THE FEDERALISM DEBATE: WHY DOESN'T WASHINGTON TRUST THE STATES?

HEARING

BEFORE THE

SUBCOMMITTEE ON HUMAN RESOURCES
AND INTERGOVERNMENTAL RELATIONS

OF THE

COMMITTEE ON GOVERNMENT
REFORM AND OVERSIGHT
HOUSE OF REPRESENTATIVES

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THE FEDERALISM DEBATE: WHY DOESN'T WASHINGTON TRUST THE STATES?

THURSDAY, JULY 20, 1995

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON HUMAN RESOURCES AND
INTERGOVERNMENTAL RELATIONS,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:10 a.m., in room 2247, Rayburn House Office Building, Hon. Christopher Shays (chairman of the subcommittee) presiding.

Present: Representatives Shays, Souder, Morella, Davis, Chrysler, Martini, and Towns.

Staff present: Lawrence J. Halloran, staff director and counsel; Doris F. Jacobs, associate counsel; Christopher Allred, professional staff member; Thomas M. Costa, clerk; Liz Campbell, minority staff assistant; and Kevin Davis, minority professional staff.

Mr. SHAYS. I would like to call this hearing to order and to welcome our guests and panelists, welcome my colleague Tom Davis from Virginia. We will be having other Members who will join us shortly.

Under the rules of the House we are charged with the responsibility of studying the intergovernmental relations between the United States and the States and municipalities. We begin that study today with a debate and we will continue this study for the next 2 years.

We have invited our witnesses to debate the principles that should guide Congress in balancing the relationship between the National Government, and the States, counties, cities, and towns. It is a debate launched by the ratification of the Constitution, waged fiercely in the Civil War, reshaped by the exigencies of the Depression and a World War, and one which continues today in discussions of Government reinvention and devolution.

The debate is over the meaning of the term "federalism," a unique system of shared sovereignty that unites the United States into one nation. The Bill of Rights placed nine explicit limits on the Federal Government and ends with the 10th amendment's reservation of power to the States or the people. That system protects fundamental freedoms, according to James Madison, because, "In the compound Republic of America, the power surrendered by the people is first divided between two distinct governments. The different governments will control each other at the same time that each will be controlled by itself."

Yet it is hardly debatable that the modern federalism is seriously out of balance. Federal powers and programs occupy and, in many cases, preempt virtually every area of public concern. The social, political, and fiscal implications of that imbalance have added urgency to the debate over the appropriate balance of power between the National Government and councils closer to home.

Any proposal for a renewed federalism must overcome a powerful barrier. It is the perception, a stereotype actually that States lack the fiscal capacity, the political will, or the management sophistication to address pressing problems. The legacy of the conflict between States rights and civil rights and the need for Federal intervention in the face of hard economic times have forged the impression that States are either unwilling or incapable of sharing a greater role in governance.

But that view is no longer tenable. Today's lopsided federalism distorts the political balance struck in the Constitution, alienates citizens from a too-distant government, and has saddled our national fiscal capacity with a multitrillion-dollar debt. The Supreme Court recently breathed new life into the 10th amendment as a limitation on the scope and reach of Federal powers.

States must play a central, sometimes exclusive, role in the public's business. Any new federalism must address these new realities and reject the convenient assumption that States cannot participate fully in a sovereign partnership.

Where should the line be drawn between State and Federal jurisdiction? Are there mutually exclusive spheres of governmental authority or do Federal and State powers overlap entirely? What criteria should guide the allocation of Federal and State authority over the matters of health, welfare, education, labor laws, or infrastructure spending? These are the questions we have asked our witnesses to address today. The answers bear directly on proposals before Congress to devolve Federal programs through block grants, swaps, or privatization.

The budget deficit may have made us all "new Federalists," in one sense. But, budget-scoring rules alone will not and should not determine the proper relationship between the National and State governments. Twenty-first century federalism will have to address the transformation of our postindustrial economy, the changing shape of the American city and the impact of shifting demographics on the need for public services.

Principles higher than the bottom line will be needed to guide us. Those principles can be found in the 10th amendment and the 14th. They can be gleaned from the shared experiences of success and failure at all levels of government and they can emerge from the type of civil disobedience embodied in the Federalist Papers, which we hope to continue here today.

I would like to welcome our witnesses. I especially would like to welcome the ranking member who was the chairman of this committee in the previous 2 years. And since my ranking member just came in, I don't know if Mr. Davis wants to make a comment and then we will give you a chance to catch your breath.

Mr. DAVIS. I will be very, very brief.

I was in local government for 15 years out in Fairfax County where I was head of the local government for 3 years, served as

a member of the board for 12 previous years. We were a State that was limited in the activities we could take without State authority. I think the federalism debate is one of the most important debates before the Congress in these next 2 years as we try to decide which level of government can deliver services most efficiently and most effectively.

One of the frustrations with the growing role of the Federal Government has been its inability to reform and change itself once a program gets set in motion, whereas the States seem to have the ability to make changes in a much quicker basis and do experiments and that kind of thing that we really haven't seen at the Federal level.

I have always had a belief few programs can be administered, controlled, reformed, or delivered better than they can at the local government. And yet States rights still carries a very bad connotation going back to the civil rights debates in the 1960's. So I think there is a lot of room for discussion.

I look forward to the debate today and following it and the debate following today's before the Congress in the next couple of years.

Thank you.

Mr. SHAYS. I thank the gentleman.

And I note that he has tremendous responsibilities dealing with the District of Columbia and it is interesting how you will relate those concerns to this issue.

Mr. Towns, I welcome you here today and welcome your statement.

Mr. TOWNS. Thank you very much.

And let me say, Mr. Chairman, that I plan to join the District of Columbia Committee so I can give him some help.

Mr. DAVIS. Well, I appreciate that.

Mr. TOWNS. This issue that we are considering today dates back to the birth of this Nation and focuses on one fundamental question: What powers, privileges, duties, and responsibility does the Constitution grant to the National Government and what powers shall be reserved to the States and to the people?

As a former county legislator, I can anticipate and appreciate the arguments that we will hear from both sides today. While I think it is important to allow for greater State and local autonomy to improve the administration of programs, to encourage innovation and creativity and to better individualize services to local populations, we should not lose sight of the circumstances that led to the current concentration of certain powers in the Federal Government.

There is the long and shameful history of discrimination in many States that precipitated Federal involvement in areas that were previously the exclusive domain of States. It was not until Federal intervention that many citizens were able to enjoy full protection of their rights guaranteed under the Constitution of the United States. For example, the existence of poll taxes, illiteracy tests, and many States that deprived many citizens of the right to vote led the Federal Government to enact the Voting Rights Act. Any transfer of power to the States should be mindful of this history and must ensure that States will protect the rights of all of its citizens.

It is imperative that the Congress critically examine the suggestions to transfer power to the States to ensure that national interests are not sacrificed at the altar of local interest. We should not abrogate our responsibilities to address difficult and conflicting national issues by block granting a program and putting it to the States. It makes no sense to simply replace one bureaucracy with another.

Also, I am concerned that we may allow the argument of devolving power to the States as a pretext to replace one set of Federal priorities with another. Specifically, how can you argue devolution of power and block-grant welfare on one hand and increase Federal control over law enforcement on the other hand? We must be honest about our objectives.

Mr. Chairman, as you well know, the issues that we are considering today will impact how we govern and may very well dictate what type of country we leave for our children and our children's children. In this light, I applaud your leadership in holding this hearing and I look forward to hearing from our witnesses because I think that this is a very serious matter and I think it should not be taken lightly because we are really talking about the future of our Nation.

I yield back.

Mr. SHAYS. I thank the gentleman and I thank both my colleagues for very thoughtful comments.

I am going to get a little household—some basic issues out of the way and ask unanimous consent that all members of the subcommittee be permitted to place any opening statements in the record and that the record remain open for 3 days for that purpose.

Without objection, so ordered.

And I also ask unanimous consent that our witnesses be permitted to include their written statements in the record if they want to summarize, or not even read at all, their written statements. They are free to do what they choose. They have 5 minutes.

And I want to point out and emphasize that we are the Human Resources and Intergovernmental Relations Subcommittee. The Intergovernmental Relations Subcommittee.

We are dealing with this issue as the primary committee in Congress. This is an issue which we will be getting into more and more, as my colleague has pointed out, discussion and votes on block grants work forward through this Congress.

I would like to say we will invite our first panel alone and then we will invite panels two and three to come up at the same time. We are looking to have some good exchange among the participants. Our first two witnesses are James Martin, the National Governors Association. If you would step forward and remain standing, I will be swearing him in. Julie Belaga, as well, if they would both come forward. If you would both raise your right hand.

[Witnesses sworn.]

Mr. SHAYS. Note for the record that both witnesses have answered in the affirmative.

And I would like to again welcome both witnesses.

Mr. Martin, I know of your work. I don't really know you that well. Frankly, I don't know you at all. I am under oath, too. But I know that you are someone who can shed a great deal of light

on this issue. But I know the other witness Julie Belaga. She is invited here as someone who has worked on the State level as a State representative and someone who served the Federal Government both as a Regional Director of EPA and now working down in Washington. I consider her one of the most talented public servants that I have ever met. It is wonderful to have both of you here.

Ms. Belaga, welcome. We are going to have you start.

STATEMENTS OF JAMES MARTIN, NATIONAL GOVERNORS' ASSOCIATION; AND JULIE BELAGA, FORMER REGIONAL ADMINISTRATOR

Ms. BELAGA. OK.

Congressman Shays and members of the committee, I am really delighted to be here today because I think you have a subject that is fascinating and challenging, and I appreciate the opportunity to be part of the discussion.

You pose the question of why doesn't Washington trust the States? I would like you to expand your question to the other side of that coin: Why don't the States trust Washington? Because I think there is a very clear issue here.

On the one hand, you have the Federal Government invoking its authority in a very paternalistic manner, which clearly signals that the Federal Government doesn't trust the States. On the other hand, you have State legislators and Governors crying foul. They want more of the power there. I think the tension is now palpable and it forces us to take a look at this role and I think it is terrific.

I am taking a look at the questions you pose after having served for 24 years in both elective and appointive office. My focus has always been on land use and the environment, so I am going to take a look at the subject from that vantage point, but I really think the issues that I discuss with you today are applicable to any agency across the government.

Mr. SHAYS. How many years were you in local government? I forgot to mention that.

Ms. BELAGA. I was in local government for 6 years, 10 years in the legislative role and then—you see the gray hair, Congressman. I have been around for quite some time. So I have a very interesting vantage point.

I want to set the record straight, first of all. I believe in government. I really believe that there is a—an important role for government to play with the private sector—where there is a need and where the private sector cannot meet those needs.

So with that in mind, if you would go with me back to some environmental history in the late 1960's when the Cayuhoga River burst into flames and it was spontaneous combustion. The pictures that were all over the newspaper focused attention on industrial pollution and that was followed by Love Canal and that was followed by urban smog and people getting ill. All of this fed the public's passion for intervention and that outrage led to a series of laws, which I will be candid with you, have been absolutely wonderful. They have been successful and they have been powerful tools. Clearly, the Federal Government had a role to play. But I think the time has changed and I think this is an interesting analogy for you.

The system that brought us those exceptional successes of the 1970's and 1980's are no longer systems that satisfy. And that traditional command and control approach, those delivery systems are outmoded and they need to be replaced by new models.

The issue, I think, for you is that $64,000 question: How do you fashion a government that responds to the changes that are clearly needed, and do so without throwing out the baby with the bathwater?

In early EPA days, it was established and then the States got the message that they really had a role to play and they came after the fact, and they looked to the Federal Government for guidance and for money and for leadership, and that relationship was very real. Then I would suggest to you that the relationship took a turn for very heavy paternalism and I think that is where we are now, and I think EPA is aware of that.

Let me, within my short 5 minutes, tell you two things that I think really need to be addressed: No. 1, I think the major responsibility for the Federal Government has got to be to set the standards, particularly in the case of environmental law. This is a very powerful requirement because pollution knows no boundary.

There are no geographic or political boundaries there, so in order to level the playing field, the economic playing field for business, for industry, for governmental entities, you really need national standards to be set. And then I think, too, that the States should implement those standards and I think that if we help the States develop a credible capacity to do the job, and it should be the Federal Government's job to help them become able to handle this challenge, then the States should have additional autonomy and flexibility to move forward to serve these needs.

I don't think your task is terribly easy, Congressmen. I think you are not going to find a cookie cutter that is going to answer all the questions here. In some instances, you are going to find the States don't want the responsibility, they prefer the Federal Government to take the role. I think pesticide registration comes to mind here.

But I would hope that you wouldn't get into a debate of either/or, that we don't have all heavy Federal laws or all heavy State power, because I really do believe that what we need here and what the stage is set for is a very good partnership. To my way of thinking, that would reap a real harvest of goodwill and would generate better services that are delivered closer to home, that allow more insightful decisionmaking and would aid all levels of government to attain those goals.

From my vantage point what is so interesting is that we are called, in fact, the United States of America and I think that word "United" really needs to be cherished. I don't think we can solve the current crisis that we have by pitting one State against the other or by pitting the State governments against the Federal Government. I think we need a better model, and in all candor, my vote is for a true cooperative, collaborative partnership between the States and Federal Government. I think that would be a win-win for everyone.

Mr. SHAYS. Thank you for a wonderful statement.

[The prepared statement of Ms. Belaga follows:]

Testimony of
JULIE D. BELAGA

The subject of your discussion today is a powerful one You pose the question "Why doesn't Washington trust the states?" I appreciate the opportunity to share my perspective on that question and to bring my experience to bear as you address the challenge of identifying a model intergovernmental arrangement.

I am here testifying today not in my capacity as a member of the Board of Ex-Im Bank, but I speak based on my previous background in federal, state and local government. I consider my experience in all of these venues to be helpful in formulating my answers to your question.

I thought that, perhaps your question could be expanded to include the question "Why don't the states trust Washington?" On the one hand, the federal government invokes its authority in a truly paternalistic manner. This clearly signals that the federal government does NOT trust the states. On the other hand, cries of "foul" are coming more and more often from Governors and legislators. They are signaling that the states do not trust the federal government, and that they want power turned over to them.

This tension is very real and it forces us to take a look at the role of government and the possible lines of responsibility between all of the players.

You have asked me to discuss the benefits and detriments of intergovernmental relations in the context of my experience in federal, state and local government and to discuss what I suggest as the appropriate role for each. I've been in both elective and appointed government service for 24 years. My focus has been on land use and environment, so let me use the environment as the model. Obviously lessons learned from years of experience with ANY federal/state relationship are applicable to other agencies.

Let me add that, in no uncertain terms, I believe in government. I feel passionately that government has an important role to play where needs exist and where the private sector cannot meet those needs.

Back in the late 1960's the Cayuhoga River burst into flames. It was spontaneous combustion! That picture catapulted industrial pollution onto the front page of the papers. This was followed by headlines of Love Canal and then stories of children and senior citizens made ill by urban smog. All this added to the public's passion for intervention. Their outrage led us to a series of laws that have been powerful, successful tools. Government clearly had a role to play here.

But times have changed. The system that brought us exceptional success in the 70's and 80's is no longer a system that satisfies. Traditional command and control regulations and rigid federal delivery systems now are outmoded and need to be replaced by new models.

I think that the reason for the current hostility toward the federal government is the public's perception that Washington is so distant and so unrelated to the real world that federal government is not only irrelevant, but hostile. This feeds the fire of anger, frustration and distrust. The $64,000 question is : "How do we fashion a government that responds to the changes that are obviously needed, and do so without "throwing out the baby with the bath water?"

In many cases, states want the federal government to get out of their way. States are asserting their rights and in most cases the states are ready to take the lead. They want and expect the federal agency to delegate the responsibility to them. Does this make sense? Does it respond to the public's cry for more responsive, less intrusive government?

I think it does. But let's look to history because it has a major bearing on where we are today. In the early days, EPA was established before many states had environmental agencies. Because EPA was up and running, states looked to the federal agency for assistance and guidance. They needed help and money and it was clear that this relationship would call for oversight on the part of the federal government.

This relationship was constructive and valued, but over the years it grew more and more

paternalistic. This wasn't all EPA's fault. Congress established a hefty requirement for reporting, and so...in attempting to communicate its work product and the work product of those states that enjoyed "delegated" authority...the agency built a convoluted and often wasteful program of oversight.

EPA does have a long history of delegating authority but often, within that delegated authority, it merely duplicates what the state agency is doing in the name of "oversight" This is a waste of limited resources and undercuts the credibility and value of the delegated authority. Oversight is important. Duplication is not.

I use the example of oversight to focus the dialogue on two important factors. First, in assessing programs, it is critical to take an historic look and then answer some really hard questions about the future of the agency in question. Drawing the lines of responsibility takes care, research and understanding of the intent of the law and the capacity of the players.

Second, there is not going to be a cookie cutter that will press out just the right way for each and every agency and program to be designed. For example, there will be situations where states won't want the responsibility and will prefer that the federal government take the lead. Pesticide registration comes to mind here.

Let's take a look at some basic principles that need to be kept in mind. After determining whether the agency brings value to the system, there should be some basic criteria for the delivery of the service offered. It is clear to me that, in the case of EPA, there is enormous value added. The public clearly demands environmental protection and even when there is controversy over implementation of the federal laws, there is very broad based support for such protection.

The question then should be how best to fashion that service?

1) Major responsibility should be given to the federal government to <u>set the standards.</u> In

the case of EPA this is a particularly powerful requirement because pollution knows no boundaries or political/geographic borders. So, in order to level the economic playing field for industries and for governmental entities, national standards must be set. The federal agency must be given Congressional support to allow it to do that research and analysis. Furthermore, in the development of these standards, states and local officials must have an opportunity for meaningful input.

2) States should be required to implement those standards. They will need a credible capacity to do the job and it should be the federal government's role to help the states build that capacity to perform. States should be given additional autonomy and flexibility once they have programs up and running.

I hope that today's discussion will not be an "either/or" debate. We cannot afford to pursue an agenda of total federal power or total state power. What we need to do is take stock of what works and what doesn't work and offer suggestions for corrective action. The old ways must give way to new systems. But this does not mean that all of the old ways are wrong. To my way of thinking the stage is set for a truer partnership that will reap a harvest of good will; generate better services that are delivered closer to home; allow for more insightful decision-making and aid all levels of government to attain their goals.

Have no illusions that the path is easy. It isn't. But the pendulum has swung away from prescriptive and proscriptive federal government. Let's not let it swing all the way in the other direction to prescriptive and proscriptive STATE government. We are, after all, the UNITED States of America. That name embodies the historic notion that we are a united group of states. We need to cherish and protect that unifying quality and standard. We cannot look to solve the current crisis in confidence by pitting one state against another or by pitting the states against the US government. We need a better model. I think that a new model, one that is fashioned on the outcome of today's discussion, will be a true win-win for everyone.

Mr. SHAYS. Mr. Martin, would you like to share your comments?

Mr. MARTIN. Thank you, Mr. Chairman.

Mr. SHAYS. Mr. Martin, if you could use that mike. We unfortunately only have three today.

Mr. MARTIN. Thank you, Mr. Chairman, members of the committee, Mr. Towns, and Mr. Davis for inviting the National Governors' Association to be at this hearing this morning. I especially thank Mr. Towns. He was our leader last year on unfunded mandates relief and will still be our leader for State government interests.

And as a resident of the District of Columbia, Mr. Davis, I appreciate your concern for the District and your positive concern. I feel that and I feel your leadership.

And we welcome you, Mr. Towns, to the District of Columbia Government Committee, if you want to make that switch.

Rarely, does NGA staff testify. It is the Governors that are the lobbyists and the testifiers. We don't have all the Governors. We have 48 signed up to be at our annual meeting in Vermont in a week and a half, and hardly any of them are leaving their States right now because they are going to be gone for a week. But I will just summarize the things that I have heard.

I have been with NGA for 29 years as their legislative counsel and director of State-Federal Relations. And my job is to lobby Governors to come here and testify and do what they say they care about, and I am, this morning, failing because I couldn't catch a couple.

Mr. SHAYS. When the Governors come, are they just saying what you give them to say?

Mr. MARTIN. They say what they believe in and then I remind them what they believe in. Now, it is time for you to remind your peers in Congress. Federalism, as you know, covers the very broad subjects of the article 5 out of the Constitutional Convention. And there are always groups around that want to always resurrect that procedure, and they say that what we have doesn't work so they want to find a new way.

This constantly includes the 10th amendment and what powers are reserved to the Federal Government that the States have. The Conference on the States is essentially a movement by the leaders of the National Governors' Association, National Conference of State Legislatures, the Council of State Governments to call attention to the 10th amendment and what does it mean.

Over the years, the Supreme Court, in 1976, in *Usery* v. *The United States* said that the 10th amendment was active and that they couldn't regulate the wages of the employees of the San Diego Transit Authority. And 10 years later, it came around with the *Garcia* decision and overturned the *Usery* decision, and *Garcia* said that the 10th amendment was inactive. And I can quote you some statements from the *Garcia* decision which essentially said, the Supreme Court essentially said if the States and locals have any problems, you have representatives in Congress, go see them and get in line, get your votes. We are not refereeing the 10th amendment is my summary, and I think many other legal scholars' summary of the *Garcia* decision. It came along in 1988 in South Carolina and said that our bonds were in the interest of the Federal Government and Congress said we should register our bonds and do whatever

Treasury said about the registration, therefore, we must do that. And the Supreme Court said the 10th amendment had nothing to do with our bonds. So our personnel—it was now up to Congress to determine how we would run our personnel.

And then in South Carolina they said our finances, our bonds were also the subject for congressional concern. In 1972—in 1992 the Supreme Court came around, made a small correction in a New York decision which said that the Federal Government couldn't commandeer the States to do their business. Grants, as you know, are voluntary and it isn't a club of grants. Most recently, just a couple months ago, the Supreme Court in *Lopez* ruled that the Federal Government couldn't regulate the police activities around schools in terms of guns. If essentially had they ruled the other way—it was a close decision 5 to 4, it would have said the Federal Government can regulate police activities around every school in the Nation. So the Governors aren't sure. The leadership of NGA and the National Conference of State Legislators aren't sure that the Supreme Court is ready to continue this look at the 10th amendment.

They like the *Lopez* decision. They like that deference, and there is some meaning to the 10th amendment. But they are still not sure because *Usery* said the same thing and they came right around and reversed it, and they could reverse that one.

Federalism also concerns the details of the work you are doing every day, all the work on block grants, all the work on formulas, all the work on how we relate to the welfare system and the health care system.

There is all the talk in Washington about Medicaid. Medicaid is $173 billion—Medicare is $178 billion, the papers are full every day about the changes in Medicare. Nobody talks about Medicaid in Washington. Medicaid is $173 billion. Medicaid is as big as Medicare.

Medicaid, nobody cares about that in Washington because that is paid for, half of it, 43 percent of it, by State government and, in many cases, by county governments where the States and the counties have to share in that.

So this morning I would just like to concentrate on four short things: The national economic growth, nothing is more important to federalism than sustained national economic growth. In 1992, the latest census figures, which are not published yet, they will be in probably another 2 months, State and local government had $1.2 trillion in revenues including about $180 in Federal aid.

The Federal budget in 1982 was $1.3 trillion, and very few people realize that the State and local budgets, the State and local finance systems are as big as the Federal system. So when the national economy dips or drops, there are enormous impacts at the State level. Our welfare costs go way up and our revenues go way down.

Because the economy has improved over the last year, at the NCSL meeting in Milwaukee just yesterday, the legislators reported from 34 States that their balances were up to 5.6 percent, the highest level in 15 years. And that's because their economies are improving, there are more jobs, more people going to work and our welfare billings are going down. So nothing compares to a sus-

tained national economic growth and its impact on State and local government. When we look at Federal aid, which is 18 percent of that, $240 billion. In 1995, we have to take that in the context of national economic growth.

Second, nothing compares to Medicaid. Nobody knows how many Federal aid programs there are. There are over 600, that's all we know. There are over 600. Nobody has a definitive count.

Medicaid alone, of all those 600 programs, Medicaid alone accounts for 40 percent of all Federal aid to all governments for all purposes, that one program. The Federal Government this year will pay—the Federal Government will pay $89 billion, the States will pay about $70 billion for fiscal 1996. That gives you that $163 billion program. Medicaid has been going up in the last year, 10.5 percent, the 2 years before that, over 20 percent per year. This is a huge program of $163 billion is going up for the foreseeable future at 10.5 percent, and the economy only growing at 3 percent, you can see where the squeeze is coming.

Governor Romer of Colorado repeatedly says today that he will not have any money left for education, basic education in Colorado unless something is done about the explosion of health care costs in the country. I think—I don't have it attached here, but President Clinton's Medicaid in his new budget, his changes for Medicaid and Medicare are only about $50 billion off from what the Republican proposals are when you take his from a 10- to a 7-year proposal. It is amazing, and something has to be done about Medicaid.

If nothing is done about Medicaid and Medicare and health care costs containment, nothing else that you and the Governors or the legislators are doing, are going to make much of a difference because the health care costs are going to eat us alive. The higher education people have said repeatedly last year that the worst thing that ever happened to higher education in America is Medicaid. Medicaid is now eating into everything else that we have at the State and local level.

And we have some proposals for Medicaid, and I can give the committee those, detailed proposals that the Governors have.

The same with welfare reform. The issue there is flexibility. Repeatedly you have heard we don't want to change Democratic micromanagers for Republican micromanagers. And Republican Governors are just as insistent as Democratic Governors that in the welfare reform that there be flexibility.

The Governors are tired of begging for waivers. It takes about—an average of 30 to 40 separate waivers to get one health care thing or welfare reform proposal going.

Secretary Shalala has been outstanding. She has given 34 waivers, 34 States are now operating under waivers of current law. The law is so confusing and so inoperative that 34 States are operating under waivers from Secretary Shalala, and she has been good to offer those.

Let me close by saying that block grants, they are the rage for fixing everything. I will make a little quote from a GAO report that just came out. This is an outstanding report on the history of block grants, up to date, published in January. And they say here in an employment training area you have 163 programs for job training by 15 separate departments. I mean, so much money must be spent

on the service providers that there is none left for the intended recipients.

And then you have $20 billion in fiscal 1995 for all these job programs. Youth development area, 46 programs and agencies with appropriations of $5 billion. This is insanity to have 600 programs, hundreds for the same client, the money is not reaching the client.

Finally, I have listed block grants that are in the budget right now. Block grants are no big new idea. We have had block grants for a long time. The GAO report says that $32 billion in Federal aid is now spent in block grants.

I don't know if my list comes up to that under the 4-year current block grants. States are running block grants. They are working. Some are working better than others. The worst one is the alcohol and drug abuse because it has about 15 categories in it. It is not a block grant.

The best one is probably the ISTEA that is a block grant. It is not listed as a block grant. It is the biggest one. It is the largest discretionary program in the Interstate Surface Transportation Act. It is a block grant that Governors, mayors, and locals like and don't want to change it. They like it. They want to keep it going.

The social services block grant is $2.8 billion of general revenue sharing for State government to use for poor people.

Finally, on this chart, of all the Federal aid programs, there are 11 of them, two-thirds of all Federal aid to all governments, for all purposes, are in 11 programs, 40 percent of it is in Medicaid alone.

The final thing is President Clinton's proposals for performance partnerships. A lot of people complain the Republicans are doing too much. If they just read what President Clinton is proposing, he has 28 block grants here covering across the whole Federal Government, he calls them performance partnerships.

There are some goals to achieve and we can achieve that. So the idea of block grants is in. It is not out. And my summary is that the Governors are running a lot, a lot of these States are running these now, they can run the new ones that you give to them very well.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Martin follows:]

Statement of
James L. Martin
Director
State-Federal Relations

Good morning Mr. Chairman and Members of the Committee. Thank you for inviting the National Governors' Association to share with the committee a few comments on the leading state concerns about federalism.

Federalism is a term with the potential of covering a wide and deep range of issues to a narrow and targeted set of specific concerns. Federalism covers Article V of the U.S. Constitution on how to call a Constitutional Convention to the Tenth Amendment, which reserves all powers to the states except those delegated to the federal government. These are fundamental questions of the "balance" of powers, roles of the citizen, values and virtues, and the "sorting out" of responsibilities between individuals and their governments.

Federalism also includes specific legislative actions such as balanced budgets, the extent of mandates and regulations, block grants, who pays for what, formulas for distribution of federal funds, preemption of states laws, and tax policies.

States are concerned about both the broad and specific aspects of federalism. This short paper deals with the immediate issues that impact states in the near term. These include a strong, growing national economy, reducing the 10 percent annual growth rate in the cost of Medicaid and Medicare, which will total $332 billion in fiscal 1996, real welfare reform, design and implementation of several new block grants, and tax reforms that could dramatically impact federalism for years to come.

Sustained national economic growth stands alone as the leading concern of state government in federalism. State and local finance in 1992 nearly equaled federal finance at $1.2 trillion, while federal aid to all governments for all purposes was only $180 billion. If the national economy dips, state revenues also dip, and state costs go up for many kinds of welfare and job assistance programs. The train of job creation, consumer spending, and new revenues for government services is pulled forward by sustained growth. U.S. leadership in a world-wide competitive marketplace directly impacts job growth, state revenues, and eventually state-federal relationships.

Medicaid is the second major concern of state officials in federalism. Medicaid alone represents 40 percent of all federal aid to all governments for all purposes.

Medicaid concerns outweigh all of these programs combined. For fiscal 1995, the federal payment is $92 billion, but it will require a $62 billion or 43 percent match from state government. This program's cost is increasing by 10.3 percent per year, while the economy is growing at less than 3 percent. Unless health costs for Medicaid ($154 billion) and Medicare ($178 billion) are controlled, all other functions and services of government will be reduced.

Health care costs are concentrated on the elderly. One hundred percent of Medicare and 69 percent of Medicaid funds go to the aged, blind, or disabled, not welfare mothers and their children. The elderly are perhaps the strongest voting block in America, so controlling costs for their programs is the most difficult domestic and political issue facing the nation and federalism. Solutions include broad flexibility for states to manage Medicaid without federal prescriptions and time-consuming requests of waivers from current law; repeal of legal restrictions and mandates for methods of payments, eligibility, and range of services; plus liability and administrative reforms. Nearly one-half of the proposed budget savings, which would produce a balanced budget by 2002, will come from controlling the public health care costs.

Welfare reform is the third concern for states and nearly everyone. All states agree that reform is needed to require more recipient responsibilities and actual work for the benefits received; broad flexibility for states to design programs that meet each state's particular needs; a contingency fund to cover increased costs during economic slowdowns; and a new philosophy for assistance programs of a hand-up rather than a hand-out.

Block Grants. The Governors agree with the February, 1995 report by the General Accounting Office that there are too many separate categorical federal programs for the same purpose. Currently, there are over 600 separate categorical aid programs to state and local governments: 150 for job training; 77 for elementary, secondary, and vocational education; and over 200 for various welfare programs. GAO says "...In the employment training area, we found 163 federal programs administered by 15 departments, with appropriations of $20 billion for fiscal year 1995. In the youth development area, we found 46 federal programs administered by 8 agencies, with appropriations of $5.3 billion specifically earmarked for delinquent and at-risk youth for fiscal year 1995. Similarly, we found over 90 early childhood programs administered by 11 federal agencies."

Second, state and local governments already effectively manage a wide range of 15 block grants, with over $32 billion in funding. States are already doing a good job with block grants. The President has also recommended similar consolidations through 28 "performance partnerships."

Third, since the President and Congress agree that the budget should be balanced by a time certain, this means we must find ways to do the same job with less funds. Block grants provide for some of these savings through less categorical programs, less service providers with multiple layers of government decision makers, and less micro-management and paperwork.

Experience has taught us repeatedly that the federal government cannot manage 260 million people. Government must be decentralized, intergovernmental trust must become real again, and government officials must work together to make federalism work both in the broad constitutional arena and in the operation of specific federal assistance programs.

States are also concerned about sustained federal commitments as a federalism partner in domestic services that transcend state boundaries and are in the national interest, such as transportation, liability reform, environmental protection, taxation, criminal justice, and civil rights.

None of these state interests or priorities are new, but the urgency of effective action has arrived. It is driven by a call from the people to stop deficit spending by a time certain. What is new is a bottoms-up move by the people to make each government—federal, state, and local—more responsive to the taxpayer and average citizen and less than to special and single-issue groups.

1996 PRESIDENT'S BUDGET -- FFIS PRELIMINARY ESTIMATES
GRANTS-IN-AID: MAJOR DISCRETIONARY AND MANDATORY PROGRAMS 02/28/95
(federal fiscal years; dollars in millions)

MAJOR DISCRETIONARY	FY 1993 ENACTED	FY 1994 ENACTED	FY 1995 ESTIMATE	FY 1996 PRESIDENT'S BUDGET	1996 PRES. BUD. vs. 1993 $	1996 PRES. BUD. vs. 1993 % CHANGE TOTAL	1996 PRES. BUD. vs. 1993 % CHANGE AVG. ANNUAL	1996 PRES. BUD vs. 1995 $	1996 PRES. BUD vs. 1995 %
DEPARTMENT OF AGRICULTURE	**$3,285**	**$3,698**	**$3,970**	**$4,410**	**$1,125**	**34.2%**	**10.3%**	**$440**	**11.1%**
WOMEN, INFANTS & CHILDREN (WIC)	2,860	3,210	3,470	3,820	960	33.6%	10.1%	350	10.1%
RURAL WATER & WASTE DISPOSAL GRTS. 1	425	488	500	590	165	38.8%	11.6%	90	18.0%
DEPARTMENT OF COMMERCE	**217**	**323**	**408**	**408**	**191**	**87.9%**	**23.4%**	**0**	**-0.1%**
ECONOMIC DEVELOPMENT ASSISTANCE 2	217	323	408	408	191	87.9%	23.4%	0	-0.1%
DEPARTMENT OF EDUCATION	**12,705**	**13,020**	**14,025**	**14,998**	**2,293**	**18.0%**	**5.7%**	**973**	**6.9%**
COMPENSATORY EDUCATION	6,709	6,912	7,233	7,441	732	10.9%	3.5%	208	2.9%
GOALS 2000	0	62	439	750	750	n/a	n/a	311	70.8%
SCHOOL-TO-WORK	0	29	146	200	200	n/a	n/a	54	37.0%
IMPACT AID	750	798	728	650	-100	-13.3%	-4.7%	-78	-10.7%
TITLE VI EDUCATION BLOCK GRANT	435	370	347	0	-435	n/a	n/a	-347	n/a
EISENHOWER PROFESSIONAL DEV. GRTS.	246	251	320	735	489	198.8%	44.0%	415	129.5%
DRUG-FREE SCHOOLS & COMMUNITIES	499	375	457	465	-34	-6.8%	-2.3%	8	1.8%
SPECIAL EDUCATION									
BASIC STATE GRANTS	2,053	2,150	2,240	2,772	719	35.0%	10.5%	532	23.7%
INFANT & FAMILIES GRANTS	539	592	642	316	-223	-41.4%	-16.3%	-326	-50.8%
VOCATIONAL & ADULT EDUCATION	1,474	1,481	1,473	1,669	195	13.2%	4.2%	196	13.3%
HEALTH AND HUMAN SERVICES	**10,966**	**12,756**	**12,527**	**12,880**	**1,914**	**17.5%**	**5.5%**	**353**	**2.8%**
SUBSTANCE ABUSE BLOCK GRANT 3	1,131	1,177	1,234	1,294	163	14.4%	4.6%	60	4.9%
MENTAL HEALTH BLOCK GRANT 4	278	278	275	275	-3	-1.1%	-0.4%	0	-0.2%
MATERNAL & CHILD HEALTH BLK GRANT	665	687	684	681	16	2.4%	0.8%	-3	-0.4%
COMMUNITY HEALTH CENTERS 5	559	604	617	617	58	10.4%	3.3%	0	0.1%
HEALTHY START INITIATIVE	79	98	110	100	21	26.6%	8.2%	-10	-9.1%
PREVENTIVE HEALTH BLOCK GRANT	149	157	158	156	7	4.7%	1.5%	-2	-1.2%
FAMILY PLANNING	173	181	193	199	26	15.0%	4.8%	6	2.9%
IMMUNIZATION GRANTS 6	341	528	466	504	163	47.8%	13.9%	38	8.2%
TUBERCULOSIS GRANTS 7	79	117	120	120	41	51.9%	15.0%	0	0.3%
RYAN WHITE AIDS GRANTS	348	579	633	723	375	107.8%	27.6%	90	14.2%
HEAD START 1	2,776	3,325	3,535	3,935	1,159	41.8%	12.3%	400	11.3%
CHILD WELFARE SERVICES	295	295	292	292	-3	-1.0%	-0.3%	0	0.0%
IMMUNITY SERVICES BLOCK GRANT	372	386	392	392	20	5.4%	1.8%	1	0.1%
CHILD CARE & DEV. BLOCK GRANTS 1	893	893	935	1,049	156	17.5%	5.5%	114	12.2%
LOW INCOME HOME ENERGY ASSIST. 1	1,346	1,437	1,319	1,319	-27	-2.0%	-0.7%	0	0.0%
REFUGEE ASSISTANCE 1	381	400	400	414	33	8.7%	2.8%	14	3.6%
STATE LEGALIZATION ASSIS. GRANTS 8	326	812	361	6	-320	-98.2%	-73.6%	-355	-98.3%
ADMINISTRATION ON AGING-STATE GRTS.	775	804	805	804	29	3.7%	1.2%	-1	-0.1%
HUD AND INDEPENDENT AGENCIES	**12,931**	**13,598**	**15,578**	**14,894**	**1,963**	**15.2%**	**4.8%**	**-684**	**-4.4%**
COMMUNITY OPPORTUNITY FUND	0	0	0	4,850	4,850	n/a	n/a	4,850	n/a
COMMUNITY DEV. BLOCK GRANTS 2 9	4,240	4,400	4,600	0	-4,240	n/a	n/a	-4,600	n/a
COMMUNITY DEV. INITIATIVES 9	0	0	450	0	0	n/a	n/a	-450	n/a
HOMELESS ASSISTANCE INITIATIVE 10	823	823	1,120	1,120	297	36.1%	10.8%	0	0.0%
AFFORDABLE HOUSING FUND 10 11	1,687	1,751	1,918	3,339	1,652	97.9%	25.6%	1,420	74.0%
HOME PROGRAM 9	1,173	1,275	1,400	0	-1,173	n/a	n/a	-1,400	n/a
PUBLIC HOUSING OPERATING FUND 10	2,457	2,916	3,220	3,220	763	31.0%	9.4%	0	0.0%
EPA WASTEWATER STATE REV. FUND 12	1,928	1,795	1,935	2,100	172	8.9%	2.9%	165	8.5%
EPA WASTEWATER PROJECT GRANTS	623	638	934	265	-358	-57.5%	-24.8%	-669	-71.6%
DEPARTMENT OF THE INTERIOR	**134**	**135**	**136**	**147**	**13**	**9.7%**	**3.1%**	**11**	**8.3%**
ABANDONED MINE REC. FUND	134	135	136	147	13	9.7%	3.1%	11	8.3%
DEPARTMENT OF JUSTICE	**550**	**527**	**2,106**	**3,606**	**3,056**	**555.6%**	**87.2%**	**1,441**	**66.5%**
BYRNE GRANT PROGRAM 13	473	420	512	500	27	5.7%	1.9%	-12	-2.3%
CRIMINAL ALIEN ASSISTANCE - PRISONS	0	0	130	300	300	n/a	n/a	170	130.8%
JUVENILE JUSTICE & DELINQUENCY PREV.	77	107	144	144	67	87.0%	23.2%	0	0.0%
VIOLENT OFFENDER INCARC. - PRISONS	0	0	25	500	500	n/a	n/a	476	1940.8%
VIOLENT CRIMES AGAINST WOMEN	0	0	26	130	130	n/a	n/a	104	400.0%
DRUG COURTS	0	0	29	150	150	n/a	n/a	121	417.2%
COMMUNITY POLICING	0	0	1,300	1,882	1,882	n/a	n/a	582	44.8%
DEPARTMENT OF LABOR	**6,128**	**7,097**	**7,567**	**8,069**	**1,942**	**31.7%**	**9.6%**	**502**	**6.6%**
ADULT WORKFORCE DEVELOPMENT 10 14	1,578	2,151	2,372	3,046	1,468	93.0%	24.5%	674	28.4%
YOUTH WORKFORCE DEVELOPMENT 10	1,367	1,522	1,680	1,297	-70	-5.1%	-1.7%	-382	-22.8%
SCHOOL-TO-WORK (LABOR)	0	50	125	200	200	n/a	n/a	75	60.0%
EMPLOYMENT SERVICE STATE ADMIN.	811	833	846	806	-5	-0.6%	-0.2%	-40	-4.7%
ONE STOP CAREER CENTERS	0	50	120	200	200	n/a	n/a	80	66.7%
UNEMPLOYMENT COMP STATE ADMIN.	2,371	2,491	2,425	2,520	149	6.3%	2.1%	95	3.9%

