



STATEMENT OF
THE HONORABLE COLLEEN LANDKAMER
COMMISSIONER, BLUE EARTH COUNTY, MINNESOTA

FIRST VICE PRESIDENT
NATIONAL ASSOCIATION OF COUNTIES

ON THE TENTH ANNIVERSARY OF THE
UNFUNDED MANDATES REFORM ACT

BEFORE THE
SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT
MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT
OF COLUMBIA
COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ON BEHALF OF THE
NATIONAL ASSOCIATION OF COUNTIES

APRIL 14, 2005
WASHINGTON, D.C.

Chairman Voinovich, Ranking Member Akaka, members of the subcommittee, I would like to thank you for the opportunity to participate in this hearing.

I am Colleen Landkamer, and I have served for the past seventeen years as a county commissioner for Blue Earth County, Minnesota. I am also proud to serve as First Vice President of the National Association of Counties (NACo).

The National Association of Counties is the only national organization that represents county governments in the United States. From its headquarters on Capitol Hill, NACo is a full service organization that provides legislative advocacy, research, financial products and services, and technical assistance to member counties across the country.

As you know, county governments play a vital and growing role in the lives of America's families, bringing crucial services to communities from rural America to our suburbs and central cities. When Americans need a police officer, a firefighter, or an emergency medical technician, they call upon county government. When Americans commute to work or drive their sons and daughters to school or a soccer game they take county highways and county bridges. When Americans face health emergencies, more often than not, they depend on our county hospitals. When Americans seek fair hearings in our judicial system, they go to county courts. When Americans elect our local, state and federal leaders, county governments ensure the integrity and fairness of the election. On September 11, 2001, county governments and county workers were the first to respond.

County governments play a critical role in the American federal system of government. As elected officials, we can best serve our mutual constituents by working in partnership among local governments, states and the federal government to meet our shared objectives, among them a cleaner environment, safer streets, better health care, improved opportunity for all, responsible taxes and transparent, accountable government.

Our system of government is designed to foster vigorous local government that has the authority and responsibility to govern in the way that is best for each community. Too often, however, the federal government decides that it knows best how to handle the issues that face local governments across the country and dictates a one-size-fits-all approach. Even worse, all too often, the federal government not only takes decisions out of our hands and puts them in the hands of someone who is hundreds of miles away in Washington, D.C., but then sends the bill to states and local government.

Mr. Chairman, the federal government imposes fewer, and less burdensome, federal mandates today than it would have without the Unfunded Mandates Reform Act. You should be proud of your role as a lead advocate for, and architect of, the law that we now seek your aid in strengthening.

However, I am here today to testify that counties continue to struggle under the burden of unfunded federal mandates and the law needs to be strengthened.

I would like to submit for the record a copy of a recent snapshot survey conducted by the National Association of Counties that provides a glimpse of the unfunded mandate burden facing counties. At the request of Chairman Tom Davis of the House Committee on Government Reform, NACo asked counties about the costs of ten significant federal mandates for fiscal years 2003 through 2005 and selected 30 counties from among those that responded as most representative of all counties. These counties provided information on an average of six mandates for which costs were identifiable within their county budget. The average per capita cost for those six mandates over the three-year span was \$137 per person, or \$548 for a family of four. NACo estimates that if this per capita cost were averaged across the entire nation, the unfunded burden on counties of this limited glimpse into unfunded mandates over a three-year period would be more than \$40 billion. Again, this is for an average of just six mandates per county for which costs are readily quantifiable; a comprehensive review would certainly run into the hundreds of billions of dollars nationwide.

I would like to discuss briefly what this survey for my own county. In Blue Earth County, Minnesota, we are proud to have the lowest property tax burden in the nine-county region. However, seventy percent of our own source revenues are derived from the property tax, much of which we spend to comply with unfunded mandates. For example, over the past three years, we have spent approximately:

- \$8.38 per family of four to comply with Americans With Disabilities Act;
- \$7.79 per family of four to implement the Help America Vote Act;
- \$26.11 per family of four to comply with provisions of the Clean Water Act and the Safe Drinking Water Act;
- \$11.14 per family of four under the Resource Conservation and Recovery Act; and
- \$2.93 per family of four to comply with the Health Insurance Portability and Accountability Act.

