequency of testing means that the costs and time lost from other duties are unlikely to be very expensive or disruptive. This is particularly true given the availability of consortia to provide testing services to a variety of small employers at a moderate, shared cost. It is not as though each small employer would have to create its own, in-house program infrastructure to cover a small number of drivers.

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In order to meet Constitutional and statutory requirements, the Department's rules must protect the privacy of employees and the accuracy and the integrity of the testing process. Within these limits, however, the rules provide substantial flexibility to employers as to the devices, personnel, and locations for testing. For example, employers can use low-cost, on-site, disposable saliva devices for alcohol screening tests, resorting to the more expensive evidential breath testing devices only when needed to confirm a positive screening test result.

The Department's rules deliberately do not specify who must bear test-related costs. It is perfectly permissible, for example, for an employer to pass along some or all test-related costs to employees. It is not even clear what the "medical" or "legal" costs referred to in the staff working paper mean. Certainly the Department's rules do not mandate the payment by employers of "medical" or "legal" costs. There is no requirement for "specialized testing centers" in the rule (drug testing typically occurs in doctor's offices, occupational health clinics, or other existing facilities, and any fixed or mobile facility affording a modicum of privacy can be used for alcohol testing), and there is no regulatory requirement concerning who transports employees to a testing site.

Drug and alcohol testing is an area in which Federal employees and agencies are subject to the same rules as state and local employees. We would also point out, that while the ACIR report refers only to the motor carrier safety requirements, the report's rationale would also apply to state and local employees covered by other operating administrations' rules (e.g., those concerning aviation and pipeline safety). This same rationale would also completely eliminate the Federal Transit Administration's drug and alcohol testing program for bus and train operators and other safety-sensitive transit personnel. In this respect, it is worth recalling that Congressional enactment of the Omnibus Transportation Employee Testing Act of 1991 was, to a significant degree, a response to an alcohol-related mass transit accident that claimed several lives.

Based on factual inaccuracies, careless or nonexistent research, and a failure to understand the concept of the program, the ACIR recommendation on this subject is fatally flawed. It does not provide a sound basis for action by Congress. We urge the ACIR to withdraw it before issuing a final report.

Sincerely,

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

05-Mar-1996 02:32pm

TO: justice
FROM: owner-justice

SUBJECT: - no subject (01I1ZGNX1P4I005R1J) -

March 5, 1996

Dear Colleagues in Justice:

Enclosed is my letter on the recent ACIR report that attacked ADA and IDEA. I sent individualized letters to each of the members of ACIR, with copies to the White House and leading members of Congress. Your letters, faxes and calls are needed.

I love you! We shall overcome!

Justin Dart

March 3, 1996

The Hon. William F. Winter
Chairman
U.S. Advisory Commission on Intergovernmental Relations
800 K Street, NW
Washington, DC 20575

Dear Governor Winter:

THE RECENT PRELIMINARY ACIR REPORT ON UNFUNDED MANDATES made several positive recommendations. It also included misleading and otherwise irresponsibly negative references to the Americans with Disabilities Act and the Individuals with Disabilities Education Act. Related press coverage contained statements that were extremely damaging to the rights of 49 million Americans with disabilities. I respectfully demand that the final report be suitably corrected, and that the public media be informed of those corrections.

THE ADA, THE IDEA AND OTHER BASIC DISABILITY RIGHTS LAWS ARE SACRED TO PEOPLE WITH DISABILITIES.

ADA AND IDEA ARE NOT UNFUNDED MANDATES. They are civil rights laws which simply guarantee to people with disabilities the same equal protection of the laws provided to all Americans by the U. S. Constitution. ADA and IDEA were rightly exempted from the recent unfunded mandate legislation, and should not be addressed by the

ACIR report on that subject.

FOR ALMOST TWO DECADES COMMUNITIES HAVE BEEN REQUIRED by the Rehabilitation Act of 1973 to make their facilities accessible. It is dishonest to imply that the requirements of the ADA are unreasonably abrupt.

ADA SPECIFICALLY STATES THAT NO COMMUNITY CAN BE FORCED to make changes which would impose an undue economic hardship. It is dishonest to imply that the opposite is true. Communities call for flexible implementation. That remedy is already written into the law.

YOUR SUGGESTION THAT PEOPLE WITH DISABILITIES and their families should not have the right to initiate legal action to remedy infringement of their rights is profoundly disturbing. A principal purpose of civil rights laws is to protect citizens against oppressive government. A right with no citizen remedy is no right.

THE ACIR STAFF WORKING PAPER RECOMMENDATION that "ADA requirements should be temporarily or permanently suspended, or made voluntary..." is alarming. Voluntary rights for Black people following the Civil War resulted in 100 years of Jim Crow segregation.

PEOPLE WITH DISABILITIES. CALL ON NATIONAL, STATE AND LOCAL GOVERNMENT, the private sector, the public media and the disability community to make full implementation of the ADA and the IDEA a first priority.

WE WILL COOPERATE 100% to achieve harmonious implementation of the ADA and the IDEA. We will work with individuals, businesses and government at all levels to create common sense solutions that meet the particular needs of different parties and situations. But we will fight to the end of time any change in law, regulation or enforcement that weakens our fundamental equality as set out in the ADA and the IDEA.

WE SUPPORT EMPHASIS ON EDUCATION AND TRAINING. We believe in greatly increased efforts to inform those immediately impacted by the ADA and the IDEA - and all Americans - about their obligations and opportunities under the laws. However, there must be no hesitation to litigate when appeals to reason are ignored and blatant violations continue.

WE CALL ON CONGRESS to provide increased funding that will enable federal, state and local agencies to fulfill their ADA and IDEA monitoring responsibilities efficiently. Resources spent on education about the laws and proactive enforcement now, will greatly reduce litigation and other expensive procedure in the future.

FINALLY, IT IS SELF-EVIDENT that every person in this nation has a vested interest in the success of the ADA and the IDEA. Disability will occur at some point in the lives of most individuals, certainly in the life of every family. Enabling people with disabilities to move from welfare to employment, from isolation to active participation in their communities will profit governments, businesses, families and taxpayers. It will strengthen America's ability to compete in world markets. It will increase the prosperity and the quality of life of every family and community.

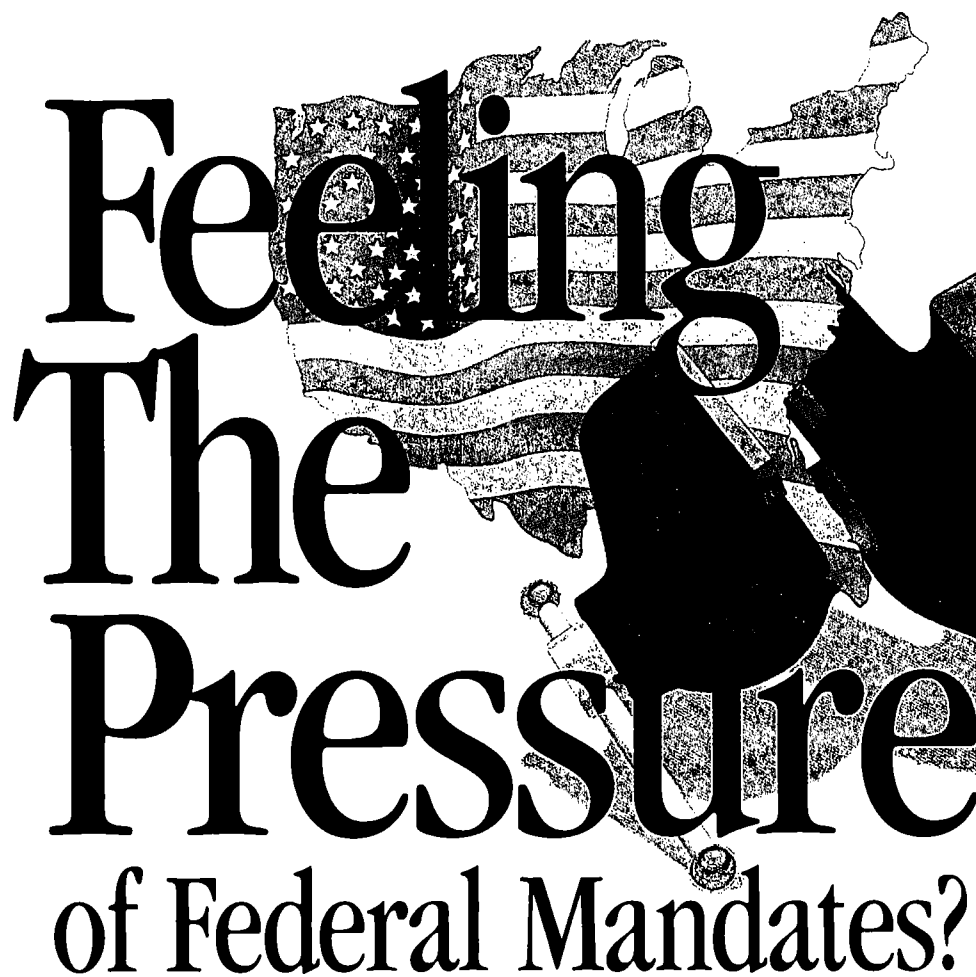
ADA AND IDEA ARE LAWS FOR ALL AMERICANS. WE CALL ON ALL AMERICANS to join us in keeping the sacred pledge: "One nation, under God,

indivisible, with liberty and justice for all."