(continued)

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02/28/95

MAJOR DISCRETIONARY (con't)	FY 1993 ENACTED	FY 1994 ENACTED	FY 1995 ESTIMATE	FY 1996 PRESIDENT'S BUDGET	1996 PRES. BUD. vs. 1993 $	1996 PRES. BUD. vs. 1993 % CHANGE TOTAL	1996 PRES. BUD. vs. 1993 % CHANGE AVG. ANNUAL	1996 PRES. BUD. vs. 1995 $	1996 PRES. BUD. vs. 1995 %
DEPARTMENT OF TRANSPORTATION	$23,524	$25,981	$25,434	$23,807	$282	1.2%	0.4%	-$1,627	-6.4%
HIFIED TRANS. INFRA. INVEST. PRG.	0	0	0	23,348	23,348	n/a	n/a	23,348	n/a
AIRPORT OBLIGATION CEILING 9/	1,800	1,690	1,450	0	-1,800	n/a	n/a	-1,450	n/a
HIGHWAY OBLIGATION CEILING 9/	15,327	17,590	17,160	0	-15,327	n/a	n/a	-17,160	n/a
HIGHWAY BONUS CEILING 9/ 15/	180	185	208	0	-180	n/a	n/a	-208	n/a
HIGHWAY EXEMPT FROM CEILING 9/	2,677	2,117	2,268	290	-2,387	-89.2%	-52.3%	-1,978	87.2%
STATE & COMMUNITY HIGHWAY SAFETY	115	123	123	169	54	46.6%	13.6%	46	37.1%
MASS TRANSIT									
FORMULA GRANTS 9/	1,700	2,415	2,500	0	-1,700	n/a	n/a	-2,500	n/a
URBAN DISCRETIONARY GRANTS 1/ 9/	1,725	1,782	1,725	0	-1,725	n/a	n/a	-1,725	n/a
SUBTOTAL: DISCRETIONARY	$70,439	$77,054	$81,811	$83,218	$12,779	18.1%	5.7%	$1,408	1.7%

MANDATORY/ENTITLEMENT	FY 1993 ENACTED	FY 1994 ENACTED	FY 1995 ESTIMATE	FY 1996 PRESIDENT'S BUDGET	1996 PRES. BUD. vs. 1993 $	1996 PRES. BUD. vs. 1993 % CHANGE TOTAL	1996 PRES. BUD. vs. 1993 % CHANGE AVG. ANNUAL	1996 PRES. BUD. vs. 1995 $	1996 PRES. BUD. vs. 1995 %
CHILD NUTRITION	$6,807	$7,498	$7,438	$7,941	$1,134	16.7%	5.3%	$503	6.8%
TEFAP, COMMODITY PURCHASES	120	80	25	0	-120	n/a	n/a	-25	n/a
FOOD STAMPS	28,115	28,097	28,819	29,793	1,678	6.0%	2.0%	974	3.4%
SOCIAL SERVICES BLOCK GRANT 16/	2,800	3,800	2,800	2,800	0	0.0%	0.0%	0	0.0%
FAMILY SUPPORT WELFARE PAYMENTS	14,829	15,881	16,243	16,946	2,117	14.3%	4.5%	703	4.3%
AFDC JOBS	1,000	1,100	1,300	1,000	0	0.0%	0.0%	-300	23.1%
CHILD SUPPORT ENFORCEMENT	810	1,021	1,154	1,067	257	31.7%	9.6%	-87	-7.5%
FOSTER CARE, ADOPTION ASSISTANCE, &									
INDEPENDENT LIVING	2,924	2,993	3,441	4,308	1,384	47.3%	13.8%	867	25.2%
PRIOR YEAR CLAIMS 17/	0	0	157	0	0	n/a	n/a	-157	n/a
FAMILY SUPPORT AND PRESERVATION	0	60	150	225	225	n/a	n/a	75	50.0%
MEDICAID OBLIGATIONS 18/	77,367	81,273	88,438	95,977	18,610	24.1%	7.4%	7,539	8.5%
VOCATIONAL REHAB. STATE GRANTS	1,880	1,974	2,054	2,119	239	12.7%	4.1%	65	3.2%
SUBTOTAL MANDATORY/ENTITLEMENT	$136,652	$143,777	$152,819	$162,176	$25,524	18.7%	5.9%	$10,157	6.7%
TOTAL: SELECTED GRANTS-IN-AID	$207,091	$220,831	$233,829	$245,394	$38,303	18.5%	5.8%	$11,565	4.9%
NET INTEREST ON THE FEDERAL DEBT	$198,800	$203,000	$234,200	$257,000	$58,200	29.3%	8.9%	$22,800	9.7%

FOOTNOTES

- * *Footnotes 3, 4, 5, 6, 7, 10, and 11 address the Administration's consolidation proposals*
- *1/ The 1994 funding level for this program reflects a rescission (i.e., reduction) of appropriated 1994 funds.*
- *2/ The 1994 funding level for this program does not include supplemental funds appropriated for emergency purposes.*
- *3/ This grant is now consolidated with one other program to form the substance abuse performance partnership.*
- *4/ This grant is now consolidated with two other programs to form the mental health performance partnership.*
- *5/ This grant is now consolidated with three other programs to form the health centers cluster.*
- *6/ This grant is now part of the immunization performance partnership and includes funds for vaccine purchases and other immunizations. $177 million of this grant is from the CDC appropriation and is performance partnership funding. $192 million is for vaccine purchase and $135 million is for other immunization expenses.*
- *7/ This grant is now consolidated with 19 other programs to form the HIV/STD/TB partnership grant. Of the total grant, $103 million will be awarded through the the performance partnership grant and $17 million will remain with CDC.*
- *8/ While no new appropriation is provided for SLIAG in 1996, $6 million would be provided for a new English language and civics instruction grant program for legalized aliens.*
- *9/ The President proposes to consolidate this program and others in 1996.*
- *10/ The 1993, 1994 and 1995 amounts reflect aggregate funding levels of programs proposed for consolidation.*
- *11/ The Administration proposes to consolidate the HOME and HOPE programs in this new program.*
- *12/ The 1996 funding level includes $1.6 billion for clean water state revolving fund and $500 million for drinking water state revolving fund.*
- *13/ The 1996 funding level includes $260 million from the Violent Crime Reduction Trust Fund, and $50 million for discretionary grants. The remaining is direct funding.*
- *14/ Funding levels do not reflect the Administration proposal to include funding for low-income Pell grants in this new program.*
- *15/ The 1995 amount for the "bonus" obligation ceiling does not reflect the Administration's proposal to eliminate 1995 funding.*
- *16/ The 1994 funding level includes $1 billion for empowerment zones and enterprise communities.*
- *17/ The conference funding level includes $156.5 million for prior year foster care and adoption assistance claims.*
- *18/ Medicaid estimates reflect estimated obligations for each year. The 1994 level includes $81 million and the 1995 level includes $377 million for vaccine purchases. The 1996 level proposes $412 million for vaccine purchases.*

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Table 12–3. "PERFORMANCE PARTNERSHIPS"—Continued

	Department of Agriculture: Rural Development Programs	Departments of Education and Labor: G.I. Bill for America's Workers	Department of Health and Human Services: Public Health Service	Department of Housing and Urban Development	Department of Transportation	Environmental Protection Agency
Improved accountability	State-by-State work plans (embodying performance measures and accountability) would be negotiated between USDA headquarters and the USDA State Directors (in consultation with State Rural Development Councils, and State and local governments.	Improved information on jobs, labor markets, and institutional performance will empower individuals to exercise informed choices and not use poor schools; tougher quality standards on providers based on results, system goals for services and outcomes, and published performance.	Strong State planning and reporting process. Grantees will report on outcomes, and progress on broad-based public health goals as well as specific results achieved with PHS funds.	Would consolidate programs into performance-based formula grants which are accompanied by Federal conditions. Grant recipients will be accountable for locally-developed performance benchmarks.	Performance reporting will be simplified under a few large programs. Infrastructure Banks will require substantial contributions of resources from States and localities, user fee financing will assure market tests of investment decisions.	The State work plans would include an evaluation component to maintain EPA oversight while improving environmental results.
Administrative savings	$42 million over five years with accompanying reductions in headquarters FTEs.	$31 million over five years for Federal oversight FTEs. States use savings from their program flexibility redesign for additional services	$15 million in 1996 for 230 oversight FTEs with FTE savings more than doubling over four years for cumulative savings totalling $218 million	$770 million over five years. Phased-in estimates of HUD administering (1) grant versus direct Federal programs; and (2) fewer grants versus the multiplicity of HUD's current grant structure	Consolidation of grant programs would reduce grant administration costs.	Lower EPA processing costs for consolidated grants, and lower EPA implementation costs in States that accept more delegation of EPA programs
1996 BA for Performance Partnership grants	$988 million	$14.1 billion (Discretionary BA)	$3 billion	$26 billion	$25 billion	$634 million
Locus of decision-making	State Directors (coordinating with the State Rural Development Councils, and State and local governments) would be able to shift resources among existing programs to meet the specific needs of each State.	Most program and administrative design responsibilities are shifted from Federal to State and local levels. Individuals empowered to select training.	Five of 16 program groups will be State grant programs, where decision-making would be left to States. States will be eligible for most of the other 11 grant clusters.	Decision-making shifted to States, cities, and communities.	Fewer Federal constraints on use of funds shifts decision-making to States and localities; Infrastructure Bank decisions reflect market viability of investments.	Participating States would be able to make funding decisions based on their priorities and to simplify their administrative procedures.
Improved accountability	State-by-State work plans (embodying performance measures and accountability) would be negotiated between USDA headquarters and the USDA State Directors (in consultation with State Rural Development Councils, and State and local governments.	Improved information on jobs, labor markets, and institutional performance will empower individuals to exercise informed choices and not use poor schools; tougher quality standards on providers based on results, system goals for services and outcomes, and published performance.	Strong State planning and reporting process. Grantees will report on outcomes, and progress on broad-based public health goals as well as specific results achieved with PHS funds.	Would consolidate programs into performance-based formula grants which are accompanied by Federal conditions. Grant recipients will be accountable for locally-developed performance benchmarks.	Performance reporting will be simplified under a few large programs; Infrastructure Banks will require substantial contributions of resources from States and localities, user fee financing will assure market tests of investment decisions.	The State work plans would include an evaluation component to maintain EPA oversight while improving environmental results
Administrative savings	$42 million over five years with accompanying reductions in headquarters FTEs.	$31 million over five years for Federal oversight FTEs. States use savings from their program flexibility redesign for additional services.	$15 million in 1996 for 230 oversight FTEs with FTE savings more than doubling over four years for cumulative savings totalling $218 million.	$770 million over five years. Phased-in estimates of HUD administering (1) grant versus direct Federal programs; and (2) fewer grants versus the multiplicity of HUD's current grant structure.	Consolidation of grant programs would reduce grant administration costs.	Lower EPA processing costs for consolidated grants, and lower EPA implementation costs in States that accept more delegation of EPA programs.
1996 BA for Performance Partnership grants.	$988 million	$14.1 billion (Discretionary BA)	$3 billion	$26 billion	$25 billion	$634 million
Locus of decision-making.	State Directors (coordinating with the State Rural Development Councils, and State and local governments) would be able to shift resources among existing programs to meet the specific needs of each State.	Most program and administrative design responsibilities are shifted from Federal to State and local levels. Individuals empowered to select training.	Five of 16 program groups will be State grant programs, where decision-making would be left to States. States will be eligible for most of the other 11 grant clusters.	Decision-making shifted to States, cities, and communities.	Fewer Federal constraints on use of funds shifts decision-making to States and localities; Infrastructure Bank decisions reflect market viability of investments.	Participating States would be able to make funding decisions based on their priorities and to simplify their administrative procedures.

How is performance measured?

Performance measures and performance targets will be developed in consultation with States and local governments and other grantees. Performance measures will include input, output, and outcome measures for the populations served.

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Congress of the United States
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July 21, 1995

Mr. James L. Martin
Director, State-Federal Relations
National Governors' Association
Hall of the States
444 North Capitol St.
Washington, DC 20001-1572

Dear Mr. Martin:

I listened with great interest to your testimony at the hearing entitled "Federalism: Why Doesn't Washington Trust the States?" As I remarked to you at the hearing, I am very interested in the problems associated with Medicaid and state waivers. To this end, I request that you provide me with a brief summary of the problems that exist, and more importantly, proposed solutions.

I would ask that you provide this material by Monday, July 31, 1995 so that it can be included in the record. Please send your response to Kevin Davis of the Committee Democratic Staff in Room B350-A of the Rayburn House Office Building, and Doris Jacobs of the Republican Staff in Room B-372 Rayburn.

If you have any questions or concerns, please contact Kevin Davis at (202) 225-5056. Thank you for your cooperation in this matter.

Sincerely,

Edolphus Towns
Ranking Member

CC: Rep. Christopher Shays

RESTRUCTURING MEDICAID

Concepts, Issues, and Alternatives

Annotated Outline

This outline is a companion document to a paper that discusses some of the concepts and issues in the current Medicaid debate before the U.S. Congress.

INTRODUCTION

As part of a broader strategy to balance the federal budget, the U.S. Congress has adopted a budget resolution that includes expenditure targets to reduce the rate of growth in costs of the Medicare and Medicaid programs. The paper examines some of the major issues in restructuring Medicaid.

PROGRAM FLEXIBILITY

For the last five years, Governors have been unified in their call for more flexibility in the Medicaid program. Historically, NGA flexibility proposals have been developed within the context of a program that has an individual entitlement to eligibility and benefits. The current debate could eliminate all or part of the Medicaid individual entitlement making the scope of flexibility virtually boundless. Flexibility in design is discussed in the following program areas: eligibility, services, service delivery systems, and reimbursement systems and rate setting. (page 1.)

ACCOUNTING FOR EXPENDITURE DIFFERENCES AMONG STATES

Since its inception, the national Medicaid program has functioned as a state and federal partnership. The federal government defines broad parameters to meet national policy objectives, and the states design and implement their programs, with some latitude, within those parameters. States and the federal government share in the financing of the program, and significant differences exist among states in those federal expenditures. These differences can be explained by the federally determined financing structure of the program, state options and state economic and demographic characteristics. Each of these areas is discussed in some detail. (page 4.)

LIMITING MEDICAID GROWTH

In June 1995, the Congress adopted a budget resolution for federal fiscal year 1996 that calls for limits in the growth of federal Medicaid spending. From a policy perspective, Congress may choose from two main strategies to limit the program's growth.

- Congress may choose to preserve the policy objectives of the current Medicaid program and limit growth (page 5.), or
- they may choose to restructure the program's objectives through either aggregate or per-capita caps in the program (page 6.).

Using aggregate and per-capita cap, different program objectives may be achieved. Aggregate caps are relatively simple to administer, allows for great flexibility in defining eligible populations and services, and gives the federal government certainty in federal expenditures. Since the individual entitlement to eligibility is retained under a per-capita cap, flexibility would

focus on benefits and service delivery systems. With a per-capita cap, states would be assured of federal funds if economic and demographics result in more individuals needing health care services, but the federal government would have less certainty in their expenditures (page 7.).

If federal Medicaid funds are limited, the allocation of those limited federal funds will become extremely important to states. Congress will have to decide whether to reallocate existing program expenditures among states or only new growth dollars; what factors might be considered in any reallocation formula; and how much weight each factor should get. Congress is probably faced with three options (page 9.). They can

- use the current allocation of existing funds and allocate new growth dollars proportionally among states;
- use the current allocation of existing funds and allocate new growth dollars according to some other formula; or
- they can reallocate both existing federal funds and new growth dollars.

PROGRAMMATIC ISSUES UNDER A CAPPED ENTITLEMENT

If the Medicaid program is changed from an uncapped to a capped entitlement, a number of issues emerge in that restructuring. Congress must give careful consideration to the transition from an uncapped to capped program; funding of administrative costs; section 1115(a) waiver states, expanding eligibility under a capped entitlement, Medicaid/Medicare dual eligibles, and quality and performance standards (page 10.).

INTRODUCTION

As part of a broader strategy to balance the federal budget, the U.S. Congress has adopted a budget resolution that includes expenditure targets to reduce the rate of growth in costs of the Medicare and Medicaid programs. As individual entitlements, these programs are designed to adjust automatically to increases in the number of eligibles and to increases in program costs and utilization. As a result, there is no upper limit on annual program spending growth. In the case of Medicaid, the program is projected to grow at more than ten percent each year for the next five to seven years—a rate in excess of twice the consumer price index.

This paper will examine some of the major issues in restructuring Medicaid. It begins with a presentation of program flexibility issues associated with the current Medicaid program. This is followed by a brief discussion of why differences exist among states in current Medicaid expenditures. The third section examines the financing and policy issues that surface when limiting the growth of Medicaid. Finally, the last section identifies some specific programmatic issues that arise under a capped entitlement. An appendix is included that highlights the basic elements of the Medicaid program.

This paper is designed solely to stimulate discussion. In some cases, alternatives and options will be presented. In other cases, not. The alternatives and options are intended to help define the breadth of the issues, not to limit the debate. In short, this paper is not an endpoint, but rather it is a beginning.

PROGRAM FLEXIBILITY

For the last five years, Governors have been unified in their call for more flexibility in the Medicaid program. NGA flexibility proposals were developed within the context of a program that has an individual entitlement to eligibility and services. Governors' calls for flexibility focused on service delivery systems with less emphasis on eligibility and benefits. With proposals under consideration that could eliminate all or part of the Medicaid individual entitlement, the scope of flexibility is virtually boundless. Flexibility discussions take on an air of a federalism debate. Specifically, what level of direction, oversight, and accountability should be retained at the federal level when the federal government is making a significant financial contribution to the program, but the state has responsibility for its design and implementation. For example, the most flexible proposal for Medicaid is one where there are no federal parameters on eligibility, benefits, service delivery systems, and quality assurance; nor are there any maintenance-of-effort requirements for state spending. The following is a listing of major program areas and alternatives for flexibility.

ELIGIBILITY

The current Medicaid program specifically defines who is eligible for Medicaid services. The federal statute defines nine mandatory eligibility groups and allows states to choose from an additional seven. In broad terms, the program covers certain poor adults, poor pregnant women and children, certain persons with disabilities and certain elders in need of long term care.

There are several broad options that might be considered in making eligibility more flexible for states. The following is a list of some of those options. This list is not exhaustive.

being served in health maintenance organizations where more than 75 percent of the enrollees are Medicaid and Medicare beneficiaries. This statutory requirement was thought to assure quality in such HMOs, but there has been no evidence that this proxy has ever worked. It could be repealed. States could be given the ability to establish networks of care (including fully and partially capitated systems) under a restructured Medicaid program as part of its regular program administration and without any waiver requirements.

Home and Community-Based Care Programs. Home and community-based care (HCBC) programs are an important alternative to institutional care for frail elderly and persons with disabilities. However, existing Medicaid statutes have a programmatic bias toward institutional care. There are more than 100 different HCBC programs across the nation, and each state has at least one program. States are required to use the waiver process to establish such programs. Statutes could be revised to give states the authority to establish these programs through a plan amendment process; however, states must retain the authority to limit the number of individuals who could enroll for such care.

Nursing Home Reform Mandates in the Omnibus Budget Reconciliation Act of 1987. Congress mandated extensive new quality assurance measures for the Medicaid nursing home program in 1987 that allows the federal government to micro-manage state nursing home programs. States could be given more flexibility to administer their programs efficiently. Toward that end, Congress could repeal the Preadmission Screening and Annual Resident Review (PASARR) requirements. PASARR has been costly, and states have developed other strategies to assure the appropriate placement of individuals with disabilities. In addition, the specialized annual resident review for mental illness and mental retardation is duplicative of existing annual review processes and could be eliminated. Serious consideration must be given to the extent to which quality standards remain mandated by the federal government as compared to a federal mandate that says that states must have quality assurance systems but the states are given the freedom to determine what those standards might be.

REIMBURSEMENT SYSTEMS AND RATE SETTING

States remain saddled with the inflexible provider reimbursement standards of the Boren Amendment. These standards limit states in their ability to establish institutional (e.g. inpatient hospital and nursing home) reimbursement rates. The Boren Amendment could be repealed and assurances be put in place to protect states from federal and judicial intrusion in the rate setting process. It should be noted that because of the revolutionary changes in American health care system, the Boren Amendment is much less relevant today to hospital rates than just a few years ago. Because of these market changes, states are negotiating with health care networks for more comprehensive health care packages that include hospital care. As such, the rate negotiation for hospital care is between the hospital and the health care network not the hospital and the state. While the impact of the Boren Amendment on hospital rates is declining, the Boren amendment also applies to nursing homes. Therefore, repeal or other forms of relief are needed.

States could be given the opportunity to explore alternative strategies for provider payment methods. Though Medicare and most private payers have moved away from cost-based reimbursement, federal legislation has mandated that certain providers be paid on the basis of costs. Mandatory "reasonable cost" reimbursement could be repealed. Moreover, strategies that try to tie access to care to certain reimbursement rates could be eliminated from Medicaid statutes.

LIMITING MEDICAID GROWTH

THE 1996 BUDGET RESOLUTION

In late June 1995, Congress adopted the federal fiscal year 1996 budget resolution. It calls for limiting the growth of spending in the Medicaid program. The provisions of the resolution that pertain to Medicaid:

- permit $773.1 billion in federal Medicaid spending over seven years,
- propose to save $181.6 billion in federal funds from current baseline estimates through programmatic changes,
- limit annual Medicaid growth to 7.2% in federal fiscal year 1996, 6.8 % in 1997, and 4% for each year thereafter, and
- reaffirm the current state/federal matching arrangements (so states will be required to spend state dollars in order to draw down federal funds).

The agreement makes no reference, however, to block grants as a strategy to restructure the program and leaves it to the authorizing committees to determine the best strategy to meet the targets outlined in the resolution. This resolution, while not binding, provides the framework in which appropriations and authorizing committees will conduct their work.

STRATEGIES TO LIMIT GROWTH IN MEDICAID EXPENDITURES

The Congressional authorizing committees are expected to consider an assortment of restructuring options in order to limit federal spending in the program and meet the budget targets. A number of different alternatives are available for their consideration.

Preserving the Policy Objectives of the Current Medicaid Program

While the Congressional leadership has expressed interest in eliminating the individual entitlement in the Medicaid program, strategies exist that will allow for program savings while preserving the entitlement nature and policy-making of the current program.

1. **Current Medicaid—Streamlined and Downsized.** In this approach, Medicaid would be kept as an individual entitlement. To bring program costs under control, Congress could make statutory changes that make program operations more cost efficient and, if necessary, they could legislate reductions in eligible populations and services. In addition, they would establish in statute streamlined service delivery systems. The Congressional Budget Office would have to estimate that the financial impact of the programmatic changes are consistent with budget targets.
2. **Current Medicaid With Changes In Federal Matching Percentages.** In this approach, Congress could streamline the program but would maintain the individual entitlement. To achieve the federal savings, the federal share of the program would be lowered for each state (e.g. from a national average of 57 percent to 38 percent). As such, states would be required to increase their spending to accommodate the reduction in federal funds. Like the first option, the Congressional Budget Office would have to estimate that the financial impact of the programmatic changes are consistent with budget targets.

Strengths and Weaknesses of Aggregate and Per-Capita Caps. Significant differences exist between aggregate and per-capita caps in both their implementation and policy objectives. An aggregate cap is relatively simple to administer—formula allocation issues aside. Because the growth is calculated in the aggregate, states could be given significant flexibility to define who is eligible for the program and what services can be offered. To make it politically acceptable, the aggregate cap may require some reallocation of funds. Aggregate caps also offer the federal government complete predictability in federal expenditures. On the downside, some but not all of the factors that have resulted in differences among states in the current Medicaid program remain (e.g. changes in population, economic downturn, differences in cost of care). Some of these might be addressed in a formula allocation. However, depending on the level of federal funding, there could be winners and losers.

With regard to per-capita caps, the individual entitlement to eligibility would be retained, and states would be assured of per-capita payments for each eligible beneficiary irrespective of changes in population demographics or economic downturn. The federal government would still have to establish a growth rate to be applied to the per-capita cap. However, this growth rate would only have to reflect differences in utilization patterns and medical inflation. This approach retains an individual entitlement to services, if a state was interested in redefining eligible populations, other strategies (i.e. waivers) would be required. While giving protections for populations, this approach does not offer the financial certainty to the federal government on expenditures since the financial impact of changes in population demographics and the economy can be modeled but not determined with certainty.

ALLOCATION OF FEDERAL FUNDS UNDER CAPS

Congress may decide to use existing annual federal expenditures to define the base year and use a uniform annual growth percentage for all states. Or they may opt to define some other allocation strategy. In the following sections, factors and issues associated with the allocation of funds are presented. This issue is complex and highly political. The reader should not assume that the detailed discussions of alternative allocation strategies is an endorsement for any allocation strategy or that an alternative allocation strategy is needed at all. Rather the detail represents an attempt to assure that the reader understands the range of issues that could be considered in an allocation debate.

Allocation Factors

The following is a list of some factors that might be considered in any allocation discussions. They fall into three broad policy categories—beneficiary-related, state financial capacity, and outcome-based incentive factors. Neither within nor across categories is this list exhaustive. In some cases, different proxy measures are presented for the same underlying policy objective. This was done because proxies are always imperfect measures of underlying phenomena. Any changes in allocation might incorporate two or more of these factors.

Beneficiary-Related Factors. These attempt to allocate funds based on the distribution among states of those potentially served by the program:

> ***Poverty Population—General.*** The federal government has established a national definition of poverty, that is calculated annually. Through census data, the number of people in poverty in each state may be calculated.

Medicare Hospital Wage Index. This measure is a proxy for the cost of doing health care business in a state. It is calculated by the U.S. Department of Health and Human Services and is used in the Medicare program. The data are not currently available on a state-by-state basis however, the calculation can be done from the existing data set.

Outcome-Based Incentives. In recent years, business and government has moved toward performance or outcome based measures of program success. Unlike most of the preceding factors, those listed below are general categories that would need more exploration and refinement before being considered in an allocation formula.

Efficiency-Related Factors. These are factors that would increase allocations of funds to states based on program administration such that those states that administer programs more efficiently would be rewarded. Two examples of factors that might be considered in this category are proportion of beneficiaries in managed care and proportion of spending allocated to administration as compared to services.

Effectiveness-Related Factors. These factors would provide allocations to states based on how successful a state has been in meeting certain health related goals. For example, allocations could be made based upon the number of children under age two who are immunized. Some examples of these measures are described in the U. S. Public Health Service's *Healthy People 2000* document or in states' version of this document.

Weighting

Once the factors have been chosen, decisions must still be made concerning the weighting of each of the factors in the final equation. For example, since the elderly and disabled represent about 70 percent of spending in the current program, should measures of the elderly receive a higher weight? What weight should state financial capacity factors have in the formula? This set of decisions is as difficult and complex as the decisions that guide the selection of factors themselves.

Allocation Strategies

In the following sections, three broad options to allocate or re-allocate funds among states are presented. The first most closely represents existing expenditures. The second makes adjustments to growth, and the third makes adjustments to base year and growth. While a basic approach is taken in the latter two options, a number of additional modifications can be made to fine tune the formula.

These options are not allocation formulas. Rather, they are conceptual approaches to the allocation of funds.

1. **Use Existing Base Year Expenditures and Allocate Growth Proportionally Among States.** Under this approach, the new federal dollars would be distributed among states proportionally using the same percentage. The growth would be calculated against actual base year expenditures in the state. Proponents of this approach would argue that the current program represents the state's financial commitment to those served by Medicaid and the state's commitment should be preserved. They also argue that changes in the base would cause serious disruptions in services.

incurred when the program was operating as an uncapped entitlement. States may have insufficient time to streamline the program to operate within the federally set expenditure limits.

Administration. Under the current Medicaid program, administrative costs, like service costs, are not capped. The Congress must decide how states should be reimbursed for administrative costs.

Section 1115(a) Waivers. More than ten states have had section 1115(a) waivers approved by the federal government. In many, but not all cases, these states have negotiated for expanded populations and expect to incur additional program costs in the future. Since most have not been operating in federal fiscal year 1995, they will not have incurred expenditures in the year that may become the base year for the program. Therefore, they may not have a sufficiently large base to implement waiver population expansions. In addition, a number of states have negotiated annual growth rates that are greater than those in the budget resolution.

Expanding Eligibility Under A Per-Capita Cap. As has been mentioned previously, per-capita caps would require federally defined eligibility categories. Such a requirement could preclude states from using federal dollars for other populations as they currently do under the existing 1115(a) waiver process. If Congress wants to continue giving states authority to change or expand eligibility under a per-capita cap, some mechanism, probably a waiver process, would be needed to assure that the state is spending no more than might have been expended if the federal eligibility requirements had remained in place. It should be noted that Governors have objected to the burdens associated with a waiver process in the past.

Medicaid/Medicare Dual-Eligibles. Some 40 percent of the SSI-related beneficiaries are enrolled in both the Medicaid and Medicare programs. These people are referred to as "dually eligible". States pay Medicare Part B premiums, and, in some cases, Part A premiums, copayments and deductibles for dual eligibles. If Medicaid funds are limited, the relationship between Medicare and Medicaid must be streamlined as well so that states can more efficiently and effectively coordinate the benefits between the two programs. In addition, Congress must be aware that increases in premiums, copayments, and deductibles in the Medicare program will result in increased Medicaid costs.

Quality and Performance Standards. The current Medicaid program contains a variety of statutory and regulatory requirements that govern quality and access to care. Under a capped entitlement, the federal government will still have an interest in assuring that the states are accountable for the use of the funds. States and the federal government must decide what types of requirements might be necessary to assure accountability.

Growth and Trends

- Between 1988 and 1992 Medicaid costs grew nationally, on average, about 20 percent per year. In 1993 Medicaid growth dropped to 9 percent.
- Recent Congressional Budget Office (CBO) estimates show that:
  - ⇒ despite the 1993 drop, Medicaid is expected to grow nationally at an annual rate of about 10.3 percent for the next five to seven years;
  - ⇒ about 33 percent of the growth in the program over the next five years can be accounted for because of more beneficiaries coming onto the rolls; and
  - ⇒ the average annual growth in the gross domestic product over the next seven years is expected to be about 5.1 percent.
- States differ significantly in their projected growth rates for this program.
- Medicaid represents, on average, about 20 percent of total state spending and comprises about 38 percent of all federal funds to state and local government.

Medicaid Waivers

In recent years, a growing number of states are making fundamental changes to their program through research and demonstration authority under Section 1115(a) of the Social Security Act. This section gives states broad authority to test innovative strategies in administering their programs. States have been most interested in two types of changes. First, they are interested in broadening the eligibility criteria to some more uniform level of poverty. Second, they are interested using managed care in their programs.

In many cases, these waivers make fundamental changes in the service delivery system and have explicit agreements with the federal government on growth rates and eligible populations.

The states' role in federalism a few years out could be much different than expected. Unless the cost of government programs for the aged, blind, and disabled are assumed by the federal government, states may not have enough funds to care for the poor regardless of all good intentions, reforms, and commitments.

The current debate on welfare programs and cuts in Medicare and Medicaid obscure a long-term problem for the states. The problem is that 70 percent of current state Medicaid funds are for the aged, blind, and disabled. These costs are rising 8 to 10 percent a year—much higher than the cost for welfare programs and the non-aged Medicaid recipients.

There is a possibility that the federal government would control their growth costs for Medicare and Medicaid, shift their growth costs for welfare programs to the states at capped levels, and leave the states with the most expensive of all programs—long-term and community based care for the aged, blind, and disabled—$58 billion state costs in fiscal 1996.

Eventually, something must be done to deal with this dilemma. One way is to swap or sort out the aged population of Medicaid for other welfare-type programs. It would not be easy to do but it would make sense.

A sorting out would do several things:

1. Protect state funding for the poor;
2. Focus federal funding on all programs for the permanently eligible aged, blind, and disabled, along with future funding of Social Security and Medicare; and
3. Create the conditions for significant health and welfare reforms for the long-term for both the federal government and state governments.

Today's expectations for significant state assumption of most federal welfare programs cannot be separated from tomorrow's realities about the costs of health programs for the permanently eligible population.

DRAFT
Dates:
December 19, 1994
March 24, 1995

Titles:

"A Five-Year Welfare/A-B-D Medicaid Swap"
"Fiscal Federalism in the Year 2000"
"Federalism in a Balanced Budget Context"

Assumptions:

- The problems of welfare and health care reforms cannot be fixed separately.
- Assuming the balanced budget amendment will be enacted to balance the budget by 2002 in response to the demands of the taxpaying voters.
- Assuming Congress will stay committed to the balance by 2002 regardless of whether or not an amendment is ratified by the states.

Then:

Payment for all programs for the aged, blind, and disabled (A-B-D) must be slowed down within the next five years to even stay on a downward glide path toward budget balance.

However:

It is more likely the federal government will rein in its expenditures for the A-B-D in Medicare but not the states' cost under Medicaid. This will leave the states with a ten percent annual growth problem for two-thirds of its cost in Medicaid for the A-B-D. In addition, chances are high that in the next five years, the federal government will also enact some form of a flat or consumption tax. The sales tax is currently the states' largest source of revenues and chances are growing that Congress will also curtail the $73 billion in tax expenditures to state and local governments that are highlighted in the President's fiscal 1996 budget.

In addition, there will be a cumulative impact upon the states of current rescissions of $17 billion, tax changes of $5-8 billion, FY 1996 cuts in categorical programs and entitlements, and possibly line-item veto authority. All of these changes assume no large cylical impacts due to economic conditions.

In combination, a further invasion of the states' sales tax turf and a required sharing of the most expensive entitlement program (A-B-D of Medicaid) will over time contribute to an inability of states to take-on responsibilities for the non-A-B-D poor, as well as sustained reduction of the role of the states in the federal system.

States will spend approximately $55 billion in fiscal 1996 for Medicaid services to the A-B-D population and cannot possibly continue these Medicaid services to the A-B-D, with their high projected cost increases over the next five years, and at the same time assume federal welfare functions as block grants with reduced funding.

The non-A-B-D poor will suffer dramatically not because the states don't care, can't manage, won't respond, or refuse to pay, but because states will be funding an ever-increasing burden of Medicaid services for the permanently eligible A-B-D population, which should be totally financed by the federal government, along with pensions, Social Security, Medicare, SSI, and 57 percent of current Medicaid costs of $173 billion for fiscal 1996 ($77 billion state; $96 billion federal).

The unchecked escalating cost of programs for this population that is now robbing the federal and state governments of options to deal with most other problems, including the poor and especially the deficit. As long as programs for this population are taken off the table—more like put under the table—real welfare reform will never occur. Most current state programs and new federal proposals only bite at the edge of the cost problems because states are spending so much on the A-B-D population ($55 billion in Medicaid in fiscal 1996).

Sometime soon, at least before the 2000 presidential election and trying to balance the federal budget, the A-B-D funding problem must be faced.

Summary:

The federal government would assume 100 percent of the A-B-D portion of Medicaid programs and costs of the permanently eligible A-B-D population over a five-year transition period in exchange for state assumption of an equivalent amount of the non-A-B-D safety net programs and dollars for welfare reform.

Benefits of a Welfare/A-B-D Swap:

1. Federalism would be better served without a continuing second guessing, blaming game, about who cares the most about the poor: children, disabled, and the aged.

2. The booming "entitlement crisis" would be placed at the federal level for reasonable integrated solutions that must be made in the near future. (Single women having children are a grave social concern but in no way are they even a significant cause of the deficit problem.)

3. A clean swap would clear the budget of billions of costs for duplicating federal and state personnel, bureaucracies, service providers, single and special interest groups, lobbyists, accountants, and auditors. It costs $7 billion annually to administer AFDC, FS, and Medicaid under OMB Circular A-87 cost allocation principles. The Circular is so complicated that most states hire specialized consultants to comply rather than use their own financial management procedures that cover over $500 billion of state own source funds.

4. A five-year phase-in would give time for necessary transitions, hold harmless formula allocations, budget planning and certainty, and performance auditing.

5. It would speed up and complete the federal government's assumption of programs for the permanently eligible poor, which is already occurring but with design and purpose.