Eight dollars per family of four may not be too much to ensure that our public buildings and transportation systems are accessible or to purchase new voting equipment, nor three dollars per family too much to ensure the privacy of health information, nor twenty-six dollars too much to ensure safe drinking water. However, the costs of all of these mandates add up. Nearly seven dollars out of every ten that Minnesota counties spend are for programs that have been mandated by the federal and state government.

In Blue Earth County, you can see that unfunded federal mandates shift the costs of programs from the federal income tax to county property taxes.

The Unfunded Mandates Reform Act was a landmark achievement in the history of federalism and has largely been very successful. It recognized and denounced the practice of imposing unfunded federal mandates. It requires the Congress to estimate the costs, then specifically debate and vote on most unfunded mandates before enacting them. The Government Accountability Office has reported that the mandate cost estimates prepared by the Congressional Budget Office are a useful tool for members of

Congress from both chambers to determine the impact of potential mandates on states and local governments and that the unfunded mandate point of order has been used in both chambers as an effective deterrent.

The Congressional Budget Office has reported that the federal government enacted five laws that contained intergovernmental mandates under UMRA over the past decade. However, counties are struggling with the costs of many more federal mandates that have failed to trigger provisions of UMRA. The following is a list of ten loopholes through which mandates continue to be enacted without facing heightened scrutiny under UMRA:

1. **UMRA identifies only the anticipated costs of proposed new mandates, not the actual costs of mandates after they have been imposed.** The Congressional Budget Office is only responsible for preparing mandate cost estimates on proposed legislation and federal agencies are only responsible for determining the costs of mandates that would result from proposed rules. No entity of the federal government is responsible for taking a broader view to determine whether the estimates of CBO or of federal agencies were correct, to “look back” at the costs of mandates that were enacted prior to the passage of UMRA, or to examine unfunded mandates in the broader context of intergovernmental relations.

NACo’s snapshot survey demonstrates that counties continue to struggle under the weight of mandates that were adopted prior to passage of the Unfunded Mandates Reform Act, including the Clean Air Act; the Clean Water Act; the Safe Drinking Water Act; the Resource Conservation and Recovery Act; the Americans With Disabilities Act; and the Endangered Species Act. Under the Clean Water Act, for example, one of the largest issues for counties currently is Phase II stormwater regulations. This has caused a huge financial drain on our nation’s counties. Counties are increasingly required to monitor and treat runoff from construction sites, car washes, and other sources of groundwater pollution. Counties also face new regulatory mandates under the Clean Air Act. Within the last year, new ozone and fine particle standards have increased the burden on counties for monitoring air quality and addressing sources of pollution. All of these federal requirements have become more strict and expensive to implement, especially for counties with fewer resources. While the Environmental Protection Agency works diligently to estimate the implementation costs for state and local governments prior to issuing regulations there is no process for determining later whether the actual costs were higher or lower.

There was an entity that could have performed this role had it not been disbanded soon after the enactment of UMRA. The Advisory Commission on Intergovernmental Relations was conducting a major study on the role of federal mandates in intergovernmental relations when it lost its federal appropriation for FY 1997. NACo urges the committee to consider either restoring the commission or investing other entity with the responsibility to perform further research on unfunded mandates.

2. **UMRA dismisses the costs of mandates that require state and local governments to enforce a constitutional right, provide for the national security, or that otherwise qualify for an exclusion.** The federal government has an important obligation to ensure that constitutional rights are protected and to protect the national security, even if doing so requires calling upon the resources of state and local government. However, the importance of the cause does not diminish the cost to states and local governments and should not get the federal government off the hook for paying its share of the cost. The exclusions do a great disservice to transparency in government and to states, counties and cities throughout the nation.