I HAVE BEEN TO EVERY STATE AT LEAST FOUR TIMES to research the need for or the implementation of the ADA. If there is any way I can cooperate with you to create an accurate final ACIR report, please call, fax or write me at any time.

Sincerely,

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



Feeling The Pressure of Federal Mandates?

Here's a question...What do the White House, members of Congress, state and local officials, government employees, the academic community, private companies, and millions of American citizens have in common?

The answer...Many, if not most, agree that while certain issues benefit from federal oversight, federal mandates aren't always the best way to achieve national goals.

Many would also argue that states, localities, and the private sector have been left out of the decision-making process. This conference will provide participants with the opportunity to debate the merits and problems of mandates and regulatory issues affecting those entities.

As part of the *Unfunded Mandates Reform Act of 1995*, Congress directed the Advisory Commission on Intergovernmental Relations (ACIR) to make recommendations on whether to modify, suspend, or terminate specific existing mandates. This conference will let participants evaluate and comment on ACIR's preliminary recommendations.

If you feel the impact of mandates, this conference is your opportunity to learn which issues ACIR has identified as the most important or most troublesome. It's also your opportunity to make your positions on these issues and ACIR's recommendations a part of the permanent public record.

Ease the pressure and lighten the load.

Attend The ACIR Conference On Federal Mandates
March 6-7, 1996 The Washington Hilton Hotel

Speakers and Moderators Include:

- President William J. Clinton*
- Sen. Robert Dole*
- Sen. Dirk Kempthorne
- Members of the U.S. Senate
- Members of the U.S. House of Representatives
- Members of the Cabinet
- Federal Department Administrators
- Governors
- State Legislators
- County Commissioners
- Mayors
- Academicians
- The Private Sector

Who Should Attend:

- Elected state and local government officials, state executive branch officials, state legislative staff, federal regulatory agency personnel, Congressional staff, local government agency officials, staff & members of non-profit organizations, private-sector executives & liaison staff, academic faculty & public policy researchers, and representatives of public-sector employee organizations.

Conference Day One:

Wednesday, March 6, 1996

7:30 a.m.	Registration
8:30 - 8:45	Welcome Hon. William F. Winter, ACIR Chairman
8:45 - 10:30	Plenary Session <i>A New Approach to Congressional Legislation</i> Hon. Dirk Kempthorne**, U.S. Senate* <i>Intergovernmental Principles Emerging from ACIR's Mandate Studies</i> Hon. Bob Graham**, U.S. Senate Hon. Richard Nathan**, Director, Rockefeller Institute of Government
10:30 - 10:45	Break
10:45 - 12:15 p.m.	Concurrent Seminars

1. Current Efforts to Reform Federal Regulatory Impacts on State and Local Governments

Current regulatory reform bills would require federal agencies to assess the impacts of proposed regulation, involve state and local governments in regulatory development processes, and allow waivers of federal requirements hindering the integration of two or more federal programs under an approved flexibility plan. This seminar will feature expert panelists from federal, state, and local governments who will:

- Debate regulatory reform bills under consideration by Congress.
- Evaluate recent efforts by federal agencies to improve their regulatory processes.

Moderator:

Larry Halloran, Staff Director, U.S. House Subcommittee on Human Resources and Intergovernmental Relations

2. Measuring the Costs and Benefits of Mandates

The *Unfunded Mandates Reform Act of 1995* requires ACIR to study the techniques used to assess the costs, benefits, and feasibility of federal mandates. During this seminar, panels of federal, state, and local representatives will:

- Review the current methods used to assess regulation.
- Discuss the feasibility, approaches, and issues in measuring the costs and benefits of federal mandates.

Moderator:

Dr. Mark Rosentraub, School of Public and Environmental Affairs, Indiana University

3. Relieving State Mandates on Local Governments

Several states have taken statutory or executive action to relieve the burden of federal and state mandates on local governments. Panelists from state and local levels of government will:

- Look at the current progress of state mandate relief efforts.
- Look at the influence mandates have on state regulatory processes.

Moderator: Hon. Bruce Todd**, Mayor, City of Austin, TX

12:30 - 2:15	Luncheon Program <i>Developing a New Partnership with State and Local Governments</i> Hon. William J. Clinton* President of the United States Introduced by: Hon. Richard Riley**, Secretary of Education
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2:30 - 4:45 Concurrent Workshops

Workshops 1 through 6 will present the findings and recommendations of ACIR's preliminary report on the effects of existing federal mandates on state and local governments. Each workshop will include ACIR Commission members, providing attendees the opportunity to directly communicate their views. Panels will also include members of the public, private, and non-profit sectors who will:

- Offer comments on ACIR's preliminary findings and recommendations
- Present materials supporting their individual positions.
- Respond to the comments and questions of those who wish to participate in an open discussion.

1. Environmental Mandates

Moderator:

Hon. Gregory Lashutka**, Mayor, City of Columbus, OH

2. Labor Mandates

Moderator:

Hon. Randall Franke**, Commissioner, Marion County, OR

3. Mandates Affecting Individual Rights

Moderator:

Hon. Edward Rendell**, Mayor, City of Philadelphia, PA

5:00 - 6:00	Conference Networking Reception Hosted by Members of the Advisory Commission on Intergovernmental Relations
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6:00 - 8:00	Dinner Program <i>A Future Agenda for Rebalancing American Federalism</i> Hon. Michael Leavitt**, Governor, Utah
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* Invited

** ACIR Commissioner

**Lightening
The Load**
The ACIR Conference
on Federal Mandates

Conference Day Two:

Thursday, March 7, 1996

7:00 am Registration

7:30 - 9:00 Breakfast Program
What Will Happen in the Congress After ACIR Submits Its Mandate Report?

Introduction:
Hon. James Moran**, U.S. House of Representatives

Speaker:
Hon. Christopher Shays*, Chairman,
U.S. House Subcommittee on Human Resources
and Intergovernmental Relations

9:15 - 10:30 Plenary Session
A Vision of American Federalism for the 21st Century

Introduction:
Hon. Craig Thomas**, U.S. Senate

Speaker:
Hon. Robert Dole*, Majority Leader, U.S. Senate

10:30 - 10:45 Break

10:45 - 12:15 p.m. Concurrent Seminars

4. Impact of Federal Court Mandates on State and Local Governments

ACIR conducted an inventory of federal court decisions from 1994 that imposed mandates on state and local governments or prevented those governments from taking certain action. During this seminar, panelists representing differing legal and governmental interests will:

- Discuss the ACIR study findings and the problems of federal court decisions for state and local governments.
- Debate ways to reduce the burden of federal court decisions on state and local governments

Moderator: Dr. Robert Brauneis, George Washington Univ

5. Mandate Relief for the Private Sector

The *Unfunded Mandates Reform Act of 1995* requires that ACIR review efforts to relieve the burdens on state and local governments that may impact the private sector. Public and private sector panelists will:

- Debate the effects of state and local mandate relief efforts on the private sector.
- Examine how similar relief may be extended to the private sector.

Moderator: Thomas Bradshaw, Smith-Barney

6. The Future Federal Role After Current Reforms Are Implemented

Once current reforms are implemented, the federal role will change dramatically. This change will be accelerated by current mandate and regulatory reforms, proposals to transfer federal programs to state and local governments, and the growth of block grants. Panelists from federal, state, and local governments will:

- Discuss what the future federal role should be.
- Review the effects of federal agencies migrating from micromanagement-style regulation to regulation by performance goals and measures.