6. It would better enable the federal government to honestly meet the challenges faced by the aging of the population.

7. It resolves several major problems now before Congress about welfare and health reform in compassionate, clean, reasonable ways that will ultimately be demanded by the new realities of fiscal federalism. As Leon Panetta said last year about mandate reform: "We are now in an era of severe fiscal constraint at all levels of government." Much more than "reform" is needed in this new era!

Proposal:

Five-Year Welfare/Medicaid Swap

Current Medicaid costs by recipients shows that one-fourth of the Medicaid population or 26 percent receives 69 percent of the payments, while 74 percent of the Medicaid population of children, their mothers, and non-aged adults receives only 31 percent of the funds. In fiscal 1996, state costs will be $77 billion and federal costs will be $96 billion for a total of $173 billion. $55 billion of the state costs are for A-B-D recipients.

1. Divide Medicaid programs by eligibility.

- Permanently Eligible (Aged, Blind, Disabled = A-B-D)

  State SSI, Medicaid, Long-Term Care, and Acute Care for A-B-D

  In fiscal 1996, state Medicaid costs for A-B-D will be approximately $55 billion plus ($23 billion state Medicaid costs for children and non-aged adults)

- Recurring Eligibility

  Medicaid services for children and acute care for non-aged adults and children. In fiscal 1996, state Medicaid costs for this population will be approximately $23 billion.

2. Swap an equivalent amount of non-A-B-D federal safety net programs for the state Medicaid population of A-B-D . Some programs include:

$28 billion	Food Stamps
17.3 billion	AFDC and JOBS
7.7 billion	Child Nutrition
2.8 billion	Social Services
1. billion	Child Support
3.6 billion	Foster Care
3.5 billion	WIC
$64 billion	Fiscal 1995 federal costs

3. The $9 billion difference to the federal government could be addressed in several ways:

- Use these funds for transition purposes, phase-in costs, or hold harmless payments for formula adjustments.
- Cost equalizations due to different A-B-D populations in the states.
- Inflation adjustments due to higher costs for the A-B-D program than the non-A-B-D Medicaid population.

- A different mix of "swap" programs, such as: trade Food Stamps for certain job training and education programs; divide Food Stamps by A-B-D eligibility and pay the states to run the A-B-D program for the federal government.

Jim Martin, 202/624-5315

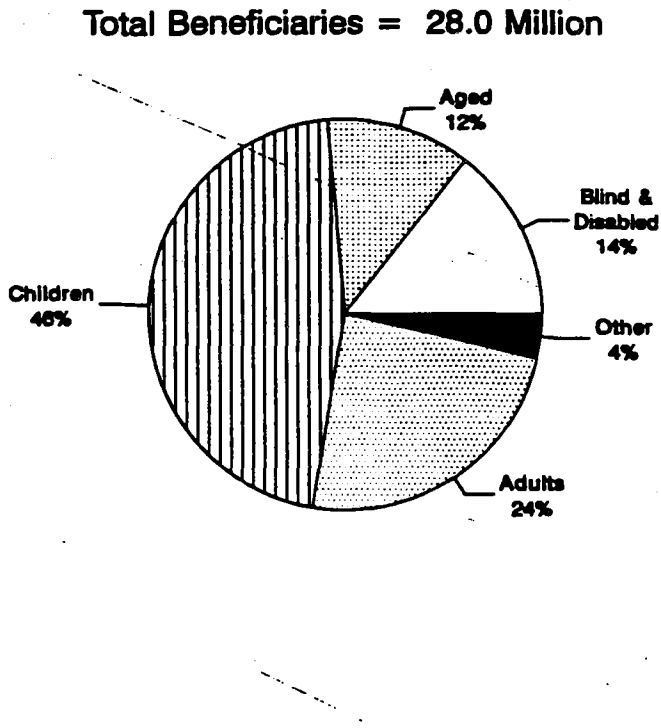
SUBTOTAL: DISCRETIONARY	$47,328	$51,613	$65,381	$67,416	$4,086	6.6%	0.9%	$15,903	30.6%

MANDATORY/ENTITLEMENT	FY 1988	FY 1990	FY 1992	FY 1993 ENACTED	CHANGES 1988 to 1990 $	1988 to 1990 Percent Total	1988 to 1990 Percent Avg. Annual	1990 to 1993 $	1990 to 1993 Percent Total
CHILD NUTRITION	$3,444	$4,887	$6,058	$6,827	$1,434	41.1%	3.9%	$1,940	39.7%
TEFAP, COMMODITY PURCHASES	0	120	120	120	120	NA	NA	0	0.0%
FOOD STAMPS	11,303	16,906	23,364	28,115	5,603	49.6%	4.6%	11,209	66.3%
SOCIAL SERVICES BLOCK GRANT 3/	2,399	2,762	2,800	2,800	363	15.1%	1.4%	38	1.4%
FAMILY SUPPORT WELFARE PAYMENTS 15/	7,712	11,659	14,496	14,906	3,946	51.2%	4.7%	3,247	27.8%
AFDC JOBS 2/	351	531	1,000	1,000	180	51.1%	4.7%	470	88.5%
CHILD SUPPORT ENFORCEMENT	0	533	705	790	533	NA	NA	257	48.2%
FOSTER CARE AND ADOPTION ASSISTANCE									
BASE AMOUNT	328	1,375	2,496	2,924	1,047	319.4%	17.3%	1,549	112.7%
PRIOR YEAR CLAIMS	0	0	118	0	0	NA	NA	0	NA
MEDICAID 13/	17,440	41,125	72,503	82,996	23,685	135.8%	10.0%	41,471	100.8%
VOCATIONAL REHAB. STATE GRANTS	854	1,528	1,788	1,865	674	78.9%	6.7%	337	22.0%
SUBTOTAL MANDATORY/ENTITLEMENT	$43,851	$81,436	$125,458	$141,942	$37,534	85.7%	7.1%	$60,516	74.3%
TOTAL: SELECTED GRANTS-IN-AID	$91,179	$133,039	$190,839	$209,358	$41,860	45.6%	4.3%	$76,319	57.4%

SUBTOTAL: DISCRETIONARY	$78,439	$77,864	$81,811	$83,218	$12,779	18.1%	5.7%	$1,498

MANDATORY/ENTITLEMENT	FY 1993 ENACTED	FY 1994 ENACTED	FY 1995 ESTIMATE	FY 1996 PRESIDENT'S BUDGET	1996 PRES. BUD vs. 1993 $	% CHANGE TOTAL	% CHANGE AVG ANNUAL	1996 PRES. B vs. 1995 $
CHILD NUTRITION	$6,807	$7,498	$7,436	$7,941	$1,134	16.7%	5.3%	$503
TEFAP, COMMODITY PURCHASES	120	80	25	0	-120	n/a	n/a	-25
FOOD STAMPS	28,115	28,097	28,819	29,793	1,678	6.0%	2.0%	974
SOCIAL SERVICES BLOCK GRANT 16/	2,800	3,800	2,800	2,800	0	0.0%	0.0%	0
FAMILY SUPPORT WELFARE PAYMENTS	14,829	15,881	16,243	16,946	2,117	14.3%	4.5%	703
AFDC JOBS	1,000	1,100	1,300	1,000	0	0.0%	0.0%	-300
CHILD SUPPORT ENFORCEMENT	810	1,021	1,154	1,067	257	31.7%	9.6%	-87
FOSTER CARE, ADOPTION ASSISTANCE, &								
INDEPENDENT LIVING	2,924	2,993	3,441	4,308	1,384	47.3%	13.8%	867
PRIOR YEAR CLAIMS 17/	0	0	157	0	0	n/a	n/a	-157
FAMILY SUPPORT AND PRESERVATION	0	60	150	225	225	n/a	n/a	75
MEDICAID OBLIGATIONS 18/	77,367	81,273	88,436	95,977	18,610	24.1%	7.4%	7,539
VOCATIONAL REHAB STATE GRANTS	1,680	1,974	2,054	2,119	239	12.7%	4.1%	65
SUBTOTAL MANDATORY/ENTITLEMENT	$136,652	$143,777	$151,619	$162,176	$25,524	18.7%	5.9%	$10,157
TOTAL: SELECTED GRANTS-IN-AID	$207,091	$220,831	$233,829	$245,394	$38,303	18.5%	5.8%	$11,565
NET INTEREST ON THE FEDERAL DEBT	$198,800	$203,000	$234,300	$257,000	$58,200	29.3%	8.9%	$22,800

FIGURE II-17.
Share of Total Medicaid Beneficiaries by Eligibility Status of Beneficiaries, FY 1991

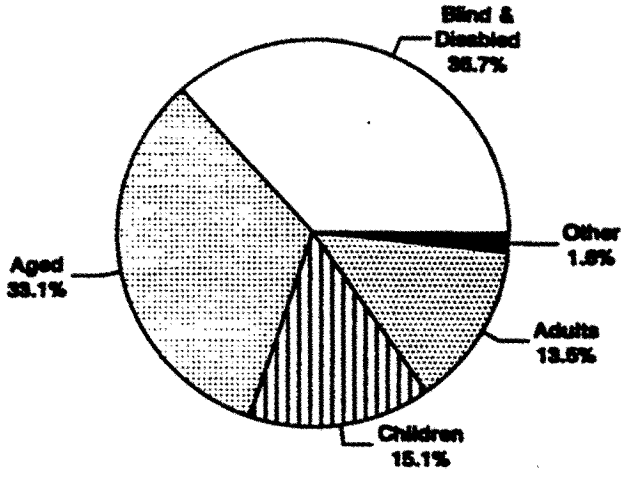


Source: Figure prepared by Congressional Research Service based on data from HCFA.

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FIGURE II-15.
Share of Total Medicaid Payments by Eligibility Status of Beneficiaries, FY 1991

Total Payments = $77.0 Billion



Source: Figure prepared by Congressional Research Service based on data from HCFA.

U.S. Advisory Commission on Intergovernmental Relations
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The Effects of a Swap of AFDC, Food Stamps, and WIC to States, State Share of Aged and Disabled Medicaid to Federal. Equivalent Per Capita State Results, 1988

State	WIC	Federal Share of Food Stamps	AFDC	Total	State Share Of Aged/Dis. Medicaid	Difference
New York	$12	$106	$103	$221	$397	$176
Rhode Island	11	78	74	163	317	154
Connecticut	11	48	61	119	258	139
New Jersey	8	65	45	118	234	116
Massachusetts	8	58	73	138	253	114
New Hampshire	9	43	29	81	160	79
Minnesota	9	56	54	119	175	56
Maine	11	95	56	162	199	37
Wisconsin	9	49	55	113	138	25
Kansas	10	59	33	102	123	21
Pennsylvania	9	87	45	142	162	21
Delaware	10	72	34	116	136	19
Maryland	8	72	40	119	137	17
Indiana	11	75	27	113	129	16
Illinois	10	95	41	145	158	13
Colorado	8	67	28	103	115	13
Nebraska	10	54	32	95	100	4
Nevada	8	66	20	94	95	2
Virginia	9	73	21	103	101	(2)
Iowa	9	55	35	100	89	(11)
North Dakota	14	61	34	110	94	(16)
Vermont	15	73	73	161	144	(17)
Missouri	11	86	35	142	124	(18)
Washington	8	76	68	153	129	(24)
South Dakota	16	85	28	129	85	(25)
North Carolina	11	74	40	125	95	(30)
Idaho	16	55	20	91	61	(30)
South Carolina	15	89	24	128	94	(34)
California	10	74	90	184	145	(39)
Florida	8	102	37	147	106	(41)
Michigan	10	95	77	182	140	(42)
Arkansas	16	92	19	127	82	(46)
Ohio	10	106	58	174	128	(46)
Montana	13	70	46	129	84	(45)
Oregon	10	83	49	141	90	(52)
Louisiana	16	160	32	209	151	(58)
Tennessee	12	125	35	172	111	(61)
Georgia	13	102	46	161	98	(63)
Wyoming	14	61	45	120	55	(65)
Utah	14	58	35	107	39	(67)
Alabama	14	116	19	150	82	(68)
Texas	13	131	22	166	92	(74)
Alaska	15	87	98	201	125	(76)
Hawaii	14	119	63	197	114	(83)
Kentucky	14	116	45	177	92	(84)
Oklahoma	14	97	46	156	71	(86)
West Virginia	14	147	51	211	107	(104)
New Mexico	15	127	58	198	63	(135)
Mississippi	17	164	28	209	66	(142)
Arizona	15	109	51	170	NA	NA
Total	$11	$91	$54	$156	$150	($6)

Table S–19. OUTLAYS BY FUNCTION

(in billions of dollars)

Function	1994 Actual	Estimate					
		1995	1996	1997	1998	1999	2000
National defense:							
Department of Defense—Military	268.6	260.2	250.0	246.1	244.2	249.6	257.9
Other	13.0	11.4	11.4	10.9	10.3	10.0	9.9
Total National defense	281.6	271.6	261.4	257.0	254.5	259.7	267.8
International affairs	17.1	18.7	16.7	16.2	16.0	15.8	15.9
General science, space, and technology	16.2	17.0	16.9	16.4	16.4	16.2	15.9
Energy	5.2	4.6	4.4	4.0	3.5	3.5	3.1
Natural resources and environment	21.1	21.9	21.8	22.2	22.0	21.4	20.8
Agriculture	15.1	14.4	13.6	12.7	10.6	10.6	10.1
Commerce and housing credit	–6.1	–12.0	–7.6	–0.9	0.7	–3.4	–4.6
On-Budget	(–6.2)	(–12.7)	(–8.2)	(–1.2)	(1.2)	(–2.4)	(–3.2)
Off-Budget	(1.1)	(0.7)	(0.6)	(0.4)	(–0.4)	(–1.0)	(–1.4)
Transportation	38.1	39.2	38.6	38.4	37.9	37.8	36.7
Community and regional development	10.5	12.6	12.8	12.7	9.4	8.6	8.7
Education, training, employment, and social services	46.3	56.1	57.2	58.4	57.6	57.8	57.9
Health	107.1	115.1	134.0	152.1	142.1	152.1	163.6
Medicare	144.7	157.3	177.8	194.4	211.0	228.1	247.0
Income security	214.0	223.0	233.2	246.2	256.4	268.5	281.5
Social security	319.6	336.1	354.5	373.1	392.6	412.9	433.7
On-Budget	(5.7)	(4.9)	(5.2)	(7.2)	(7.7)	(8.2)	(8.8)
Off-Budget	(313.9)	(331.2)	(349.4)	(365.9)	(384.9)	(404.7)	(424.9)
Veterans benefits and services	37.6	38.4	38.1	39.7	39.8	40.0	41.7
Administration of justice	15.3	17.6	19.7	21.3	22.5	23.3	24.1
General government	11.3	14.5	14.6	14.3	14.2	14.3	14.0
Net interest	203.0	234.2	257.0	270.4	282.9	297.1	309.9
On-Budget	(232.2)	(267.8)	(295.1)	(313.0)	(330.2)	(349.6)	(367.9)
Off-Budget	(–29.2)	(–33.6)	(–38.1)	(–42.6)	(–47.3)	(–52.5)	(–58.1)
Allowances	.....	.....	–0.2	–0.5	–0.8	–0.9	–1.0
Undistributed offsetting receipts:							
Employer share, employee retirement (on-budget)	–28.4	–27.9	–27.1	–26.8	–27.7	–28.0	–28.9
Employer share, employee retirement (off-budget)	–6.4	–6.4	–6.9	–7.1	–7.5	–8.1	–8.7
Rents and royalties on the Outer Continental Shelf	–3.0	–2.7	–3.0	–2.5	–2.4	–2.4	–2.4
Sale of major assets	.....	.....	–0.9	–2.0	–3.5	.....	.....
Other undistributed offsetting receipts	.....	–4.4	–4.6	–4.9	–3.1	–2.6	–1.5
Total Undistributed offsetting receipts	–37.8	–41.4	–42.4	–43.3	–44.2	–41.0	–41.5
On-Budget	(–31.4)	(–35.0)	(–35.6)	(–36.2)	(–36.7)	(–33.0)	(–32.8)
Off-Budget	(–6.4)	(–6.4)	(–6.9)	(–7.1)	(–7.5)	(–8.1)	(–8.7)
Total	1,460.9	1,538.9	1,612.1	1,694.7	1,748.2	1,822.2	1,906.8
On-budget	(1,161.5)	(1,246.9)	(1,307.1)	(1,368.1)	(1,415.6)	(1,479.1)	(1,548.6)
Off-budget	(279.4)	(292.0)	(305.0)	(316.6)	(329.6)	(343.1)	(358.7)

* $50 million or less

WEDNESDAY, MARCH 8, 1995 A19

Robert J. Samuelson

A Nation In Denial

If any program is busting the budget, it's Medicare, which provides health insurance for 37 million older Americans. After Social Security and defense, it is the third largest federal program, and it is growing faster than the other two. The Congressional Budget Office expects it to overtake defense early in the next century. By 2010 it could almost equal Social Security. Yet Congress barely discussed it in the bitter debate over the constitutional balanced budget amendment.

The omission captures the delusional quality of budget politics. Everyone clamors to balance the budget, cut taxes and control spending, but no one wants to discuss programs for the over-65 population. The first is thought to be wildly popular, while the second is deemed political suicide. But the two can't coexist, because the budget is increasingly a transfer between workers and retirees. In 1995 Social Security ($334 billion) and Medicare ($176 billion) alone account for 39 percent of non-interest federal spending ($1.3 trillion).

The balanced budget amendment foundered on precisely the unwillingness of its Republican sponsors to face this issue candidly. They kept insisting that Social Security would be safeguarded, which is code language for exempting the elderly from the budgetary vise. Sooner or later, this will prove impossible. But if Republicans are slippery, Democrats are contemptible. They brandish—as they did in this debate—Social Security as a club against anyone trying to temper federal spending.

The resulting political climate mixes misinformation and fear. Many retirees falsely think they paid for their benefits by earlier contributions to "trust funds." This is simply untrue. New retirees will receive an average of $5 in Medicare hospital benefits for every dollar they contributed, calculates Gary King, former actuary of the Health Care Financing Administration. As for fear, President Clinton—in the Democratic tradition—suggests that balancing the budget now might mean "dramatic cuts" in "services to the elderly." That would happen only if all the weight of balancing the budget fell on the elderly.

Consider: Between 1995 and 2000, the Congressional Budget Office projects that spending on Social Security and Medicare will grow from $510 billion to $719 billion, a rise of 41 percent, while the number of beneficiaries will increase about 7 percent. Suppose a budget-balancing plan for the year 2000 cut $45 billion from Social Security and Medicare. That would equal about 6 percent of the programs' spending.

We are a nation in denial. There's a sanctioned avoidance of problems that almost everyone knows will worsen with time. Spending on the elderly, though heavy now, is not crushing. As the baby boom nears retirement, though, it will become so. Alone, Social Security is probably manageable. It now consumes 4.7 percent of gross domestic product (roughly, our national income), reports economist Eugene Steuerle of the Urban Institute. This is projected to rise to 6.4 percent of GDP by 2030, when all the baby boomers will have reached 65.

The real crusher is Medicare. Similar projections show it growing from 2.5 percent to 7.1 percent of GDP by 2030. Together, the estimated increases in the two programs would amount to about 6.3 percent of GDP, which is more than twice the size of today's budget deficit. To cover the increases—and the existing deficit—would require that federal taxes be increased by about half. In today's terms, that's a $650 billion tax increase.

Though crude, such estimates do convey correct orders of magnitude. We know that we're aging and that older people use more health care than younger people. The exact projections almost certainly won't come to pass because before they could, changes will be made. Retirement ages will be raised, benefits will be cut, health costs will (somehow) be controlled. By acting as if the elderly aren't a part of the budget debate, we do more than perpetuate present deficits. We ensure that future adjustments will be unnecessarily abrupt and Draconian. If politicians won't discuss these problems, they can't make gradual changes.

Medicare, for example, cannot survive forever in its present form. Efforts to curb costs by trimming doctor and hospital fees have met with only modest success. Between 1980 and 1995, Medicare rose from 5.8 percent to 11.5 percent of federal spending. One reason is that services constantly expand, driven by need and the self-interest of providers. Since 1989 spending on home health care (visiting aides and nurses) has jumped from $2.4 billion to $12.9 billion; the number of beneficiaries doubled, and the number of home visits nearly quintupled.

Gail Wilensky, a former administrator of Medicare, argues that the program must encourage more recipients to join "managed care" groups, where costs are lower. On some services, higher patient copayments would encourage wiser use of health care, she says. For instance, there's no copayment now on home health care.

It is an illusion to think that these issues can be always evaded or that Social Security and Medicare can be treated entirely separately. Both affect the same people. Despite trust funds, both are essentially financed on a pay-as-you-go basis. Connections are obvious. Would we want to raise the eligibility age for Social Security and not for Medicare? The questions involve a better sharing of burdens among generations and rewriting society's rules to reflect lengthening life expectancy.

Our political system ignores these questions. The constitutional amendment was an ill-conceived way to deal with them. It was ill conceived because it could not create consensus—which requires a change in public opinion—and without consensus, the amendment might be flouted. But the debate showed why many in Congress embraced the amendment: We can't control government spending unless we talk about what government spends.

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Mr. SHAYS. I want to thank both of you for very excellent statements. They were compatible. You have launched us into this discussion. It will be my intention not to ask either of you many questions. We are going to try to get to our six other panelists and hopefully there will be little sparks flying between them and among them.

I would make this comment to you. We have had a number of hearings. In one of the hearings we had, it was pointed out that the Departments of HHS, Health and Human Services budget when it included Social Security was bigger than the gross domestic product of Canada. Not bigger than the entire budget of Canada, bigger than the gross domestic product of Canada.

And we had someone who testified in the planning department of HHS that he, during the entire time he was there, did not have a full handle on all the things HHS did, he said the task was so mammoth.

I basically am comfortable with what both of you have said. I note, Ms. Belaga, that it strikes me that you are basically making the argument that where there is a spillover effect—where as with New Jersey pollution, the air brings it over Connecticut and New York—you can't have Connecticut deal with this environmental challenge if it is a spillover effect.

Ms. BELAGA. Right.

Mr. SHAYS. So that to me is an obvious given that there you have to have the Federal Government step in. I have no questions to ask either of you. Your statements were quite outstanding. I just want to note for the record, that Connie Morella, distinguished Member from Maryland is here, and also is a very close neighbor of the District of Columbia.

With that, I will invite my colleague Mr. Towns, if he would like to ask any question of this panelist.

Mr. TOWNS. No, Mr. Chairman.

I would just like to thank both of them for their testimony, it was very thoughtful testimony. And, of course, they also pointed out some areas that we really have some serious problems that we need to address, and I appreciate your comments in that area.

What I would like to do, though, is to—being I know Mr. Martin has had a lot of experience and I have a lot of respect for him, he mentioned that health care cost is going to eat us alive. You know, if you have any thoughts—I won't ask you this morning. But if you would send me—actually the record.

Mr. SHAYS. He can submit it for the record.

Mr. TOWNS. For the record, any thoughts that you have on what we might be able to do in terms of health care. I know these waivers, but I feel very uncomfortable with some of the waivers, I will be honest with you. Because if waivers are not going to be monitored, you know, what do we really learn from them?

And that's a concern I have as well. So what I would like to ask, if we would leave the record open for additional thoughts on that, along those lines.

Thank you very much, both of you, for your testimony.

Mr. MARTIN. Thank you, Mr. Towns.

Mr. SHAYS. I recognize the gentleman from Virginia.

Mr. DAVIS. I will be brief, too, but I want to thank both panelists.

Mr. Martin, you talk about Medicaid. That really is missing from a lot of the debate we hear on health care and on Medicare. I recently did a town meeting, had more questions on Medicaid from recipients and providers alike in terms of what was the future of that, the growth in those areas. And I think you have hit it on the head in calling attention to that. And I feel, at least from a District of Columbia budget perspective, it is Medicaid has really outstripped everything else in the increase in spending. We have problems across the board, but Medicaid is something this city has not been able to get a hold on, as a number of States haven't across the country. It is something by going like this and sending it to the States we think we solved it. There are still a lot of problems with the rules and the regulations and the mandates that come with that.

I have—Ms. Belaga, you talk about the EPA. That is a very good example of Federal-State issues that we have had and unfunded mandates, regulatory reform, and the like. And it seems to me that it's dollar-driven.

We don't have the money at the Federal level to do a lot of the things that we want to do so we have resorted to unfunded mandates, regulations, and sending that bill on down to State and local governments and they have become tremendously expensive.

I know in Fairfax County we have just a number of pretty stupid regulations we had to comply with, we felt we could have accomplished in a better way. And I just think if the Federal Government is going to continue to do that, we've got to be more flexible in how these areas are administered.

Any thoughts on that?

Ms. BELAGA. I would agree with you that the magic word there is flexibility. And in some instances, the agencies themselves are the culprits, if you will, in terms of establishing such rigorous standards that they are not meetable.

But in some instances, Congress has put into the law some incredibly rigorous standards that are impossible to meet. And, so I think, when you take a look at this issue, you really need to look at the whole—the whole array, not only the agency's implementation but also the language in the statute so that we don't continue to foster this. When you look at a lot of laws you see this problem.

Mr. DAVIS. I was just wondering, the sponsors of the Unfunded Mandates Reform Act and the thing that caught—that, I think, didn't get paid enough attention to but really makes a lot of sense is, if you are going to mandate and you don't have to worry about the bill, you will get a different kind of mandate than if you worry about paying for it.

Ms. BELAGA. Right.

Mr. DAVIS. That is what is missing is the financial accountability for these decisions. If you get the financial accountability, you get sounder decisions.

Ms. BELAGA. Right.

Mr. DAVIS. Whatever level of government, it doesn't make any difference what it is, but you will get better decisions across the board and that is what has been missing. But I agree that standards is something that the Federal Government is going to have a continuing role in how they meet that and who pays for it is some-

thing I think the accountability ought to be with who is making the rules, for the most part.

Thank you.

Ms. BELAGA. And I will share with you that if we say to a State you have to go ahead and do this, we really have to give them the choices of how they are going to meet those standards.

Mr. DAVIS. Don't tell me how to live with it. One size doesn't fit all.

Mr. Martin.

Mr. MARTIN. Mr. Davis, in my testimony is a real short statement on Medicaid and the health care issue, there is a subissue that is the crux of the matter. Of all Medicaid recipients, 12 percent are aged, and 14 percent are blind and disabled. So 26 percent of all Medicaid recipients are aged, blind, and disabled. They are getting of the $173 billion being spent, 26 percent are getting 69 percent of that money. It is mainly for nursing homes. It is not poor pregnant women——

Mr. DAVIS. Long-term care.

Mr. MARTIN. It is not only Medicaid children that are bankrupting us. It is the aged, and the aged are the Medicaid problem, and the Medicare problem, the SSI problem, the pension problems, and we have decided to take that off the table, and both parties have and nationwide for the time being. Until the issue of controlling the cost of programs for the aged, blind, and disabled, at the rate at which they are expending, we will not solve the deficit issue. This is going to reduce the growth rate from 10 to 7 percent.

The plans are to reduce the growth rate for our State old folks on Medicaid from 10 to 4. Our old folks cost more than your old folks, and it is just not fair to have our old folks get down to four and yours stays at seven. It, at least, ought to be seven—the same.

And federalism is not going to be resolved until the health care issue has been resolved, and that is not going to be resolved until the Nation is ready to deal, and the people, and, I think, you are representing the people, with how are we going to control those long-term costs for the aged, Social Security, Medicare, and Medicaid.

Mr. DAVIS. We are spending money just shrinking this small piece?

Mr. MARTIN. It is shrinking everything else.

Mr. DAVIS. Everything, including discretionary, domestic spending, squeezing it and trying to get more and it is not—I agree with you, it is not the way you are going to get the answer.

Mr. MARTIN. Last year when Mr. Panetta came up and testified by the full committee on the mandate relief bill—and you may remember this, Mr. Towns, all of you may have been there at the full committee—and he said we are now in a long—in an era of long-term fiscal constraints at every level of government. That's what is new in America.

What is new in America is the taxpayers have said enough is enough, at the Federal level, State level, and local level. Before you could push up Fed and we could cover this, that. Now it is the entire—it is the public budget we are dealing with, not the Federal budget.

As Governor Nelson says, don't balance your budget and bust ours. And you can't do that because the taxpayers aren't going to allow it. So the rebellion is at every point in the pie. So, therefore, the functional fatalists want to come off budget. Let's take highways off budget and let the kids suffer, or let's take kids off budget and let highways suffer. So we are back to the point where we have a stable pie and the old folks are—they get first bite.

Mr. DAVIS. Thank you very much.

Mr. SHAYS. The gentlelady—I always feel strange saying the gentlewoman, the strong woman from Maryland.

Mr. DAVIS. Strong and gentle.

Mrs. MORELLA. Thank you. I like that.

Thank you very much, Mr. Chairman, and thanks for calling this meeting. And I will be very brief.

I would like to ask unanimous consent that an opening statement be included in the record.

[The prepared statement of Hon. Constance A. Morella follows:]

Statement of the Honorable Constance A. Morella
Subcommittee on Human Resources and Intergovernmental Relations
July 20, 1995

MR. CHAIRMAN, THANK YOU FOR CONDUCTING THIS IMPORTANT HEARING ON ONE OF THE MAJOR GOVERNMENTAL ISSUES OF OUR DAY -- THE DIVISION OF RIGHTS AND RESPONSIBILITIES OF THE STATES AND THE FEDERAL GOVERNMENT.

AS FORMER STATE LEGISLATORS, MR. CHAIRMAN, YOU AND I SHARE BOTH A STRONG KNOWLEDGE OF AND COMMITMENT TO THE RIGHTS OF STATES. WE BOTH KNOW THAT THEY CAN BE INNOVATORS IN A WIDE ARRAY OF AREAS -- EDUCATION, HOUSING, SOCIAL SERVICES -- AND THAT THEY CAN SERVE AS LABORATORIES OF EXPERIMENTATION IN WAYS THAT THE FEDERAL GOVERNMENT OFTEN CANNOT. THAT IS WHY IT IS IMPORTANT TO EXAMINE THE ROLE OF STATES IN OUR CURRENT FEDERAL SYSTEM AND TO DETERMINE IF THERE ARE WAYS IN WHICH THAT ROLE

CAN BE EXPANDED EFFECTIVELY FOR THE BENEFIT OF OUR CITIZENS.

WE MUST ALSO KEEP IN MIND THAT, JUST AS STATES ARE BETTER SUITED THAN THE FEDERAL GOVERNMENT TO UNDERTAKE CERTAIN RESPONSIBILITIES, THERE ARE AREAS OF PUBLIC POLICY WHERE UNIFORM, FEDERAL POLICY HAS ABLY SERVED OUR NATION. THE DOMAIN OF CIVIL RIGHTS ENFORCEMENT IS ONE SUCH AREA, FOR EXAMPLE. I HAVE ALWAYS BELIEVED THAT STATES SHOULD HAVE MORE LEEWAY TO EXPERIMENT AND INNOVATE IN PUBLIC POLICY, BUT THAT THE FEDERAL GOVERNMENT MUST MAINTAIN CERTAIN NATIONAL STANDARDS. DEVOLVING RESPONSIBILITY SHOULD NOT, AND NEED TO, INVOLVE LOWERING OUR EXPECTATIONS OF GOVERNMENT. ON THE CONTRARY, IF PROPERLY ENACTED, IT CAN MEAN SURPASSING THOSE EXPECTATIONS.

I WELCOME TODAY'S HEARING, MR. CHAIRMAN, AND I LOOK FORWARD TO THE TESTIMONY OF OUR WITNESSES.

Mr. SHAYS. That has already happened.

Mrs. MORELLA. Great, thank you.

I am a former State legislator, as you are, too, and other members of this panel. And so I recognize the need for not having unfunded mandates as well as the fact that States can become great laboratories to try different concepts and ideas as we talk about welfare reform.

Thinking of Medicaid, as somebody who was on the Steering Committee on the White House Conference on Aging, their No. 1 concern is long-term care, and you find that reflected in the Medicaid statistics. Right now, there are even 37,000 people receiving Social Security and SSI who are centenarians, and that is only the beginning.

I mean, this is going to continue with strides in medical science and research, this is going to continue. People are going—are going to be on average living well above 100. So we need to look at some innovative ideas in terms of how to handle it.

I think States can do that. I do think on a Federal level we may want to begin to think of maybe some tax deductions for long-term care insurance or other kinds of incentives.

But I appreciate it very much the fact that you talked about the duplication of many of the programs that we have and the need to come to grips with it and recognize what we are requiring our States to do.

And, Ms. Belaga, I think your point is very well taken in terms of the fact that we've got to sort of be a partnership, there has to be a balance. We have to give oversight but not duplication, and I think that is a key point that we have to remember.

I have never seen such an environment or a climate where we are moving everything back to the States and that is why I think this hearing is of particular importance to us, so I thank you both very much.

Mr. SHAYS. Thank you very much.

I welcome the gentleman from New Jersey. I am happy you came in after we discussed a comment about the State of New Jersey.

Mr. MARTINI. I didn't hear it.

Mr. SHAYS. It is a great State. I welcome the gentleman.

Mr. MARTINI. Thank you, Mr. Chairman, and I also ask unanimous consent to submit an opening statement.

[The prepared statement of Hon. William Martini follows:]

REMARKS BY:
CONGRESSMAN WILLIAM MARTINI
HUMAN RESOURCES SUBCOMMITTEE
FEDERALISM HEARING
JULY 20, 1995

I WANT TO JOIN IN CONGRATULATING CHAIRMAN SHAYS FOR HOLDING THIS IMPORTANT HEARING TODAY.

MR. CHAIRMAN, I HAVE ONLY HELD ELECTED FOR A VERY SHORT TIME. I HAVE BEEN A CONGRESSMAN FOR EVEN LESS TIME.

ONE OF THE MAIN REASONS I RAN FOR CONGRESS IS THAT I WAS TIRED OF THE FOLKS IN WASHINGTON D.C. TELLING ME IN CLIFTON, NEW JERSEY HOW RUN THINGS AND HOW TO SOLVE OUR UNIQUE PROBLEMS.

MR. CHAIRMAN, WE HAVE TAKEN GREAT STRIDES IN THE PAST SIX MONTHS TO HELP RETURN THE POWER TO THE PEOPLE.

BY BLOCKGRANTING MANY LONG STANDING FEDERAL PROGRAMS, WE ARE EMPOWERING STATES AND LOCAL COMMUNITIES TO TAKE CONTROL AND DEVELOP INNOVATIVE SOLUTIONS THAT MEET THEIR INDIVIDUAL NEEDS.

HERE IN WASHINGTON WE LIKE TO USE THE ONE SIZE FITS ALL APPROACH! IT TOOK US FORTY YEARS, BUT I THINK WE FINALLY FIGURED OUT THAT THIS DOES NOT WORK.

WHAT WORKS IN PHOENIX, ARIZONA MAY NOT WORK IN PATERSON, NEW JERSEY.

THIS COMMITTEE HAS PLAYED A KEY ROLE IN RE-THINKING THE WAY WASHINGTON WORKS.

EARLIER THIS YEAR WE PASSED AN UNFUNDED MANDATES REFORM BILL THAT WILL BEGIN TO STEM THE TIDE OF BURDENSOME UNNEEDED FEDERAL REGULATIONS.

I BELIEVE THAT MY STATE COULD ADMINISTER MANY OF THE PROGRAMS MORE EFFECTIVELY AND AT A CHEEPER COST THAN THE FEDERAL GOVERNMENT.

WE HAVE STARTED ON THE PATH TOWARD RETURNING RESPONSIBILITY BACK TO THE STATES. WHILE WE HAVE MADE PROGRESS, I BELIEVE WE STILL HAVE A LONG WAY TO GO.

Mr. SHAYS. Without objection.

Mr. MARTINI. Unfortunately, I didn't have the benefit of the testimony.

Just one or two things come to mind that I think of a practical nature are of concern in this process of attempting to have a better balance between the Federal Government's role and the State's role and the local government's role. And as we go through this adjustment period and making that shift, the one thing that is of great concern to the people at the local level and the State level is the impact of that shift on local property taxes. And so this entire discussion of shifting responsibilities and defining better what are the roles of the different governments, Federal, State, local, county, et cetera, by necessity I think has to be done in the context of the tax structures and the impacts on that.

Having served just for a short time on the county level of government and still being in communication with those there, while they are in favor of the efforts we are attempting to make here in Washington to reform government and define the roles and duties of the Federal Government and they are behind that, they have this anxiety about what is going to happen to the State, what is going to happen to the county government, who is going to pick up some of these—what they view as voids and may not be voids.

It just may mean, as I try to explain to them, an effort on their part to define their roles even more efficiently and more effectively, and that that is a necessary part of this process. Their dependency on the Federal Government, et cetera, may have to be reviewed and reflected upon and they have to start to make some priority choices in their governing roles. But again that is a general concern that I hear sometimes and I am not so sure we have the best of answers to the people at the local level of government who are faced with the fear of an increased property tax to make up for some of the shifting of responsibilities.

And I think it is a perception problem, too, and I will close with that. There is this perception by the governing officials at the local level that the Federal Government is now—and I say this with some caution, dumping responsibilities on the States. I don't believe that is what we are doing.

I happen to believe that what we are trying to do is make the process more effective and more efficient and have better definitions, because the one thing I did observe at the local level of government a very short while was how much duplication there existed as you went up. I mean, there were so many departments at every level doing the same thing or overviewing the same thing, and I think what we are trying to do is streamline that process.

I don't know if you have any response to that. The concern at the local level of government is—by the governing officials is what will this do to property taxes in this shifting and it is a legitimate concern?

Mr. MARTIN. In Oregon they pushed it up to the State level and last year they pushed the property tax up to the State level in Michigan. The movement is under way in about nine States. They can't stand the property tax anymore. The people are fed up with it. They don't have any idea in the world what federalism is or what is being done or what is being changed.

They are for balanced budgets at all levels of government and they are not about to pay for it with a property tax. So, therefore, if we are going to balance the budget, if Congress is going to balance the budget, something is going to have to be cut, and if something is going to have to be cut, somebody is going to have to be given a lot of flexibility to figure out new ways to save money and they are not going to be the same for New York City as they are for Albuquerque or Cape May. They are going to be different, and we are going to have to put a lot of trust back in government.

There is not much of it left there, as Ms. Belaga said, there is a new need for some intergovernmental trust. And I understand Mr. Towns' comments about civil rights. Roger Taney who was the judge who did the *Dred Scott* decision. It wasn't until last year that they changed the name of the Roger Taney Middle School in Prince George's County to the Thurgood Marshall School. So we are still a long ways to go in a lot of places and we've got to be careful about that. And there is not a Governor I know that isn't firmly ready to stand up for every civil right that we need. So I don't think we are talking about civil rights in all this, but we've got to be careful that it doesn't hurt that. But we do need a lot of trust put back into each level of government, trusting each other instead of checking each other.

