

# THE FUTURE OF FEDERALISM IN AMERICA

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## HEARING

BEFORE THE  
SUBCOMMITTEE ON GOVERNMENT OPERATIONS  
OF THE  
COMMITTEE ON OVERSIGHT  
AND REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTEENTH CONGRESS

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## **THE FUTURE OF FEDERALISM IN AMERICA**

**Tuesday, July 23, 2019**

HOUSE OF REPRESENTATIVES  
SUBCOMMITTEE ON GOVERNMENT OPERATIONS,  
COMMITTEE ON OVERSIGHT AND REFORM  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 4:09 p.m., in room 4:09 p.m., 2154 Rayburn House Office Building, Hon. Gerald E. Connolly (chairman of the subcommittee) presiding.

Present: Representatives Connolly, Khanna, Meadows, Hice, Norman, and Grothman.

Mr. CONNOLLY. The subcommittee will come to order. Without objection, the chair is authorized to declare a recess of the committee at any time. The subcommittee will examine the state of federalism in the United States, and discuss how Congress can improve intergovernmental processes, including the possibility of reestablishing the U.S. Advisory Commission on Intergovernmental Relations.

To begin our hearing this morning, we want to welcome our colleague, Rob Bishop. And, Rob, I know you're probably on a tight schedule, so I'm going to suspend my opening statement and you as well, Mr. Meadows, to allow our colleague to go forward.

I do want to just say, Mr. Bishop, at the behest of former Speaker Paul Ryan, in the last Congress for two years, chaired a committee we formed, a task force on intergovernmental affairs. And we had four or five hearings, and we heard from lots of witnesses, and it was a very thoughtful process, very bipartisan in its approach. One of the follow-ups to our work over two years, was to reestablish, but in different form with different functions and different membership, the commission that used to exist, and that's the Partnership Act that Mr. Bishop and I are introducing today. I am very proud of that, and I'm very proud of the collaboration.

I also want to praise him. He ran the task force on an almost nonpartisan basis, very fairly, and I think we got a lot of ground covered. I want to thank him right now for his leadership in that effort, which kind of looked like a difficult assignment when it was first proposed.

So we want to welcome you, Mr. Bishop, and we want to respect your time, and we're happy to hear what you'd like to share.

### **STATEMENT OF THE HON. ROB BISHOP, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH**

Mr. BISHOP. Well, look, I appreciate those kind words. Most of them are true, and thank you so very much. Jerry and Mark, I appreciate you being here and I appreciate you holding these hearings. Shouldn't you be in my committee right now? Am I in the wrong spot somehow? All right, fine.

Now, we did have the fortunate opportunity of working with the Speaker's task force on whatever the rest of the acronym was. And we heard a lot of different things from a lot of different ideas. We have some ideas I still think, as the time goes on, will still be coming through.

But it was important to realize that one of the things we have to emphasize is the kind of intergovernmental cooperation is extremely important. This is one element of that, the idea of consultation, which is in law, but it's not really defined as to who has to consult with whom and how. Those things are still ideas that are coming from that task force that I still want to address, and hopefully will be coming up here again.

But I also am appreciative of the fact that we give a lot of lip service to the concept of federalism without actually really thinking about it, or knowing what we are doing. We spend more time trying to find a solution when some of the things we ought to be thinking about is who ought to be finding those solutions.

So, you know, the Bible says that you can't serve two masters, and the Founders of our Constitution insisted that we do exactly that, with their concept of dual sovereignty. So we have an obligation to state governments, and we also have an obligation to the Federal Government, which could be problematic except James Wilson said that as long as those two entities, local government, state governments, and the Federal Government, stay in their sphere of responsibility, they will simply circle like the planets in the solar system, all in harmony and all working together for the betterment of the human cause. But, if one of those acts like a meteor and then starts slashing through the solar system, it will produce chaos in its wake.