Moderator: Paul Posner, Director, Budget Issues, GAO

12:30 - 2:15 Luncheon Program
CBO's Approach to Its Responsibilities Under the Unfunded Mandates Reform Act of 1995

Hon. June E. O'Neil,
Director, Congressional Budget Office

EPA's Implementation of Title II of the Unfunded Mandates Reform Act of 1995: Regulatory Analysis & Reform

Hon. Carol Browner**, Administrator, U.S. EPA

2:30 - 4:45 Concurrent Workshops

4. Health and Social Service Mandates; Transportation Mandates; Metric Mandates

Moderator:
Hon. Art Hamilton**, Minority Leader,
Arizona House of Representatives

5. The Impact of Federal Mandates on Smaller Local Governments; Litigation Against State and Local Governments

During this workshop, a panel of federal, state and local government representatives will address two issues that ACIR's preliminary Mandate Report identifies as critical. A general session will follow where attendees can respond to this discussion.

Attendees' comments and recommendations may be included in the Commission's final report.

Moderator:
Hon. Victor Ashe**, Mayor, City of Knoxville, TN

6. Consolidating and Simplifying Federal Regulations for State and Local Governments

Part of ACIR's responsibilities under the *Unfunded Mandates Reform Act of 1995* is to provide recommendations for consolidating, standardizing and simplifying federal program regulations on state and local governments. This workshop will include a panel of federal, state and local governments to address these issues.

ACIR is also seeking information and recommendations that can be included in its final report on how federal regulatory requirements can better accommodate local governments.

Moderator:
Hon. John Stroger, Jr.**, President,
Cook County Commissioners, IL

* Invited
** ACIR Commissioner

Each attendee will receive his or her own copy of ACIR's Preliminary Report on Federal Mandates. Copies are also available in advance from:

- ACIR's home page: <http://www.access.gpo.gov/acir>
- FedWorld/NTIS's home page: <http://www.fedworld.gov> (\$12 per download)
- FedWorld/NTIS's bulletin board: 703-487-4223
- For a print copy, fax your name and address to: 202-653-5429 or call ACIR at 202-653-5540.

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Conference Pricing

	Pre-Registration Price (postmarked on/before Feb. 28, 1996)	Regular Registration Price (after Feb. 28, 1996 and on-site)
Government and Academic*	\$345.00	\$395.00
Other	\$445.00	\$495.00

*Federal, national, state, & local organizations representing government officials & functions or university/academic staff

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☐ I am also attending ☐ NACO and/or ☐ NLC.

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Your Conference Registration Includes...

- ☒ A copy of ACIR's preliminary Mandate Report.
- ☒ A conference workbook with session handouts.
- ☒ Admission to all plenary sessions, workshops and seminars.
- ☒ March 6 luncheon, afternoon reception and dinner.
- ☒ March 7 breakfast and luncheon.

Hotel Accommodations

Please make hotel reservations by February 12.

A limited number of rooms are available at the Washington Hilton at the discounted rate of \$150 (single), \$175 (double) and \$114 (government). To obtain this special rate, please identify yourself as an attendee of the ACIR Federal Mandates Conference. Registrants should call the hotel directly at 202-797-5820 or the central reservations office at 1-800-445-8667.

The cutoff date for registrations at this special rate is February 12. Because of the strong demand for this conference, we suggest that you make your reservations as soon as possible.

The Washington Hilton requires a first night's pre-paid deposit on all reservations. Checks, money orders, or major credit cards can be used to establish prepayment. All credit cards used as first night's prepayment will be charged immediately. Reservations can be cancelled prior to 72 hours of arrival without penalty.

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Please call 703-883-9363 with any special accommodations you may require in accordance with the Americans with Disabilities Act.

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Preregistration payments must be postmarked on or before February 28, 1996. On-site registrations will be accepted (please call 703-883-9363 to reserve a space). Cancellations received on or before February 28 will be accepted subject to a cancellation fee of \$95.00. Conference registration fees will not be refunded after February 28. Registrants cancelling after February 28 will receive audio cassettes of the conference sessions. Substitute registrants will be accepted from the same organization.

Lightening
The ACIR Conference
on Federal Mandates
The Load

March 6-7, 1996

**Washington Hilton,
Washington, D.C.**

Please R.S.V.P. by February 28, 1996

Who Should Attend:

- ☑ Elected state and local government officials.
- ☑ State executive branch officials.
- ☑ State legislative staff.
- ☑ Federal regulatory agency personnel.
- ☑ Congressional staff members.
- ☑ Local government department & agency officials.
- ☑ Academic teaching faculty & public policy research staff.
- ☑ Staff and members of non-profit organizations.
- ☑ Private-sector executives & liaison staff.
- ☑ Public-sector employee organization representatives.

Program Components:

- ☑ Featured speakers will address plenary sessions on the effects of mandate and federal reforms.
- ☑ Concurrent workshops will let participants impact ACIR's mandate findings and recommendations.
- ☑ Workshop participants will be encouraged to suggest additional mandate issues for ACIR's consideration.
- ☑ Concurrent seminars will include current and needed reforms, state mandate reform, federal court rulings, and the cost and benefits of mandates.
- ☑ Meals: attendance includes lunch on both days, dinner on March 6, and breakfast on March 7.

Topics Covered:

- ☑ Impact of ACIR's preliminary report on the reform of existing mandates.
- ☑ An assessment of the progress of implementation of the *Unfunded Mandates Reform Act of 1995*.
- ☑ Impact of mandates imposed by federal courts.
- ☑ Impact of mandate reforms on the future of intergovernmental relationships.
- ☑ Techniques for measuring the costs and benefits of mandates.
- ☑ Successes and failures of relief measures.
- ☑ Current Congressional proposals.
- ☑ Federal regulatory changes after block grants and other reforms take effect.

Attending This Conference Will Benefit *You* By:

- ☑ Letting you speak directly with members of Congress, governors and state legislators, local government officials, academics, and private-sector executives who all have an interest in mandate reform.
- ☑ Providing a forum for debating and discussing a wide range of mandate and regulatory issues.
- ☑ Helping you gauge the impact of mandate reform on your constituents, jurisdiction, or organization.
- ☑ Debating which mandate issues are important or troublesome to state and local governments.
- ☑ Highlighting the changes ACIR has recommended for modifying specific existing mandates.
- ☑ Letting you evaluate and comment on ACIR's recommendations and findings.

And perhaps most importantly...

- ☑ Letting you voice your position for the permanent public record.
- ☑ Letting you help shape ACIR's final report and recommendations.

Comments from conference attendees will be included in ACIR's final report to Congress and the President.

Learn what's new. Impact future changes.

The ACIR Conference On Federal Mandates • March 6-7, 1996 • Washington Hilton Hotel

ACIR Conference Day One

7:30 am	Registration
8:30 - 8:45	Welcome
8:45 - 10:30	Plenary Session • <i>A New Approach to Congressional Legislation</i> • <i>Intergovernmental Principles Emerging from ACIR's Mandate Studies</i>
10:30 - 10:45	Break
10:45 - 12:15 p.m.	Concurrent Seminars • <i>Current Efforts to Reform Federal Regulatory Impacts on State and Local Governments</i> • <i>Measuring the Costs and Benefits of Mandates</i> • <i>Relieving State Mandates on Local Governments</i>
12:30 - 2:15	Luncheon Program • <i>Developing a New Partnership with State and Local Governments</i>
2:30 - 4:45	Concurrent Workshops • <i>Environmental Mandates</i> • <i>Labor Mandates</i> • <i>Mandates Affecting Individual Rights</i>
5:00 - 6:00	Conference Networking Reception
6:00 - 8:00	Dinner Program • <i>A Future Agenda for Rebalancing American Federalism</i>

ACIR Conference Day Two

7:00 am	Registration
7:30 - 9:00	Breakfast Program • <i>What Will Happen in the Congress After ACIR Submits Its Mandate Report</i>
9:15 - 10:30	Plenary Session • <i>A Vision of American Federalism for the 21st Century</i>
10:30 - 10:45	Break
10:45 - 12:15 p.m.	Concurrent Seminars • <i>Impact of Federal Court Mandates on State and Local Governments</i> • <i>Mandate Relief for the Private Sector</i> • <i>The Future Federal Role After Current Reforms are Implemented</i>
12:30 - 2:15	Luncheon Program • <i>CBO's Approach to Its Responsibilities Under the Unfunded Mandates Reform Act of 1995</i> • <i>EPA's Implementation of Title II of the Unfunded Mandates Reform Act of 1995: Regulatory Analysis & Reforms</i>
2:30 - 4:45	Concurrent Workshops • <i>Health & Social Service Mandates, Transportation Mandates, Metric Mandates</i> • <i>The Impact of Federal Mandates on Smaller Local Governments; Litigation Against State and Local Governments</i> • <i>Consolidating and Simplifying Federal Regulations for State and Local Governments</i>

Put your position on the record at
The ACIR Conference On Federal Mandates.