Ms. BELAGA. I would like to add to that, I think there are two questions, two real answers to what you have addressed. And one is the issue of trust, which Jim reiterates, but I also think you used the word "priority," establishing priorities and making choices. And I think that is clearly what we are going to have to do.

There are two categories. There are new programs and anything that is new really needs to get a very firm assessment. But some of the programs that we have existing today could be far more cost-effective if the implementation of it was done closer to home.

I think those are the decisions that are going to challenge you all, but they need not be adding to the budget constraints of the States and local governments and they need not be unfunded mandates. There can be better ways to do what we are doing now and prevent overlapping.

Mr. MARTINI. Thank you very much.

Mr. TOWNS. Mr. Chairman.

Mr. SHAYS. The gentleman from New York.

Mr. TOWNS. Yeah, right.

I appreciate the statement made by Mr. Martin. I think that what I am really saying is that we can't forget the history in terms of how we got to this point. But talking about the waivers, I really have some concerns.

Mr. SHAYS. What the gentleman wants to say is that the North won the war. And we freed the slaves.

Mr. TOWNS. Good way to put it.

Anyway, but aside from that, what I wanted to say is that when I look at waivers and I look in terms of how this is coming about in some instances, where in some instances the legislature is not even involved in it, in the process, so it is just a decision made administratively.

Of course, when you talk about the lack of funds, lack of resources and that a State can very well say we are not going to treat

X, Y, Z, and then people that have X, Y, Z would have to pick up and move to another State in order to be treated. That is a concern I have.

I think that, you know, when you start talking about waivers and cutting costs and saving money, I mean, you just could exclude a whole group and that group would have to scramble and go to another State that will provide the service, and then you create a problem for that State. So I don't know in terms of what the answer is, but waivers without any kind of monitoring really sort of frightens me.

Mr. MARTIN. Well, what I hear Governors saying is they are prepared to take some.

Mr. SHAYS. Would you put the mike in front of you?

Mr. MARTIN. They are prepared to take minimum national performance standards so the cross-State problem wouldn't encourage that. It is what we have now is a maximum Federal management instead of the min—you know, the standard, minimum standards to guarantee that. It is not a matter of either/or. I hear Governors saying at both ends they need flexibility but they are willing to abide by some performance standards and at the end how many people are being helped instead of the process in between, and guarantee that their money is producing something.

And I think that we can work that out. There are a lot of block grants now that are working. I think we can make that work. But I share your concerns and I think the Governors share your concerns that they—it is not a wholesale throwing things out.

Mr. TOWNS. I would feel a little better—and then I will let you move on, Mr. Chairman—if the legislators were involved in the process, I think I would feel a little better because I think there would be a little more accountability. But when you have a situation where the administrator of the State can just make a decision and move forward, you know, I really have trouble with it. I have a lot of problems with that, you know, because we are still talking about accountability at every level, and when you exclude a large group like that, you know, it bothers me. This is going on as you know. I don't have to tell you, I'm sure you know that this is happening right now with waivers.

Mr. MARTIN. With some of ours. But the waivers, the money that is spent on those waivers is not going—in Medicaid is not going to bypass the State legislator. It is billions and they are involved in that.

Mr. TOWNS. Let me put it this way, there is nobody from the State of Tennessee, but they have done it already. I can name some other States. But I happened to pick one State that there is nobody present so nobody can defend it.

Mr. SHAYS. That is what I did with New Jersey a while ago.

Mr. MARTIN. My guess is there are a lot of legislatures that would like to have the Tennessee plan waiver.

Mr. SHAYS. You know, as I am thinking——

Mr. MARTIN. I better shut up.

Mr. SHAYS. I find this dialog extraordinarily interesting. As we are having this very thoughtful hearing in this building, there is a hearing on Waco, and what a gigantic distraction from this issue. I mean, we are getting into issues about block grants with Medi-

care and with Medicaid and other issues that are just going to be extra in their impact in years to come.

Mr. Martin, you are free to stay.

I know, Ms. Belaga, you have to leave.

You are free, both of you are free to stay and listen to the other panelists and then participate afterwards, if you want.

I do want to correct one thing, Mr. Martin, you said in the beginning. And that is, you said no one is talking about Medicaid. We are talking about it every day. I have a meeting with the Speaker right now on Medicaid, and I am going to have to leave for a half hour.

I had a meeting last night that ended at 12 on this issue. The committees are conducting hearings on it. It is the press that chooses to report on things like Waco and other issues so you are not hearing a dialog about it. And you don't see many press at this meeting now.

Mr. MARTIN. I appreciate your correction, Mr. Chairman, and I meant the press.

Mr. SHAYS. I am not dumping on the press, but that is just not their priority right now.

I would like to call on our other witnesses again, either you are free to stay or you can come back if you want to.

Thank you both very much.

Mr. MARTIN. Thank you Mr. Chairman.

Mr. SHAYS. And if I could call these witnesses, if they would remain standing so I can then swear them in.

Prof. Paul E. Peterson, Harvard University Department of Government; Robert Greenstein, executive director, Center on Budget and Policy Priorities; Ed Kilgore, senior fellow, the Progressive Policy Institute. That is panel two.

Panel three is Richard Nathan, commissioner, Advisory Commission for Intergovernmental Relations; Roger Pilon, director, Center for Constitutional Studies, Cato Institute; and Douglas Seay, director, the Governors Forum, the Heritage Foundation.

I am going to swear the witnesses in and then apologize for yielding the chairmanship to my colleague. I will be back shortly. But let me swear you in.

If you would raise your right hand.

[Witnesses sworn.]

Mr. SHAYS. I would note for our record that all have answered in the affirmative.

You are welcome to sit down.

We will go in the order in which I called you, if we can. I am going to yield the chair to Mr. Souder for about a half an hour, and I will be back.

Mr. SOUDER [presiding]. Having just come over from the hearings on Waco, let me say that I could barely get out without tripping over the TV cords and the newspaper people, around the things, and there is a dramatic difference when something is more detailed and more technical, the media runs from that.

Mr. Peterson, would you like to go ahead?

STATEMENTS OF PROF. PAUL E. PETERSON, HARVARD UNIVERSITY, DEPARTMENT OF GOVERNMENT; ROBERT GREENSTEIN, EXECUTIVE DIRECTOR, CENTER ON BUDGET AND POLICY PRIORITIES; ED KILGORE, SENIOR FELLOW, THE PROGRESSIVE POLICY INSTITUTE

Mr. PETERSON. Representative Souder, thank you very much for inviting me. I simply want to start off by seconding what Mr. Martin from the Governors' Association said, that the budget problem that we are facing today is driven by costs of programs serving people over the age of 65. I did notice yesterday that if you look at life expectancy among the G–7 countries, the seven most strongest economies in the world, we rank No. 7 in terms of life expectancy at birth; once you get to age 65, we rank No. 1 in terms of life expectancy. So what we are doing in terms of health care over the whole life cycle is very different from what we are doing for health care at the age of 65. And if you start looking at where the dollars are going, as was just testified to, it shows those dollars are really affecting people's lives in very important ways.

Now, how does that relate to our discussion today? I think it does in a very direct and important way because it raises the question exactly what is it that we should be turning over to State and local governments? What is the appropriate division of responsibilities between the National and the State Governments?

And it has been increasingly the case that the two levels of government have begun to specialize in different kinds of activities. State and local governments have assumed the responsibility for managing the country's physical and social infrastructure, the roads, education, mass transit systems, public parks, police and fire services, and sanitation systems that are necessary for the country's economic growth. And I call these programs developmental programs because were it not for them, economic progress in the United States would be retarded.

The National Government by contrast, has taken responsibility for transferring economic resources from those who have gained the most from economic development to those who have gained the least: The elderly, the disabled, unemployed, the sick, the poor, and those lacking the material resources. I call these programs redistributive because they shift resources from the haves to the have-nots.

Developmental spending by State and local governments amounts to 10.8 percent of the gross national product. The amount of developmental spending by the National Government on domestic policy amounts to only 5.2 percent of GNP.

Now, when you look at redistributive spending, it turns around. The National Government spends 10.3 percent of GNP as compared to 3.5 percent by State and local governments. So basically we have a division, a responsibility here.

The Federal Government takes the responsibility for redistribution, the State and local governments for economic development, and this, I submit, is appropriate. It is the right thing to do. Local and State governments are efficient mechanisms for supplying most of the physical and social infrastructure necessary for economic development. In providing roads and sanitation systems and public safety for residents, local governments, and State govern-

ments must be sensitive to the needs of the businesses and residents. If they were not, if they didn't attend to business, people would vote with their feet and move to some other place.

Seventeen percent of the population changes its residence each year, 3 percent moves across State lines. You can turn a lot of things over to State and local governments and expect them to do a very good job. You can let 50 flowers bloom, and the competition among the States will make sure that they do a good job.

However, the very fact that State and local governments are effective instruments for achieving economic development makes them much less effective at providing those redistributive services that we today expect of our government. The smaller the reach of a government, the less its capacity for redistribution.

The most extreme case is the small suburb. The small suburb in our metropolitan area has almost no capacity to meet the special needs of low-income citizens because the effects of such actions would be immediately felt in the suburban tax rate, property values and attractiveness to business.

States, too, have to worry about the in-migration of people if they have more generous welfare policies or Medicaid policies than their neighbors have. They can easily become a welfare magnet or a Medicaid magnet if their program of services is more generous than those of surrounding States. And, therefore, it is not surprising that the bulk of the responsibility for these kinds of programs, social programs has been carried out by the National Government rather than by the State and local governments.

Mr. SOUDER. You have a minute left.

Mr. PETERSON. Yes.

Current congressional plans to transfer economic development functions to the States are desirable because they place economic development in the hands of those policymakers best able to do it. And both the Clinton administration's proposals and the proposals coming out of the Republican majority here in the House are doing an effective job of turning over a lot of responsibilities in this area to State and local governments.

However, it is not a good idea to turn over the responsibility for Medicaid and welfare through block grants so that all the additional costs of these programs are going to be carried by your State and local officials. Instead of having 50 flowers bloom, we are going to have 50 flowers wilting as each are competing with each other in a race to the bottom to try to shift the responsibility for taking care of the needy in our society to some other place.

This is not because political leaders at the State and local levels are not concerned about the poor and about the needy. It's because to the extent that they focus their activities on this kind of service, they become a welfare magnet, they become a Medicaid magnet, they become an attractive place for a dependent population. It retards their economic development. They have all the incentives to wilt their programs, not bloom their programs.

Let's not turn over to the State and local governments responsibility for things that just don't belong at that level of our governmental system.

Mr. SOUDER. Thank you very much.

[The prepared statement of Mr. Peterson follows:]

Who Should Do What?

The Division of Responsibility in the Federal System

Paul E. Peterson

The newly elected congressional majority arrived in Washington in January determined to turn a great deal of national policymaking over to the states. Goals include cutting federal spending on state and local programs and allowing states to design public programs to fit their particular needs.

Many of these proposals--giving states more responsibility for transportation, job training, education, crime control, and other policies that affect economic development--are promising. A number are rightfully winning the support of the Clinton administration. Indeed, President Clinton proposes to finance a tax cut by means of substantial reductions in federal spending on roads, housing, education, and flood control. For example, money is to be saved by combining thirty separate grants for construction and repair of mass transit systems, highways, airports, and railroads into a modest, if unified, transportation grant to states and localities.

The convergence of interest between the congressional majority and President Clinton results partly, of course, from the enormous pressure exerted on federal spending by demands for tax cuts, the rising cost of senior-citizen entitlements, and the budget deficits piled up during the 1980s. But it also reflects an important trend in American federalism as it has been developing over the past two decades--a shift in economic

development responsibilities from the national to the state and local level. Despite partisan infighting, it is entirely possible that some version of these proposals will be enacted and that the shift will continue.

But Republican leaders are also proposing to delegate to the states responsibility for a broad range of social policies that serve low-income citizens. The House has approved legislation eliminating Aid to Families with Dependent Children, an entitlement program, and replacing it with a fixed block grant that, unlike AFDC, would not increase or decrease depending on the number of welfare recipients. Under the proposed block grant program, states could set, within limited guidelines, their own eligibility standards and benefit levels.

Unlike the Republicans' proposals to increase the state role in economic development policymaking, transferring redistributive policy from Washington to the states would be a mistake. It would defy the logic of the existing division of responsibility between the national and state level of government and give states responsibility for a policy role for which they are unsuited.

Dividing Public Responsibilities

As relations between state and national governments have evolved over this century, the two levels of government have--for very good reasons, as I shall explain shortly--taken distinctively different domestic policy roles. Traditionally, states and localities have taken responsibility for managing the country's physical and social infrastructure--roads,

education, mass transit systems, public parks, police and fire services, and sanitation systems--necessary for the country's economic growth. I shall call these kinds of policies developmental because without them economic progress would be retarded. The national government, by contrast, has taken responsibility for transferring economic resources from those who have gained the most from economic development to those who have gained the least--the elderly, the disabled, the unemployed, the sick, the poor, families headed by single parents, and others lacking in material resources. I shall refer to these policies as redistributive because they shift resources from the "haves" to the "have-nots."

Since 1962, developmental spending at the state and local level has been more than double that at the national level. In 1962, state and local spending was 9.4 percent of gross national product as compared with 4.2 percent for national spending. Despite growth in the size of the domestic responsibilities of the national government in subsequent decades, Washington still spends less than half as much on development as the lower tiers. In 1990, the states and localities were spending 10.8 percent of GNP on the country's developmental infrastructure, while the national government was spending only 5.2 percent of GNP.

With regard to redistributive expenditure, the story is entirely different. Since 1962, the state and local share of the country's spending on the elderly, the poor and the needy has steadily declined. While national government redistributive spending more than doubled, from 4.9 percent of GNP in 1962 to 10.3 percent in 1990, state and local

redistributive spending edged up only slightly, from a very low 2.2 percent of GNP in 1962 to only a slightly higher 3.5 percent in 1990. The modest increment at the state and local levels is particularly striking, inasmuch as this was the period when the civil rights movement awakened the country to problems of poverty, the Great Society was introduced, and entitlements became an entrenched part of American social policy. Yet the percentage of state spending devoted to redistribution increased only from 28.9 to 33.0 percent. And at the local level the increase was barely detectable, from 13.5 percent to 14.1 percent.

State and local reluctance to participate in the redistributive movement can hardly be attributed to the political climate. Over most of this period Democrats controlled at least part of state government in most states, and they held unified control over both houses of the state legislature as well as the gubernatorial chair in many. And despite the intent of today's congressional majority to transfer welfare policy to the states, there is no indication that states are becoming either more suited for or more capable of such policy.

To the contrary, the division of responsibility between national and state governments is growing more pronounced, as each level of government has learned to concentrate its spending on the things it does best. States and localities, ever more constrained by market forces, are increasingly competent at making choices affecting state and community development. But state and local capacities to care for the needs of poor and disadvantaged citizens has been diminishing.

Economic Development Engine

Local governments are efficient mechanisms for supplying most of the physical and social infrastructure needed for economic development. In providing roads, schools, sanitation systems, and public safety to their residents, local governments must be sensitive to local businesses and residents. If they ignore them, people will vote with their feet and move to another town. Since 17 percent of the population changes its residence each year, the effects of locational choices on property values can be quickly felt. Moreover, if a locality makes a poor policy choice, its failure will soon become apparent and will be ignored by other communities. If it chooses wisely, its policy will be copied--and thus be disseminated throughout the federal system.

Not all local policies will be identical, of course. People vary in their tastes and preferences. Some towns will provide sex education in their schools; others will not. Some towns will ban smoking in stores and restaurants; others will be more permissive. Some towns will emphasize country lanes for walkers and joggers; others will provide playgrounds and baseball diamonds. Part of what makes local government efficient is the variety it provides for people choosing a place to live.

Development policy cannot be an exclusively local prerogative, however. For example, major systems of transportation, air and water pollution control, and some forms of higher education must be coordinated across a substantial geographical area. Thus state governments, too, are significant participants in economic development.

The national government, on the whole, is the least efficient provider of economic development. Unlike states and localities, it operates under few market-like constraints. It need not fear that a series of poor economic investments will cause citizens to move to another country. But without market signals to help guide policy choices, development easily degenerates into political "pork" that does little to spur national economic growth. Proposals to create a national industrial policy have generally gone nowhere--in good part because proponents cannot convince policy makers that national bureaucracies, can allocate scarce economic resources wisely.

Washington did enlarge its developmental responsibilities during the 1970s, largely through grants to state and local governments. Federal dollars were given to cities and towns to help build roads, fight crime, improve schools and redevelop deteriorating central business districts. Members of Congress delighted in taking credit for securing federal dollars that helped build bridges, dams, tunnels, and colliders.

This kind of developmental pork prospered during the sixties and seventies partly because Congress was organized into subcommittees that focused member attention on narrow issues and interests. But it was also facilitated by the fact that the revenues of the national government increased automatically by means of inflation-induced bracket creep within a steeply progressive income tax system. Members of Congress could enjoy increasing tax revenues without ever passing a tax increase. Indeed, it was possible to claim that taxes were being cut even when inflation was causing them to increase. (The

famous Kennedy tax cut of 1963, for example, was in fact nothing other than an offset against bracket increase).

But in 1981 income taxes were sharply reduced, brackets were indexed to inflation, and fiscal deficits mounted. In subsequent years, every new federal program had to be paid for with a tax increase. Even existing programs were endangered by the squeeze created by the pressing demand for tax cuts and the rising cost of senior-citizen entitlements. Developmental pork lost its allure. The size of the intergovernmental grant program dropped precipitously, and the percentage of the remaining grants that were developmental (as distinct from redistributive) declined from a high of 59.5 in 1977 to 43.1 in 1990. Far from being a radical departure from past practice, the recent cuts in developmental spending proposed by both Republican leaders and the Clinton administration are just the latest in a decade-long series of like-minded decisions.

Not that Washington should play no role in economic development. Some policies, such as investment in scientific research, have such broad and far-reaching consequences that they must be carried out by the national government. Others, such as certain components of the communication and transportation system, must be coordinated in Washington to achieve a desired degree of national integration. Still other development aid to states and localities allows the national government to minimize the adverse effects of economic development on the environment.

Nevertheless, the national role in economic development has dwindled in recent years under the pressure of fiscal deficits, anti-tax pressures, and senior-citizen entitlements, and it will probably continue to do so.

Redistributing the Wealth

For the same reason that local governments are best suited to providing economic development--the mobility of labor and capital--they are not effective at redistributing wealth. Local governments, for example, avoid progressive income taxes. No more than 3 percent of local revenues comes from this source. Any locality making a serious attempt to tax the rich and give to the poor will attract more poor citizens and drive away the rich. No amount of determination on the part of local political leaders can make redistributive efforts succeed. If no other force is able to stop their efforts, bankruptcy will.

The smaller the territorial reach of a local government, the less its capacity for redistribution. Most small suburbs in metropolitan areas have almost no capacity to meet the special needs of low-income citizens, because the effects of such actions would be immediately felt in the suburb's tax rate, property values, and attractiveness to business. Big cities are somewhat better able to undertake redistribution because of their greater geographical reach and their control over extremely valuable land at the heart of the nation's transportation system.

The greater territorial reach of states also makes them better at redistribution than most local governments. The costs of moving across state lines is more substantial than changing residence within a metropolitan area. As against the 17 percent of the population who change residence every year, only 3 percent move across a state line. Even so, labor and capital can and do move, and states must take that possibility into account in their policymaking. Since 1970, for example, states have been in something of a race to lower welfare benefits for fear that high benefits could attract poor people to the state--thus raising social spending and perhaps triggering an exodus of taxpayers.

The bulk of the responsibility for income redistribution falls to the national government. It levies higher taxes on the well-to-do than on the poor, then carries out redistribution through pensions, welfare, health care, and other programs aimed at the needy, the old, the sick, the disabled, and the disadvantaged. The largest and most successful redistributive programs in the United States--Social Security and Medicare--are designed and administered in Washington. And again the explanation is capital and labor mobility--or rather comparative immobility. Washington is best suited to engage in redistribution because it can prevent the in-migration of labor from foreign countries and need not worry as much about the outward flow of capital. If any state or local government had attempted to mount programs like social security by itself, it would have gone bankrupt long before becoming a haven for the aged.

The increasing integration of the world economy has begun to erode some of the national government's redistributive capacities. Information and products can move

globally at low cost. Capital also flows freely. Nevertheless, as long as the U. S. political economy remains healthy and stable, the national government will continue to have the capability of redistributing substantial amounts of the national income.

Current economic trends are having a considerably more powerful effect at state and local levels. The improvements in transportation and communication systems that have produced an increasingly integrated world economy are also at work among states and localities within the United States itself. Capital, entrepreneurial activity, and skilled labor have become ever more mobile. State and local governments now face increasingly competitive relationships with each other and must attend ever more strictly to economic development. The result is that they are growing ever more reluctant to provide for the needy within their ranks.

Making the Best of Federalism

The Republican proposals for wholesale policy shifts from Washington to the states and localities have grabbed their share of headlines, and many are likely to be signed, sealed, and delivered. Plans to transfer economic development functions to the states are not only politically feasible but also smart policy, for they place economic development in the hands of those policymakers best able to manage it.

But the Republican plans to move welfare policymaking to the nation's statehouses are more dubious, if for no other reason than that state and local officials have become increasingly reluctant to pay for the cost of social policy. It is my (perhaps

reckless) prediction that any policy enacted in the forthcoming Congress that dramatically shifts the responsibility for welfare downward to states and cities will prove unworkable and short-lived, simply because such shifts run at odds with the underlying structure of the federal system. If I am wrong and welfare policy is permanently turned over to the states, the well-being of the most marginal members of society, including large numbers of children living in poverty, will be adversely affected in serious ways.

States have demonstrated that they are increasingly incapable of sustaining welfare benefits in an ever more integrated economy. State AFDC benefits are jointly funded by the national and state governments but set at the state level. For the first 33 years after AFDC was established in 1937, states raised the real value of this benefit program steadily. The mean benefit paid to a family in the average state was $287 in 1940, $431 in 1950, $520 in 1960, and $608 in 1970 (all figures are in 1993 dollars).

But in 1970 welfare benefits began to decline, partly because states became more fearful that high benefit levels were attracting and retaining poor people within their states. In 1969 the Supreme Court decided, in Shapiro v. Thompson, that newcomers could not be denied access to state welfare benefits. Over the next twenty years evidence accumulated that high benefit levels acted as a (low-strength, but nonetheless detectable) welfare magnet. The debate over the welfare magnet intensified and, after 1970, welfare benefits began to fall--to $497 in 1975, $437 in 1980, $409 in 1985. In 1990 they reached $379, and in 1993 they dropped to $349, not much more than they were in 1940. In the earliest days of this century, states often led the way to innovative social

policies (Wisconsin had an unemployment compensation system before the national government did). But in recent years state proposals to reform welfare have generally taken the form of reductions in welfare assistance. In 1988 the Family Support Act explicitly gave states the opportunity to experiment with Aid to Families with Dependent Children. The first three proposals submitted to the Department of Health and Human Services all proposed new restrictions on welfare. Wisconsin and New Jersey petitioned, among other things, to withhold the increase in benefits that typically comes with the birth of an additional child. California proposed an immediate 25 percent reduction in benefits, a second further reduction for all families remaining on welfare after six months, and a restriction that limited benefit levels to new arrivals to California to the level they were receiving in their previous state of residence. What began in a few states is now spreading nationwide.

Although AFDC has been the major target of state welfare cuts, other redistributive programs have proven to be politically unpalatable as well. State general assistance programs have all but disappeared. State supplementary benefits to the long-term unemployed and to disabled persons have also been dramatically reduced, even while national benefits have kept pace with increases in the cost of living. State contributions to unemployment insurance programs have fallen far short of what is necessary to maintain their viability.

Looking to the Future

Intensified state and local opposition to redistribution is understandable in an economy that has become increasingly integrated and a society that has become ever more mobile. States and localities can no longer make policy choices as if they were living in isolation from other parts of the country. The decisions they take are noticed by people elsewhere, and the impact on their economic and fiscal situation will be felt sooner rather than later. One may regret that states and localities no longer seem capable of caring for their sick and needy, but it is a price a federal system must pay in an ever more integrated society.

Because states and localities are unequipped to finance social welfare programs, their role in any welfare reform should be carefully circumscribed. The legislation approved in March by the House to abolish AFDC gives states too much latitude to set policy and is almost certain to worsen the "welfare magnet" problem. As some states tighten eligibility standards and reduce benefit levels, states with more generous benefits will become more powerful welfare magnets than ever before and yet will receive no commensurate increase in federal funding, as now happens, if poor people move to take advantage of the more generous benefits. And states are already making strenuous efforts to avoid losing the "race to the bottom."

The state of Wisconsin reported last summer that about 20 percent of new AFDC applicants in Milwaukee county came from new residents, many of whom were arriving from Illinois, a state with lower welfare benefits. To respond to these pressures, Wisconsin asked the national government for permission to try an experiment in which

recent migrants would for six months only receive a level of benefits equal to that of the state from which they were migrating. In the past, courts have declared such discriminatory treatment of newcomers as unconstitutional, but the Supreme Court announced last fall that it would be willing to revisit this issue. If discrimination against newcomers to a state is given constitutional blessing, a new round of state welfare cuts can be anticipated.

Time has shown that the national government has a different sphere of competence than that of state and local governments. The new breeze blowing through Washington should capitalize on this increasingly well-known fact and return to states and localities most of the responsibility for maintaining the nation's physical and social infrastructure necessary to sustain economic growth. But some things, namely programs for the sick, the poor, the needy, and the elderly, remain a Washington responsibility. To turn these responsibilities over to the states is to turn the clock backward.

Mr. SOUDER. Dr. Greenstein.

Mr. GREENSTEIN. Thank you, Congressman, and I commend the subcommittee for holding the hearing on this important question today.

Let me start by saying I am in broad agreement with the framework that Professor Peterson laid out that States should be accorded more authority in an array of areas, that there are some areas of Federal Government that should be shifted or devolved to States.

Block grants are desirable in some areas, they are unwise in other areas. And in particular, I think a concern I have about the current debate is that it is often formulated that either you are for trusting States and for giving them flexibility and for block grants in a whole array of areas or you are against a block grant because you don't trust the States and think they should not be given flexibility.

I think that formulation oversimplifies and in some cases misses the point. In particular, in a number of areas we need to distinguish the question of whether to convert the financing structure of a program to a block grant from the separate question of whether to give States flexibility and authority in designing and operating the program. There are some program areas where the best policy mix is probably to give the State broad authority in designing and operating the program, a lot of trust, without changing the program's fiscal structure to that of a block grant.

I would like to focus particularly this morning on federalism questions and low-income programs. Some low-income programs probably should be consolidated into block grants. There is a broad consensus, for example, that we have too many overlapping job training programs, more State authority and flexibility makes a lot of sense there, a block-grant structure.

The issues become a lot more complicated, though, when one looks at means-tested entitlements like food stamps, Medicaid, school lunches, and the like. It is sometimes said that block grants are needed in those areas to give States more flexibility and reduce Federal cost, but States can be given greatly enhanced flexibility and a lot of Federal costs reduced in those programs without block grants.

Take food stamps as an example. Legislation introduced by Senator Lugar in June and passed by his committee last month, and to a lesser degree the food stamp provisions in H.R. 4, your welfare bill, show that large savings can be extracted and substantial flexibility accorded the States without going to block grants. The Lugar bill allows States to set virtually all of their own rules in determining food stamp benefits for families that receive welfare.

Mr. GREENSTEIN. It includes a sweeping array of State options, repeals scores of prescriptive Federal rules, and establishes waiver authority covering every aspect of the program in which an explicit State option is not granted. States would have vast flexibility here so long as the changes they made in the program's benefit structure didn't increase Federal costs.

The bill also cuts food stamp costs $16 billion over 5 years and it does this without turning food stamps into a block grant or ending its fiscal entitlement status. Why is that important? Because

converting the financing structure of a program like food stamps to a block grant gives you some undesirable effects.

Under the current financing structure for such a program, Federal funding rises when poverty and need increase in a State, such as during recession, and fall when need recedes during a recovery. Similarly, Federal funding rises when the number of poor people rise in a State during rapid population growth and decline with population in those States in which populations are falling.

Entitlement financing structure automatically shifts funds among States as relative need changes due to economic or demographic shifts. But a block grant by contrast has to use a fixed-funding formula that's necessarily out of date when determining what share each State gets.

At any point in time, the latest State-by-State data on poverty and average income are 3 to 5 years old. For example, some of the proposals now before Congress to block grant the means-tested entitlements would give each State the share of the funds in the future that it got in fiscal 1994. That creates serious equity problems.

States that would be inequitably treated would be those that experience a serious recession in the future, have rapid population growth, had an unusually robust economy and therefore unusually low poverty last year, or those in which conditions changed for other reasons. So business like the Lugar food stamp bill avoids these adverse side effects of block grants while according States sweeping flexibility and saving Federal money.

Again, the basic point, the need to distinguish between flexibility in designing and operating means-tested entitlements, and whether the financing structure should be converted to a block grant. Similar issues arise with regard to Medicaid.

At the present time the Federal Government and States have a financing partnership. They share in Medicaid costs. If costs rise in a State due to recessions, populations, fewer employers providing coverage, advances in medical technology that save life but have costs, onset of new diseases like AIDS, both parties share. If you have a block grant in a program like Medicaid or food stamps and a recession comes or population grows, one of these things occurs. The State must bear 100 percent of the added costs, including those due to factors beyond its control such as the business cycle.

In Medicaid, as in food stamps, States can be given sweeping flexibility of large Federal savings extracted without terminating the financing partnership and shifting all risk to States. States can be given more flexibility to go to managed care, reduce payment rates to providers, freed from Federal mandates, without converting Medicaid to a block grant that fails to respond to shifts and needs among States.

Last year's Chafee health care bill is an example of such approach. So in short, I will close, flexibility within a financing structure that maintains a Federal partnership of sharing the unexpected costs and savings stemming from fluctuations in these appears to be the wisest course to follow in these programs, as distinguished from others where a pure block does make sense.

If we simply convert these means-tested programs to blocks, I believe such a structure won't withstand the first substantial recession. At that time, Governors will be faced with choices of raising

taxes in a recession, cutting benefits across the board, or turning away newly unemployed families who worked and supported the programs for years with their taxes.

In such circumstances, I think Governors of both parties will come to Washington seeking additional funding. That funding, if granted, will be accompanied by a new set of strings, and it would be better if we're at long last fundamentally rethinking Federal and State roles to kind of get the design structure in the appropriate place from the start. Thank you.

[The prepared statement of Mr. Greenstein follows:]

TESTIMONY OF ROBERT GREENSTEIN, EXECUTIVE DIRECTOR
CENTER ON BUDGET AND POLICY PRIORITIES
before the
Subcommittees on Human Resources and Intergovernmental Relations
House Committee on Government Reform and Oversight
July 20, 1995

I appreciate the opportunity to testify here today on the important question of federalism. I commend the chairman for scheduling a hearing on this matter.

In general, I believe that:

1. States should be accorded more authority in an array of areas.

2. Some areas should probably be largely shifted or devolved to states.

3. Block grants are desirable in some areas and unwise in others.

4. In a number of important areas, we need to distinguish the question of whether to convert the *financing structure* of a program to a block grant from the separate question of whether to give states flexibility and authority in designing and operating the program. In some areas, the best policy mix may be to accord states broad flexibility in designing and operating a program without changing the program's financial structure to that of a block grant. Broad state flexibility can be provided without a block grant, while a block grant can come with strings that greatly restrict state authority.

I generally concur with the analysis of my fellow panelist this morning Paul Peterson on the appropriate divisions of federal and state roles. Areas such as economic development and local infrastructure can be shifted — perhaps entirely devolved — to states. At the same time, basic programs for the poor should not be devolved. Some states have more poor people and less fiscal capacity to aid them than do other states. Moreover, as Peterson has trenchantly explained, shifting to states the basic programs to support low-income households can trigger a "race to the bottom," not because states are less compassionate than the federal government but because the wide disparities that will quickly develop among states will set off fears that if more generous states do not lower their benefit levels, they will attract increased numbers of the poor to their borders.

There are many facets to the federalism debate and to how to restructure federal and state roles. I'd like to focus this morning on issues relating to programs targeted on those with low incomes.

Federalism and Low-Income Programs

Some low-income programs probably should be consolidated into block grant-type structures. There is broad consensus, for example, that there are too many overlapping job training programs and that consolidation — and more state authority and flexibility — makes sense here.

The issues become more complicated, however, when one looks at means-tested entitlement programs like food stamps, Medicaid, school lunches, and AFDC. It's sometimes said that block grants are needed in these areas to give states more flexibility and to reduce federal costs. But states can be can be accorded greatly enhanced flexibility in these areas — and federal dollars saved — without a block grant.

Take food stamps as an example. Legislation introduced in June by Senator Richard Lugar and approved by the Senate Agriculture Committee on June 14 (and to a lesser extent, the food stamp provisions of H.R. 4, the House welfare bill) show that large savings can be extracted and substantial flexibility accorded to states without turning the program into a block grant.

The Lugar bill allows states to set their own rules in determining food stamp benefits for families that receive welfare. It includes a sweeping array of state options affecting virtually all parts of the program. It repeals scores of prescriptive federal rules. It also establishes waiver authority covering virtually every aspect of the program in which explicit state options are not established. States would have vast flexibility so long as the changes they made in the program's benefit structure did not increase federal costs.

The bill also contains provisions reducing federal food stamp costs by more than $16 billion over five years. And it achieves these things without turning the food stamp program into a block grant or ending its entitlement status.

Why is this important? Because converting the financing structure of means-tested entitlements like food stamps into a block grant structure results in some highly undesirable effects:

- Under the current financing structure, federal funding rises when poverty and need increase in a state — such as during a recession — and fall when need recedes such as during a recovery.

- Similarly, federal funding rises when the number of poor people rises in a state due to rapid state population growth and falls when a state's overall population — and its poverty population — decline.

- In addition, an entitlement financing structure automatically shifts funds among states as relative need changes among states due to economic, demographic, or other reasons. By contrast, a block grant must use a funding formula that is out-of-date in apportioning funds among states. At any point in time, the latest state-by-state poverty and income data are three-to-five years old.

  Furthermore, some of the proposals before Congress to block-grant means-tested entitlements would give each state the same share of block grant funds in future years as the state's share of FY 1994 funds under the program being block-granted. Such an approach creates serious equity problems. At least four groups of states are inequitably treated: 1) states that experience a serious economic downturn in the future; 2) states with rapid population growth; 3) states that had an unusually robust economy in 1994 and hence uncommonly low poverty that year; and 4) states in which conditions change markedly for other reasons. (As an example of how a state can fall into the fourth category, decisions recently made to reduce AFDC benefits in Connecticut would place that state at a disadvantage if the food stamp program were block-granted based on FY 1994 state food stamp data.)

Block-granting means-tested programs also can have adverse macroeconomic effects because it weakens the "automatic stabilizer" effect of means-tested entitlements. These programs expand during recessions — thereby infusing more purchasing power into a weak economy — and contract during economic recoveries. Herbert Stein, chairman of the Council of Economic Advisers under President Nixon, recently called attention to this point.

Finally, as Paul Peterson has described so well, block granting such programs can engender a "race to the bottom." This is a serious issue. I will not cover it here since Peterson has elsewhere written so ably about it.

Approaches like the Lugar food stamp bill avoid these adverse side-effects of block grants while according states sweeping flexibility and saving federal money. They illustrate my basic point — that policymakers need to distinguish between flexibility in designing and operating means-tested entitlements and whether the financing structures of these means-tested entitlements are converted to block grant form.

The school lunch program provides another example of these issues. Savings can be achieved here in a reasonable manner. But a block grant — including one that makes no cuts — is not a desirable way to proceed. In the recession of the early 1990s, the number of children receiving free school lunches rose 1.2 million. A block grant

could not respond to such a development and would necessarily misallocate lunch funds among states as state economies and school-age populations grew at different rates.

Moreover, the school lunch block grant in H.R. 4 illustrates the pitfalls of this approach. Its designers struggled mightily in an effort to craft an equitable funding formula but ultimately could not do so. The formula in H.R. 4 would have the unintended side-effects of shifting school lunch funds from poorer states to more affluent states and from states serving full meals to states selling large numbers of less costly, less nutritious snacks or partial meals.

The program in which the question of whether to block grant may be most important is Medicaid. At the present time, the federal government and states have a financial partnership -- they both share in Medicaid costs. When costs rise in a state due to recessions, population growth, employer "dumping," advances in medical technology that save or prolong life but at high cost, or the onset of new diseases such as AIDS, both parties share. By contrast, under a block grant, states would bear 100 percent of such increased costs.

In Medicaid, as in food stamps, states can be given sweeping flexibility — and large federal savings extracted — without terminating the financing partnership and shifting all risk to states. States can be given flexibility to move to managed care and reduce payment rates to providers and can be freed from various federal mandates and requirements *without* converting Medicaid to a block grant that fails to respond to increases and decreases in need among states. This can be accomplished while saving substantial amounts for the federal government through reductions in federal Medicaid matching rates or through imposition of a "per beneficiary cap" on federal Medicaid payments to states, as last year's Chafee health care bill would have done.

In short, when it comes to means-tested entitlements, flexibility within a financing structure that maintains a federal partnership of sharing in unexpected costs and savings stemming from fluctuations in need appears the wisest course to follow. If instead we simply convert these programs to block grants, I believe such a structure will not fully withstand the first substantial recession. At that time, governors will be faced with such choices as raising taxes in a recession to cover increased need, cutting benefits across-the-board, or turning away newly unemployed families who worked and supported these programs for years with their taxes. It is likely that in such circumstances, governors will come back to Washington seeking help. If such help is granted, it likely will come with a new array of strings. At a time when we are fundamentally rethinking federal and state roles, it would be better to design these structures more appropriately from the start.

Mr. SOUDER [presiding]. Thank you.

I guess I should have worn an orange tie today, since we don't have our lights. But I'm trying to give you a 1-minute warning, because we don't have the usual light signals.

Mr. Kilgore.

Mr. KILGORE. Thank you, members of the subcommittee. My name's Ed Kilgore. I represent the Forensic Policy Institute, which is the think tank of the Democratic Leadership Council. I guess our distinctive role in this debate is that—or our position in this debate is that we urge Democrats to embrace a devolution agenda, not to imitate or compete with conservatives, because the intergovernmental grant tapes that typifies our current model of domestic Governors, has become so unwieldy and dysfunctional that it's all but destroyed the public's confidence in the ability of government to solve any problems at all.