I think that's one of the things that we are talking about here. How do we insist that the Federal Government as well as state governments stay in their sphere of responsibility for the betterment of people? That is an extremely important concept. I think we give short shrift to that, and we need to spend more time thinking how you actually implement that. That is the nexus behind, I think, the concept of this bill.

In 1953, President Eisenhower suggested that this committee be established so there would be a permanent and ongoing relationship and interaction and conversation as to what level of government is doing what and how they can work together, but, more importantly, how they can stay out of each other's way as we go forward. That is what Mr. Connolly's legislation is trying to reintroduce.

It lapsed, I think, in the 1990's. It lapsed primarily not because it was not functioning, but as a means of a cost-cutting measure at the time. But it is still important, that kind of conversation. So the Speaker's task force was an effort to try and reestablish those conversations.

I'm very appreciative of those who will also be testifying today. Many of them came to the task force, but, more importantly, they represent local governments and their effort to try and make sure that that balance between the Federal Government and local governments has to be there in some particular way. So I appreciate

their efforts with our task force. I appreciate their efforts being here today.

Mr. Connolly, you and your staff has done a great deal of work on this issue. You've taken it seriously, and I appreciate where you're going forward.

Mr. Meadows, you and your staff has also been extremely helpful with this, and I'm sure that there may be some ways of actually improving this legislation as we go forward with it.

But, once again, as long as we maintain that concept that there has to be a permanent, viable medium in which state and local governments can have permanent conversations with the Federal Government so that we maintain both of those functioning in their own spheres of responsibility for the betterment ultimately of the people. That's what federalism is all about, and we need to give more credit and credibility to that concept.

So with that, I don't need to take really a whole lot more of your time, unless you want me to ramble on for whatever reasons you want me to. I can do it very well, but I don't need to.

Mr. CONNOLLY. Thank you so much. I would just add to what you said. I know it comes as a surprise maybe to some people, but conservatives and progressives can come together on this subject, especially if you've had experience in local or state government.

To be on the receiving end of unfunded mandates, whether they be Federal or state—I was a local government guy—is not a pleasant experience. I can remember in Fairfax County across the river, a huge sum in the hundreds of millions of dollars a year, was spent simply meeting unfunded mandates, both from the Federal Government and the state government. So [it is] time to address that kind of thing.

Also, sometimes unregulated—I mean, the intrusive regulation. We can disagree about this or that regulation, but I think we come together in saying, "Well, let's keep to a minimum the intrusive regulation that just makes things harder to manage, harder to govern, and without really merit."

I would give as an example both the No Child Left Behind legislation, well-intended intentions beyond question. But in the writing of that bill, I don't think the authors, I don't think any of them ever ran a school district. And some of the consequences that flowed from that legislation on schools and on school districts were quite consequential, when there was a different way of managing it. And, by the way, it was a big fat unfunded mandate.

My view, and I think yours, Mr. Bishop, is if the Federal Government, if we in Congress think something is a really good idea, we ought to pay for it, not impose it on states and localities and leave it to them to figure out how to fund our mandate.

So I think there's a lot of common ground. I think we uncovered that in your effort in chairing this task force for two years. Again, I thank you so much for the cooperation and for the opportunity to work with you on these matters.

Mr. BISHOP. Mr. Chairman, if I can just follow-up on that. I think you are absolutely correct. The only thing worse than an unfunded mandate is probably a funded mandate. The important element to remember here is federalism and what we are trying to accomplish is not liberal, it's not conservative, it's not Republican, it's

not Democrat; it's a philosophy of government of how we organize ourselves. So I appreciate that.

Mr. MEADOWS. So, Mr. Bishop, I just want to say thank you for your thoughtfulness. If I had your hair, I could be somebody. So, I just want to say thank you for coming, thank you for your testimony, and always for your gracious and kind and gentle spirit.

I yield back.

Mr. CONNOLLY. Thank you so much, Mr. Bishop, and thank you for being here and for your leadership on this bill.