Advisory Commission on
Intergovernmental Relations

800 K Street, NW
Washington, DC 20575

Lightening
The Load
The ACIR Conference
on Federal Mandates

March 6-7, 1996

WHY ACIR REPORT DOES NOT MEET THE FEDERAL CHARGE

- Title III of the Act instructs ACIR to issue a final report on Federal mandates by March 22. It is not likely that this date will be met, given the March 15 closing of the comment period for the preliminary report.
- Congress asked ACIR to:
 - 1) **review the role of Federal mandates in intergovernmental relations** and their impact on State, local and tribal governments, considering private sector effects;
 - 2) **investigate the role of unfunded State mandates on local governments;**
 - 3) **make recommendations in seven different general areas:**
 - providing flexibility,
 - reconciling inconsistent mandates,
 - terminating duplicative or obsolete mandates,
 - temporarily suspending mandates not related to health and safety,
 - simplifying mandate reporting requirements,
 - establishing common Federal definitions,
 - mitigating negative private sector impacts that result from intergovernmental mandate relief, and
 - providing similar relief to the private sector.
 - 4) for each recommendation in 3, **identify specific mandates to be relieved.**
- **ACIR's draft report falls far short of the bill's ambitious charge.** There is little discussion the role of mandates, no attempt to place the individual mandates analyzed into a general framework, and no mention of the impact of State mandates on locals.
- The report contains a procedural discussion of how they did their work; a general section on common themes; and anecdotal analysis and recommendation of policy regarding 14 mandates that were chosen because they were most commonly cited by States/locals, consistent with ACIR's previously released review criteria, and presumably diverse in subject matter (although 12 of the 14 affect labor, the environment, or persons with disabilities).
- ACIR mentions but does not highlight that resources were limited, and only uses this to explain why they examined only 14 mandates; **with more money, they recommend examining more mandates, not answering the congressional charge.**
- ACIR also drafted for limited public comment a longer listing of roughly 200 mandates that has many inaccuracies.
- **Tribal governments are missing from the report.**

- **ACIR identifies 6 “common themes”, which are primarily common sense and do not address many of the questions posed by the legislation:**
 - 1) Avoid detailed procedural requirements.
 - 2) The Federal Government should share costs as an incentive to restrain the mandate.
 - 3) Recognize that other governments are led by elected officials who are accountable.
 - 4) Ban litigation by individuals against States/localities that implement Federal laws (this would limit an individual’s right to bring civil actions).
 - 5) Extend deadlines for very small governments.
 - 6) Designate a lead Federal agency for any mandate.
- Congress also instructed ACIR to conduct a baseline study to examine measurement and definitional issues involved in calculating total costs and benefits. This study was to consider the feasibility of measuring indirect as well as direct effects, including the benefits of Federal aid and tax benefits. **ACIR chose not to issue this study** due to resource limitations, although it would have provided important contextual analysis -- and could have been more useful than the catalogue of mandates issued by ACIR.

Highlights of Problematic Policy Recommendations

Americans With Disabilities Act of 1990 (ADA)

- o Unfunded Mandates Reform Act of 1995 does not apply to ADA -- not w/in scope of report.
- o ACIR recommends:
 - increasing federal funding or modifying some deadlines and requirements for state - and local governments;
 - creating single federal ADA enforcement and assistance agency, and limiting private right to sue states and localities in fed. courts (i.e. federal enforcement only).
- o Janet Reno wrote to Gov. Winter (2/7/96) stating that the report is based on significant misrepresentations of ADA implementation, that the ADA already provides substantial flexibility and allows for consideration of cost, and that the changes recommend by ACIR will not ensure that the rights of people with disabilities are protected.
- o The President said last year, on the 5th anniversary of the ADA, that he would veto any substantive change to the law.

Individuals With Disabilities Education Act (IDEA)

- o ACIR recommends, among other things:
 - increasing federal funding to 40% OR relieving states from administrative mandates;
 - requiring alternative dispute resolution practices;
 - denying parents the right to bring court challenges.
- o Dept. of Education's memo to Cabinet Affairs (2/21/96) notes that:
 - the Administration has developed a reauthorization proposal that is now being used as the basis of legislation in both houses of Congress;
 - the Administration's proposal addresses administrative mandates and rejects mandatory dispute resolution practices;
 - removing the private right of action would be inconsistent with the intent of the law to create individual rights (the Dept. of Educ. notes only 61 federal cases brought out of 5.4 million kids).

Labor Laws

- o ACIR recommends, among other things:
 - exempting states and local employees from Family and Medical Leave Act and the Fair Labor Standards Act;
 - not requiring states to regulate state and local workplaces under OSHA even when a state opts to administer the OSH Act;
 - greatly narrowing the scope of the Davis Bacon Act by limiting its coverage to projects that cost more than \$100 million and are at least 50% federally funded;
- o DOL's memo to Cabinet Affairs notes that: *if sustained*
 - the Commission recommendations signal bipartisan support for repeal of key worker protections;
 - that the ACIR provides no substantive justifications for its recommendations,
 - that ACIR's criticisms reflect perceptions, not reality (OSHA);
 - that the report overstates the costs and ignores the benefits of the mandates (FMLA);
 - that the Administration last year proposed acceptable Davis-Bacon reforms (raising threshold to \$50,000-100,000 and reducing administrative burden).
- o It would be ironic to repeal state-local coverage under these laws just as Congress brought itself under their jurisdiction.

Environmental Laws

- o ACIR recommends, among other things:
 - Safe Drinking Water Act -- enacting Senate legislation and setting long-term goal of returning responsibility to the states;
 - Endangered Species Act -- giving states and local governments an official role in decisions;
 - Clean Air Act -- permitting states to set their own ways of meeting air quality standards, and eliminating financial penalties where good faith efforts are made to comply;
 - Clean Water Act -- restoring cost sharing OR letting state and local governments develop their own requirements and timetables; ✓
- o EPA (Shelly Metzenbaum) memo to White House (2/21/96) states that:
 - the report is one-sided and fails to consider benefits or sort through intergovernmental responsibilities as directed;
 - EPA opposes removing financial penalties under CAA, noting that although sanctions are rarely applied, *they have been effective in moving states to comply* *they are in San Antonio* *has*;
 - EPA disagrees with the report's characterization of the current cost-sharing arrangements and opposes eliminating deadlines and standards;
 - EPA supports the Senate SDWA bill but strongly opposes goal of handing total program to states.

THE WHITE HOUSE

MARCIA HALL
ELIZ DRYE

FROM: Mrs. Balderston

I ASSUME you already
Dec'd. BOJ's statement
at ~~BOJ~~ ACIR.

U.S. DEPARTMENT OF JUSTICE
ENVIRONMENT AND NATURAL RESOURCES DIVISION
POLICY, LEGISLATION AND SPECIAL LITIGATION SECTION
WASHINGTON, D.C. 20530

FAX NUMBER 202/514-4231

DATE: 2/4/96

FROM: MARK HAAG

PHONE NUMBER: 514-5391

NUMBER OF PAGES TO BE TRANSMITTED (including cover): 11

TO: Elizabeth Drye, MARCIA Hale

PHONE NUMBER:

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MESSAGE:

DRAFT DOJ Testimony for
ACIR Conference

DRAFT DRAFT DRAFT DRAFT DRAFT DRAFT DRAFT DRAFT DRAFT

3/4/96 8pm

STATEMENT OF ELIZABETH M. OSENBAUGH

ACIR CONFERENCE ON UNFUNDED MANDATES

MARCH 7, 1996

My name is Elizabeth Osenbaugh. I work in the Justice Department's Environment and Natural Resources Division, where I serve as Council to the Assistant Attorney General for State and Local Affairs. I am pleased to be here to discuss these important issues.