I think most federalism advocates, regardless of their background this year, feel a little bit like all the attorneys and the law professors who were on television and radio commenting on the O.J. Simpson trial. We certainly welcome the opportunity to peddle our pet ideas, but I think most of us share a lot of misgivings about the event that's made that possible.

And make no mistake, the event that has created a devolution debate this year, is the large array of block grant proposals, particularly in the U.S. House of Representatives, and I don't think we can have a useful debate on federalism or devolution unless we very carefully characterize how those block grants do, and do not, fit into a genuine debate on federalism.

Kathleen Sylvester of the Progressive Policy Institute and I published a paper earlier this year called blocking devolution, where we argue that block grants as proposed in the 104th Congress are, in fact, a step back from genuine devolution, and an obstacle to any real discussion on the subject. And I'd like to devote the balance of my testimony to a justification of that critical assessment.

You cannot have a debate without some agreement on the terms. To make it clear that our opposition to block grants or our concerns about them is not a partisan matter, I think it might be useful to compare this year's federalism debate in Congress with the one that was initiated in 1981 and 1982 by President Ronald Reagan.

The Reagan administration proposed a number of block grants in its first budget and a broader array in President Reagan's 1982 State of the Union Address. The block grants were never advertised as a centerpiece of President Reagan's new federalism concept, much less as its sum total. Generally speaking, the Reagan administration block grants were, as Dr. Greenstein suggested, in areas with an unusually large number of small, narrow, and outdated categorical grants.

Their purpose was not to give States total control of Federal funds, but instead to allow their more flexible use by States to accomplish broad Federal goals. This year's block grant proposals are radically different in two respects, beyond the claim that they represent a comprehensive agenda for devolution.

First, block grants are being proposed as a scheme to convert major entitlements into discretionary programs. Whether or not you think that's a good idea, it's certainly remote from the original

idea of block grants, which is simply an administrative reform to promote more flexible management of Federal/State grants.

Second, the block grant legislation we have seen so far does not liberate State administrators of Federal grants to focus on achievement of broad national objectives, that I believe every witness so far has suggested ought to be the object of block grants. Instead, those broad national objectives are themselves eliminated, and with them any coherent rationale for providing Federal funds in the first place.

In the Reagan budgets and in the 1982 State of the Union Address, block grants were clearly and honestly described as interim weigh stations toward full State assumption of selected Federal responsibilities. I have no doubt that there are Members of Congress who privately viewed these block grant proposals as a weigh station for eventual abandonment of Federal responsibilities to States, but those predictions have remained private. So we really haven't had a debate over how States would finance any new responsibilities that are ultimately given to them.

The Reagan administration's federalism proposals exhibited some internal consistency. Entire functional areas of domestic government were identified as appropriate for full assumption of the States, by the States. This year's block grants are full of inconsistencies. For example, the crime block grant legislation passed by the House earlier this year completely replaces categorical crime prevention and community policing grants supported by Democrats in last year's crime bill, while leaving in place a host of conservative prescriptions on sentencing and prison construction.

The House welfare block grant package totally eliminates Federal eligibility rules for cash assistance in the name of State flexibility, but then prohibits eligibility for specific categories such as unwed teen mothers and illegal immigrants.

Finally and most importantly, in contrast, the Reagan era new federalism agenda reflected thoughtful analysis of those areas of domestic responsibility which Federal and State governments were best equipped to handle, the sort of sorting out agenda that Professor Peterson talked about. You didn't have to agree with the conclusions they reached to respect the seriousness of their effort.

President Reagan's swap concept included a proposal to entirely federalize the Medicaid program, because it was understood that sorting out these responsibilities is a two-way street, not a one-way shift. This year, many Republicans in Congress rightly argue that there's no one-size-fits-all Federal solution to every problem, but they tend to embrace a one-size-fits-all solution in block grants.

The casual and almost frivolous application of the block grant concept, I think, reached its apex last week, when Senators Gramm and Faircloth proposed to turn Medicaid into a block grant for the sole apparent purpose of overcoming a formula fight over distribution of funds for the welfare block grant.

The question that Chairman Shays raised in convening this hearing, why didn't Washington trust the States, is really the wrong question to ask about the debate that's occurred so far this year. Trust requires an honest and serious dialog on commonly defined problems.

Unfortunately, the block grant debate this year has brought out the worst in all of its participants. With some honorable exceptions, block grant proponents in Washington appear motivated by narrow interest in Federal budget savings and by the usefulness of block grants as a way to avoid difficult Federal policy questions that just happen to divide Republicans.

Meanwhile, State officials supporting block grants appear motivated by narrow interests in controlling Federal funds. In part because they believe that the money is going to be cut in any event. In other words, the block grant fashion really is blocking devolution at both the intellectual and political levels. This country does need a broad debate on devolution that goes far beyond the inside-the-boxes reorganization schemes of federalism scholars, and addresses the challenge faced by Government officials at all levels adjusting to the economic and social forces that are producing a radical decentralization of private institutions. Instead we're arguing about funding formulas for block grants.

Members of the subcommittee, I really do hope that a genuine debate on devolution in federalism can begin with this hearing. Thank you.

[The prepared statement of Mr. Kilgore follows:]

Ed Kilgore

Senior Fellow

Progressive Policy Institute

Chairman Shays, and members of the Subcommittee on Human Resources and Intergovernmental Relations. I appreciate this opportunity to testify on the future of American federalism.

I must begin with a couple of disclaimers.

Despite what you might infer from my placement on this panel, I am not testifying on Washington's behalf in a debate on the relative power of federal and state governments.

The Progressive Policy Institute, which is the think tank of the Democratic Leadership Council, is strongly in favor of a real devolution of power from the current regime of centralized bureaucratic institutions, not just to state and local governments, but to private civic enterprises and to citizens themselves.

We urge Democrats in particular to embrace a devolution agenda not to imitate or compete with conservatives, but because the intergovernmental grant system that typifies our current model of domestic governance has become so unwieldy and dysfunctional that it has all but destroyed the public's confidence in the ability of government to solve any problems at all.

Like everyone else in political life, we are struck by the conflict in public opinion polls between the strong and continuing support for a positive government role in national life, and the willingness of voters in 1994 to embrace a strongly anti-government agenda. But while some observers view this conflict as a sign of popular ignorance, confusion, or even dishonesty, we believe it indicates so powerful a frustration with the poor performance of government institutions that Americans are

willing to throw out the baby with the bathwater, if that's the only choice they are given. We want to throw out the bathwater in order to save the baby.

That is why we view federalism in a very broad context—not as an end in itself, but as one of several frameworks for developing a new model of domestic governance suited to the Information Age, and capable of solving real problems.

Unfortunately, Mr. Chairman, I cannot agree that this year's debate in Congress on block grants for welfare, nutrition, health care, crime, or education, truly represents a debate on federalism, much less on reform of democratic institutions or a real devolution of power. In a PPI paper entitled "Blocking Devolution" that Kathleen Sylvester and I published in February, we argued that block grants as proposed in the 104th Congress were in fact a step back from genuine devolution, and an obstacle to real discussion on the subject. I would like to devote the balance of my testimony to a justification of that critical assessment, because you cannot have a debate without some agreement on terms.

Lest you conclude that our antipathy to block grants is motivated by partisan considerations, allow me to illustrate the limited nature of this year's federalism debate in Congress by contrasting it with the debate initiated in 1981 and 1982 by President Ronald Reagan.

The Reagan Administration proposed a number of block grants in its initial budget, and a broader array in the President's 1982 State of the Union Address. Block grants were never advertised as the centerpiece of Ronald Reagan's New Federalism concept, much less as its sum total. Generally speaking, the Reagan Administration

proposed block grants in areas with an unusually large number of small, narrow, and outdated categorical grants. Their purpose was not to give states total control of federal funds, but instead to allow more their flexible use by states to accomplish broad federal goals.

This year's block grant proposals are radically different in two respects, beyond the claim that they represent a comprehensive agenda for devolution. First, block grants are being proposed as a scheme to convert major entitlements into discretionary programs. Abolishing a federal entitlement to cash public assistance or to health care may or may not be a good idea, but's it's certainly remote from the traditional purpose of block grants, which is simply an administrative reform to promote more flexible management of federal-state grants. Second, the block grant legislation we've seen so far does not liberate state administrators of federal grants to focus on achievement of broad national objectives—those broad national objectives are themselves eliminated, and with them, any coherent rationale for providing federal funds in the first place.

Both in the Reagan budgets and in the 1982 State of the Union Address, block grants were clearly and honestly described as interim way stations towards full state assumption of selected federal responsibilities. Indeed, in the 1982 "swap" proposal, President Reagan laid out a carefully calibrated timetable for turning back both program responsibilities and the revenues to pay for them.

I have no doubt there are members of Congress who privately view this year's block grant proposals as a way station for eventual abandonment of federal

responsibilities to the states. But those predictions have remained private, which means block grant proponents have been relieved of the responsibility of explaining how states would find the revenue sources to unburden Washington of these fiscal obligations in the future.

The Reagan Administration's federalism proposals exhibited some internal consistency. Entire functional areas of domestic government were identified as appropriate for full assumption by the states, even if they included specific programs that were popular or which enjoyed support from powerful constituencies in the President's own party.

This year's block grants are full of inconsistencies. For example, the crime block grant legislation passed by the House earlier this year completely replaces categorical crime prevention and community policing grants supported by Democrats in last year's crime bill, while leaving in place a host of conservative prescriptions on states related to sentencing and prison construction. The House welfare block grant package totally eliminates federal eligibility rules for cash assistance in the name of state flexibility, but then prohibits eligibility for specific categories such as unwed teen mothers and legal immigrants.

Finally and most importantly, the Reagan-era New Federalism agenda reflected a thoughtful analysis of those areas of domestic responsibility which federal and state governments were best equipped to handle. You did not have to agree with the conclusions they reached to respect the seriousness of their effort. President Reagan's swap concept included a proposal to entirely federalize the Medicaid program,

because it was understood that sorting out federal and state responsibilities was a two-way street, not a one-way shift.

This year, many Republicans in Congress rightly argue that there is no one-size-fits-all federal solution to every national problem—yet they embrace a one-size-fits-all solution in block grants, for widely varying areas of domestic government. The casual and almost frivolous application of the block grant concept reached its apex last week, when Sens. Gramm and Faircloth proposed to turn Medicaid into a block grant, for the sole purpose of overcoming a formula fight over distribution of funds for the welfare block grant.

Ironically, the one step taken by the House in the 104th Congress that will have a major impact on the future of intergovernmental relations had nothing to do with federalism or devolution: the decision to reduce the number of committees and subcommittees and their staffs, and to limit the seniority system. Those reforms represent a real attack on one element of the "iron triangle" that typically defends narrow, prescriptive federal programs, and House Republicans deserve some real public credit for making it happen.

Mr. Chairman, the question you asked in convening this hearing, "Why doesn't Washington trust the states?", is the wrong question to ask about the debate over federal-state relations we've seen so far this year. Trust requires an honest and serious dialogue on commonly defined problems. Unfortunately, the block grant debate in Congress has brought out the worst in all its participants. With some honorable exceptions, Washington's block grant proponents appear motivated by a

narrow interest in federal budget savings, and by the usefulness of block grants as a way to avoid difficult federal policy questions that happen to divide Republicans. Meanwhile, state officials supporting block grants appear motivated by a narrow interest in controlling federal funds, in part because they believe the money's going to be cut in any event. Many block grant opponents are in fact opposed to any change in the status quo, and are happy to retail all the old horror stories about the alleged incompetence of the states.

In other words, Mr. Chairman, the block grant fashion really is "blocking devolution" at both the intellectual and political levels. This country needs a broad debate on devolution that goes far beyond the inside-the-boxes reorganization schemes of federalism scholars, and addresses the challenge faced by government officials at all levels in adjusting to the economic and social forces that are producing a radical decentralization of private institutions. Instead we are arguing about funding formulas for block grants.

Debating federalism and devolution in the context of the block grant approach is a bit like debating the American system of justice through the optic of the O.J. Simpson trial. It provides a departure point and stimulates public interest, but you pay a high price in clarity and mixed motives. I hope a real debate in the 104th Congress can begin with this hearing.

Mr. SOUDER. If it's acceptable to the ranking member, Mr. Towns, and Mrs. Morella, I think what we'll do is we'll go ahead to the third panel. We have an unusual opportunity. I don't think it's completely accidental that we started with what at least would be a more traditional, moving to the neoliberal, to the neoconservative, to the libertarian and traditional conservative, and it should be a very interesting comparison.

Mr. TOWNS. By all means, do that.

Mr. SOUDER. Mr. Nathan.

Mrs. MORELLA. Mr. Chairman, may I just acknowledge that among the groups that you considered kind of the real conservative is a constituent of mine, Roger Pilon.

Mr. SOUDER. Dr. Nathan.

Mr. NATHAN. As a former constituent of yours, I'm——

Mrs. MORELLA. And a former constituent.

STATEMENTS OF RICHARD P. NATHAN, DIRECTOR, NELSON A. ROCKEFELLER INSTITUTE OF GOVERNMENT; ROGER PILON, DIRECTOR, CENTER FOR CONSTITUTIONAL STUDIES, CATO INSTITUTE; AND DOUGLAS SEAY, DIRECTOR, THE GOVERNORS' FORUM, THE HERITAGE FOUNDATION

Mr. NATHAN. I'm glad you're having these hearings, and I think your characterization of the way we're lined up is a good one. I noticed, I want to start with what the chairman said in his letter, inviting me to participate. He gave me an assignment.

He said you will be participating in the panel advocating the devolution of current programs to the States. Now, I advocate some but not others, and I'm not as easy to position. None of my associates are either, as all of that. So I favor blocking some programs and not others, and there are important differences actually between me and I want to talk about some things in Mr. Peterson's testimony that hopefully will start on a discussion that has some liveliness.

Perhaps I should have been asked to be the referee. I could do that. But the first sort of conceptual point I'd make is that there's no one sorting out for all time. I have always thought that some functions should be centralized and some decentralized, going back to Nixon's New Federalism, when I worked in OMB on exactly these formula and allocation issues.

The remarkable thing about what I call the New(t) Federalism this year is that it is so broad. It takes a giant leap into the unknown, proposing to devolve to the States entitlement-type safety net functions, which is roughly two-thirds of all grants, as others have said.

There's the three C's of grant blocking. You cut, you cap, and you close the end. When you do that with these entitlement programs, I don't know what's going to happen. The bottom of page 2—one of my statements, says I'll be damned if I know what's going to happen, but it looks to me like we're headed toward radical nonincremental domestic policy this year in a way that is very exciting and very unusual.

The top of the second page of my testimony I say that when I worked on these issues on Nixon's New Federalism, we had FAP and FHIP, which Nixon wanted to centralize, welfare and health

insurance. And then the next line on my statement is where I part a little company with Mr. Peterson. And it's my favorite line in my testimony.

I say this, which I never said publicly before, policy analysts have to be honest. Now, I never said that before. And the reason I want to highlight that is that we tend to think of AFDC as a pure income transfer. And yet what the debate about it is about on welfare this year is changing behavior, is providing services so that we stop teenagers from having babies out of wedlock, get them to stay in school, get them into jobs. These are not income transfer functions.

The same, I think, can be said of Medicaid. It is very much a service mix, redistributive and service program, so that you've got to be careful not to oversimplify. Food stamps, I agree with Mr. Greenstein, I'm on his board and I speak like this just to give credibility to his wonderful center.

Food stamps are a pure transfer. And I personally have the most reservation about that, about devolving food stamps. So I am on the—I'm on the fence in the devolution revolution of 1995, which is a phrase I like.

I am concerned, like Mr. Peterson, about the race to bond. But I also in my statement in three pages talk about the opportunity that comes from block granting the programs that are the center of focus now for block grants, AFDC and Medicaid, and I think work force development, too, the opportunity to have truly integrated one-stop automated service systems.

In my testimony I talk about how caseworkers go out and they can't get parking places because there's so many people serving the same clients in our social programs. And there could be something really good that comes out of, I think, very possible big changes this year.

Commenting on Mr. Peterson's statement, and just to make the discussion interesting and like a seminar at Harvard or SUNY, he talks about governments doing what they do best. Now, I don't think that the Federal Government has a whole lot of glory to wrap itself in for what it's done in Medicaid or AFDC. Those are troubled programs.

And in AFDC, where the Federal role is what it has been, we have situations like in Mississippi, for example, just to show the contrast, benefits are so low that you get two and three times as much in food stamps as you do in cash, which is very unusual and I think a questionable arrangement. So I don't think it's as simple as some sorting-out theories often indicate, and I'm very unsure myself about what—and we're going to have a hearing next week in the Senate on this, on how this might all end up.

And just as a final comment, the hearing in the Senate next week is on formulas. And I, myself, have been doing some new formula runs to figure out ways to deal with this Pandora's box issue.

Once you open the Pandora's box and let Mrs. Hutchinson and her people go after the Northeasterners, Mr. Towns, you wonder if they can ever close the box. I have some ideas which I'll be happy to discuss with this committee which I'm working on for actually for next week, but very pertinent to the discussion today so far,

and maybe in the exchange that's going to come on what should be block granted and what shouldn't be.

Thank you for inviting me to testify.

Mr. SOUDER. Thank you very much.

[The prepared statement of Mr. Nathan follows:]

BLOCK GRANTS - SHOULD WE OR SHOULDN'T WE?

Testimony for the U.S. House Committee on Government Reform and Oversight

Richard P. Nathan

July 20, 1995

In my experience as a student of federalism and U.S. domestic policy, I have never seen a period as turbulent as the present one. I will be fascinated to see what eventually comes out of all of this and I am amazed by the strong likelihood of non-incremental - really *radical* - changes in federal grants-in-aid being made by the 104th Congress. And I am also surprised by some of the things that are happening like this "debate." Chairman Shays' letter inviting me to participate today gave me an assignment, and I quote: "You will be participating in the panel advocating the devolution of current federal programs and responsibilities to the states." Thanks but... I favor some block grants, but not others. I am not sure how far we should go in the "Devolution Revolution" of 1995.

Having served as an official of OMB in the first term of the Nixon administration, helping to design President Nixon's "New Federalism," I have always thought that some government functions should be centralized - others decentralized. The remarkable thing about what I call the "New(t) Federalism" is that it is so broad. It takes a giant leap into the unknown by proposing to devolve to the states entitlement-type "safety net" functions (AFDC, Medicaid, and maybe food stamps) which we have never done before. Roughly two-thirds of all federal the grant-in-aid money today is for this type of open-ended income transfer-program. (See the ACIR table on the history of federal aid from 1955 to 1994, which is **Attachment-1** to this testimony.) What happens when you cut, cap, and close the end on these programs? I'll be damned if I know.

Personally, I have always felt that income transfers for the poor should be centralized. This was Nixon's position with "FAP" and "FHIP," which are described in **Attachment-2** to this testimony presenting a brief history of block grants. But policy analysts have to be honest. Welfare today is not a pure transfer-type program. We also want to change personal behavior. We want to stop teenagers from having babies out of wedlock, get them to stay in school, and orient them to self-respecting lives of work and self-support. This involves a lot more than sending out a check. The process of achieving these behavior-modification goals cannot be micro-managed from Washington. Similarly, health care for the poor and the disabled under Medicaid is not a pure transfer function. Food stamps are more of a pure transfer, and personally I am reluctant about devolving this program to the states.

So I am on the fence. I worry about closing the end on entitlement programs and causing the proverbial "Race to the Bottom." But at the same time I see advantages to the "Devolution Revolution" of 1995 stimulating states to develop new and truly integrated systems to reform health, welfare, and social service programs. Where does that put me? Maybe I should be the referee in the debate you are having.

Although I only get my five minutes to say what I think could and should happen in the intergovernmental arena this year with the "Sword of Domiciles" of budget cuts pushing towards devolution, I want to add two subjects in my written testimony about what happens AFTER the revolution. The first subject concerns what the states could and should do to implement radical changes in American intergovernmental relations. This subject - *implementation* - never gets enough attention when we are preoccupied in Washington with legislative deal making as is now the case. Second, I want to comment on another subject that often doesn't get enough attention in times like the present. I refer to the need for *feedback*, that is, accountability mechanisms for the new devolutionary policy changes that may very well be enacted this year.

The Implementation Challenge

The familiar saying about problems being turned into opportunities is the theme of my comments in this section. Assume states receive a much higher degree of freedom in exchange for much lower levels of federal aid. The rhetoric that goes along with this bargain is that they can be more efficient if they are in charge. In economic terms, they can shift the production function, or in the vernacular get more bang for the buck. Assume further that the President vetoes the reconciliation act, that there is a 90-day Continuing Resolution, and that late in this calendar year the President, the Speaker, and Senator Dole shake hands on a deal (which all try to take credit for) that includes block grants or, whatever they are called, that look like block grants, quack like block grants, and give the states a lot more policy discretion and a lot less money. This "Big Deal" if it occurs will have important fine print. One fine-print detail is that the budget cuts are likely to take effect soon, say April 1, 1996, and that the block grant policies are likely to go into effect right away, with the understanding that it is up to the states to pass the necessary enabling legislation to create in each case their own particular version of this "Big Deal" for American federalism.

Assume further the following: (1) there is an eight-year glide path to a balanced budget in 2003; (2) the budget reduction numbers are somewhat (but not a lot) lower than in the recently-passed Congressional budget resolution; (3) there is a capped Medicaid program, whereby states can set their own benefits and eligibility rules without Waxman or waivers; (4) there is a welfare block grant with tough cut-off rules; (5) there is a workforce development block grant (a compromise between Goodling and Kassebaum) that gives states wide latitude; (6) the food stamp program (the biggest surprise element) is capped with a CPI escalator and automatic emergency add-on for recessions; (7) major changes of a similar nature are made in foster care, SSI for children, and child care for welfare families; and (8) all other federal grants are cut by 6

percent in FY 1996 and 8 percent over the remainder of the eight-year glide-path period. Add to this formulation that the unfunded mandates law is now on the books and that the ACIR (which I hope will stay in business) is hard at work on a study of existing mandates that present serious problems. And frost this cake with the possibility that the U.S. Supreme Court may move down the path to overturning *Garcia* and in selected specific areas (environmental and civil rights) loosening federal controls. Anything close to this would in my mind justify the designation of a "Devolution Revolution" if this is what comes out of the 104th Congress.

From my vantage point as far as block grants are concerned, I also see the possibility of a SuperBlock with functional-area earmarks that could provide the framework for a "grand compromise" on the contentious issue of interstate formula allocations.

A recent GAO report (GAO/HEHS-95-139) highlights opportunities for exciting management and structural reforms as part of an overhaul of American intergovernmental relations. Under such a new regime, states are likely to push hard to extend their Medicaid managed care system for medical and hospital care for the AFDC population and other poor people and also for institutional care for the elderly and disabled. Many states, I hope, will take advantage of such opportunities to link social services and create "One-stop" shops for coordinating case management across health (managed care) and welfare ("Jobs First," "Jobs Now," "Jobs Above All," or whatever), and the Employment Service, to which they could assign an enlarged mission with new powers for state economic development if a workforce development block grant is enacted this year or next. See **Attachment-3.**

Let me also sketch in another element to this picture that involves technology. I have been around for awhile, and I have seen more failures of program coordination than you can shake a stick at. I am now convinced that we have gone about this nice-

sounding but elusive goal of social program integration the wrong way. We have tried to do it top side by taking on bureaucratic battles that are not understood by the bushy-tailed policy wonks who invent new coordination systems.

There is a techno-fix that we are excited about in our work at the Rockefeller Institute that could give added power to program linkages under the new domestic policy regime. I refer to GIS, geographic information systems. When "Boston Market" locates a new restaurant, they use sophisticated computer mapping to assess the site. The same techniques are used by those awful telephone solicitors who call us all the time, by cable T.V. companies, and by marketers of all shapes and sizes. Why shouldn't the public sector (both for program management and program evaluation) use the same tool to modernize social services? There is no reason we shouldn't. The GAO points out that often these programs serve the same people. Jokes are often made about how case workers for different social services can't find parking places to meet with clients because so many agencies are serving the same families. If states really linked up their data systems for health, welfare, jobs, and social services, by requiring state agencies to share data for these programs, the new world of social program management would never be the same again. Instead of top down coordination that agencies and interest groups fight and defeat, put the data together to create "One-stop" systems for social services.

There is a little bit of good in everything: The little bit of good in the new world of domestic program devolution and federal deficit reduction is that states could be really innovative. Both governors and legislators have to be involved. Governors often devise bold new ways to organize programs and then direct that new systems be adopted, boasting that the salvation of society is at hand. But political bargaining in the legislature often prevents these "sliced-bread" schemes from ever being put into effect. If we are serious as a Nation about making basic structural change in the domestic

public sector, it is in state legislatures that big steps have to be agreed upon to capitalize on the kinds of non-incremental decisions for policy devolution now being considered in Washington.

The Accountability Challenge

Speaking of federalism, John Stuart Mill said that one function that has to be centralized is the intellectual one, namely, the job of designing actions for and assessing societal matters. You can't have the brains everywhere. The supply may be short, and it may not be worth the price anyway. The center should be the place where we decide how to define problems, how to assess what conditions are and where progress is being made in pursuing goals (both public and private). This is especially so with the kinds of big and bold new block grants now being considered. You should make sure there is feedback so the Congress and the public at large can understand and assess the different ways different states interpret and implement their mission under new block grants.

How do you do this? As a self-serving advocate of the business at which I make my living, I believe the new block grants should include requirements on the states, plus authority and money for data systems, regular evaluative reports, and research on what happens AFTER the revolution. I believe furthermore that you can't do this job the way the administration wants to do it with federally prescribed national performance measurement systems, which are an integral part of the administration's proposals for grant-consolidation packages. (I am not a fan of "GPRA" - the Government Performance and Results Act of 1993.) The states will "game" federally-prescribed systems for performance measurement every time, or at least most of the time. This is especially the case for service-type social programs like welfare, job placement and training, health care, education, etc. (Witness the history of the JTPA performance measurement system.)

My view is that big and bold new federal block grants should require and pay states to have their own goal setting, data gathering, and reporting systems. The proper federal role is to help them design and support such systems, encourage the sharing of ideas about how to do this hard job, and publicize the results from different states. Credit should be given for good results and good reports, and the Feds should indicate in discrete ways which states do not have a handle on providing feedback on what they are doing under block grants. I also think the national government should sponsor and support demonstration-type studies of best practices, using rigorous research methods to say how they worked - well, badly, medium. And finally, I myself have participated in studies of the overall systems for implementing new domestic programs that look broadly at what was decided as to the goals of a new program, and why, how, by whom, and for whom. In other words this involves taking a broader political science approach to understanding what happens when you snap your fingers in Washington and states and localities are operating under new rules. **Attachment-4** is a listing of previous studies of this type.

Mr. Chairman, I thank you for this chance to meet with your Committee.

Richard P. Nathan is director of the Nelson A. Rockefeller Institute of Government, the public policy research arm of the State University of New York, located in Albany. He chairs the board of the Manpower Demonstration Research Corporation and is a member of the U.S. Advisory Commission on Intergovernmental Relations. The ideas and opinions expressed here are the author's.

ATTACHMENT-1

Table C

Federal Grants-in-Aid in Relation to State and Local Outlays, Total Federal Outlays and Gross Domestic Product 1955-1994

(billions)

	Federal Grants-in-Aid (current dollars)					*Exhibits:* Federal Grants Constant Dollars (1987 dollars)		Grants for Payments to Individuals	
			As a Percentage of						
Fiscal Year[1]	Amount[2]	Percent Increase or Decrease (-)	Total State-Local Outlays[3]	Total Federal Outlays	Gross Domestic Product	Amount	Percent Real Increase or Decrease (-)	Amount[r]	Percent of Total Grants[r]
1955	$3.2	4.9%	10.2%	4.7%	0.8%	$15.3	4.1%	$1.6	50.0%
1956	3.6	12.5	10.4	5.0	0.9	16.7	9.2	1.7	45.9
1957	4.0	11.1	10.5	5.2	0.9	17.7	6.0	1.8	45.0
1958	4.9	22.5	11.7	6.0	1.1	21.0	18.6	2.1	42.9
1959	6.5	32.7	14.1	7.0	1.4	27.1	29.0	2.4	36.9
1960	7.0	7.7	14.5	7.6	1.4	29.1	7.4	2.5	35.7
1961	7.1	1.4	13.7	7.3	1.4	29.4	1.0	2.6	36.7
1962	7.9	11.3	14.1	7.4	1.4	32.2	9.5	3.0	37.2
1963	8.6	8.9	14.2	7.7	1.5	34.0	5.6	3.3	38.0
1964	10.2	18.6	15.4	8.6	1.6	39.7	16.8	3.6	35.0
1965	10.9	7.9	15.1	9.2	1.6	41.8	5.3	3.7	33.9
1966	12.9	19.3	16.1	9.6	1.7	48.5	16.0	4.3	33.2
1967	15.2	16.9	16.9	9.7	1.9	55.3	14.0	4.8	31.3
1968	18.6	22.4	18.3	10.4	2.2	64.3	16.3	6.1	32.7
1969	20.2	9.1	17.8	11.0	2.2	65.8	2.3	7.2	35.9
1970	24.1	18.2	19.0	12.3	2.4	73.6	11.9	8.7	36.3
1971	28.1	17.1	19.7	13.4	2.7	80.2	9.0	10.5	37.5
1972	34.4	22.4	21.7	14.9	3.0	92.8	15.7	13.9	40.6
1973	41.8	21.5	24.0	17.0	3.3	107.3	15.6	13.9	33.2
1974	43.4	3.8	22.3	16.1	3.1	102.3	-4.7	14.9	34.3
1975	49.8	14.7	22.6	15.0	3.3	105.4	3.0	16.8	33.7
1976	59.1	18.7	24.1	15.9	3.5	116.1	10.2	20.1	33.9
1977	68.4	15.7	25.5	16.7	3.6	124.3	7.1	22.7	33.2
1978	77.9	13.9	26.5	17.0	3.6	131.4	5.7	24.8	31.8
1979	82.9	6.4	25.8	16.5	3.4	128.1	-2.5	27.6	33.3
1980	91.5	10.4	25.8	15.5	3.5	127.6	-0.4	32.7	35.7
1981	94.8	3.6	24.7	14.0	3.2	121.5	-4.8	37.9	39.9
1982	88.2	-7.0	21.6	11.8	2.8	106.5	-12.3	38.8	44.0
1983	92.5	4.9	21.3	11.4	2.8	107.0	0.5	42.6	46.0
1984	97.6	5.5	20.9	11.5	2.6	108.4	1.3	45.4	46.5
1985	105.9	8.5	20.9	11.2	2.7	113.0	4.2	49.4	46.6
1986	112.4	6.1	19.9	11.3	2.7	115.9	2.6	54.2	48.3
1987	108.4	-3.6	18.0	10.8	2.7	108.4	-6.5	57.8	53.3
1988	115.3	6.4	17.7	10.8	2.4	110.8	2.2	62.4	54.1
1989	122.0	5.7	17.3	10.7	2.4	112.2	1.3	67.4	55.2
1990	135.4	11.0	19.4	10.8	2.5	119.7	6.7	77.1	57.0
1991	154.6	14.2	20.5	11.7	2.7	130.9	9.4	90.7	58.7
1992[r]	178.1	15.2	21.5	12.9	3.0	146.9	12.2	110.0	61.8
1993[r]	193.7	8.8	21.9	13.8	3.1	155.2	5.7	121.5	62.7
1994*	217.3	12.2	n.a.	14.6	3.5	169.6	9.3	137.6	63.3

n.a. – not available

[r] revised

* OMB estimate

Note: The number of federal grant programs funded was 132 in 1960, 379 in 1967, 426 in 1975, 404 in 1984, and 557 in 1992.

[1] For 1955-1976, fiscal years ending June 30; 1977 and later, fiscal years ending September 30.

[2] See *Special Analysis H* of the *1990 Budget of the United States* for explanation of differences between grant-in-aid figures published by the National Income and Product Accounts, Census, and OMB.

[3] As defined in the National Income and Product Accounts.

Source: ACIR computations based on U.S. Office of Management and Budget, *Budget of the United States Government, Historical Tables, FY 1995*, Table 12.1, p. 178; ACIR, *Characteristics of Federal Grant-in-Aid Programs to State and Local Governments: Grants Funded FY 1991; Intergovernmental Perspective*, August 1993, p. 30.

ATTACHMENT-2

History of Block Grants

The nomenclature of grants is not easy to explain when it comes to terms like "block grant." Historically, one can go back to the pre-Constitutional period for cases in which broad intergovernmental fiscal subventions were made to the states. During the period when the United States operated under the Articles of Confederation, the Continental Congress adopted the first grants-in-aid to the states, putting aside land for the support of public schools in territory west of the Ohio River.

It was not, however, until the twentieth century in the Woodrow Wilson years that the United States developed specific cash grants to the states that came to be known as "categorical" grants.

In an important way, the history of block grants is an outgrowth of this steady narrowing of categorical grants with specifications about their eligible uses, often a requirement of matching funds from the states, as well as other requirements regulating the use of these funds. Increasingly over time, there have been strong reactions to these practices, often referred to as the "proliferation" of federal grants and criticized for heavy handedness and intrusiveness on the part of the federal government.

Earlier Block Grants

Lyndon Johnson saw the writing on the wall. It was during his presidency that the idea of broader and less conditional block grants began to take hold in response to what the chairman of Johnson's Council of Economic Advisors, Walter Heller, called *"the hardening of the categories."*

In 1966, President Johnson proposed a block grant that consolidated several relatively small public health grants into a single more comprehensive grant for a range of health services. Then, a year later in 1967, Johnson took a bigger leap into grant blocking (although not enthusiastically) when his administration, with Republican urging, backed the creation of the law enforcement assistance grant. LEAA funds were distributed on a formula basis to states with a requirement that 75 percent of the funds provided be passed on to localities.

Block grants in the modern era have involved the consolidation of pre-existing categorical grants into broader grants with the combined stream of grant funds from the folded-in programs allocated to states and/or localities on an automatic formula basis. President Nixon's New Federalism saw the creation of several such block grants, notably for community development, employment and training, and social services. Nixon also won passage of the general revenue sharing program in 1972, which provided flexible aid on a formula basis to states and

localities. But this was not called a block grant, because the use of this aid was not limited to a particular function of government like law enforcement, community development, etc.

Three Types of Grants

Federal grants come in three basic types as to the nature of their end uses - entitlement grants, operating grants, and capital grants. Nixon's New Federalism called for blocking operating and capital grants, but not entitlement grants. That is, not Medicaid or Aid for Families with Dependent Children (AFDC). Nixon was a spender when it came to grants, and also for that matter other domestic policies in general. Besides his revenue sharing program (which involved distributing $5 billion per year in new funds to states and localities) Nixon's block grants included funds known as *"sweeteners."* The term referred to extra funds provided on top of the money contained in the categorical grants bundled together in a new block. Nixon added these sweeteners as an inducement to state and local officials to support his initiatives.

But, to reiterate, the main idea in understanding block grants is that Nixon did not recommend blocking entitlement grants. The term refers to grants that transfer income (both in cash and in-kind) to individuals and families based on defined conditions of need. States determine eligibility for benefits under these grants within federal guidelines. The national government reimburses the states for the benefits provided on an open ended basis. Whoever qualifies receives aid, and the state is reimbursed accordingly. The food stamp program is not a grant-in-aid. Food stamps are federal government vouchers, although administrative funds for the food stamp program are paid to the states as a grant-in-aid.

Nixon's "New Federalism"/FAP and FHIP

In advocating the sorting out functions in American federalism, Nixon argued that income transfers (cash, health care, foster care, school lunches, food stamps) should be made more - not less - national in order to assure equal treatment of the needy and to share this fiscal burden on a national basis. Neither Nixon's Family Assistance Plan (FAP) for welfare reform or his Family Health Insurance Plan (FHIP), which was similar to Clinton's 1993 proposal, were enacted. Actually, if FAP and FHIP had been enacted in the seventies, it would have saved a lot of grief over the past two decades, *right now especially*.

Reagan's "new federalism"

President Reagan's brand of "new federalism" (he didn't use the term, but the press did to describe his program) departed from Nixon's approach on this very point. In 1982 Reagan advanced his "swap and turnback" plan, which had the national government taking over Medicaid. In exchange, the states were to pick up the full responsibility for AFDC.

So, Reagan was on the fence intellectually on this federalism issue. He would centralize one income transfer program (Medicaid) and devolve another (AFDC). As it turned out, Reagan's "swap and turnback" plan never went anywhere; it was not even introduced in the Congress.

In the 1981 Omnibus Budget Reconciliation Act (OBRA), Ronald Reagan won enactment of nine new programs called "block grants" by his administration. They were for operating and capital functions - not for entitlement-type programs. Three were in the health field - for the prevention and treatment of substance abuse and mental health, preventive public health services, and maternal and child health care. Four of the "blocks" contained only one pre-existing grant. So, at least in my view, Reagan as a grant blocker was overrated.

Reagan's block grants and Nixon's, have one point in common that is very important when considering the ideas advanced by the new majority in the House of Representatives. Over time, these grants have *lost value*, both in nominal dollars and in real terms, i.e., adjusted for inflation. A recent report by Steven D. Gold from the Center for the Study of the States of the Rockefeller Institute of Government on nine block grants (some of Nixon's and some of Reagan's) showed that four declined in actual dollars over the ten year period 1983-93, one remained about the same, and all nine lost ground in real terms.

The "New(t) Federalism"

Enter the new House Republican majority in 1995: They are decidedly not on the fence intellectually when it comes to block grants for welfare-type (that is, entitlement) programs. Early on in the "100 Days," Speaker Gingrich and his House Republican colleagues set about creating block grants for entitlement grant-in-aid programs with a vengeance. The New Majority at one point advocated capping and blocking existing grants to create five new block grants - for AFDC, school lunches, foster care, Medicaid, and food stamps.

This is a distinction with a difference. Grants for payments to individuals now account for 63.3 percent of total federal aid outlays. Under the new Republican majority in the House they are, in effect, repealing the national safety net, which President Nixon built up and which Reagan said should be preserved.