When the Help America Vote Act was enacted, the committee report that accompanied it to the Senate floor indicated that the legislation contained no mandate under UMRA and the legislation was not subject to a mandate point of order. Despite the expressed intent of many members of this chamber at the time the mandates were enacted, the law has not been fully funded. While I believe that every individual has a right to vote and to have that vote counted, I do not believe that the importance of the franchise should absolve the federal government of responsibility for paying its share of the cost of new voting equipment. The Help America Vote Act is particularly burdensome for counties because with the deadline for compliance less than nine months away, the law has still not been fully funded and costs are rapidly escalating because the federal government has not met its promised commitment to issue voting system standards and provide for independent testing of voting equipment.

3. **UMRA excludes grant conditions, even new conditions on existing funding, conditions that would cut funding to implement mandates, and conditions that are unrelated to the grant.** With the exception of a few large entitlement programs, the law does not consider grant conditions to be mandates. In our experience, this is a distinction without a meaningful difference. To participate in a federal program, states must generally require all of their local governments to participate. Grant requirements, then, become not a condition but a mandated responsibility for local government.

Often, the federal government imposes a new condition on existing funding, unilaterally changing the terms of a contract that a state or local government may not have accepted had the condition been imposed at the start. This practice is at its most egregious when the condition is unrelated to the original purpose of the grant. Withholding funding is often used to achieve a policy goal, not simply to target federal funding, as it is among the most effective enforcement mechanisms in the federal arsenal.

4. **Not all federal mandates are imposed explicitly by law.** While counties bear the expense of incarcerating and prosecuting those who commit violations of state or local law, counties have no authority to deport criminal illegal aliens. The Constitution of the United States specifies that the federal government has

exclusive jurisdiction over immigration law. Counties have no option but to jail these individuals at county expense while they await deportation or other federal immigration action.

The State Criminal Alien Assistance Program (SCAAP) provides reimbursement for some – but far from all – of the costs associated with incarcerating illegal immigrants who have committed violations of the law and now reside in our county jails. Historically, states and counties receive less than half of the costs expended in housing undocumented criminal aliens in reimbursement from the SCAAP program. If the federal government were to eliminate SCAAP, as the administration has proposed, the provisions of UMRA would not apply. Nevertheless, NACo insists that it would be an unfunded mandate if the federal government were to abandon its responsibility for illegal immigrants who are being held in county jails because of failures in federal immigration policy.

Counties also spend billions of dollars every year on uncompensated health care for undocumented immigrants. The federal government denies coverage for undocumented immigrants under both Medicare and Medicaid, yet requires county hospitals to treat all patients regardless of citizenship status or ability to pay. Counties must bear the costs associated with providing health care for undocumented immigrants despite our lack of authority over eligibility for these federal programs or the ability to control their presence within our borders.

5. **Agencies have inconsistent interpretations of their responsibilities under UMRA.** Because a single division within the Congressional Budget Office is charged with preparing mandate cost estimates for the legislative branch, interpretation and enforcement is consistent. The role of the Office of Management and Budget, however, is limited to guidance and oversight. Consequently, federal agencies differ on their interpretations of UMRA and mechanisms to consult in preparing their analysis of the mandate impact of rules, much as if each authorizing committee was asked to prepare its own interpretation of what classifies as a mandate and to decide how to consult with state and local government. The Environmental Protection Agency is consistent in its consultation with local governments in the preparation of written statements on the costs of mandates; the Administration for Children and Families makes no such habit.

The committee may wish to consider strengthening the role of OMB to ensure consistent application of UMRA across the executive branch.