I. THE ADMINISTRATION SUPPORTS UNFUNDED MANDATES REFORM

Unfunded mandate reform -- and, more broadly, improved cooperation and coordination between all levels of government -- are major concerns of this Administration. In his first year in office, President Clinton issued an Executive Order directing Executive branch agencies to ensure that new regulations do not place undue burdens on states and communities, and the Administration has been working in a variety of ways to address the concerns of state and local governments. Some of these efforts have been carried out under the banner of Unfunded Mandate Reform, and some in the context of broader efforts to Reinvent Government. Just this past Monday, for example, the Vice President, in a speech at the National Press Club, presented the Administration's plan for the next phase of reinvention. Two key components are the development of performance-based grant partnerships among federal, state, local and tribal governments,

and the increased use of regulatory partnerships with industry and state and local government.

The Environment and Natural Resources Division of the Department of Justice, where I work, is not a regulatory agency. Rather, we bring litigation on behalf of our client agencies, such as EPA and the Department of Interior, to enforce the nation's environmental laws. We also defend our client agencies in court when their regulatory actions are challenged. Within the context of our litigation responsibilities, we work very hard to consider the concerns and interests of state, local, and tribal governments. In particular, we try whenever possibly to work cooperatively with state and local governments in our enforcement actions against private entities. And when we do take enforcement action against state or local governments, we do so under policies that take the unique characteristics of those entities into account. I'll have more to say about these efforts later.

II. THE PRELIMINARY REPORT IS A DISAPPOINTMENT

It is because the Administration is committed to improving intergovernmental relations that the current "Preliminary ACIR Report on Federal Mandates" is such a disappointment. Any serious discussion of mandate reform -- and any real progress in improving the way that all levels of government work together -- must proceed from a complete, accurate, and unbiased understanding of the issues. Before we talk about whether to amend or repeal a particular federal law, we need to know what

the law actually requires, how it is being implemented, what problems the law was intended to address, and what public concerns may have prompted Congress to take action in the first place. Otherwise, we are not looking at the whole equation. Unfortunately, the current draft report does not look at the whole equation. I understand that the Report was based on complaints by state and local governments and not an independent analysis of each alleged unfunded mandate, and that this approach may have been dictated by limited time and lack of staff resources. Whatever the reason, the result is a report that is unbalanced and fails to appropriately take into account the concerns which resulted in the statutory requirements. This is counterproductive to the very important task at hand.

I would like to use the next part of my remarks to provide some of the background information and context that is missing from the draft report, focusing on environmental enforcement issues. After that, I have some more specific comments about the draft ACIR Report.

III. ENVIRONMENTAL ENFORCEMENT PROTECTS THE PUBLIC

A. Generally -- Let me start with a few words about the importance of strong environmental enforcement, and the Justice Department's environmental enforcement program generally. We bring criminal prosecutions and civil judicial enforcement actions to protect the environment, remedy environmental harm, punish wrongdoers, and deter future violations. These enforcement actions protect our lakes and streams, our sources of

drinking water, the air we breathe, our food supply, the land our children and grandchildren will inherit, and even the ozone layer that protects us from harmful ultraviolet rays. Without the protection that environmental statutes afford, the health of our families, the health of our communities, the health of our environment, and the health of our economy would all be compromised.

Environmental protection statutes depend upon voluntary environmental compliance, but voluntary compliance is premised on a strong enforcement program since few of us would comply voluntarily with a statute that is not enforced. How many of us would send our checks to the IRS -- or the state or local tax collector -- if we thought that there would be no penalty for failure to do so? We cannot expect voluntary compliance with environmental laws either without vigorous enforcement.

A strong federal enforcement presence helps states in their environmental enforcement efforts. As state enforcers will tell you, the possibility of a federal enforcement action strengthens the negotiating position of states in trying to get a violator to remedy a problem.

In addition to federal and state enforcement, citizen suits are another important component of the enforcement scheme established by the federal environmental laws. Citizen enforcement supplements limited government enforcement resources -- a particularly critical function when federal and state enforcement budgets are being cut. More fundamentally, citizen

enforcement gives local communities a powerful tool for protecting their air, water and land from illegal pollution.

B. Enforcement against State and Local Gov't -- Pollution is pollution -- whether it comes from a privately-owned facility, or a municipal one. When pollution from a state, local or tribal government facility poses a potential threat to public health or the environment, then enforcement may be the necessary.

Indeed, the federal government frequently brings enforcement cases against local governments at the request of the relevant State government. When it is unable to reach an accommodation with the violator, a state environmental agency will often come to the Justice Department or to one of our client agencies and request that we file our own enforcement action or intervene in theirs. Over the last few years, the states have referred dozens of Safe Drinking Water Act cases to the Environmental Protection Agency and/or the Justice Department.

In one such case, the United States recently joined with the State of Montana to bring enforcement actions against Butte Water Company, a private provider of public drinking water, for violations of the Safe Drinking Water Act. The City of Butte, County of Silver Bow, and local businesses arranged to have the water system purchased by a local company set up for that purpose and operated by the City and County. The United States and State of Montana negotiated a compliance plan with the new owner and operator. The agreement was finalized in a consent decree for injunctive relief requiring, among other things, the construction

of two drinking water filtration plants on an expedited schedule to correct chronic turbidity violations in the system. High turbidity endangers public health by reducing the effectiveness of chlorine disinfection. The decree also gave the new owner and operator relief from civil penalty liability so that they could obtain financing for the upgrade to the system necessary to bring it into compliance with the Safe Drinking Water Act. As a result of these actions, the Butte Water system is expected to come into full compliance with the SDWA and primary drinking water regulations and will protect the public health in Butte. Additionally, the settlement of the civil penalty claims against the Butte Water Company, if approved by the Court, will provide for \$700,000 worth of public health projects benefitting the local community.

When the federal government takes enforcement action against a state or local government, it is mindful of the special considerations that apply to such actions. There are several EPA policies that reflect these considerations. For example, EPA has a special policy on the calculation of penalties against municipalities for Clean Water Act violations. Similarly, under EPA's Small Communities Policy, EPA will not take an enforcement action against a small community that is not complying with environmental laws if the state has designed and is using multimedia compliance assistance and compliance prioritization measures consistent with EPA's policy to bring the communities into compliance.

IV. SPECIFIC CONCERNS ABOUT THE ACIR PRELIMINARY REPORT

Let me finish my remarks with a few specific comments on the ACIR Preliminary Report:

1. The Report fails to appropriately take into account the concerns which have resulted in the statutory requirements. For example, the Clean Water Act and the Clean Air Act were a federal reaction to a national pollution problem that the state and local governments had been unable to solve. The detailed requirements and sanctions imposed by the Clean Air Act amendments of 1990 were enacted only after many localities failed to meet repeated deadlines for air quality standards.

A particularly striking example of this problem is in the Report's discussion of the Safe Drinking Water Act. The Report endorses the Senate Safe Drinking Water Act reauthorization bill, which the Administration supports too. But the Report also recommends establishing "a long-term goal of returning to the states full responsibility for safe drinking water standards." The report notes that, "prior to 1974, states had responsibility for the safety of drinking water, but they generally relied on standards set by the Public Health Service." But the Report fails to mention (as EPA Assistant Administrator Perciasepe explained in January 31, 1996, testimony to the House Commerce Committee, Subcommittee on Health and the Environment) that

Before Congress created the original SDWA in 1994, a Public Health Service study found that over one-third of tap water samples evidenced bacterial or chemical contamination exceeding the voluntary limits of the Public Health Service. Fifty-six percent of systems had physical deficiencies that could seriously affect

safety. Sixty-nine percent of systems failed to test half the basic microbial samples recommended by Public Health Service. * * * Against this backdrop, Congress passed and President Nixon signed the original Safe Drinking Water Act." Quite frankly, states didn't show the inclination to protect the public from unsafe drinking water, when it was left to them.

Because it fails to consider the concerns that lead to the enactment of the mandates at issue, the Report provides no factual basis by which the Commission could determine whether a particular mandate is necessary. The Commission should not proceed to make recommendations to Congress in the absence of such information.

2. The Report suggests that state and local governments should not be required to comply with federal mandates absent federal funding. This would be a radical and unwarranted departure from current law. Local governments operate sewage treatment systems, public water supplies, and landfills. It is the nature of these activities, not the nature of the entity which operates them, which requires compliance with environmental laws. Additional federal funding for publicly owned treatment works may well be desirable. For example, the Administration supports reauthorization of the Safe Drinking Water Act, including establishment of a state revolving fund to help local communities develop needed water infrastructure. But the lack of federal funds should not discharge state and local government from their obligations to conduct their activities in a manner that is consistent with the law and protective of public health and the environment, any more than lack of federal funding

would excuse a private facility from the obligation to comply with the law.