The Essential Question

James Madison is much maligned when conservatives attribute to him and to the Federalist Papers the idea of devolving such welfare functions. Madison's Constitutional purpose was nation building, to centralize. Classical public finance theory in a similar way in the modern period assigns redistributional functions to the broadest population group in order to achieve equal (or close to equal) treatment for the needy and to share this fiscal burden widely. As a nation, we have done this - or at least moved in this direction strongly - since the nineteen thirties. The United States is by no means first among the industrial democracies in carrying out this safety-net function centrally, but in our own distinctive incremental bargaining process we have come a long ways. To block income-transfer programs to the poor is not just a management change. It represents *a basic change in direction* for American social policy.

ATTACHMENT-3

SIDE-BY-SIDE ANALYSIS

WORKFORCE DEVELOPMENT BLOCK GRANTS

Source

The Sar A. Levitan Center
Institute for Policy Studies
Johns Hopkins University

June 1995

A COMPARISON OF H.R. 1617 and S. 143

ELEMENT	*H.R. 1617*	*S. 143*
INTRODUCTION		
NAME	*Consolidated and Reformed Education, Employment, and Rehabilitation Systems Act; or CAREERS Act*	*Workforce Development Act of 1995*
EFFECTIVE DATE	*October 1, 1996 (FY 97), Secretaries given broad transition authority.*	*July 1, 1998 (FY 98), waivers available for FY 96 and 97.*
PURPOSE	*The purpose of this Act is to transform the vast array of Federal workforce development and literacy programs from a collection of fragmented and duplicative categorical programs into a streamlined, comprehensive, coherent, high-quality, cost-effective, market based, and accountable Federal workforce development and literacy system that is designed to meet the education, employment, and training needs of the workforce and the competitiveness needs of employers of the U.S., both today and in the future.*	*1) to make the U.S. more competitive in the world economy by eliminating the fragmentation in Federal employment training efforts and creating coherent, integrated statewide workforce development systems designed to develop more fully the academic, occupational, and literacy skills of all segments of the workforce;* *2) to ensure that all segments of the workforce will obtain the skills necessary to earn wages sufficient to maintain the highest quality of living in the world; and* *3) to promote the economic development of each State by developing a skilled workforce that is responsive to the labor market needs of the businesses of each State.*
FUNDING AUTHORIZATION	*FY 97: Youth Grant $2.308b. (20% cut); Adult Grant $2.263b. (20% cut); Literary $280m. (10% cut). Otherwise, such sums for FY 98 - 2002 as may be necessary.*	*$7 b for consolidated system and $2.1b for at-risk youth with 7% reserved for national activities and 93% allocated to States.*
SYSTEM STRUCTURE		
CORE APPROACH	*Over 100 programs consolidated into 4 grants to States: Adult Training, Adult Education and Literacy, Voc Rehab, and Youth Workforce Preparation.*	*Over 91 programs consolidated into one block grant with two funding streams; workforce education 25%, and workforce employment 25% and a "flex" account of 50% that can be used for either.*
FEDERAL ROLE	*Includes administration and management of national activities, LMI, setting guidelines for provider eligibility determination and MIS. Secretaries shall collaborate in setting common procedure for compliance with statutory requirements. They also set core indicators and world class performance levels in order to ensure a nationwide performance system*	*Role performed through a Governing Board, comprised of Secs of Ed and Labor and 3 reps from private sector, two Govs., two local officials and (as nonvoting members) Chairs and ranking members of House and Senate authorizing committees. The Board reviews/approves State plans; makes allocations to States; oversees LMI; negotiates State performance benchmarks, reviews performance, and initiatives performance awards/sanctions.*
STATE PLAN	*To receive a grant, the Governor has to submit a State workforce development and literacy plan to the Secs of Labor and Ed which includes:*	*To receive an allotment, Governor shall submit a plan to the Governing Board, including:* • *overall strategic plan for workforce*

	• *description of collaborative process* • *system goals* • *how State has established workforce development (wd) areas, local wd boards, 1-stop systems, and certification of training and service providers* • *how State will participate in national LMI system* • *voc rehab info* • *how coordination will be ensured* • *public input to plan* • *consultation with business and industry* • *assurance of fiscal control* • *sanctions State may impose*	*activities, including allocation of funds within the flex account, limits on economic development, how state will set and meet goals, obtaining business input, leveraging other resources, performance evaluation, plans for common data collection and reporting* • *workforce employment activities, including designated areas, one-stop system, performance indicators, LMI, job placement accountability* • *workforce education activities, including allotment of funds, activities, performance indicators, how State will meet goals for at-risk youth, evaluation, technical assistance, assessment of progress in meeting student performance measures*
PLAN DURATION	*remains in effect until mod submitted*	*three years*
AUTHORITY OF GOVERNOR	*If Governor cannot get agreement through collaborative process, has final authority to submit plan*	*After allowing comment, if Governor cannot get agreement, can submit plan with any such comments included*
WORKFORCE DEVELOPMENT AREAS	*Set by Governor; to consider existing labor market areas, units of government, areas served by ed agencies, SDAs under former JTPA*	*Governor sets substate areas taking into account labor market areas*
STATE BOARD	*Requires Gov. to bring together a specified group of people to work with him/her in a collaborative process to make decisions relative to the organization and planning of the workforce system; groups include presentatives of business, local elected officials, local ed agencies, postsecondary institutions, rehab council, orgs. representing individuals served by programs, employees, and lead State officials for education, econ dev, employment, postsecondary ed, voc rehab, welfare, and vets to:* • *develop the State workforce development and literacy plan* • *otherwise comply with the Act* *Gov. may use existing group to provide this function*	*Governor has to develop a strategic plan and obtain approval from: the State ed agency, business reps, labor and workers, local elected officials, voc ed officials, postsecondary ed official, other officials, including economic development as the Governor may designate. The Governor may establish a State Workforce Development Board, including the above officials, and a majority of business members, at least 25% labor and community based org reps. Gov. must establish the Board if any funds are to used for econ. dev. This board, chaired by a business person, would:* • *advise Gov on workforce dev system, the State plan, and State goals and benchmarks* • *assist in developing performance indicators* • *serve as link between business and system* • *assist in preparing annual report* • *receive and comment on State rehab plan* • *assist in developing LMI system* • *assist in monitoring and continuous improvement*
LOCAL STRUCTURE	*Governor ensures establishment of local workforce development board, selected by*	*Governor negotiates and enters into a local agreement with local partnership or local*

	chief elected official, which must include a majority of business reps, individual with disability, reps of ed. & cbos. *Board:* *1. develops biennial plan, including:* • *goals and strategies* • *performance measures* • *description of 1-stop system* • *strategy for involving community* *2. uses LMI to identify demand occupations* *3. sets budget and program oversight* *4. but cannot administer programs*	*workforce development board. Local partnership members selected by local elected officials and must include reps from:* • *business, industry, and labor* • *secondary and postsecondary schools* • *local elected officials* • *rehab agencies* • *cbo's* *Agreement must include how funds allocated to area will be spent to meet State goals and benchmarks, and how collaboration took place. If agreement cannot be reached, Governor, with 30 days notice advises how funds to be spent.* *Separate application for workforce education funds submitted by secondary, postsecondary, and adult ed eligible entities to State Ed Agency.*
PROGRAM DESIGN		
IN GENERAL	*Creates four block grants to States: Adult Training, Adult Education and Literacy, Voc Rehab, and Youth Workforce Preparation.*	*One block grant divided at State level into two separate streams with minimum funding levels: workforce employment (25%) and workforce education (25%). State flexibility on remaining 50%, but must use a portion of funds for school-to-work activities.*
SERVICES	*1-stop centers required. Core services and information available to general public through 1-stops. Intensive services available to general public if sufficient funds available.*	*1-stop centers required. Targeting of services at discretion of the Governor and local partnership; core services provided to general public through 1-stop.*
INCOME SUPPORT	*Income support similar to needs-based payments under JTPA Title III explicitly authorized.*	*Support services, including financial assistance, authorized.*
CERTIFICATION OF EDUCATION AND TRAINING PROVIDERS	*Certification required for providers to receive funds through vouchers or contracts. Extensive arrangements for certification and performance based information.*	*Where State chooses to use vouchers, State required to describe:* • *criteria for provider eligibility and* • *providing information about provider performance*
SKILL GRANTS/ VOUCHERS	*Vouchers are to be used for education and training in Adult Grant except for OJT, or where there insufficient certified providers or services for special populations.*	*Authorized but not required.*
NAT. PROGRAMS	*Authorization for national activities, but funding set at 60% of FY95 level.*	*Provides for national incentive grants based on performance, but silent on other national activities.*
SCHOOL-TO-WORK	*Consolidated/eliminated. Requires STW framework but has no funds for national incentive grants.*	*Consolidated/eliminated but existing States with STW grants must continue to implement using 50% flex funds. No specific STW framework but requires State funding for STW out of State flex grant.*
LABOR MARKET INFORMATION	*National Labor Market Information system established. Prescribes how Secretary to administer at national level.*	*National LMI system established. Governing Board given discretion on how to administer at national level.*
VOC REHAB	*Funds go to the Governor who designates an agency to administer, including*	*Continue as a separate authorization. Amends Title 1 of Rehab Act to achieve*

	participation in the development of the workforce development plan. *Agency is responsible for monitoring performance and providing training and best practices info to one-stop and voc rehab personnel.* *Planning requirements simplified. Consumer choice strengthened, and voc rehab closely integrated with adult training, delivering core services and specialized services through 1-stop centers.*	*greater coordination. Planning, timelines, and accountability are consistent with Workforce Development Act. Voc Rehab becomes part of the larger employment and training system in the State but retains separate authority and funding stream.*
ALLOTMENTS / ALLOCATIONS		
STATE AND LOCAL FUNDING	*For Title II, of the amount authorized, 20% or $25m.(whichever is less) may be retained by Secy, the balance is allotted to the States based on the percentage of Perkins 101 and JTPA 252 and 262 funds received in previous year. In subsequent years, percentages stay the same.* *Substate allocation - 90% of funds allocated to local areas, (40%), eligible institutions for in-school, (40%) for out of school. Governor sets within State formula for distribution based on poverty rates, proportion of youth, and other appropriate factors. Minimum grants specified.* *State may grant incentive awards from funds reserved for State.* *For Title III, 85% of authorized funds allotted to states based on proportionate amount received in last year under Title IIA and III of JTPA. Governor may reserve 20% of allotment for TA, innovative and experimental programs, 1-stop support, mis. No more than 1/4 reserved may be used for admin. Governor sets allocation formula based on poverty, unemployment, proportion of population or other factors.* *Title IV allotment for adult ed and family literacy based on proportionate number of eligibles in State*	*Formula for allotments to States based on general population, unemployment rates, numbers of low-income individuals, and welfare recipients. 7% of appropriation may by retained at the federal level, with 93% allotted to the States* *For Workforce employment activities, 75% shall be distributed to local entities, allocation formula using such factors as poverty, unemployment and the number of AFDC recipients in the State. For workforce education activities, 80% must be allocated in accordance with the formulas set out in the sections for secondary, postsecondary, and adult education.* *Flex funds (50%) - through a collaborative process, the State will decide how to use and allocate these funds, setting priorities according to the State's economic, educational, and employment factors. The approach to be taken is based on the model established in the STW Act.*
WORKFORCE DEVELOPMENT LOANS	*Secretary may provide grants to states for loans to employers or employee representatives for skills upgrading*	*No provision.*
ACCOUNT-ABILITY	*Consumer information and certification of service providers combined with consumer choice through vouchers. States establish core indicators under definitions of Secretary. States establish levels of performance for local areas, taking into account world class levels. States report levels to Secretaries. State failure to meet*	*Consumer information and certification of service providers required if vouchers used. States set appropriate benchmarks related to appropriate education and meaningful employment to meet broad workforce development goals and report annually on success in meeting benchmarks. Governing Board negotiates benchmarks with State.*

	performance levels for 2 consecutive years results in up to 25% reduction in grant. Feds grant incentive monies based on performance. For 2 year transition, certification of service provider can be based on JTPA performance.	*States failing to achieve benchmarks may have allocation reduced by up to 10% for 3 years and States may receive incentive grants for meeting or achieving benchmarks. States required to evaluate progress of all individuals through 1-stop system.*
MAJOR DIFFERENCES		
CONSOLIDATION	• *Employment Service remains separate* • *JOBS remains* • *Job Corps remains a federal program* • *Food Stamps E & T remains*	• *ES resources are a part of grant* • *JOBS is repealed* • *Job Corps turned over to Govs.* • *Food Stamps E & T is repealed*
FUNDING	*(See Allocation Section)*	*(See Allocation Section)*
APPROACH	*Organizes the system based on target groups*	*Organizes the system based on core activities*
PLANNING	*Unified approach to produce a one plan*	*Bifurcated approach that essentially has two plans*
FEDERAL	*Reduces but maintains federal national role and maintains existing administrative system*	*Cuts federal role significantly and establishes new administrative system*
STW	*No provision*	*Makes core provisions*
LOCAL BOARDS	*Required*	*Optional*
VOUCHERS	*Required*	*Optional*
PERFORMANCE	*Creates a more defined national framework for a consolidated and uniform performance measurement system for program activities*	*Provides more flexibility to the States in the development of specific performance benchmarks*
AT-RISK YOUTH DEFINITION	*Clear definition that extends beyond economic situation to include barriers to employment and school drop-out factors*	*Defined as economically disadvantaged*

ATTACHMENT-4

Selected Publications
Field Network Evaluation Studies

Revenue Sharing

Revenue Sharing: The Second Round. Richard P. Nathan, Charles F. Adams, Jr., and Associates,(Washington, D.C.: The Brookings Institution, 1977.)

Monitoring Revenue Sharing. Richard P. Nathan, Allen D. Manvel, Susannah E. Calkins, and Associates, (Washington, D.C.: The Brookings Institution, 1975.)

Community Development Block Grants

Decentralizing Urban Policy: Case Studies in Community Development. Paul R. Dommel, and Associates, (Washington, D.C.: The Brookings Institution, 1982.)

Block Grants for Community Development. Richard P. Nathan, Paul R. Dommel, Sarah F. Liebschutz, Milton D. Morris, and Associates, (Washington, D.C.: The Brookings Institution: prepared for the U.S. Department of Housing and Urban Development, Washington, D.C., 1977.)

Public Service Employment

Public Service Employment: The Experience of a Decade. Robert F. Cook, Charles F. Adams, Jr., V. Lane Rawlins, and Associates, (Kalamazoo, Michigan: W.E. Upjohn Institute for Employment Research, 1985.)

Public Service Employment: A Field Evaluation. Richard P. Nathan, Robert F. Cook, V. Lane Rawlins, and Associates, (Washington, D.C.: The Brookings Institution, 1981.)

Federal Aid to Cities

Federal Aid to Big Cities: The Politics of Dependence. James W. Fossett, (Washington, D.C.: The Brookings Institution, 1983.)

Federal Aid to Detroit, Thomas J. Anton

Federal Aid to Rochester, Sarah F. Liebschutz

Federal Aid to Houston, Susan A. MacManus

Federal Aid to Chicago, Charles J. Orlebeke

Federal Aid to St. Louis, Henry J. Schmandt, and Associates

Reagan's New Federalism

Reagan and the States. Richard P. Nathan, Fred C. Doolittle, and Associates, (Princeton, New Jersey: Princeton University Press, 1987.)

The Consequence of Cuts: The Effects of the Reagan Domestic Program on State and Local Government. Richard P. Nathan, Fred C. Doolittle, and Associates, (Princeton, New Jersey: Princeton Urban and Regional Research Center, 1983.)

Reductions in U.S. Domestic Spending. John William Ellwood, ed., (New Brunswick, New Jersey: Transaction Press, 1982.)

Welfare

Implementing JOBS: Progress and Promise. Jan L. Hagen and Irene Lurie, (Albany, New York: The Nelson A. Rockefeller Institute of Government, 1994.)

Turning Promises Into Performance: The Management Challenge of Implementing Workfare. Richard P. Nathan, (New York, New York: Columbia University Press, 1993.) A Twentieth Century Fund Book.

State Government Finances

The Fiscal Crisis of the States: Lessons for the Future, edited by Steven D. Gold, (Washington, D.C.: Georgetown University Press, 1995).

Research Methodology

The Methodology for Field Network Evaluation Studies, Richard P. Nathan (Albany, New York: Rockefeller Institute of Government). Reprint with permission from *Studying Implementation: Methodological and Administrative Issues*, edited by Walter Williams, Chatham House Publishers, Inc., Chatham, New Jersey, 1982.

Mr. SOUDER. Mr. Pilon, is that how you——

Mr. PILON. It's pronounced Pilon.

Mr. SOUDER. Pilon, thank you for coming.

Mr. PILON. Thank you for the invitation to be here. I'm Roger Pilon, Director of the Center for Constitutional Studies at the Cato Institute.

I should open my remarks by invoking the line from John Cleese in the Monty Python series: "And now for something completely different."

In listening to the discussion this morning, I am struck by how we are here to discuss federalism, and yet the discussion treats federalism, when it even uses the word, almost entirely as if it were a policy discussion, as if federalism were about policy questions.

Indeed, this is a quintessential, inside-the-beltway, policy wonk, green-eyeshades discussion, with the exception of a few of the opening remarks by the chairman. And I'd like to move it off that position, if I may, and raise the fundamental point that federalism at bottom is not about policy. It is about legitimacy. Indeed, it is a constitutional issue. And this is what I want to use as my driving theme throughout my brief remarks this morning.

I, too, was struck, as was Julie Belaga, by the question that is put before us: Why doesn't Washington trust the States?

Because it strikes me, especially after the November elections, that the proper question is: Why don't individuals and the States trust Washington?

And the reason, I submit, is not simply because Washington has failed in so much that it has tried to do, but, more deeply, because there is a more fundamental issue, namely, that Washington has assumed a vast array of regulatory and redistributive powers that were never its to assume in the first place. Not, that is, if we take the Constitution seriously.

Thus, the question that the people in the States are increasingly putting to Washington is simply this: By what authority do you rule us as you do?

That question, of course, takes us to first principles of the kind that the Supreme Court invoked just recently in the *Lopez* case, which was raised earlier this morning. That case sent shock waves through this town, which had not thought about the question for 60 years. Indeed, in the statute at issue, the Gun Free School Zones Act, Congress had not even bothered to cite the source of its authority under the Constitution for that act.

One can hardly fault the average American for finding in that a certain indifference, if not contempt for constitutional limits. And yet that's what federalism is all about at bottom. It is about constitutional limits. It is not about block grants and many of the other things that we are talking about here today. And nowhere is that more clear than in the 10th amendment, properly understood.

Now, the 10th amendment states: The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. It is, as the court said in *Darby*, a truism, but it is no less important for that.

Indeed, the crucial words in that truism are not Federal and State; they are delegated, the verb, and retained, the other verb.

And it's crucial to understand that you cannot understand the 10th amendment until you understand that it is informed by the doctrine of enumerated powers.

It is that doctrine that gives the 10th amendment substance. Because the Federalist Papers made it clear right from article 1—made it clear and the Constitution itself makes it clear in article 1, that all legislative powers herein granted, just as the 10th amendment makes reference to powers not delegated, prohibited and reserved, it makes clear that power begins with the people. The people in the original position delegate power. That power is enumerated in the Constitution, and it is limited by virtue of that delegation and enumeration.

In a nutshell, if the power is not delegated, the Federal Government does not have it. It's just that simple, as a matter of constitutional law. At bottom, then, the 10th amendment is not about Federal/State partnerships or turn-backs or swapping. It's about legitimacy, the legitimacy that is derived from delegation and enumeration. Yet today the Federal Government exercises powers, vast powers, of the regulatory and redistributive sort that the Founders would have simply been appalled to see.

How did we get to this state of affairs? We got to it through the demise of enumerated powers. Very briefly, in the New Deal era, the court simply looked the other way under pressure from the Roosevelt Court-packing scheme and opened the floodgates through a reinterpretation of the commerce clause and the general welfare clause. Through those two clauses we have gotten the leviathan we live with today, the leviathan we know and love so well. Those two clauses are the principal vehicles for government today.

It is absolutely striking to think that the Founders meant for Government to arise just through those clauses. If they had meant that, why would they have bothered to enumerate Congress' other powers, if Congress could do whatever it wanted through those two simple clauses?

The issue today, therefore, is that we have government all over the place. What can we do about rolling it back?

We have got to turn to some of the practical things that have been talked about here today as way stations. But the fundamental point must be kept in view: that government to be legitimate, government power to be legitimate, must be located in the Constitution.

Let me say finally a word about the States' rights issue, because I know the subcommittee is concerned about that. And here, too, we have an issue that has arisen because of a fundamental mistake in constitutional interpretation. It happened in the *Slaughter House* cases in 1872. Had that decision, that 5-to-4 decision, gone the other way, we would be in a very different situation today. We in all likelihood would not have had Jim Crow.

The privileges and immunities clause, which was eviscerated from the 14th amendment in that opinion, was meant to carry the principal substantive burden, was meant to provide the rights to the freed slaves that Jim Crow thereafter denied them.

We then had a sordid history of Jim Crow for almost 100 years. Properly understood, federalism does not strip the Federal Government of the power to regulate the States when those States are

running roughshod over the privileges and immunities of their citizens. Article 1 gives the courts the power to secure the privileges and immunities of citizens, the very power the Supreme Court abdicated in the *Slaughter House* cases.

Article 5 gives Congress the power to regulate, to secure the rights of citizens. In short, what the 14th amendment's privileges and immunities clause was meant to do was to ensure that the Federal Government had a power to negate State actions in violation of the privileges and immunities of citizens of the United States. This issue, properly understood, has nothing to do with federalism, it has nothing to do with the devolution issues and the 10th amendment we're talking about today. It has everything to do with the case of judicial abdication.

Thank you.

Mr. SOUDER. Thank you.

[The prepared statement of Mr. Pilon follows:]

STATEMENT

of

Roger Pilon, Ph.D., J.D.
Senior Fellow and Director
Center for Constitutional Studies
Cato Institute
Washington, D.C.

before the

Subcommittee on Human Resources and Intergovernmental Relations
Committee on Government Reform and Oversight
United States House of Representatives

July, 20, 1995 -

Mr. Chairman, distinguished members of the subcommittee:

My name is Roger Pilon. I am a senior fellow at the Cato Institute and the director of Cato's Center for Constitutional Studies.

I want to thank Congressman Shays for inviting me to testify on the subject of these hearings, "The Federalism Debate: Why Doesn't Washington Trust the States?" I want also to commend the subcommittee for holding these hearings, for the federalism debate is, without doubt, the most important political, legal, and constitutional debate taking place in America today, going to our very roots as a nation.

At the same time, I would have thought, especially following last November's elections, that the proper question was not "Why doesn't Washington trust the states?" but "Why don't the people and the states trust Washington?" For surely, it is distrust of Washington that drives the debate today.

And the answer to that question, I submit, has rather less to do, in the final analysis, with the policy concerns that infuse the subcommittee's statements to date on the subject than with a much more basic concern about political and constitutional legitimacy. In a word, the people and the states no longer trust Washington not simply because Washington has been doing a less than satisfactory job but, more deeply, because Washington has assumed a vast array of regulatory and redistributive powers that were never its to assume--not, that is, if we take the Constitution seriously.

Thus, the question the people and the states are increasingly putting to Washington is simply this: By what authority do you rule us as you do? That is a question that takes us to First Principles of a kind the Supreme Court itself revisited less than three months ago when it found, for the first time in nearly 60 years, that the power of Congress to regulate interstate commerce is not the power to regulate anything and everything.

The Court's opinion in *United States v. Lopez* sent shock waves through official Washington, not least because Washington had simply assumed, since the era of the New Deal, that its regulatory powers were plenary. Indeed, with the statute in question, The Gun-Free School Zones Act of 1990, Congress had not even bothered to cite the source of its authority under the Constitution. One can hardly fault the average American for finding in that a certain indifference, if not contempt, for constitutional limits.

Yet it is just such limits that federalism, in the end, is all about. To appreciate the point, however, it is necessary to go beyond the federal-state and states' rights debates that have dominated the federalism discussion. For the issues, at bottom, are not so much jurisdictional as substantive. And nowhere is that more clear than in the Tenth Amendment, properly understood.[1]

I. The Tenth Amendment and Enumerated Powers

The Tenth Amendment states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

By its terms the amendment tells us nothing about which powers are delegated to the federal government, which are prohibited to the states, or which are reserved to the states or to the people. To determine that, we have to look to the centerpiece of the Constitution, the doctrine of enumerated powers.

That doctrine is discussed at length in the *Federalist Papers*. But it is explicit as well in the very first sentence of Article 1, section 1, of the Constitution ("All legislative Powers *herein granted* . . .") and in the Tenth Amendment's reference to powers "*not delegated*," "*prohibited*", and "*reserved*."

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[1] I have discussed the issues that follow more fully in "A Government of Limited Powers," *The Cato Handbook for Congress*, ch. 3 (Washington, D.C.: Cato Institute, 1995); "On the Folly and Illegitimacy of Industrial Policy," 5 *Stanford Law & Policy Review* 103 (1993); and "Freedom, Responsibility, and the Constitution: On Recovering Our Founding Principles," 68 *Notre Dame Law Review* 507 (1993). For my brief thoughts on the *Lopez* decision, see "It's Not About Guns," *Washington Post*, May 21, 1995. at C5.

Plainly, power resides in the first instance in the people, who then *grant* or *delegate* their power, *reserve* it, or *prohibit* its exercise, not immediately through periodic elections but rather institutionally--through the Constitution. The importance of that starting point cannot be overstated, for it is the foundation of whatever legitimacy our system of government can claim. What the Tenth Amendment says, in a nutshell, is this: if a power has not been delegated to the federal government, that government simply does not have it. In that case it becomes a question of state law whether the power is held by a state or, failing that, by the people, having never been granted to either government.[2]

At bottom, then, the Tenth Amendment is not about federal vs. state, much less about federal-state "partnerships," block grants, "swapping," "turnbacks," or any of the other modern concepts of intergovernmental governance. It is about legitimacy. As the final member of the Bill of Rights, and the culmination of the founding period, the Tenth Amendment recapitulates the philosophy of government first set forth in the Declaration of Independence, that governments are instituted to secure our rights, "deriving their *just* powers from the *consent* of the governed."[3] Without that consent, as manifest in the Constitution, power is simply not there.

It is the doctrine of enumerated powers, then, that gives content to the Tenth Amendment, informs its theory of legitimacy, and limits the federal government. Power is granted or delegated by the people, enumerated in the Constitution, and thus limited by virtue of that delegation and enumeration. The Framers could hardly have enumerated all of our rights--a problem the Ninth Amendment was meant to address.[4] They could enumerate the federal government's powers, which they did to restrain that government. The doctrine of enumerated powers was meant to be the principal line of defense against overweening government. The Bill of Rights, added two years after the Constitution was ratified, was meant as a secondary defense.

Yet today the federal government exercises powers not remotely found in the Constitution, leading lawyers and laymen alike to say,

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[2] This is a point that Justice Thomas got exactly right in his trenchant dissent in *U.S. Term Limits v. Thornton*, 63 U.S.L.W. 4432, 4433 (U.S. May 22, 1995).

[3] Declaration of Independence, para. 2 (emphasis added).

[4] "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."

increasingly, that those powers are illegitimate.[5] How then did we get to this point, where the federalism debate is increasingly a debate about the very foundations of our system of government? I have discussed that question at length elsewhere.[6] Let me simply summarize the answer here, then turn to an issue that seems to concern the subcommittee, and not without reason--the connection, historically and prospectively, between federalism and "states' rights."

II. The Demise of the Doctrine of Enumerated Powers

Our modern regulatory and redistributive state--the state the Framers sought explicitly to prohibit--has arisen largely since 1937, and primarily through just two clauses in the Constitution, the Commerce Clause and the General Welfare Clause respectively. It is striking that this is so, for if the Framers had meant for Congress to be able to do virtually anything it wanted through those two simple clauses, why would they have bothered to enumerate Congress' other powers, much less defend the doctrine of enumerated powers throughout the *Federalist Papers*? That is the question that cries out for explanation.

The explanation, of course, is that the Framers intended no such thing. The modern state arose through judicial legerdemain, following Franklin Roosevelt's notorious 1937 Court-packing scheme.

In a nutshell, the Commerce Clause, which gives Congress the power to regulate commerce among the states, arose out of concern that the free flow of commerce among the states might break down if states, as under the Articles of Confederation, had the power to erect protectionist measures on behalf of indigenous enterprises. Thus, its principal aim was to ensure the free flow of commerce by giving *Congress* the power to regulate, or make regular, such interstate commerce. Not remotely did the Framers intend that the clause would be converted from a shield against state abuse--its use in the first great Commerce Clause case, *Gibbons v. Ogden*[7]--

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[5] *See, e.g.*, Gary Lawson, "The Rise and Rise of the Administrative State," 107 *Harvard Law Review*, 1231, 1231 (1994): "The post-New Deal administrative state is unconstitutional, and its validation by the legal system amounts to nothing less than a bloodless constitutional revolution"; Richard A. Epstein, "The Proper Scope of the Commerce Clause," 73 *Virginia Law Review* 1387, 1388 (1987): "I think that the expansive construction of the [commerce] clause accepted by the New Deal Supreme Court is wrong, and clearly so . . . ."

[6] *See* note 1, *supra*.

[7] 22 U.S. (9 Wheat.) 1, 187 (1824).

into a sword, enabling Congress, through regulation, to try to bring about all manner of social and economic ends. Yet today, following the Supreme Court's reversal in 1937,[8] that is just what has happened as Congress claims power to regulate anything that even "affects" interstate commerce, which in principle is everything.

The General Welfare Clause of Article 1, section 8, was also intended as a shield, to ensure that Congress, in the exercise of any of its enumerated powers, would act for the general rather than for any particular welfare. Here, however, Hamilton stood opposite Madison, Jefferson, and others in thinking that the clause amounted to an independent, enumerated power--albeit limited to serving the general welfare. But as Congressman William Drayton noted in 1828, if Hamilton were right, then whatever Congress is barred from doing because there is no power with which to do it, it could accomplish by simply appropriating the money with which to do it.[9] That, of course, is precisely what happened, which the Court sanctioned when it came down on Hamilton's side in 1936,[10] then a year later went Hamilton one better by saying that although the distinction between general and particular welfare must be maintained, the Court would not itself police that distinction.[11] Congress, the very branch that was redistributing with ever-greater particularity, would be left to police itself.

With the Court's evisceration of the doctrine of enumerated powers, the modern regulatory and redistributive state poured through the opening. One result of the subsequent explosion of federal power, of course, was the contraction of state power where the two conflicted--and the attendant federalism dilemmas. At the same time, individual liberty contracted as well--the preservation of which was supposed to be the very purpose of government. And finally, questions about constitutional legitimacy never did go away. As government grew, the idea that a Constitution designed for *limited* government had authorized that growth of power became increasingly difficult to sustain.

III. Federalism and "States' Rights"

But what about the sorry history of "states' rights" as a doctrine that southern states invoked by way of defending slavery and then, after the Civil War, the reign of Jim Crow? Does this

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[8] *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937).

[9] 4 *Congressional Debates* 1632-34 (1828).

[10] *United States v. Butler*, 297 U.S. 1, 65-66 (1936).

[11] *Helvering v. Davis*, 301 U.S. 619, 640 (1937).

not give weight to the question, "Why doesn't Washington trust the states?" Indeed it does, but here too there has been substantial misunderstanding over the years, with a seminal Supreme Court case at its core.

The tragic compromise that led the Framers to accept slavery in their midst is well known. It took a civil war to abolish that institution, and the Civil War Amendments to secure the legal rights of the freed slaves. Unfortunately, no sooner had those amendments been ratified than the principal vehicle for insuring substantive rights against state action, the Privileges and Immunities Clause of the Fourteenth Amendment, was eviscerated by a deeply divided Court in the *Slaughter-House* cases.[12] The clause has never been successfully revived.

On Blackstone's view, the clause referred to our "natural liberties." The Civil Rights Act of 1866, which Congress reenacted in 1870, just after the Fourteenth Amendment was ratified, made it clear that the clause was meant to protect the very rights Jim Crow went on to deny.

The demise, then, of the Privileges and Immunities Clause had nothing to do really with the Tenth Amendment or the doctrine of enumerated powers. It was a blatant case of judicial abdication that eviscerated the clause, thereby leaving the freed slaves in the South to the mercies of state legislatures.

Nor is there anything in current efforts to revive the Tenth Amendment and the doctrine of enumerated powers that should give pause--provided only that we are clear, and the judiciary is clear, that the Fourteenth Amendment gives the courts, through section 1, and the Congress, through section 5, the power to negate state actions that deny their citizens the privileges and immunities of citizens of the United States. Were the Congress to move to do that, the promise of the Civil War Amendments would at last be realized, not in opposition to federalism, but in harmony with it as perfected through those amendments.

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[12] 83 U.S. (16 Wall.) 36 (1872).

Mr. SOUDER. I would also like to note for the record and welcome Mr. Chrysler from Michigan to the hearing.

We'll go ahead with Mr. Seay.

And I'll give the chair back to our distinguished chairman.

Mr. SEAY. Mr. Chairman and members of the subcommittee, thank you very much for the opportunity to be able to appear before you. I'm Douglas Seay, I'm the director of the Governors' Forum at the Heritage Foundation. There is a liability often to——

Mr. SHAYS. Can you put the mike a little closer to you?

Mr. SEAY. There is a liability often to speaking last. The good stuff has been said before they get to you, and often said better than you yourself might have done. So I will try to focus on some other areas.

I would like to commend the Members here and the others interested in probing this subject. Long-time federalists, such as myself, I think, have gotten used to people being turned off by the subject. But as the chairman had indicated earlier, it is among the most important that we are facing.

Now the discussions of federalism to the extent that they occur are usually about who does what, the Federal Government or the States, about devolving power, how much, in what manner? Even though I'm a very strong advocate of the States, this issue of devolution I, frankly, don't know what the result would be if one asked, will the States do a better job?

Well, in some areas they're certain to do a worse job. That's, going to be quite clear. In some areas, they'll do better. But overall, I think that devotion is something that needs to be tried. But we should be realistic about the results that we expect to obtain.

Also, the debate often focuses on efficiency, and I think that is a misapplied focus. Obviously it is important to be efficient with the taxpayers' money. But government is not about efficiency. Governments really can't be efficient. If we want something done efficiently, we'll give it to the private sector.

Those tasks that the government does are tasks for which efficiency is not the first criterion. I have a number of problems with block grants. For one thing, I think they dangerously separate the taxing authority from the spending, and public accountability is lost.

When Washington raises the money and then gives it to the States to spend, it is difficult for the public to know who is actually responsible for the use of their money and for the results that it obtains. Plus, block granting programs to the States is, in my mind, not really federalism.

This is federalism as defined by Washington. It assigns the States roles that can easily be changed by Washington. This may be a part of federalism, but certainly shouldn't be confused with the real thing. But my interests focus on another aspect of federalism besides block grants, and I think it's one that isn't often discussed, but it's one I think is much more important. And that is the constitutional role of federalism.

When the Framers of the Constitution were setting up their system, having a very sober view of human nature, they did not base the system on individual self-restraint. Nor did they base it on written provisions, because neither of these are self-enforcing. In-

stead, they sought to harness self-interest to the public good by setting up opposing political forces.

Now, we know this as checks as balances. The phrase doesn't occur in the Constitution, and we're most familiar with it in the division into three branches of the Federal Government and their competition with one another. This is often referred to as gridlock, but I think it's a misunderstanding of the purpose of the Constitution.

The Constitution exists, at least in part, to make government decisions difficult to make, if not impossible in certain cases. But there's a more important component of the checks and balances than simply the division of powers within the Federal Government. And that is the checks and balances between the Federal Government and the States.

The Framers, knowing that the Federal Government itself would have a tendency to aggrandize its power, deliberately set up the States as an equal counterforce, hoping that both the Federal Government and the States would balance and check one another. However, the system that they have set up is almost entirely gone.

Certainly, the States are not capable of playing the political role that they had been intended to. The question is, is this a bad thing? Is it really something that should trouble us, that Washington now does things that perhaps Kansas used to do?

The problem is that there are now no limits on the Federal Government. It's hemmed in only by its own self-restraint, which the Framers, as I indicated, said was no restraint at all. There are no larger fiscal limits, as we have seen with having run up a $6 trillion public debt. But there are far more negative consequences than simply this.

The expansion of government has had very negative effects upon the network of social institutions known as civil society. Civil society allows communities to control the world they consist of and allow individuals to be connected to those communities.

Mr. SHAYS. Could I give you a 1-minute warning? Please wrap it up.

Mr. SEAY. OK. In the minds of the Framers, government was to establish a general environment within which society would govern itself through its voluntary social institutions. As government advances, society must retreat, it simply cannot compete.

The results are the range of social and even economic problems that we are faced with today that seem to be resistant to virtually all types of government efforts to ameliorate them. The only solution that I see is the restoration of civil society, which can only begin by the reimposition of effective restraints on the Federal Government, and that has to include a revival of the State power to do that. Thank you.

[The prepared statement of Mr. Seay follows:]

Douglas Seay

Director, The Governor's Forum

The Heritage Foundation

FEDERALISM AND THE REPUBLIC

Introduction

American national life awards no higher place in its hierarchy of values than the Constitution. Liberals and conservatives alike ground their political philosophies on the document; its creation has been the subject of endless praise and study; the system of checks and balance it brought into being is used as an exemplar for wide areas of endeavor. The oldest written constitution in the world, it is regarded as the supreme creation of the American political mind, and remains the final arbiter of legitimacy for all political activity.

Yet, for all of this universal adulation, the reality is that the praise is anachronistic. The applied Constitution in force today, the one actually governing the American commonwealth, is far different from the written document. This divergence of the written and applied Constitutions is the product of a radical transformation over a century in the making. Some of this occurred by consensus, some by extra-constitutional means. Taken together, these innovations have brought about a fundamental transformation of the American political, economic, and social systems, one never sought or approved by the Congress, the states, or the electorate.

The Constitution is justly famed for the many compromises it contains. Of those, the central compromise arose from the effort to establish and empower a national government, while at the same preventing tyranny, defined as the unrestrained exercise of power. The result was a carefully chosen list of powers to be granted to the federal government, which were restricted to the most necessary and narrowly defined purposes. Not trusting the new government to follow either the letter or spirit of these provisions, nor believing in the efficacy of self-restraint, the Framers selected as guardians the jealous sovereignties of the states and provided these with the most formidable institutional and legal armory they could devise.

The inevitable tension produced by these and other deliberately contrived opposing mechanisms often made for seemingly awkward processes of government; but that awkwardness conceals their most important purpose: the restraint of government.

In contrast with the central importance of government in all aspects of modern American life, the Framers of the Constitution had a far different understanding of the respective roles of government and society. For them, the purpose of government was to maintain a secure environment within which individuals, communities, and society as a whole would order themselves through the operation of voluntary social organizations, collectively known as civil society. By this means, the Framers sought to ensure liberty to individuals and allow them to exercise control over their communities.