6. **UMRA does not apply to mandates that are not approved by an authorizing committee or rules that are issued by an independent agency.** The procedural mechanisms of the Unfunded Mandates Reform Act apply only when legislation is considered through regular order in the United States Senate and House of Representatives. UMRA does not apply to mandates that are inserted into legislation or strengthened after a bill has been approved by the committee of

jurisdiction or to mandates in appropriations legislation. For example, provisions of the Public Health Security and Bioterrorism Response Act required that community water systems conduct vulnerability assessments to identify potential threats, assess the critical assets of the system, evaluate the likelihood and consequences of an attack, and develop a prioritized set of system upgrades to increase security. These requirements were never included in legislation that was reported by an authorizing committee. In March 2002, the Federal Communications Commission issued a declaratory ruling classifying cable modem fees as an information service not be subject to cable franchise fees, costing local governments an estimated \$350 million to \$500 million each year.

7. **UMRA can be satisfied by authorizing funds, even if funds are never appropriated.** Perhaps the easiest way to enact an unfunded mandate without paying for it is to authorize “such sums as may be necessary”. Every advocate who has ever lobbied for full funding for a federal program knows that the authorizing legislation does not require the appropriations committee to provide full funding for a program, or even to provide any funding at all. In many instances, Congress authorizes but does not appropriate sufficient funds to reimburse states and local governments for the costs of unfunded mandates. The State Criminal Alien Assistance Program is a key example of this problem.

Options for the committee to consider to close this loophole include creating an enforcement mechanism in the appropriations process or permitting states and local governments to opt out of a mandate that has not received sufficient funding.

8. **UMRA excludes indirect mandates.** States and local governments often incur costs as an indirect result of federal legislation.

Perhaps the most compelling examples are related to the Endangered Species Act. New species listings have been known to decimate a local economy, wreaking havoc with the county tax base and dramatically increasing the need for numerous public services. However, three provisions of the American Jobs Creation Act, enacted last year, are far more typical as they will drive up the cost of products and services purchased by counties across the country. The first increased the excise tax on vaccines and will significantly increase costs for county hospitals and other public health care providers. The second was a set of provisions designed to crack down on tax shelters, the costs of which companies that lease equipment to local governments will probably pass along by charging state and local governments higher prices for many of their leases. We worked to minimize the effects of these provisions on traditional leasing but the remaining costs will likely still be significant and have not been estimated. The third would have prevented local governments from using fleet credit cards to purchase gasoline without having to pay the fuel excise tax and submit separate claims for reimbursement. We are working toward a fix to this problem in the upcoming surface transportation bill, but the provision as it originally passed the Congress would have driven up costs for local governments significantly.

9. **UMRA applies a nationwide threshold regardless of the impact on a specific government or region.** To highlight an example from the jurisdiction of this subcommittee, the Congress could impose a mandate of more than \$60 million on the District of Columbia and it would be considered de minimis under the Unfunded Mandate Reform Act. Anywhere in the country, a federal mandate can have a disproportionate impact on a local government without exceeding the de minimis threshold. This is frequently an issue under the Endangered Species Act and in federal environmental law, where rulemaking can have a devastating effect on a single county or region but fail to attain heightened scrutiny under UMRA.

10. **UMRA imposes only a majority point of order.** NACo applauds the provision of the Senate-passed budget resolution that would temporarily require a supermajority vote to override an unfunded mandate point of order. We believe that a point of order designed to protect state and local government budgets should require the same threshold as points of order designed to achieve discipline in the federal budget. If the provision appears in a final budget resolution it will be a significant first step toward strengthening the Unfunded Mandates Reform Act. NACo urges the committee to consider making that supermajority requirement permanent an important component of legislation to strengthen UMRA.

We hope that this list is useful to you and look forward to working with you to develop and enact legislation that will strengthen UMRA in the 109th Congress. We urge you to build on the success of the legislation by expanding its current framework to improve the collection of data on unfunded mandates both during the legislative and rulemaking processes and through retroactive analysis of the impact and to strengthen the enforcement power of the point of order both in the authorizing and in the appropriations process.

Mr. Chairman, that concludes my testimony. I thank you for the opportunity to share the views of the National Association of Counties on this important issue and look forward to any questions that you and other members of the committee may have.