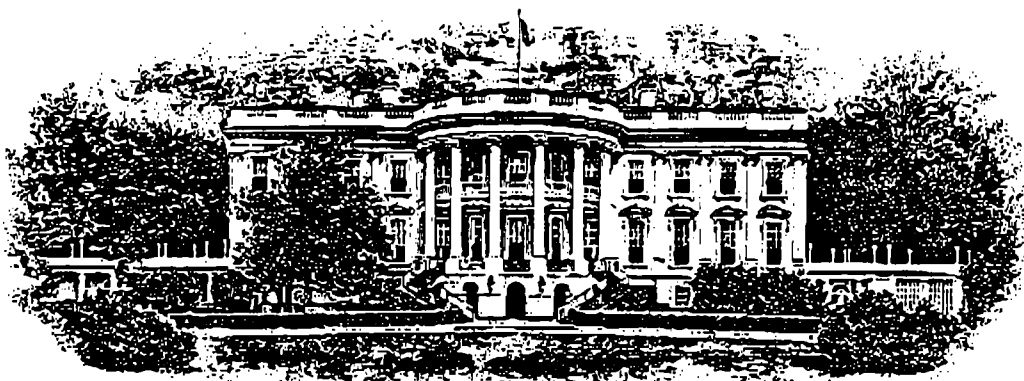
3. The Report recommends that individuals be barred from bringing lawsuits against state and local governments to enforce federal requirements. This would eliminate the ability of individuals to seek redress for violations of federal laws passed to protect them. As support for this recommendation, the Report asserts that the laws involved "are often written in such broad terms, it is not clear what is required of federal, state, and local officials."

While there is no doubt that many laws could and should be written more clearly, the requirements at issue in many environmental citizen suits are not at all unclear. To the contrary, under statutes like the Clean Water Act, the vast majority of citizen suits involve violations of permit requirements. Indeed, in most cases, the basis for the case is the defendant's own reports that its discharges violating its permit.

In any event, at a time when many are calling for reduced federal oversight and smaller federal budgets, it is particularly inappropriate to recommend the elimination of private rights of action, which provide direct redress for violations of federal law without increasing federal bureaucracies.

4. The methods used in the Report are inadequate to analyze whether the congressional goals of clean air, clean water, protection of species, etc., can be met if the Report's

recommendations are adopted. For example, there is no analysis of what might happen if Congress were to do as the Report recommends and return full responsibility for safe drinking water standards to the states. There is no discussion, for example, of the individual states' ability to conduct the research necessary to set drinking water standards or of the degree of compliance by states and local governments with existing health standards, either before enactment of the Safe Drinking Water Act or currently, with federal enforcement.



THE WHITE HOUSE
OFFICE OF CABINET AFFAIRS

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FAX COVER SHEET

DATE: March 7, 1996

TO: Liz Doye

PHONE: _____

FAX: 82216

FROM: Kirk Balderson

NO. OF PAGES: 6
(Including Cover Sheet)

PRIORITY: Y N

MESSAGE: Please see attached

ENVIRONMENTAL PROTECTION AGENCY
REGIONAL OPERATIONS/STATE/LOCAL RELATIONSDATE March 1-96

To:

NAME: Kris BaldersonORGANIZATION: White House Cabinet AffairsFAX NUMBER: 456 - ~~256~~ 6704

PHONE NUMBER: _____

FROM: Anna RaymondSHELLEY METZENBAUM, ASSOCIATE ADMINISTRATOR
OFFICE OF REGIONAL OPERATIONS & STATE/LOCAL RELATIONS

PHONE: (202) 260-4719

FAX: (202) 260-2159

TIME: 11:30 amTOTAL NUMBER OF PAGES: 2SUBJECT: ACIR - Letter CommentsMESSAGE: _____



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON DC 20460

MARCH 1, 1996

OFFICE OF REGIONAL OPERATIONS
AND STATE/LOCAL RELATIONS

MEMORANDUM

SUBJECT: Comments on ACIR letter to Governor Winter from Marcia Hale

FROM: Anna Raymond for *Anna Raymond*
Shelley H. Metzenbaum

TO: Kris Balderson
White House Cabinet Affairs

We have only one suggestion to add to the letter. However, we are not wedded to this language, but feel it would be useful to put in some form of this statement:

Paragraph 1 - White House Letter to Governor Winter.

Suggested language to be added -- line #3 after *Mandates in Intergovernmental Relations*.

As you know, the President is deeply committed to building a strong and effective working partnership with state local and tribal governments. Furthermore, this administration has strongly supported the ACIR and is greatly appreciative of its past efforts to improve intergovernmental relationships. For that very reason, it is essential that the next draft of this report correct the serious problems in the Preliminary Staff Draft. --The draft report fails.....

With regard to the substance of the letter, it is fine with us because of the balance with the other pertinent issues. If you make substantial changes to these issues we would like to see the letter again.

Thanks.



U.S. Department of
Transportation

Office of the Secretary
of Transportation

400 Seventh St. S.W.
Washington, D.C. 20590

TELECOPIER COVER SHEET

DATE: 3-1-96

THE FOLLOWING 3 PAGES (INCLUDING COVER SHEET) ARE FOR:

NAME: Kris Balderson

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THE FOLLOWING PAGES ARE FROM: BARBARA LEACH, DIRECTOR
OFFICE OF INTERGOVERNMENTAL AFFAIRS

PHONE: (202) 366-1524

FAX: (202) 366-7907

COMMENTS:

See attached for ACIR comments.

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL THE ABOVE
NUMBER PROMPTLY.

DOT COMMENTS ON 2/29/96 DRAFT LETTER TO ACIR

- On page 2, last paragraph, could also take credit for overall progress in regulatory reform made by the Administration as part of the National Performance Review (see proposed sentence penciled in on page 2)
- In the attachment, could include following section on **Drug & Alcohol Testing**.

The preliminary staff draft recommends repeal of drug and alcohol testing for state and local government employees who operate commercial vehicles.

The Administration strongly disagrees with the draft report's recommendation. From a transportation safety perspective, it makes no difference who employs the person driving a commercial vehicle (which is defined as weighing over 13 tons or carry 16 or more people). Common sense tells us that a motorist is in just as much danger from an impaired state or local employee driving a large truck as from a private company's employee. And contrary to the draft report's analysis, drug and alcohol testing is not inconsistent with the treatment of law enforcement and emergency personnel. In many, if not all cases, local governments already apply their own drug and alcohol testing requirements to these personnel.

For example, the preliminary staff draft recommends that Congress repeal the Family and Medical Leave Act's (FMLA) applicability to state and local governments. I oppose this recommendation. The draft report asserts that the FMLA has "created unfunded costs related to extending medical insurance coverage to employees while on leave, to temporary hiring of replacement workers, and to additional training and personnel counseling activities..." The report cites no supporting evidence for this claim, however. Further, the report does not acknowledge the substantial benefits to employers, families, and individuals of implementing FMLA requirements.

The preliminary staff draft also recommends several generic modifications to federal laws without carefully considering the consequences of such changes. For example, the draft report proposes eliminating citizens' rights to sue state and local governments to enforce federal mandates. I strongly oppose this broad-sweeping change. Again, the recommendation is based on a consideration of costs but not of benefits. The draft report simply asserts that citizen suits create "budgetary uncertainties and substantial legal costs" for state and local governments. The draft report does not document or quantify these costs or discuss the constructive role citizen suits have played in strengthening enforcement of civil rights, environmental, and other federal statutes.

Another particular concern is the report's recommendations with respect to civil rights laws for people with disabilities -- specifically, the Americans with Disabilities Act (ADA) and the Individuals with Disabilities Education Act (IDEA). Since the Unfunded Mandates Reform Act does not apply to civil rights statutes, it is inappropriate for ACIR to recommend changes to these laws. The draft report's recommendations to eliminate a private right of action and allow voluntary compliance under these statutes would set back our efforts to guarantee equal rights for citizens with disabilities. I oppose these recommendations. I would note that both of these laws allow federal agencies to emphasize education and voluntary compliance as much as possible, and that this Administration has taken a cooperative and flexible approach in implementing the ADA and IDEA.

I am also concerned about the process for seeking public comment on the staff draft. I urge you to ensure full public participation in the Commission's deliberations. I understand the ACIR is sponsoring a March 6-7 Conference on federal mandates and is charging a \$400-500 admission fee. Charging a fee in this context is inappropriate since it creates a barrier to full public participation. I strongly recommend you [instead?] host a free and accessible public meeting to seek comment on ACIR's activities.