This is the system which worked so well for most of the Republic's history. Yet, at the end of the 20th-century, it is incontestible that this conception no longer describes the actual relationships between government on the one hand and society and the individual on the other, for the latter half of the original constitutional compromise is gone. In fact, it has been wholly inverted.

Far from limiting the power of the federal government in any meaningful way, the Constitution is now used to justify the growth of government and its continuing centralization in Washington. At century's end, there are no effective checks on the federal government's reach;

its reach has expanded enormously into every area of public and private life, leaving none untouched and displacing social institutions and representative government with pernicious effects.

Government Unrestrained

Surveying the American landscape, an observer would be struck by the number and range of social, economic, and other problems which, after decades of ambitious government programs and trillions of public dollars, only seem to be growing worse. The list is a long and familiar one: pervasive crime, low educational standards, high taxes, enormous budget deficits, reduced economic growth, decaying cities, a decline in the social order and quality of life, and so forth. New programs are regularly announced in Washington to address these problems but, despite perennially optimistic predictions, they continue to worsen.

For many, it has become clear that, far from being the source of solutions, the federal government's activism is the root cause for much of the intractability of these problems. Not only does the federal government bear considerable responsibility for creating or exacerbating these ills; it has also reduced or even blocked the ability of individuals and communities from attempting to deal with these problems. It is this marginalization of civil society which is perhaps the most damaging effect.

Although the federal government has neither solved nor substantially ameliorated any of these problems, its expansive activism has brought about a profound transformation of the American system of government and its relationship to the individual and society. Whereas once the federal government was restricted only to those powers necessary for the maintenance of a general environment in which society was free to act and to order itself, now all decisions regarding virtually every aspect of society are either made by Washington or are subject to its review and approval, with the individual citizen and society as a whole made increasingly passive recipients of these decisions.

This combination of widespread social and economic ills with the feeling of helplessness on the part of the citizenry in dealing with them, has led to increasing frustration, even rage, at Washington in all sectors of American society. Aspiring office-holders have learned to identify themselves as being in the "anti-Washington" category, but a succession of such elections has yet to fundamentally alter the existing system.

In seeking to address this problem, many would-be reformers are led to advocate appealing, but ultimately ineffective, solutions. By themselves, none of the many piecemeal efforts at reform, from term limits to opposition to unfunded federal mandates to proposals for a balanced budget amendment, are likely to produce decisive results, even if enacted. For example, term limits may have some beneficial effects, but the larger problem of a distant and unrestrained government they seek to correct does not lie in insufficiently active or unethical individuals in Washington, but in the system itself. Replacing officeholders while leaving the larger system intact is likely only to reproduce the same patterns of behavior.

These and other proposals seek to treat symptoms, and not the source of the malady which lies in the system itself, especially the consequences of its radical transformation over recent

decades. To have any chance of success, any proposed solution must aim at reforming the entire system.

Federalism: The Key to Reform

An essential element to any reform is the restoration of clear limits on the federal government. This should not be regarded as a partisan matter, nor motivated by an anti-government rationale, for the federal government has not only a proper role to play in the nation's life, but an essential one. Instead, it is an effort to restore the ability of government to carry out its responsibilities, which it cannot do without enforced restraints on its freedom of action.

If they are to be effective, these limits cannot be dependent upon self-restraint nor held hostage to the vagaries of future judicial interpretations. Sober in their appreciation of human nature, the Framers understood that only through the operation of opposing political mechanisms in which self-interests are pitted against one another can paper restraints be enforced. The key role in this salutary struggle of contending interests they naturally allocated to the states as the parties most interested in restraining Washington's power. It has been the progressive elimination of the states' ability to exercise this equal political role that has virtually removed all restraints on the federal government. In the resulting inexorable march to the current situation, the Constitution's written limitations by themselves have proven to be singularly ineffective as barriers to determine political actors.

The answer is not to be found in a simple repeal of the century's accumulated errors. Federalism in its original form cannot be revived, as no argument for repealing the popular election of senators is likely to be acceptable politically. But the role of the states can nevertheless be significantly enhanced beyond their current vestigial level, and the powers of the federal government correspondingly reduced, through other means, including enhancing the role of the states in the making of national policy and granting them greater autonomy in a broad range of areas.

The goal would not be simply to transfer the operations of the federal government to the states, although the benefits of such a transfer would be several, including an enhancement of public accountability and flexibility. The far greater benefit would result from their check and balance of the federal government as a consequence of their defense of their own autonomy. By so doing, the states would serve to protect civil society from the withering intrusion of government.

FEDERALISM IN AMERICA

In its original conception, and throughout most of the history of the United States, the federal government was never intended to be as the national decision-maker on the range of public issues. For most of our history, the individual states had far greater powers to represent and legislate for their citizens than did Washington, and the totality of those powers was quite limited: society was recognized as being largely self-regulating through its many institutions.

In their debates over the Constitution, the Founders were concerned with two competing objectives: establishing a central government with sufficient powers to carry out a carefully enumerated set of responsibilities while also creating safeguards against the abuse and expansion of that power. This concern grew out of their own experience: The Founders had rebelled against what they regarded as tyranny: the unchecked operation of government, regardless of its motives, however positive. And they were determined to avoid recreating it themselves. As a result, the limited responsibilities accorded the federal government were confined almost exclusively to those directly concerned with maintaining a secure environment in which the states and society could operate without undue hindrance.

Far from authorizing the creation of a national decision-maker, the framers devoted considerable effort to making its emergence impossible. To ensure restraint, they purposely hobbled its decision-making processes with several undemocratic elements. Not only were the processes of election to national office made elaborate, but the reaching of consensus among the branches of government were deliberately made quite difficult, with a wide range of individuals and groups being armed with an effective veto power. Getting something done was supposed to be hard; stopping something from getting done was made easy.

Of the many checks and balances written into the Constitution as a safeguard against tyranny, the best known is the division of the federal government into three competing branches. However, this provision is effective only in balancing the powers of the three branches relative to one another; it does not address the problem of restraining the absolute power of the federal government as a whole, nor its power relative to the states and society. In fact, the separation of powers actually works to encourage an expansion of the federal government's overall reach by allowing each branch to operate largely independently and to compete in expanding its authority into all areas of society.

Restraint of the absolute and relative power of the central government was to be secured through two principal means: the absolute power was limited by a careful delineation of the areas of authority granted to the federal government, along with several specific prohibitions against its assumption of any additional powers, a safeguard reinforced by the sweeping and definitive language of the 9th and 10th Amendments. The relative power was to be restrained by what has come to be known as federalism, i.e., the states as sovereign powers collectively and individually would comprise a natural adversary to the expansion of the power of the central government. The protection of the interests and autonomies of the states from encroachment by the federal government was regarded of such importance to the stability of the whole that a second chamber -- the Senate -- was established for the exclusive purpose of representing the political interests of

the state governments and granting them a prominent role in all national lawmaking, including a collective ability to initiate and veto legislation, as well as the consent to administrative, military, and judicial appointments. Understanding that the atomized population, as represented in the House of Representatives, could itself pose no sustained bulwark against the expansion of the federal government, the Founders sought to achieve an effective counterweight by enlisting the jealous sovereignties of the states as watchful guards against encroachments by Washington.

Although federalism is conventionally described in terms of a technical arrangement of divided and shared powers according to competency, in actuality the central purpose of this division of powers is not one of efficiency but to enable the federal government and the states to check and balance each other, and thereby prevent either from an unrestrained exercise of its powers. That it has manifestly failed to do; for the power and reach of the federal government has undergone an enormous expansion and now has few restraints other than limitations on resources.

The Federal Ascendancy

The federal government's acquisition of greater power at the expense of that of the states has been a prominent feature of American history, especially following the Civil War and the Amendments enacted in its aftermath. But it is in this century that the greatest expansion of the federal government's power has occurred, and at an accelerating pace.

The new era was heralded by ratification of the 16th and 17th Amendments in 1913, which together removed key restraints on the federal government's range and the resources it is able to employ, thereby laying the foundation for its subsequent expansion. The 16th Amendment authorized differing levels of income tax and armed the federal government with a virtually unlimited taxing authority. By mandating the popular election of Senators, the 17th Amendment gutted the role of the Senate as protector of the interests of the states and removed them from participation in national decision-making. At a stroke, the most effective political mechanism for the maintenance of a balance was abolished, and with it the ability of the states to restrain Washington.

These innovations were quickly matched by the piecemeal removal of the remaining constitutional and legal restrictions on the federal government's range of action. The most important development in this respect was the enunciation by the Supreme Court in the 1920's of the revolutionary doctrine that the Constitution was fully applicable to the states, a viewpoint which the Founders and the drafters of the 14th Amendment -- the provision most commonly cited in support of this new interpretation -- had explicitly rejected. Now, not only were all state laws, regulations, and court decisions subject to federal judicial review and approval, but the potential scope for national legislation and executive action was greatly expanded into hitherto untouched areas of state responsibilities and even into areas which no level of government had previously touched. The determination of the limits of that power were left solely in Washington's hands.

The federal government was quick to exercise its new freedoms in response to the emergencies of the Depression and World War II. Here, the most fundamental change was not the vast new powers assumed by the federal government but the change in the public's outlook,

whereby the federal government became synonymous with government in general, and it became regarded as the principal decision-maker in all areas of social and public concern. As a result, action by Washington became the only effective vehicle for addressing the wide range of social and economic problems.

This included an ever-broader definition of the parameters of those powers traditionally exercised by the federal government, with intentions increasingly at odds with their formal purposes. For example, whereas in the early 19th century, Henry Clay's call for the federal government to undertake a system of limited internal improvements such as turnpikes and canals was bitterly assailed as an unwarranted and unconstitutional expansion of the federal government's powers, the 1950's witnessed Washington's largely uncontested inauguration of the massive interstate highway system under the guise of the National Defense Highway Act.

Courts Create Federal-State Imbalance

Although during this time of transition the states retained the bulk of their formal authority within their own borders, the change in public attitudes set the stage for the next revolution: the vast inflation of the federal government's powers, and the deliberate diminution of those of the states, by the federal judiciary's radical reinterpretation of the Constitution. Not content with removing restraints on the executive and legislative, the Supreme Court and the federal judiciary embarked upon an unprecedentedly activist role, striking down reams of state and local law, and replacing these with increasingly detailed and broad court orders, the effect of which has been to subject all aspects of society, from government to private activity, to detailed review and corrective intervention by the courts.

Although much of the Supreme Court's activity in this area was stimulated by the civil rights movement, federal court rulings have reached into all areas. As the activity of the federal courts has grown, the states have been emasculated and forced into a wholly subordinate role; even their constitutions are amended by the federal courts at will. Given that the responsibility for interpreting the Constitution has traditionally been the prerogative of the Supreme Court, its assumption of activist role, and its willingness to assist the federal government's expansion of power, has meant that there is no practicable limit to its powers. This revolution carried out by the federal courts has perhaps been the most damaging blow to federalism over the long term, for Congress and the executive branch could not have expanded their powers over the past few decades without the consent and active support of the federal courts.

In effect, there has been a radical revision of the Constitution, one not only approved by, but in large part carried out by, its self-appointed keeper, the Supreme Court. And the process shows few signs of slowing: new powers are annually granted by the federal government to itself.

This de facto amending of the Constitution has occurred without any public vote or formal amendment. Those provisions such as the 10th Amendment that had been intended as absolute guarantees have been totally eviscerated. The result is one wholly counter to that intended by the Framers.

From a system of enumerated powers with a self-evident content and application, the integrity of which was maintained by the actions of contending political powers, the Constitutional system now in effect is one whose expanse and guarantees are entirely defined by interpretation by

the federal courts. There is no law, regulation, social organization, or private activity at any level which cannot be struck down or altered at will by any five members of the Supreme Court. It is for this reason that the once routinely approved appointments to the court have become brutal political battlegrounds, for the replacement of even a single individual can alter the definitions, operations, and obligations of every aspect of government and society. There are no limits to this: even sections of the Constitution itself have been cast off and delegitimated, not through amendment, but through "reinterpretation."

The Effects of Revision

The negative consequences of this vast expansion of power by the federal government extend far beyond the abstractions of political theory; many of the ills facing the United States, including the range of social and economic problems, are directly related to the federal government's expanded role. Certainly, the intractability of these problems in large part is due to this change.

One effect has been to make the political system more rigid and thus less adaptive to changing conditions and the electorate's preferences and therefore more likely to do harm. In discussing the merits of federalism, reference is often made to the benefits of experimentation by the different states, the so-called "laboratories" of public policy. The existence of different approaches to similar problems can provide policymakers with valuable evidence regarding the comparative advantages of one course over another, as well as identify the ever-present unintended consequences. Mistakes, to the extent that they occur, are confined to single states; benefits can be extended to the entire country.

By contrast, the centralization of decision-making in Washington has had the effect of imposing a pervasive and heavy-handed uniformity throughout public policy. The negative consequences entail more than merely a loss of flexibility and of experimentation; by removing decision-making further away from the people it affects, increased bureaucratization usually results. As a result, mistakes are much more difficult to correct, or even notice. Edicts from Washington usually do not allow for appeal, and in any case, with a monopoly on policy, there is rarely the opportunity to amass evidence of the superiority of alternative approaches. To be noticed by distant, bureaucratic Washington, mistakes must produce enormously bad effects and on a national scale, usually over considerable periods of time.

The quality of decision-making has been significantly reduced as well. As the number of bills introduced in Congress has risen dramatically, the time available to examine any of them has correspondingly shrunk. Complex legislation affecting broad ranges of society is often written by very small groups of staff members and consultants, with little or no oversight; bills commonly are voted on by members who have only an outline knowledge of their content. Even assuming honesty and competency, the long-term consequences for the public from such legislation are almost never addressed in a comprehensive manner. Decision-making in the regulatory bureaucracy is even less responsive and informed.

A more insidious effect of the federal government's expanded role is the greatly enhanced opportunity provided to special interest groups to influence decision-making behind closed doors in favor of their particular agendas, with the costs passed on to the larger society. With decision-

making centralized in Washington, away from scrutiny and outside control, these interest groups -- economic, social, political, and ideological -- wield enormous influence. Virtually all are aware that their agendas cannot be implemented through the electoral process because they do not benefit the public.

The negative effects are evident in every area of society: Rampant crime, mediocre public education, a welfare system that has created a seemingly permanent American underclass, an ever-increasing federal tax burden, and enormous budget deficits that mortgage future generations. Nor can the federal government ever have sufficient competence to ensure a positive impact on such public policy areas as America's global competitiveness or revitalization of the community and family. The federal government has consciously preempted state, local, and private control over most of these issues as it has taken upon itself the role of imposing open-ended social and political reforms on American society. Washington's involvement in these and other areas has diverted scarce resources from state and local governments and other organizations that are far better equipped to solve these problems. The federal government cannot solve them, but as long as it has the power to try, it will; and it is this heavy-handed approach which will ensure that no real solutions are possible. In fact, often the most positive action the federal government can take in these areas is to remove itself from policy-making.

Deligitimizing Society

The growth of Washington has had the effect of rendering the individual and society helpless and passive. Originally, the Constitution was written to guarantee the liberty of the individual and the free workings of society; government was established to guarantee the larger framework in which these operated. Now, however, the same document is used to empower the federal government's assumption of ever-greater responsibilities over each, as its provisions are used by the federal courts, Congress, and the executive branch to justify their impositions on society, down to the smallest details.

Even as ever-greater areas of their lives are subject to increased legislation and regulation, no individual or group of individuals is likely to regard themselves as able to affect the far-off, mysterious process of rule-making. Their participation is limited to a choice of either protesting or ratifying the entire package, with little or no possibility of having a specific effect on anything. In effect, they cannot have any role in determining anything which affects them directly: none of the laws produced by their elected representatives to govern the communities they live in can withstand the displeasure of Washington and must conform to the parameters that are established for them.

Instead of being protected and allowed to regulate itself, society, in the form of social institutions and local government, has been almost entirely emasculated. The federal government's responsibility to protect society has transmuted into an ambitious effort to displace it; the autonomous workings of society, moderated by local governments directly accountable to their citizens, have been suppressed by unchallengeable federal regulations, directives, and court orders.

Unable to exercise any substantial control over their community, the average citizen has little option but resignation and a growing resentment stemming from watching the ongoing

breakdown of society. The large-scale effort needed to engage the federal government's attention is beyond all but the largest organizations. Even identifying the source of the problem is virtually impossible, beyond "Washington" or "the government." As a result, there is a perennial sentiment to "throw the bums out," creating endless opportunities for anyone, even incumbents, who run "against" Washington, but such expressions of discontent have no possibility of producing true change.

Correcting the Problem

The restoration of limits on the federal government entails restoring a balance between the powers of the federal government and those of the states. The durability and effectiveness of these limits, in turn, depend upon the states reclaiming a collective authority sufficient to treat with Washington as an equal. Only then can a revival of civil society and of the individual's control over their community be effected. The means for accomplishing these varied tasks is through a revival of federalism.

This will be a difficult and complex endeavor. Not only have the institutional and conceptual frameworks been so profoundly altered as to now depict the vastly expanded range of the federal government's powers as normal and constitutional, but a host of powerful interest groups which have an enormous stake in preventing any dilution of Washington's power are arrayed against any such attempt. These include not only economic and political interests, but ideological ones as well. Their determined and well-organized resistance to change must be assumed.

Given the extent to which the provisions of the Constitution have been harnessed to serve Washington's interests, and the profound alteration of national institutions, the necessary degree of change probably cannot be secured through existing channels. The electoral process is unlikely to provide an avenue for a restoration of federalism or even for a halt in the expansion of Washington's power. There are no organized groups in Washington, including those charged with the responsibility of representing the interests of the states, that have a compelling interest in promoting federalism. One administration may prove more or less accommodating to the interests of the states than another, but only within very narrow parameters. Members of Congress may be attentive to the needs of their home state, but have little incentive to advance the interests of the states as a whole. And the extension of federal power by statute, bureaucratic regulation, and court rulings, continues to grow. The last vestiges of state responsibility in areas such as crime, education, and welfare, continue to erode. The political process has become so tilted toward Washington that even conservatives focus their energies and attention on capturing power in the national government and base much of their platforms on replacing the imposition of liberal Washington policies on the states with conservative ones. But the fundamental relationship would remain the same. Thus, even the natural allies of federalism now concentrate their attention on national agendas.

Given the fact that the public has come to see Washington as the principal governmental actor across the range of issues, and as unhappiness with the current state of affairs tends to devolve upon incumbents as opposed to the system itself, it is unlikely that any candidate for

national office can be persuaded to adopt a platform of having Washington do less for his constituents or that the electorate can be convinced to vote for him.

To the contrary, many are not satisfied with existing pace of federal action. As ever-wider areas of economic and social policy are concentrated in Washington, there are constant pressures to accelerate the process of decision-making by the federal government and also to increase the detail. Especially prominent are the perennial calls to remove "gridlock." These range from inveighing against any obstacle to swift legislation to proposals for merging aspects of executive and legislative power.

The pejorative connotation of "gridlock," however, is a profound misreading of the purposes of the Constitution: gridlock was deliberately incorporated into the operations of the federal government so that decision-making would be made deliberately difficult. This was not just to make decisions more contemplative and consensual but to prevent many decisions from being made at all. Opposition to an activist government that is constrained only by its own self-limitations -- regarded as the source of tyranny regardless of its motivations -- was the central purpose of the Revolution and a central focus in the framing of the Constitution. Removing those restraints on action which remain would constitute the last step in the complete overturning of the intentions of the Founders.

Even assuming electoral success by those pledged to limit or even roll back Washington's reach, any successes in so doing are likely to prove disappointing and ephemeral. It is unlikely that the U.S. will elect a more conservative president than Ronald Reagan, yet under his administration only limited successes in retrenching federal power were possible, and most of those were quickly rolled back by his successors, Republican and Democratic alike. To a large extent, the system mandates activism: conservatives in power will be forced to address problems from a national perspective or risk being accused of irresponsibly allowing problems to go untreated when an array of federal instruments are at hand to address them. As long as the federal government's power exists unchecked, the pressure to use it -- to "do good" -- will be politically irresistible.

What is required are systemic changes. Because the Constitution has been so profoundly altered, a restoration of a balance of power will require constitutional changes. These changes are easy to enumerate, but the mechanism for their enactment is far from obvious. The current route of amending the Constitution is not workable: Congress has been unwilling to forward to the states any amendment which truly limits the federal government's power or the workings of any of its branches.

The Revival of the States

Once the states were toppled from their collective position as the principal enforcers of limits on Washington, no other restraint on the federal government arose to take their place. Inexorably, they have been relegated to the sidelines, powerless to prevent the further evisceration even of their own prerogatives. Nevertheless, the responsibility for bringing about the necessary changes to restore a new form of federalism inevitably devolves upon the states.

Given that many in the state governments have become used to a subordinate relationship toward Washington, with little leverage to extract favorable decisions from federal officials on

even the most minor of issues, it may surprise them to learn that the states already possess the requisite power to force changes upon Washington. Largely unrecognized by state officials and others is the fact that the states, specifically their legislatures, not only share the amending power with Congress but, uniquely, have the unique ability to amend the Constitution by themselves. Congress alone cannot amend the Constitution; it can only pass its recommendations on to the states for their ratification. But the Constitution provides the authority to the states to propose and ratify amendments. In a sense, the states comprise the Board of Trustees of the Constitution, and they have the clear constitutional authority to alter it to suit their wishes without restriction. Although it is popularly said that the Constitution is whatever the Supreme Court says it is, the truth is that the Constitution is whatever a constitutional majority of the states -- 38, the current minimum needed to secure passage of an amendment -- say it is.

This unlimited latent power, however, is difficult to use, for it can only be employed collectively. Establishing a consensus among 38 states and thousands of legislators is difficult enough. More serious is the fact that this process has never been used, and would seem to require a Constitutional Convention to employ. The very thought of such a convention is troubling to many on both the left and the right who worry about their opponents' ability to bring forward unwanted amendments, such as a provision for or against abortion, or a runaway convention which would radically alter the Constitution. Fears of the latter do have precedent: the original Constitutional Convention was called to make only limited improvements to the Articles of Confederation, but ending up scrapping the older document altogether. There are ways to substantially eliminate this possibility, but it remains a troubling concern for many would-be allies of federalism.

A far greater obstacle, however, will be the resources and efforts employed by organized interest groups to block either a revival of federalism or any particular amendment. Restrictions on Washington's power will be particularly opposed, as these groups understand that their agendas cannot be implemented through the ballot box, but only through imposition by Washington.

Conclusion

The self-described intention of the Framers of the Constitution was to establish a system that would last "for the ages." Unwilling to rely upon the self-restraint of individuals wielding governmental power, they set up an elegant and self-correcting set of balancing forces, both within the federal government and between it and the states, hoping thereby to reduce, if not eliminate, the ability of government -- whether for perverse purposes or good -- to exercise its coercive powers unrestrained.

Major elements of that original design remain in robust health after over two centuries, but certain others, including those vital to the system's integrity, have been effectively nullified and by the very government they were inteded to constrain. Were they to survey the operation of the system they set in motion, the Framers might not be surprised by the deleterious effects of this constitutional revolution -- after all, they had given warning against them -- but they would very likely be genuinely troubled by the passive complicity of the people in the dismantling of the central elements of their wondrous engineering achievement, the protective structure which keeps

the elements inimical to American liberties at bay. For they knew that only if the citizenry is determined to control its government can the Republic endure.

Douglas Seay
July 19, 1995

Mr. SHAYS. I thank you, Mr. Seay.

What I'd like to ask each panelist, I'd like to ask you what the most—what statement you disagreed with most by another panelist. In other words, take the comment you disagree with most, and then explain why you disagree with it. And some of you may need a little more time to think about it, but someone want to start off? I mean you all didn't get to comment on what was being said there, but what did you disagree with most that was said by someone else?

Mr. Peterson.

Mr. PETERSON. Well, I would like to first preface that by saying that I agreed most strongly with the comment——

Mr. SHAYS. That's fair.

Mr. PETERSON [continuing]. With the fellow from the Heritage Foundation. So maybe that—maybe that should just——

Mr. SHAYS. Tell me what you agreed with most, and in a succinct way I want you——

Mr. PETERSON. I will. And that was the point, that block grants divorce taxing from spending. I've never seen a Governor who hasn't wanted a block grant. What's better than having the Federal Government give you some money and you can spend it any way you want? Terrific.

Let Congress get the blame for raising the taxes and then you get to spend the money free for nothing. That's great. I agree with that. It really says that if the Federal Government's going to spend the money, they should say, OK, this is what you should spend it on. And if—if you think the States can do it themselves, then let them raise their own money to do it. And there's a lot of things States can do very well.

The thing that surprised me was Professor Nathan's comments, because as Bob Greenstein just pointed out to me, his position on federalism was included in a report, "To Form a More Perfect Union." And in this, he said exactly—in this report, that was signed by Charles Robb and Daniel Evans and included Alice Rivlin on it and Richard Nathan. The report recommended basically what I've recommended to you today, turn over responsibilities for the economic development to the State and local governments and leave the redistributive responsibilities to Washington. So that—why he would disagree with this principle that he agreed with when he wrote this report is curious to me.

Mr. NATHAN. Can I get equal time?

Mr. SHAYS. Unless I disagree with your point. No, I'm being facetious. Everybody's going to have a chance here. Please indicate what you agree with and what you disagree with most about what someone else said.

Mr. GREENSTEIN. I guess the—it's a question of framework. Among the things I——

Mr. SHAYS. Excuse me, you know what I am going to do? I am going to go back and forth here. Is that right?

Mr. GREENSTEIN. That's fine.

Mr. SHAYS. Would someone here like to make a comment, Mr. Nathan? Would you like to?

Mr. NATHAN. Well, I'll respond. When you asked me the question what I most agreed with, I was going to agree with the gentleman

to my left saying his comments were something completely different. I thought they were petty much on point. But I'd like to respond to what Paul Peterson said. And I most—I commented, I said when I gave my testimony, that there are things on page 6 of his statement that I disagree with. And he—you know, what Emerson said about hobgoblins of small minds, I was on that Rob Evans Commission. And I always thought that AFDC should be, and Bob Greenstein will be interested in this, should be a national program, because it's redistributive to the poor. It gives money to the poor.

But all the debate about welfare, since 1988, since the Family Support Act, has been about changing behavior. How do you deal with out-of-wedlock births? How do you get people trained for jobs? How do you teach them to read? There are three types of Federal grants. There are grants for operating purposes, capital purposes, and entitlement or income transfer purposes.

The way people think about income, about AFDC today and welfare for families, the nonaged, nondisabled family category, has changed. And I think we have to recognize that it is very much a service challenge that everybody in Washington is talking about.

I testified before the Finance Committee with Charlie Murray, and all anybody could talk about was out-of-wedlock births. And about 12 Senators came and that's what they talked about. Now, that is not an appropriate national function, to agree with my colleagues here.

I don't think that the National Government can deal with the behavior problems of the poor people in distressed areas where we have some ideas about how we want to change their behavior in line with national values about family life and work and staying in school.

Mr. SHAYS. Mr. Nathan, thank you for your comments. I'm going to try to ask you to be a little shorter just because I'm going to try to get all six of you, then I'm going to yield to my colleagues.

Mr. GREENSTEIN. I'm going to continue along the same line of discussion and say that I think some of the comments, and including some of Dick Nathan's, and Dick and I talk a lot about these issues, to me, are both part on target and part miss the point. And that is the following, and I'm going to be a broken record here.

The point I tried to make in my testimony was that we really need to distinguish financing structures, like block grants, from the according the flexibility to States. The commission on which Dick Nathan served in the mid-eighties, Ronald Reagan's chief federalism expert was on it. It was across the political spectrum, called for taking some broad areas of the Federal Government, not block granting them, but completely devolving them, and others that there was a very important Federal role and that was most particularly true of some programs for low-income families where some States have more poor people and less tax capacity than others. That hasn't changed.

Dick Nathan makes a very good point that there's now more interest in how to affect behavior through these programs, and that that probably shouldn't be dictated by the Federal Government. The point that I was trying to make is that in areas like AFDC and Medicaid and food stamps, one can give States the flexibility to set

their own rules in the behavioral areas and the service delivery areas and the training areas for welfare recipients in the way that Dick Nathan proposes, and do it without a block grant funding structure which has the quite different problem of not responding to recessions, not responding to population growth, and getting the wrong amount of money in the wrong State at the wrong time.

And since you're here, I'll give one quick example. To your State, Connecticut, your State has just reduced payments in the AFDC program. If one were to do a food stamp block grant, and one were to, as Governor Engler calls for, base it on each State's share of the total in 1994, Connecticut would be very heavily disadvantaged, because it had higher payment levels in 1994. But why should in the year 1998 Connecticut get fewer food stamp funds than another State that has the same AFDC benefit level, just because it lowered its level after 1994 rather than before 1994?

So I'm trying to distinguish the financing question, where the Federal Government would recognize that different States' economies, different States' wealth, different States' taxing capacities change over time, from giving States the flexibility, as the Lugar food stamp bill does, as Chafee's Medicaid bill he's developing I think will do, give States the flexibility to make those rules without having them hit a wall in recessions or when population raises.

Mr. SHAYS. Let me ask Mr. Pilon, am I saying your name correctly?

Mr. PILON. Yes, you did. I had corrected it earlier, but you weren't here. You got it right.

Mr. SHAYS. I asked someone who was here.

Mr. PILON. OK, you cheated a little, all right.

Mr. SHAYS. But I didn't trust him enough.

Mr. PILON. Let me just say that my colleague here, Mr. Nathan, remarked that what he agreed with was my statement that my remarks would be something entirely different. And over the laughter, you did not hear him say, and yet his points are exactly on point. And that's what I want to return to. Because it strikes me again that the discussion throughout is assuming a kind of business-as-usual approach. That is to say, we're now simply talking about how we transfer these Federal programs to the States to carry out, as though there were no question, but that these programs will continue.

And my point throughout my testimony is this: What are we doing running these programs to begin with? I mean, is it the idea that we take the subsidies for the National Endowments for the Arts and CPB and so forth and then give them to States to subsidize? Is it that we take all these programs and just give them to the States, let them fund them?

I mean the fundamental question that I'm trying to bring us back to is, that this is not a policy issue. This is an issue of principle. May I remind you, ladies and gentlemen of the panel, that James Madison, your predecessor, rose on the floor of Congress in 1794, when a welfare bill was introduced of the kind that Professor Peterson is talking about when he says redistributive spending should stay with the Federal Government, developmental spending should be at the States, never even asking the question, well, is there authority in the Constitution for this redistributive spending.

That presumes, in other words, that the Constitution arose like the Phoenix in 1937, and the first 150 years was just back there. Well, James Madison rose on the floor of the Congress when this bill was introduced, this welfare bill, and said, I cannot undertake to lay my finger on that passage of the Constitution that authorizes us to expend the money of the taxpayers on this welfare measure. Two years later, his colleague from Virginia, William Giles, when faced with a similar bill, rose from the House floor to say, our duty is to uphold the Constitution and the oath we took to do so, not to engage in these humanitarian activities.

Contrast that with Franklin Roosevelt, writing to the chairman of the House Ways and Means Committee in 1935: I hope you will not allow any reservations about the constitutionality of this bill, however well founded, to stand in the way of its passage. Contrast that with Rexford Tugwell, one of the principal architects of the New Deal, writing in Center Magazine in 1968: In order to get our programs through we had to engage in, "tortured interpretations of a document intended to prevent them."

Well, it is just those kinds of programs that my colleagues over here on the right are talking about preserving, the kinds of programs that have no place whatever in the Constitution. To put it in a nutshell, most of what you are doing today is illegitimate. It enjoys no constitutional foundation. This is a Congress without constitutional clothing, and it is increasingly recognized as such.

I have a quote, for example, from Prof. Gary Lawson, now at the Northwestern University Law School, from the Harvard Law Review. "The post New Deal administrative State is unconstitutional and its validation by the legal system amounts to nothing less than a bloodless constitutional revolution." And Congressman J.D. Hayworth——

Mr. SHAYS. In interrupting you you'll think that I'm trying to shut you off because you're saying we're illegal. That's not my purpose.

Mr. Kilgore.

Mr. PILON. I made my point, I think.

Mr. TOWNS. If you will continue to yield 1 second. I think it's important, he says what we're doing is naked, and I think that's an interesting point.

Mr. SHAYS. He got to you, huh?

Mr. TOWNS. Yeah. I think it's a——

Mr. SHAYS. He was going to leave, and now you kept him.

Mr. PILON. This is more interesting than Waco.

Mr. TOWNS. Fine, I'm hearing what you're saying. But still, specifically, how do you propose giving the States what you say is their rightful power? I don't hear that.

Mr. PILON. How do I propose giving it to them?

Mr. TOWNS. Yeah.

Mr. PILON. I don't propose you give it to them. I propose you stop doing what you're doing and let them assume it. Because these are powers that are, as the 10th amendment makes clear, retained by the States or the people.

Mr. TOWNS. I mean I really don't understand how we do that. Could you just—Mr. Chairman, could you just yield just another minute to me? Because he's saying a lot of things here, and I want

to follow him, because, you know, he's very articulate. I mean he sounds good, you know. But I am having difficulty following you.

Mr. PILON. Well, I know you are. Because you're at this point in the 20th century. What you are asking is very much like what is being asked today in Moscow.

Mr. TOWNS. I am having trouble following that, too.

Mr. PILON. It's very much what is being asked today in Moscow. I was at a conference that Cato put on there in 1990, and again in 1991. And there they were. The regime was collapsing about them, the regime which had power in Moscow, planning every facet of their lives. And now the question is, how do we get out of this mess? It was easy to get into it. We socialized property and people's activities. Now, what do we do?

Mr. TOWNS. How do we get out of it?

Mr. PILON. That's exactly the question you're putting to us.

Mr. TOWNS. That's correct.

Mr. PILON. And there is no easy answer to that. I'm sorry, that is something——

Mr. TOWNS. OK. I yield back, Mr. Chairman.

Mr. PILON. That is something I don't have an answer to. My simple solution, and your solution, and you're going to have to do this over time, you do what Chile did, for example. You privatize the Social Security System, and today it's a remarkable success. You move toward a tax system that allows for medical IRA's. It would solve a host of problems with respect to Medicaid that you're never going to solve by trying to micromanage them at this level.

Mr. SHAYS. I'd like two others to just respond, Mr. Kilgore and Mr. Seay. And I'm going to ask you to try to be a little shorter, because you'll get other chances to comment. We are not going to leave for a while. We're going to stay for a while. We're going to have a good dialog here.

Mr. KILGORE. I have very mixed feelings particularly about the point of view being expressed by my colleagues from Cato and Heritage. On the one hand, I think it's very important to recognize——

Mr. SHAYS. Excuse me, Connie, did you have anything you want to say?

Mrs. MORELLA. No, I find this fascinating. I want to thank all the panelists.

Mr. SHAYS. Thank you for being here.

Mr. KILGORE. Federalism, much less block grants, really is a subject which needs to be seen in a much larger context, in essentially of how we make—how we achieve public goals through the least bureaucratic and least coercive method possible, of which privatization is one method.

Devolution of power through vouchers or empowerment strategies is another. And most importantly, as my friend from Heritage indicated, through figuring out how to reinvigorate the civil society. But I do have to say this. If we—if federalism advocates wait for an institutional or a constitutional solution to the current system, and refuse to engage the inside-the-beltway policy debate over—that goes in the name of federalism or devolution, you'll be waiting a very, very long time.

The problem is there is no political constituency for the 10th amendment. Let's be blunt about that. The reason we are—have

any attention on this subject this year is that the subject of federalism happens to coincide with the political agenda of the party that happens to control the House and the Senate of Congress. So we have to—we have to begin with—if you're concerned with a long-term institutional solution to our system of federalism, you have to begin with how you build a political constituency so that the public knows what you're talking about.

Mr. SHAYS. Interesting.

Mr. SEAY. Well, as Ed Kilgore knows, a veteran of a very bloody institutional battle on this subject, having been deeply involved for several months with the Conference of the States project, which those of you who have heard of that will probably shrink in horror, my simply mentioning the name. I know I do.

What I wanted to address isn't really so much a disagreement, is what some of a number of the other panelists have already addressed, why doesn't Washington trust the States? I think there's an implicit assumption on the part of many who advocate or who worry about the States, can they carry out these responsibilities, and because they may not be able to meet a standard that it should be retained by the Federal Government.

Well, it is not the States that aren't being trusted. It is the population. Because what is actually being implied, whether deliberately or not, is that the populations, the electorate, the taxpayers, either are too ignorant or too mean-spirited to do these things. And if they don't want to do them, then Washington will simply force them to do them. And that, I think, is a very dangerous assumption to make. But it's one that I think is implicit in the position of those who question the States ability to carry out these functions.

Mr. SHAYS. Mr. Chrysler.

Mr. CHRYSLER. No questions.

Mr. SHAYS. Mr. Souder, I will ask a question, too, unless you're prepared to jump in.

Mr. SOUDER. Why don't you go ahead.

Mr. SHAYS. OK. What value does—well, let me put it this way. I have different areas that I want to talk about. I want to talk about block grants, because I'm fascinated—my background is I have an MBA, an MPA. My MPA is in public finance. We got a little issue of spillover effects and the kinds of revenue and their purposes and so on and so on. Some Members have said, listen, if we raise the money, why don't we have the right to tell the States how to spend the money.

I think that's a pretty logical argument on its face. The problem is, my challenge with that view is that which Julie Belaga has expressed pretty soundly. I am someone who does not find government offensive, and feels that government has a role to play, a positive role. The challenge is in trying to sort out what that role is. I have had to wrestle with the fact that the Federal Government doesn't handle this responsibility very well.

It does some things well. But for most things, what it ultimately does is adopt a one-size-fits-all approach. We have shoe sizes, 3 to 18 with the Federal Government there's a size 9 and everybody has to fit it.

I think of environmental law and I think we've solved our wetland problem in the Northeast, but candidly, most of Louisiana is a wetland so we basically tell Louisiana you can't do much. And they have a problem with that. And I understand it. I have seen the creativity that I long for in government happen at the State level, not the Federal level.

Now, having said that, just to preface my remarks and then throw it open, I look at national service. National service is a Democratic program with a Republican delivery system. In some ways it's a Republican program. But it's clearly Republican in its delivery system. We say two-thirds have to be State and local.