As you know, the Clinton Administration has worked hard to strengthen the intergovernmental partnership and to address state and local government concerns about unfunded mandates. The President signed Executive Order 12875 during his first year in office to ensure that new regulations do not place undue burdens on states and communities. In March of 1995, he signed the Unfunded Mandates Reform Act. In addition, the Administration has proposed or supported modifying a number of federal laws to ease the public sector's compliance burden. Further, in implementing federal laws, the Administration has sought to provide state and local governments with enhanced technical assistance and to help them take full advantage of the flexibility that already exists in many federal statutes.

He and the Vice President have taken tremendous strides in regulatory reform through the National Performance Review.

— Draft —
3/1

March 1, 1996

The Honorable William F. Winter
Chairman
U.S. Advisory Commission on
Intergovernmental Relations
800 K Street, NW
Suite 450, South Building
Washington, DC 20575

Dear Governor Winter:

I am writing to express my deep concerns about the preliminary staff draft of the Advisory Commission on Intergovernmental Relations (ACIR) Report: *The Role of Federal Mandates in Intergovernmental Relations*. The draft report fails to respond to key questions the Congress posed to ACIR, and instead focuses on policy issues well outside of ACIR's Congressional mandate or area of expertise. In addition, the draft report discusses the costs of mandates largely without examining their benefits. As a member of the Commission, I oppose many of the specific recommendations in the report, and would like to work with you and other members of ACIR to develop a more balanced report of the Commission's work.

As you know, Title III of the Unfunded Mandates Reform Act of 1995 directs ACIR to: (1) "review the role of Federal mandates in intergovernmental relations and their impact on State, local, tribal, and Federal government objectives and responsibilities, and their impact on the competitive balance between State, local, and tribal governments, and the private sector and consider views of and the impact on working men and women on those same matters;" (2) investigate the role of unfunded State mandates on local governments; (3) make recommendations in seven different general areas, including providing flexibility and reconciling inconsistent mandates; and (4) identify specific mandates that should be addressed in each of these areas. Congress also instructed the ACIR to examine measurement and definitional issues involved in calculating total costs and benefits of Federal mandates. ✓

The preliminary staff draft report does not adequately reflect this Congressional charge. Unfortunately, the draft report focuses on the requirements of specific statutes without establishing a sufficient framework for their consideration. The report does little to further consensus on fundamental questions such as how state mandates affect local governments and how we should measure the costs and benefits of mandates. Instead, it presents cursory and often misleading analyses of 14 Federal health, safety, environmental,

worker protection, and civil rights laws. [These analyses fail to consider the views of or effects on working men and women as directed by Congress.] ✓

For example, the preliminary staff draft recommends that Congress repeal the Family and Medical Leave Act's (FMLA) applicability to state and local governments. I oppose this recommendation. The draft report asserts that the FMLA has "created unfunded costs related to extending medical insurance coverage to employees while on leave, to temporary hiring of replacement workers, and to additional training and personnel counseling activities..." The report cites no supporting evidence for this claim, however. Further, the report does not acknowledge the substantial benefits to employers, families, and individuals of implementing FMLA requirements.

The preliminary staff draft also recommends several generic modifications to Federal laws without carefully considering the consequences of such changes. For example, the draft report proposes eliminating citizens' rights to sue state and local governments to enforce Federal mandates. I strongly oppose this broad-sweeping change. Again, the recommendation is based on a consideration of costs but not of benefits. The draft report simply asserts that citizen suits create "budgetary uncertainties and substantial legal costs" for state and local governments. The draft report does not document or quantify these costs, or discuss the constructive role citizen suits have played in strengthening enforcement of civil rights, environmental, and other Federal statutes.

The draft report's proposed changes to specific environmental laws are similarly disconcerting. The preliminary staff draft recommends -- again without adequate justification -- substantially weakening Federal environmental statutes. For example, the draft report recommends eliminating financial aid penalties for states that fail to meet Federal air quality standards where such states are making a good faith efforts to comply. I oppose this proposal. As the draft report itself notes, most states did not adequately control air pollution until strong Federal standards and enforcement mechanisms were put in place. Now that sanctions are mandatory, states, with a few exceptions, are meeting compliance deadlines, although sanctions have almost never been applied..

Another particular concern is the report's recommendations with respect to civil rights laws for people with disabilities -- specifically, the Americans with Disabilities Act (ADA) and the Individuals with Disabilities Education Act (IDEA). [I oppose the draft report's recommendations with respect to these laws.] Since the Unfunded Mandates Reform Act does not apply to civil rights statutes, it is inappropriate for ACIR to recommend changes to these laws. The draft report's recommendations to eliminate a private right of action and allow voluntary compliance under these statutes would set back our efforts to guarantee equal rights for citizens with disabilities. I would note that both of these laws allow Federal agencies to emphasize education and voluntary compliance as much as possible, and that this Administration has taken a cooperative and flexible approach in implementing the ADA and IDEA. ✓ per Marilyn

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the ACIR is sponsoring a March 6-7 Conference on Federal mandates and is charging a \$400-500 admission fee. Charging a fee in this context is inappropriate since it creates a barrier to full public participation. I strongly recommend you instead host a free and accessible public meeting to seek comment on ACIR's activities.

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[I have additional profound concerns about many of the draft report's recommendations not mentioned in this letter. Attached are comments prepared by Federal agencies and departments on the draft report. Federal agencies will also be forwarding comments to you and the Commission directly. I strongly embrace the attached comments, and urge you to give them full consideration as the Commission redrafts the report.] ✓

Sincerely,

Marcia Hale
Assistant to the President and Director for
Intergovernmental Affairs

Attachments

cc:



UNITED STATES DEPARTMENT OF LABOR
FACSIMILE TRANSMISSION

OFFICE OF CONGRESSIONAL AND INTERGOVERNMENTAL AFFAIRS

200 Constitution Avenue,
N.W.
Room S-1325
Washington, DC 20210

Confirmation:
202/219-6141

To: ELIZABETH DYRE

DEPARTMENT/COMPANY:

FACSIMILE NUMBER: 456-7028

FROM: EARL GOHL

NUMBER OF PAGES INCLUDING COVER: 9

FACSIMILE REPLIES:

CONGRESSIONAL AFFAIRS

202/219-5120

INTERGOVERNMENTAL AFFAIRS

202/219-5736

IMMEDIATE OFFICE OF THE ASSISTANT SECRETARY

202/219-5288

MESSAGE:

March 1, 1996

The Honorable William F. Winter
Chairman
U.S. Advisory Commission on
Intergovernmental Relations
800 K Street, NW
Suite 450, South Building
Washington, DC 20575

Dear Governor Winter:

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The preliminary staff draft report does not adequately reflect this Congressional charge. Unfortunately, the draft report focuses on the requirements of specific statutes without establishing a sufficient framework for their consideration. The report does little to further consensus on fundamental questions such as how state mandates affect local governments and how we should measure the costs and benefits of mandates. Instead, it presents cursory and often misleading analyses of 14 Federal health, safety, environmental,

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Sincerely,

Marcia Hale
Assistant to the President and Director for
Intergovernmental Affairs

Attachments

cc:

JAMES P. MORAN

8TH DISTRICT OF VIRGINIA

WASHINGTON OFFICE:

408 CANNON HOUSE
OFFICE BUILDING

WASHINGTON, DC 20515-4608
(202) 225-4376

COMMITTEE
ON

GOVERNMENT REFORM
AND OVERSIGHT

SUBCOMMITTEE ON CIVIL SERVICE
RANKING MINORITY MEMBER

COMMITTEE
ON

INTERNATIONAL RELATIONS

SUBCOMMITTEE ON
INTERNATIONAL OPERATIONS
AND HUMAN RIGHTS

Congress of the United States

House of Representatives

Washington, DC 20515-4608

February 12, 1996

The Honorable William F. Winter
Chairman
Advisory Commission on Intergovernmental Relations
800 K Street, N.W.
Suite 450
Washington, D.C. 20575

Dear Chairman Winter:

We are writing to express our concern with the decision of a majority of ACIR members to endorse a specific set of recommendations on the "The Role of Federal Mandates in Intergovernmental Relations."

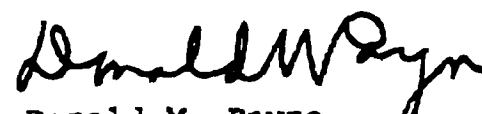
We voted against the recommendations because of the limited opportunity of the full body of members to meet, review the draft recommendations, air disagreements and discuss different perspectives. Obviously, the federal furlough and the government shut down prevented many of the federal members from attending the December 19 meeting. If we are unable to convene a meeting where a full quorum is present, we would prefer to have the final report present the full set of recommendations described in the December 1, 1995 draft.

ACIR's proper role is to smooth bumps in the intergovernmental system, identify the problems and build a consensus on appropriate remedies. ACIR compromises this role and invites controversy when it endorses specific legislative remedies without a fairly high degree of consensus among its members. Where a near consensus exists, a preferred recommendation may be endorsed.

We look forward to an opportunity to raise our concerns at the next meeting.

Sincerely,


James P. Moran


Donald M. Payne

The President has a strong record on unfunded mandates.

- On October 26, 1993, he signed Executive Order 12875 -- "Enhancing the Intergovernmental Partnership"
 - requires Agency to submit any new, non-statutory regulations to OMB review;
 - Sets a deadline of 120 days for the approval or notification of waiver requests.
- Supported the Unfunded Mandates Reform Act of 1995 and signed it on March 22, 1995.
- March 31 report on Progress?

The Administration has worked to restore balance to the intergovernmental partnership in reauthorization of individual laws

- IDEA -- submitted legislation to the Hill that will reduce paperwork and promote mediation.
- Safe Drinking Water Act -- support Senate bill that provides much greater flexibility to states and communities while ensuring all americans have safe drinking water
- Davis Bacon Reform -- proposed change in threshold and paperwork reductions

We've taken advantage of flexibility in current law to ease burdens on communities

- ADA -- extended deadlines for compliance where appropriate (curbs)
- OSHA -- e.g. encouraging alternate standards, allowing states to self-inspect

Should address community concerns about specific laws based on full debate -- ACIR should help shape the terms of that debate, not the appropriate forum for rewriting statutes.

Can make progress w/out backing off of commitment to worker protections, health and safety and the environment.

- Tone is unconstructive

-

- pick on - give example -

- Then 3-4 page of examples of specifics. —

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

27-Feb-1996 02:45pm

TO: (See Below)

FROM: Christopher C. Jennings
 Domestic Policy Council

SUBJECT: NY Times article and Medicaid

Update on response to today's NY Times article today on
Medicaid/Welfare and the unhelpful leak of the HHS testimony:

* HHS sent over some talking points that respond to the story.
(I will forward them over to you.)

* I have talked with Ginny in Communications, who is now doing
the briefing. (She is very unhappy with HHS) She decided to work
off her own set of points, rather than talk off the HHS talking
points. Basically, she will avoid criticisms of the NGA proposal
(other than the kids/disabled eligibility concerns that the
President himself has referenced) and will say that the President
views the NGA resolution as a constructive contribution to the
debate.

* I went over all the Medicaid references with Marcia Hale. She
told me she can live with the actual testimony. She will have to
send the testimony out soon to the Governors, since Robert Pear
already received an early copy.

* I will be talking today with Bruce R. about status of any new
talking points for tomorrow's hearing.

cj

Distribution:

TO: Carol H. Rasco
TO: Laura D. Tyson

CC: Gene B. Sperling
CC: Jennifer L. Klein
CC: Elizabeth E. Drye
CC: Thomas O'Donnell

CITIZENS FOR SENSIBLE SAFEGUARDS

February 26, 1996

Honorable William F. Winter
U.S. Advisory Commission on Intergovernmental Relations
800 K Street, NW
Washington, DC 20575

Dear Governor Winter:

We write in strong opposition to the recommendations contained in the preliminary report of the Advisory Commission on Intergovernmental Relations, released January 24. The laws and public safeguards reviewed by the Commission should be preserved, not weakened. They protect millions of Americans from hazardous workplace conditions, discrimination, and an unhealthy environment. They remain as important today as when they were passed.

In particular, we oppose your preliminary recommendation to exempt state and local governments from complying with seven critically important occupational, health and safety protections. Regrettably this recommendation would create a society where some are worthy of protection, and some are not.

Moreover, your report conveys a false sense of balance by recommending exemptions for seven of the reviewed laws, while recommending that seven others be retained "with modifications." Many of these "modifications" amount to "no money, no mandate," which in times of reduced federal spending are actually further exemptions. This report is not balanced in any sense of the word, and should be recognized as such.

It is ironic that, in the same month that Congress began abiding by the laws faced by other employers, ACIR would recommend exempting state and local governments from many of the same laws. Fairness dictates that all Americans benefit from these protections, regardless of where they work.

It is clear that much greater research, debate, and consideration is needed before any further recommendations are made in this area.

Again, as organizations representing millions of Americans, we strongly oppose the recommendations of your preliminary report, and urge their reconsideration before a final report is issued in the weeks to come.

Endorsed by,

Action on Smoking and Health
AFL-CIO
AFL-CIO Public Employee Department
AFSCME

1742 Connecticut Ave., NW Washington, D.C. 20009
Phone: (202) 234-8494 Fax: (202) 234-8584
E-mail Address: regs@rtk.net

AIDS Action Council
Alliance to End Childhood Lead Poisoning
American Association of University Women
American Association on University Professors
American Council of the Blind
American Counseling Association
American Federation of School Administrators
American Federation of Teachers
American Foundation for the Blind
American Jewish Committee
American Lung Association
American Oceans Campaign
American Postal Workers Union
American Public Health Association
American Speech Language Hearing Association
Americans for Democratic Action
Association of Farmworker Opportunity Programs
Atlantic States Legal Foundation
Bazelon Center for Mental Health Law
Brain Injury Association
Center for Advancement of Public Policy
Center for Community Change
Center for Law and Education
Center for Law and Social Policy
Center for Marine Conservation
Center for Neighborhood Technology (IL)
Children's Defense Fund
Church Center for Sustainable Community
Citizens for Reliable and Safe Highways
Clean Water Action
Coalition for New Priorities
Commission on Social Action of Reform Judaism
Cornucopia Network of New Jersey
Council for Exceptional Children
Environmental Defense Center (CA)
Environmental Defense Fund
Environmental Health Coalition
Environmental Justice Working Group
Environmental Ministries
Epilepsy Foundation of America
Families as Leaders of Oregon
Families USA
Friends Committee on National Legislation
Fund for New Priorities in America
Galveston-Houston Association for Smog Prevention
Goddard College Institute for Social Ecology
Government Accountability Project
Greenpeace
Hadassah
Health and Development Policy Project
Higher Education Consortium for Special Education
Industrial Union Department of the AFL-CIO

International Association of Firefighters
International Federation of Professional and Technical Engineers
International Union of Electronic, Electrical, Salaries, Machine and Furniture Workers
Kansas Audubon Council
Laborer's International Union of North America
Metropolitan Ecumenical Ministry
National Association for Fair Contracting
National Association for the Advancement of Colored People
National Association for Visually Handicapped
National Association of Government Employees
National Association of Homes and Services for Children
National Association of Protection and Advocacy Systems
National Association of School Psychologists
National Associations of Developmental Disabilities Councils
National Audubon Society
National Campaign for Freedom of Expression
National Campaign for Pesticide Policy
National Catholic Social Justice Lobby
National Citizens' Coalition for Nursing Home Reform
National Coalition on Black Voter Participation
National Consumers League
National Council of Jewish Women
National Council of La Raza
National Council of Senior Citizens
National Education Association
National Mental Health Association
National Parent Network on Disabilities
National Urban League
National Wildlife Federation
Natural Resources Defense Council
Network for Environmental and Economic Responsibility
Oklahoma DD Planning Council
OMB Watch
Paralyzed Veterans of America
PhilPOSH
Physicians for Social Responsibility
Planned Parenthood Federation of America
Public Voice for Food and Health Policy
RI Association of People with Disabilities
Service Employees International Union
Service Employees International Union
Sierra Club
Sierra Club Legal Defense Fund
20/20 Vision
The Arc
The Arc of Multnomah County
The Arc of Texas
The International Brotherhood of Teamsters
The Learning Disabilities Association of America
Transportation Communications Union
Trout Unlimited
Union of Needle Trades, Industrial and Textile Employees

United Auto Workers Union
United Cerebral Palsy Associations
United Church of Christ Office for Church in Society
United Food and Commercial Workers International Union
United Methodist Church General Board of Church and Society
United Mine Workers of America
United Steelworkers of America
Laborers International Union
US Public Interest Research Group
Whole Foods Project (NY)
WI Assembly of Local Arts Agencies
Women Strike for Peace
Women Work
Women's Legal Defense Fund
World Institute on Disability