Now, what's the danger with that? Some States are going to do it well and some States are going to really screw it up. You're going to have, instead of that lowest common denominator view of the Federal Government. Some States that are going to be worse off and some that will be better off. The critics on my side of the aisle go after and pick out the programs they don't like and say, see, national service stinks, instead of saying, my God, look at the great things it's doing here and here and here.

So what is my bottom line? My bottom line is that I understand the Federal Government getting involved in spillover effects.

We are not going to get into the debate yet of whether it's constitutional or not, because we can have that debate. But, I'm going to make an assumption right now that it is. And I'm going to make an assumption that it exists; that, you can't disagree with me on. I don't have a problem with the spillover effects and understand why it has to happen.

I can't have New Jersey polluting Connecticut. New Jersey is not going to deal with its pollution because the air doesn't stay there. It comes right over Connecticut. Connecticut has the third worst air quality in the country because of New Jersey and New York, candidly, I'm not throwing stones, but that's the fact. So I have no problem saying we should step in there.

Where I debate the issues are on other issues about the whole concept of why we're doing a block grant. I'm doing block grants because I think States can do it better and local governments can do it better. I'm absolutely convinced of it. Some of them will do it worse. And, yes, we are using federalism as the vehicle to discuss that issue. I throw my comments out. Yes, sir.

Mr. PETERSON. Well, I think your comments, Mr. Chairman, are really on target and very helpful. The Federal Government tries to make one-shoe-fit-all kinds of different circumstances and it makes lots of mistakes. And it always will. And just a lot of things should be turned over to State and local governments. And I think there's a lot that is being done in the legislation that's going through Congress today that's moving in that direction and doing a good job.

And I would even go further. I'd say if you're moving toward a block grant in transportation, just why do you need a block grant in transportation? You can pretty much expect the States and the local governments to raise the money themselves if they need to do it.

Mr. SHAYS. But I can answer that question. The answer to that question is I want a three-lane highway to match a three-lane highway in New York that matches a three-lane highway in Penn-

sylvania. And so I have no trouble understanding why the Federal Government would step in and say here are some dollars if you do it our way, a Federal mandate with money, then you can use our dollars. I have no trouble with that whatsoever.

Mr. PETERSON. Yes, I would agree. Now that we have the interstate transportation system pretty much put together, there's less of a need for that than there was in the 1950's when that was being proposed. But there's just a lot that could be done in that area.

I think that the problem is that this whole question of what should the Federal Government do and what should the State and local governments do has become so political, so partisan politics, that you can't sort of say, well, yes, some things we can turn over to State and local governments and other things are just going to be very difficult.

I mean it's really hard to imagine the Social Security Program being run by 50 different States. It just is unimaginable that you could do that. One State would say, OK, we'll have a retirement program, and everybody would move to that State to get the benefits. I mean it just wouldn't work. And that's true with a whole range of social programs. And now you can say, OK, well, we'll block grant those and we'll give a block grant to the States, but that means that any time that you have a change due to economic circumstances or population growth or unforeseen circumstances, then you've got an imbalance developing.

Mr. SHAYS. Let me just throw a point over here, then I'm going to ask Mr. Souder if he has any comments he wants to make.

Mr. PILON. May I respond, Mr. Chairman?

Mr. SHAYS. I'll be happy, Mr. Nathan, and then——

Mr. NATHAN. Let me say I really agree with Mr. Kilgore, as a way to think about, Mr. Shays, what you're saying. He says that whether we like it or not, we got to talk about what is—are the instruments. And block grant is an instrument for loosening up on Federal control, which a lot of Republicans want to do now. And I would add to what Mr. Kilgore said.

He said the reason that we're here today is because you're interested in block grants. But the real reason we're here is you're interested in reducing the Federal deficit. The real reason you're putting block grants on the table with such assertiveness is you want to take $180 billion over 7 years out of Medicaid and $100 billion over 7 years out of AFDC. And the only way to do that is by putting——

Mr. SHAYS. I'm just going to correct you, just because you're in the Washington mind-set. No, we want to spend a hell of a lot more money in each program. We just don't want to spend it——

Mr. NATHAN. I misspoke. Against current services, I completely understand your correction, sir. But the point is that once you want to say you can only spend—a particular State can only spend this much on those two programs, Medicaid or AFDC, you've got to give them freedom to figure out how to stay within that amount of money, that amount of increase, reduced from what the current service projection is. So I think that Mr. Kilgore's right; that if we want to talk about giving the States more influence and more power in relation to our budget goals, block grants are the instru-

ment, like it or not. And if we were going to start over again, maybe we wouldn't like it at all.

I also think that we're on to something here about whether just because a program is a low income program to help the poor, I mean really your rationale comes down to saying that's why it should be open-ended. And that's a debate we'll have, I'm sure, after the hearing. So I'll just point out that I've—I'm sure I got Mr. Greenstein thinking about that.

Mr. SHAYS. I'm going to stay for a little bit longer. This fascinates me. I appreciate my staff getting such fine speakers here. That's very interesting.

Mr. Pilon.

Mr. PILON. Yes, the question you asked, Mr. Chairman, about the proper relationship between Federal and State governments, was answered 200 years ago as an institutional matter, not as a policy matter. It was answered as a jurisdictional matter, informed as a substantive matter by the theory of enumerated powers. What you have done, though, is recast it in its modern version, where federalism is not a jurisdictional matter, but rather becomes a policy matter. It's what one might call——

Mr. SHAYS. We have an hour more of debate and we could spend a whole day on your issue. We may come back to the legitimacy of what we're doing.

Mr. PILON. But there's a deeper point I want to point to. When you do that, you're up against a well-known problem, and that's why this debate is going on today, just as it went on in the Reagan administration, just as it went on in the Nixon administration, in the Eisenhower administration, and 10 years from now, you will be sitting here, if you're still here, having this same debate. Because economists, for example, of the public choice school, James Buchanan, the noble laureate, have explained this over and over again.

You've got the issues of human behavior under different systems of restraint, concentrated benefits, dispersed costs, all of which explains why this debate is constantly, when kept at the policy level, a race to the bottom. And as I said, 10 years from now we'll be having this same debate, so long as it remains as a mere policy debate.

Mr. SHAYS. But we're always going to have debates, but at least we don't have a debate of whether the States should free the slaves. And I don't mean that in a sarcastic way. But I listen to what you say, and then I think, well, what problems wouldn't have been revolved if we had basically said we didn't have the power to deal with the problem?

Mr. PILON. If we treated slavery as a policy matter whereby, look, let's see if we can get the optimal amount of slavery, we'd still be here debating that one today. And that's, in a way, what you're talking about when you're talking about, well, these should be Federal, these should be State. The issue is, if it's going to be Federal, where's the authority for it? That handles it as an institutional matter, as opposed to a policy matter. That's a well-recognized distinction in philosophy.

Mr. SHAYS. Mr. Nathan. I'm calling you Mr. Nathan. You're probably all doctors. When you say we're doing block grants for this reason, we're doing block grants for another reason, too. We're

doing block grants because people like me and others are outraged that a city like Bridgeport, which declared bankruptcy, and then applied for a lot of different grants, closed down its parks, and one of the grants it got was a beautification grant to improve a park. That's an outrage. They go through a whole lot of work and hurdles to get categorical grants. We have people who evaluate the grants. They come down and we pay them. Then we decide in some arbitrary ways, as best we can, who gets the grants. Then we figure that maybe 60 cents gets down to the person on the street. So that's another reason why we're looking at that issue. Mr. Green—is it Greenstein or Greenstein?

Mr. GREENSTEIN. Stein.

Mr. SHAYS. I got that right at least. Mr. Greenstein, why don't you make your comment, then I'll go to Mr. Souder.

Mr. GREENSTEIN. Mr. Chairman, you make the excellent point about the problem of the one size fits all. And I think my concern is that your statement was the key reason we're interested in block grants, is we've got to get more flexibility to State and local government, let them make more of these decisions.

The Federal Government hasn't done a lot of these things well. My one caution would be, a block grant is one of, but not the only way, to achieve that goal. So let's not have also I would say a one-size-fits-all in terms. In some areas, as I think all six panelists are in agreement on at least in principle, in some areas, the Federal Government should just devolve a function, no grant, no block grant. You're going to have to reduce the size of the Federal Government as we move toward budget balance, and rather than making everything a block grant at less money, some things shouldn't have less money. Some things shouldn't have any money, and let the States decide out of their own taxing capacity what to do in areas like economic development.

And local parks and things like that probably, in my view, fall into that category. Then you get a second set of programs, including, and I think Dick misunderstands my view on this, including some low income programs, that should be block granted. We have a hundred and X job training programs now. Each local labor market is different.

Let the local areas decide what to do. But it shouldn't be devolved. It should be Federal funding through a block grant. Different areas have different rates of poverty, unemployment. They can't all raise the amounts they need for job training or else we'll have people constantly moving to areas where the training programs are better. But the third area and the one that particularly concerns me where I think a block grant structure is a problem, but flexibility is appropriate, are some of the means-tested entitlements.

I think you will have a hell of a time trying to come up with an equitable formula to distribute the Medicaid funds. I don't think it's workable. Should States have a lot more flexibility in Medicaid? Absolutely. Should we save money in Medicaid? Absolutely. There are a variety of ways to do it.

We would probably all agree that we should repeal some of the mandates. We should give States flexibility to go to managed care without having to go through all kinds of waiver procedures. They

should be freer on setting their payment rates. We could have a whole array of things. You could do it within a structure that's a block grant, but you then have a problem of some States have already done cost containment.

Well, some haven't done much. Some have a lot of dish money; some don't. It's very complicated. And the risk, I think, is that if one block grants a program like Medicaid or food stamps and the economy changes and you get the wrong amount in the wrong States, doesn't adjust automatically as it does at present, then some States have to really cut the benefit levels. And since once you get to the block's total everything above that is 100 percent State money, that's where you get the risk of the race to the bottom; that a State like yours that wants to do well thinks, my God, everybody who moves to the State, we're now paying a 100 percent of the AFDC, Medicaid, food stamp costs, isn't so.

Last point I'd make on this is there are areas where a State can't do as well in setting a standard, not because it doesn't want to, but because of certain fundamental political forces. In the WIC Program would be my example. Here is a program that does work well. Little dispute. Reduces infant mortality——

Mr. SHAYS. It may be duplicative, but it is a good program.

Mr. GREENSTEIN. Excuse me?

Mr. SHAYS. It may be duplicative. In other words, there may be other programs that do the same thing.

Mr. GREENSTEIN. We don't have any evidence of that. The General Accounting Office was asked about 3 years ago——

Mr. SHAYS. If I could, let me get to Mr. Souder on this.

Mr. GREENSTEIN. Just to make the punch line on this. WIC Program has lots of State flexibility. There's not a single State in the country I know that's asked to have it blocked. But it has a Federal general framework for the foods that are in the package that are based on the scientific evidence of the foods pregnant women and infants most need in their diets. That doesn't vary from State to State. That's scientific evidence.

Mr. SHAYS. But it doesn't say that certain people—that doesn't vary from State to State, but people have different appetites and like different kinds of foods.

Mr. GREENSTEIN. And States have flexibility to tailor that. My only concern is if you blocked it——

Mr. SHAYS. It's my fault you keep going on. I keep asking you questions. I'm going to have Mr. Souder. Make your last point.

Mr. GREENSTEIN. This is my last sentence. If you blocked it in States where individual agricultural interests or food processors were very strong, they would inevitably, I think, get their foods added to the package in lieu of others, and we wouldn't have as much effect. So there's lots of other areas we could give them broad flexibility, but maintain a Federal standard here. So I wouldn't block that program.

Mr. SHAYS. I understand. Thank you. Mr. Souder.

Mr. SOUDER. Yes, I've got a couple of different types of questions.

Mr. SHAYS. You chose us over Waco?

Mr. SOUDER. And I had to run over to do six votes in education, missing the first one because they were looking for me in the Waco hearings.

Mr. SHAYS. I should have yielded to you a lot sooner.

Mr. SOUDER. The first question, and I realize as the chairman said, this could be a whole hearing, but the question raised by Mr. Pilon hasn't really been directly addressed. I wanted to ask Mr. Peterson, do you see that the thing that the Federal Government does best is redistribution functions? What is the constitutional jurisdiction?

Mr. PETERSON. Well, the taxing and spending clause of the Constitution has been interpreted by the courts to say—we don't know what's in the general welfare. The Supreme Court said, you know, everything is in the general welfare and everything is for the specific welfare of a particular group or individual. And to try to draw the line between what's in the general welfare and what's in somebody's specific welfare is so complicated that we think this is something Congress should decide, not the courts. I think that's one of the wisest decisions the Supreme Court has ever made. It sort of said this is something we're not going to subject to judicial review.

Mr. SOUDER. Well, the——

Mr. PETERSON. They took the lawyers out of this question. I think it was a great decision. And that means that you can do a lot of things.

Mr. SOUDER. A core difference that—it means you can do anything.

Mr. PETERSON. I think that's right.

Mr. SOUDER. That one of the differences between this Congress and past Congresses, is that—I worked here for 8 years as a staff person. About the only reference I heard to the Constitution was the avenue. And all of a sudden, when you go to the 49 States, there are a number of Members who pull constitutions out of their pocket.

I'll say something on their floor, and they'll hold it up to me. I had 31 town meetings in April and there were very few where somebody didn't either wave the Constitution or talk to me about the Constitution. And the immediate perception is, oh, it's the gun people. No, it's not just the gun people. It's the education people, then it's somebody on welfare, then it's somebody on another issue. And that it's not really a satisfactory answer to say that, oh, we could do anything because the court enabled us to do anything.

The question is, Do you see anything in there that suggests that Congress should decide that they have jurisdiction over these issues beyond that the court has given them a general term, welfare, and said that they can do whatever they want?

Mr. PETERSON. Well, it is the Constitution we are interpreting. That is what Justice Holmes said, and he says that the Constitution has to be interpreted in terms of the experiences of the American people. It is not something that was written in 1789 and never changed. It is a document that has had life and breath moving within it because of the people who struggled and died on the battlefields during the Civil War and in the many other wars that we fought. It has the richness of the great diversity of our society contained within its framework and its understanding, and to try to treat this document as a dusty piece of parchment dried up from the past to give instant solutions to any public problem we have to face is a complete misconstruction of how to think about the

Constitution in a complex society, a complex world that we live in today.

Mr. SOUDER. Not to completely wave a red flag in front of you, I did amend the Constitution.

Mr. SHAYS. You waved it in front of Mr. Pilon.

Mr. SOUDER. I did support an amendment for flag burning, and I know you support that amendment.

Mr. PETERSON. I am a real flag waver. I don't think anybody should insult the flag.

Mr. SOUDER. I think that there is a standard process for amendment. But this could be a long argument. I wanted to see, and that is a crucial difference between how conservatives approach it. I wouldn't necessarily refer to it as a dusty document. I refer to it as a living document.

I understand the arguments in Holmes and Story, and these guys have argued this for years, and we are continuing to have that debate here. But I do think it is a legitimate question because it is a different approach to government.

You also said in your testimony—and I was intrigued by this, and let me see if I understand it correctly—I understand the race to the bottom which also Mr. Nathan used in trying to compete to not get a heavy caseload in welfare, for example.

What I also thought I heard you say is that in the suburban areas, the closer you get to the people, where they feel there is a direct tax impact, they don't like to vote for the taxes for the programs.

Mr. PETERSON. Let me just give you an example. In a town neighboring mine, they have a very generous set of social services for low-income people. It is really much better than in the town I live, which really doesn't have much of anything. And in this neighboring town, they are getting a huge influx of people who are very much in need of social services, and even though a lot of this is being covered by State and Federal money, there is still a lot of pressure on local public officials to cut these programs back, to reduce them in size, because they are saying we are getting too many poor people coming into our town.

And to me this is sort of a dramatic illustration of, when you turn things over to lower levels of government, it becomes more and more difficult to deal with the problems of the needy.

Now, maybe you can say government shouldn't care about that, you know; let people starve in the streets. That is a position that some people might want to take; I just don't take it.

Mr. SOUDER. I wanted to clarify your comment a little further. You live in Massachusetts?

Mr. PETERSON. Yes.

Mr. SOUDER. And I—all I am——

Mr. SHAYS. He will pass those.

Mr. SOUDER. I am from Indiana. My question was going to be—is that there may be—in fact, I was going to be complimentary. There may be altruistic suburbs in Massachusetts that would like to keep their benefits higher but feel that pressure.

Don't you think, in fact, most suburbs around the United States keep their taxes low because they don't want to spend money on

anything? The closer you get to the people, you have school bond referendums; no matter what the issue, they are being voted down.

Mr. PETERSON. No. I find at the local level a lot of people concerned about their property values, and they say if we don't have good schools, if we don't have good parks, if we don't have good roads, if we don't have a good sanitation system, this town's not going to be keeping up its property values. They care—people in my town care a lot about basic social services, and they will vote to support them.

Mr. SOUDER. Your principle that the closer you got the people and the more they feel the tax impact, the less likely they are to do these things is solely based on the race to the bottom theory.

Or do you think that, at the Federal Government level, part of the argument to keep some of these funds at the Federal level is that you don't get this competition at the local level to cut the spending?

I would argue that part of that is that the closer you got the people, the more they feel they have direct control of the government, the more they see the impact. Therefore, the more they vote against it, because they don't like the government, whether it is social services, almost any type of things right now.

I understand, because I grew up in a community and currently live in a suburban area that has a higher property tax because they wanted it for their schools. So I would argue there are exceptions, but that is not the general rule, the voting pattern around the country.

Mr. PETERSON. No, I think your town is not the exception. I think your town and my town are like many towns. Everybody really wants to have a good community. People don't want to live in a lousy town that doesn't have good public services so long as they are for the good, solid, productive citizens of that community. What they are concerned about is a highly dependent population moving into their community, and that's where you have to have a higher level of government take responsibility.

Mr. SHAYS. You have more time.

Mr. Kilgore, you were going to weigh in a second. Did you want to weigh in on this issue or something close to it?

Mr. KILGORE. Well, I can make a brief comment.

Obviously both of the gentlemen to my right know a lot more about this than I do. But the—the welfare block grant as enacted by the House, which has led to most of the discussion of the race to the bottom, I think it is important to recognize that it is not just the basic block grant structure that tends to produce this.

There are actually incentives in the bill itself which tend to encourage States to reduce benefits or eliminate eligibility. It has sort of perverse negative performance standards in it, which is part of the strange design of that particular block grant.

So you can believe that that bill will produce a race to the bottom without making that a general characterization of any devolution proposal.

Mr. SOUDER. I want to make just kind of a general statement that I do not necessarily agree with this concept of race to the bottom. It may be a race to move people off welfare and into the work

force, and what seemed to be perverse incentives may be intended to be incentives to get people to work.

Now we can argue whether that is an effective way to do it, but there is some motivational implication here that we are trying—and, as the chairman said, I don't think this is just a budget question. Many of us were philosophical conservatives coming in and have—I will grant that we have used the budget argument to help advance a philosophical point.

What's the most effective way to deliver services? We believe philosophically that the welfare state may not have—may have caused people, to their own harm, to the breakdown of families, to the collapse of communities, to become involved in the welfare system, and we are trying to encourage people to get out of that welfare system.

But I do understand that if you go too far, people who, for a number of reasons, may not be able to take care of themselves, and local communities may not be sensitive enough to that, and I am not one who believes there is no role for the Federal Government, but we could—we could go on as we have.

And so I wanted to ask one question of the conservatives from a completely different angle, and that is, how do you address the more liberal question? And one of the reasons the Federal Government is increasingly taking over these things, and as we get into it, even in joint and several liability in lawsuits, a number of things that are forcing some of us who were States' rights advocates to look at certain things at the Federal level.

Because of the tremendous mobility of the population, the interactivity of the population, in northwest Indiana, which is not in my district, but when I worked for Senator Coats we dealt with in Lake County 27 different communities. Literally, people had child care in one, worked in another, visited relatives in another, grocery shopped in another. Some of them didn't even know which State they lived in, in Chicago, IL, or in Indiana.

How do we deal with government at the local level with that tremendous mobility of the population? And is that not some of the pressure rather than an insensitivity to the Constitution or an opposition to States' rights that is driving some of the problems that we are seeing in the move toward the Federal Government?

Mr. PILON. Mr. Souder, I think you got it exactly right when you said that maybe these perverse incentives that Mr. Peterson is talking about are not so perverse after all, and indeed it seems to me that he's got it exactly wrong when he is concerned about welfare migration.

As we have seen, the point that is brought out by his examples is that you get what you pay for. When you provide liberal welfare benefits, you will get a lot of welfare people coming in.

The cities of California, some of them, found out that when you provide ample benefits for the homeless you are soon inundated with the homeless. I think that the lesson from that, that you get what you pay for, should be the lesson that drives us here, and your point that maybe what we want to do is have programs that get people off welfare. What we have learned from human behavior is that one of the best ways to do that is to reduce the benefits, and pretty soon they do find that they can work after all—at least

many of them can—and then you are left with only the small core, the hard-core welfare problem.

I do think that federalism in this sense can be used very effectively in the laboratory of experiment model that the Founders spoke about to provide optimal programs at the State and local level that will address many of the problems that have arisen from attempting to federalize so many of these programs where you have, as a result of that, instituted the genuinely perverse incentives.

Mr. SEAY. There are a number of points obviously that you have raised. Just a couple. I think one of them comes down to the—your view of the Constitution. Is this a set of rules that we actually agree to abide by, or is it merely a set of suggestions that we would like to follow if we could but they need not be binding?

The Constitution is supposed to be self enforcing. As I mentioned in my opening statement, the checks and balances between the States and Federal Government are meant to limit the Federal Government's power to do certain things as well as to limit that of the States.

The situation we have now is that the Federal Government is essentially unrestrained, and therefore the debate is how should we use this power? Should we use it this way, or should we use it that way? That is simply the wrong debate. Even for conservatives, such as yourself, and I know of many others, once they have grasped the levers of power, suddenly are overwhelmed with a desire to do good, and I think their motives are often quite positive, but the fact is that they do damage simply by continuing to expand the role of government.

You can't have a vigorous social——

Mr. SHAYS. Are you referring to the Federal Government when you say "government"?

Mr. SEAY. Yes, exactly—a vigorous social set of institutions and a vigorous government at the same time, one of them has to go, and so far it has been the social end that has suffered. And, that can't be put right by the Federal Government simply agreeing to restrain itself because it won't, it can't; the political pressures are all in the other direction.

You can't go before your electorate and say, "Elect me and I will do less," or, "Elect me, and even though we have this power to correct things in your lives, we are not going to use it because philosophically that is a bad thing to do."

So when you are talking about the local governments, it is easy to find problems all over the place, problems that I would agree are problems. Simply because the Federal Government can do something about them doesn't mean that it should, and that may mean that some problems go unsolved.

Mr. PILON. Could I make a quick point? "Elect me, and I will do less"; it seems to me that is what the 1994 election was about, if I understood it correctly.

Mr. Kilgore said there is no constituency for the 10th amendment. I thought that the 1994 election was about just such a constituency: Less government, get government off our backs. Maybe I completely misread the 1994 elections.

Mr. GREENSTEIN. Can I make a comment on this welfare issue?

Mr. SHAYS. Mr. Chrysler, you have been wonderful in listening to this. Any time you want to weigh in——

Mr. CHRYSLER. I appreciate that, Chris. I did get here a little bit late because of the same problems that all of us have.

Mr. SHAYS. Thank you for being here.

Mr. CHRYSLER. In today's Congress, with three subcommittee meetings all happening at the same time, and we had a markup in Banking.

But you know, it is interesting that we could fund these—this block grant situation, we could give everybody a $2,000 tax cut, and let the States raise the taxes and write the rules, and I think it would give—go a long way toward giving us accountability and responsibility, insight, in this Government and the State government.

I think having 50 labs to try out new programs would be helpful, and I think the fact that we are entering into this, as Newt Gingrich would say, the third wave information age, I think with information being disseminated as fast as it is today, you would have a very good opportunity to share that, and I would not worry so much as we did back in the fifties and sixties as whether one State wasn't really up to speed on what another State is doing. I think it moves much faster these days.

Let me ask a couple of real quick questions. First of all, realistically, how significant a role can charities be expected to play in a meeting—in meeting social needs, in your opinion? Start over there.

Mr. PILON. The book Newt Gingrich speaks about by Marvin Olasky is an absolutely magnificent statement about how, through public programs, we all but destroyed private efforts.

Indeed, the effort was made at the beginning of this century, during the progressive era, and it was consciously made to crowd out, not from an economic explanation point of view but from a conscious political point of view—to crowd out private charities so that public welfare institutions, professionally trained, would be able to provide these programs better. Well, we have seen the result of that.

Mr. Seay in his remarks talked about how so many of these public programs destroy what Charles Murray has called the tendrils of community. They destroy the kinds of private, voluntary institutions that would naturally arise in their absence and would especially—so if we left the money in the communities to begin with, rather than draw it all to Washington.

I mean, we all presume that, well, the private charities won't rise. Of course not if we keep the taxing levels at the level they are today. But you put the taxing levels at the levels that they were, and you would see the wherewithall to do this. Already, though, we have an eleemosynary community which is very substantial in this country notwithstanding that taxation.

Mr. CHRYSLER. I believe that my colleague, Mr. Souder, has come up with a program to increase charitable giving.

Would you like to comment on that, Mark?

Mr. SOUDER. A dollar twenty on the dollar and a couple of other changes, such as 3 percent—we, in 1990, took the highest income people out of the charitable giving cycle because we took—exempt-

ed the first 3 percent from being deductible, which resulted in some degree in a decline in giving and, also allowing nonitemizers to take up to $1,000.

I think as we look at changing the structure of government and as we move more back to the States, we have to look at the private sector and how to fill it. The charitable giving has stayed relatively flat. We need to look at ways to boost it.

Mr. GREENSTEIN. Could I just add, there was some very interesting work done by the Urban Institute in the early eighties following some of the changes made in the early Reagan years to see how charitable giving responded, and what they found is, in areas like the arts and the symphony and areas of those sorts, the charitable giving did respond quite significantly when Federal funding for those areas went down.

In programs providing basic services and needs for the very poor, that generally didn't occur in the same fashion. In fact, two things happened there. There was some increase in charitable contributions. It was far less, though, than the amount that was withdrawn.

Of course the second thing that we often forget is that many of the programs that are federally funded that are aimed at the needy go through States and then in turn through charitable organizations. Many charitable organizations deliver some of those services. So that some of the very charities lost more money as the grants were withdrawn than they got in additional contributions. And my sense will be that we will probably see a repeat of this in the future.

If the funding goes down for National Endowments for the Arts and things of that sort, you know, some of that will get raised in terms of private giving. I think the degree to which that's true on things like job training programs for the very poor will probably be far smaller.

Mr. SHAYS. Mr. Souder, do you have any comments before we kind of close up here? I would be happy if each of you would make a short closing comment. Why don't we start with Mr. Peterson.

Mr. PETERSON. I just have one general comment which has to do with, if you look at the domestic budget of the National Government, about two-thirds of it is going to finance programs serving people over the age of 65. Now, we have said that a big portion of those programs is not to be touched by——

Mr. SHAYS. Are you saying two-thirds of the entitlements?

Mr. PETERSON. Two-thirds of all the domestic spending of the Federal Government is going for programs serving people over the age of 65. That includes Social Security, that includes Medicare, it includes lots of Medicaid, it includes veterans programs, and so forth.

Mr. SHAYS. I understand.

Mr. PETERSON. Now what we have decided is that a lot of that is not on the table. We are making fairly modest cuts in that portion of the budget. We are trying to get the budget balanced by cutting back on the remaining one-third in a very heavy way. Now, that's what has happened in the past.

I mean the amount of money that we are spending on people over the age of 65 is 10, 15 to 1, compared to what we are spending

on programs for children, and yet we are trying to balance the budget mainly by cutting programs that are serving needy children. I can't see how this is good public policy.

By the way, this is not a criticism of the Republicans because the Clinton administration is proposing essentially the same thing.

Mr. SHAYS. Mr. Peterson, I serve on the Budget Committee. I just want you to know that I just think you are not accurate. I thought we were going to adjourn this meeting, but we may have a longer dialog.

Seriously, we just need to get used to the concept that we are going to spend more dollars. It is true, we are cutting discretionary spending. Those are real cuts. We are slowing the growth, and yet the WIC Program is going up, and nutrition programs will go up. They just won't go up quite as much as they have in the past.

Mr. SOUDER. Mr. Chairman, may I make a comment on that?

Earlier Mr. Nathan referred to current services projections. In some programs that is a variable; in other programs we have changed eligibility standards. There have been no limits to what type of things people had access to. So the spending is going up, and we may—we may, if you had all the variables—the changing eligibility, everybody being able to get any kind of health care they wanted—conceivably we have had some reductions against that. But it also wasn't a reduction from current services projections. It is still an increase in dollars. It is just a slowed increase in most of the programs.

Mr. SHAYS. Right. The critical thing, candidly, that is off the table is Social Security, but Medicare, we are slowing the growth from basically 10 percent to 6.9 percent. And I think the elderly will come to you and say that what you said is just way off base. So if you just want to isolate discretionary spending, then I might be more inclined to agree with you.

Mr. PETERSON. Maybe what I should do is supplement my testimony with written information that would go into this more exactly.

Mr. SHAYS. OK.

Mr. CHRYSLER. I think the Medicare is obviously one of the biggest areas that is affected. I mean that is obviously the over-65 group. That is probably the single biggest—single biggest dollar amount.

Mr. PETERSON. I think you will find that my numbers are not far off, but it needs to be laid out.

Mr. SHAYS. I would welcome that. Thank you.

Mr. Greenstein.

Mr. GREENSTEIN. Thank you for making that.

On the part of what happens depends on where those savings in Medicaid comes from, if what ends up happening is that in most States the elderly and disabled who were two-thirds of Medicaid costs get shielded and most of the Medicaid savings come out of the other third, then——

Mr. SHAYS. That is true. Well, since it will be a block grant, we don't know. That is a very valid point.

Mr. GREENSTEIN. Could I just, too—again, on this front, I hope as your deliberations go forward, particularly in the Medicaid area,

some of these numbers will change with the Senate and the White House, that you do look at the 182 in Medicaid.

We have just done an analysis that suggests if one makes the most heroic estimates in managed care and providers savings and so forth, it is way short of the 182. So you are right that the spending goes up and your—the rate of growth.

My fear is that 182 is such a big number compared to what one can get that it could cause a number of States to restrict coverage and have more uninsured even though the total cost does go up.

But a closing comment I would make is, I think there is actually—despite all the disagreements—a lot of agreement that there are a lot of areas, there are too many Federal prescriptive rules.

States should have more flexibility; some things should probably be completely devolved. There are areas where block grants are definitely the right way to go.

I just reiterate that as you look for more State flexibility, to look area by area and see what is the best mechanism.

Again, both houses—the majority in both houses seem to be headed toward saying we can save money in food stamps and give States lots of flexibility without block granting them. I think that was the right decision. I know it is not what you want to do. I think ultimately it is the right one in Medicaid as well.

I think one needs also, even where you block grant, to be careful Mr.—about the structure.

Mr. Souder was saying in welfare we want to encourage the right behavior, we want to put people to work and make them—we all agree with that.

I think a point where Dick Nathan and I would very much agree is a concern, for an example, that if one puts in the same block grant the cash benefits for welfare and the work programs for welfare, when States hit a recession, when they have population growth and they have more poor people, they will be compassionate, they won't throw them in the street, and they won't have enough money for the work programs.

It is exactly what happened in the recession in the early nineties. States didn't draw on the money for the work programs when more poor people occurred in the recession. If one were to block those, one would at least want to do two separate block grants.

So I think there are a lot of important questions here in how one moves the flexibility to States. I would urge one to be particularly careful in the means-tested entitlements, which I would distinguish from the discretionary.

But I think there are some real concerns in a block structure in certain of the means-tested entitlements and that there are other ways to cut costs and give States a lot of flexibility to experiment and do a better job in those areas without in every case saying the financing structure should be a fixed block.

Mr. SHAYS. Thank you.

Mr. Kilgore.

Mr. KILGORE. Yes. My final comment is, I think there is a real danger in this whole area of confusing ends and means.

Mr. Chairman, you made a comment earlier——

Mr. SHAYS. Confusing ends and means?

Mr. KILGORE. Right.

Mr. SHAYS. Yes.

Mr. KILGORE. You made a comment that you tended to support block grants because of a residual conviction that States could do it better. The key question with block grants is, what "it" is.

In transportation you—or in welfare, you decide what is the most important single or very small number of fundamental national purposes to justify spending Federal money to begin with and then get rid of a lot of the narrow categorical measurements reflected in narrow categorical programs. So you sharpen the national purpose and provide enormous flexibility to the States as a means to achieve it.

Unfortunately, what seems to be happening in this year's block grants, we think, is that the national purpose itself is being obliterated and there are alternative ways, as Mr. Greenstein and Mr. Martin earlier suggested, a performance-based grant, the performance partnerships the Clinton administration is proposing, or even the kinds of block grants the Reagan administration were proposing in the 1980's.

But this question of ends and means also applies to the bigger question of federalism and devolution. I think if there is any deep philosophical split between panelists here today, it may be between some of us who view devolution as a way to take a completely fresh look at how we pursue public purposes in a nonbureaucratic empowering way and those who believe the purpose of devolution is to eliminate the pursuit of those public purposes to begin with, and it's the most concise way I can think of to say it.

It is the difference between suggesting that we ought to find ways to enliven the civil sector, charities, religious organizations, to pursue public purposes and the point of view that you simply devolve what purposes we want to pursue for those organizations themselves to define. That is a big difference.

But my basic comment is, we have got to keep ends and means completely separate.

Mr. SHAYS. OK. Thank you.

Mr. NATHAN. To paraphrase Tip O'Neill when he said all politics is local, all federalism debates are political.

Mr. SHAYS. All what?

Mr. NATHAN. Federalism debates are political. All federalism debates are political, as intellectual as we may want to sound, and I like to sound that way all the time.

But here is what I would like to say as a final point, Mr. Chairman, and I disagree with Mr. Kilgore now. We should have traded places. I think that if you are going to do block grants, do block grants. Mr. Goodling's career block grant has got too many strings in it.

If you really believe—once you start making block grants, you—everybody throws in a string. It gets to be a great big ball of string, and it's got more ways that Federal agencies can make local and State and—organizational officials jump through hoops.

I am greatly opposed to the idea in the Clinton administration budget that Alice Rivlin is always pushing and Mr. Kilgore just mentioned performance-based block grants. I don't think there is such a thing as a performance-based block grant. I think if you let

the Federal Government start telling people what is good performance, you might as well not even talk about devolution.

Mr. SHAYS. Mr. Pilon.

Mr. PILON. I tend to think that inside the beltway it is not appreciated how fast things are moving in this country. The November elections were a shock to Washington.

The *Lopez* case, which we talked about at the outset of these hearings, was thought to be a very easy one for the Supreme Court. Most conventional wisdom said that it would be a slam-dunk, 9-zip. It came out 5 to 4 the other way. Things are moving very fast in this country toward reduction of government, real limitation of government.

Mr. SHAYS. Are you talking about Federal Government again?

Mr. PILON. I am talking about all government.

Mr. SHAYS. OK.

Mr. PILON. And returning power to the people, which is what the final words of the 10th amendment speak about.

Earlier Mr. Souder said he is just amazed, the freshmen class, of which he is a Member, walks around with copies of the Constitution in their pocket and pull it out. That is a mark of the change that is taking place. Your colleague, J.D. Hayworth from Arizona, has led the formation of a constitutional caucus, of which there are now some 100 members.

Mr. SHAYS. I might say—and I love the gentleman—the last 2 days he has been on the floor of the House encouraging me not to cut certain programs.

Mr. PILON. I will speak to him about that.

My point, though, is very simply this, that things are moving very fast and we will, I predict, see this policy debate about federalism very soon—indeed, already, as these hearings are indicating—become not simply a policy debate but a constitutional debate, which is where it should always have been, failing which, we got ourselves into the mess that we are in today, such that we have to ask, how do we get out of this mess? And there is no easy answer to that, for the reasons that I cited earlier from economic theory which explains why there is no easy answer to that.

The fundamental question again is: Do we have authority to do what we are doing? I doubt that anyone in this Congress seriously believes that the Constitution authorizes Congress to create and expend money on a Corporation for Public Broadcasting, all things considered. I seriously doubt that anyone seriously believes that you can find that authority in the Constitution, and yet a thousand Corporation for Public Broadcasting-type institutions are flourishing as a result of the kinds of power that Washington accrued to itself after the crucial year of 1937 following Roosevelt's court packing scheme. That was the watershed, and that is what we have to come to grips with if we are going to come to grips with the policy questions that are vexing this subcommittee.

Thank you.

Mr. SHAYS. Thank you very much, Mr. Seay.

Mr. SEAY. I had indicated earlier I am not a fan of block grants. I am not a strong opponent. I just believe the results will be somewhat different than what their advocates hope they will be. The same with term limits. I am not opposed to them. I don't think that

they are going to accomplish what their adherents believe th will.

The major problem I have with the block grants that are bei discussed now is the lack of accountability. It is, in essence, fr money as far as the States are concerned, and even given the ve best people in power, there is no incentive for them to really anything risky with the new power they have been given. They a going to spend that money, every penny that they get, and I a not sure that their desire to innovate is going to be as great as should be.

Congressman Chrysler's approach of coupling a devolution power from Washington to the States with giving the citizens ba their money then letting the States raise the taxes is, I think—e actly the way to go, because then there will be a healthy deba and the arguments will have to be laid out: Do we want this pr gram? Do you want to pay for this program? Is this program ne essary? If the citizens say no, I don't understand how there can l a viable argument against their choice.

If the argument is that we can't allow the citizens to make th choice because the electorate is going to make the wrong decisio then that argument, at least in an American democracy, is illegi imate.

My last point is this—goes back to what I think the—what is tl unique characterization of the American republic, certainly what was established to do, and that was the view of Americans as sel governing.

That characteristic has been something that has been cor mented on by observers, throughout our history, the most famo being DeTocqueville. Yet that description is rapidly becoming a anachronism, because government has often with the best of inte tions—so intruded itself into rulemaking in every area, every a pect of life, that the idea of us being self governing, of our comm nities being self governing, is simply a fiction. And it is an attem to restore tax money to the citizens and allowing them to deci how they want their own money to be spent as a way of correctir some of this problem.

Mr. SHAYS. Each one of you has made a comment that trigge me to respond, which means that you have been wonderful wi nesses, and I really appreciate your participation in this hearin which will be the first of many. Again, I thank each and every o of you, and I now adjourn this hearing.

[Whereupon, at 1 p.m., the subcommittee was adjourned.]

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