As we get ready for our panel, I'm going to go ahead with my opening statement and then, Mr. Meadows, if you want to do yours. We'll be expeditious.

Today, the subcommittee will pick up where Mr. Bishop of Utah, who served as chairman of the Speaker's task force, left off. Our hearing examines the status of federalism in the United States, and legislation that Rob Bishop and I have introduced to help spur dialog and coordinated action on the greatest challenges facing the intergovernmental system.

As a former member and chairman of the Fairfax County Board of Supervisors, a county of 1.1 million people, I know how important it is to balance the roles and responsibilities of Federal, state, and local governments. I'm also painfully aware of how local government, the most immediate form of government and the level of government where services have to be delivered, can suffer when we fail to strike that right balance.

The value proposition of functional intergovernmental relationships is immense. America's federated system demands that Federal, state, local and Tribal governments work together and reduce overlap to improve people's lives. The United States Constitution does not give any one level of government absolute power, or unlimited jurisdiction over public matters. Therefore, we rely on collaboration across governments to ensure the reliable administration of public services and the protection of the public welfare. A federated system that works and delivers real results for our constituents is as fundamental to our system of governance as free and fair elections. Without either, confidence and trust in our institutions is inevitably diminished.

While the Constitution formed a strong Federal Government in the wake of the failure of the Articles of Confederation, it also included a respect for the sovereignty of states. To honor the Framers' vision, we must remain vigilant about unfunded mandates passed down to state and local governments, and push back on overly intrusive Federal regulation. In dealing with states such as mine, Virginia, where local governments only had the authorities explicitly granted to them by the state government, overreach at the Federal and state level can be especially onerous, as local governments are often forced to deal with mandates with their revenue hand tied behind their back. We can all agree that overreach exists. I mentioned the No Child Left Behind Act being a great example.

What the intergovernmental relationship needs is a venue for addressing the overreach in a collaborative manner. Our legislation, the Restore the Partnership Act, which we introduced today, would provide such a venue by reconstituting the U.S. Advisory Commis-



sion on Intergovernmental Relations, a committee that fosters critical conversations and allows for the sharing of best practices among the leaders of governments that form our Nation.

We're proud to announce the bipartisan legislation has received already the endorsement of the so-called Big Seven, which includes the National Governors Association, The Council of State Governments, the National Conference of State Legislatures, the National League of Cities, the United States Conference of Mayors, the National Association of Counties, and the International City/County Management Association, all bipartisan organizations.

Please indulge a short historical aside, which mirrors how the Restore Partnership legislation came about. As Mr. Bishop indicated, in 1953, Congress, with the support of then-President Dwight Eisenhower, authorized the temporary Commission on Intergovernmental Relations, known as the Kestenbaum Commission, to conduct a review of intergovernmental affairs in the United States. After the Commission published its final report and then sunset, the House Intergovernmental Relations Subcommittee studied and held hearings on those recommendations.

Acknowledging the usefulness of the Commission, the subcommittee subsequently developed legislation to establish a permanent successor entity that would have broad jurisdiction over intergovernmental relations. Congress established that successor entity, the ACIR, in September 1959, when President Eisenhower signed into law legislation that resulted from the work of the subcommittee. The ACIR operated until September 1996, and during those 37 years, the committee was tasked with serving as both a forum for intergovernmental dialog, and a neutral analytical commission that published reports and guidance on how to create partnerships across different levels of government. It operated much like the modern-day Congressional Budget Office, but remained focused on intergovernmental relations.

The ACIR also provided a bipartisan venue for finding solutions to intergovernmental challenges. It brought together representatives of Federal, state, local and Tribal governments to promote innovation and collaboration in this space. The ACIR also provided the expertise and analysis necessary for state and local governments to share best practices in fiscal administration and program management.

The Commission, unfortunately, was de-funded in 1996, not for substantive reasons but simply as a push to cut Federal agencies wherever we could. In retrospect, the decision to abandon the ACIR deprived the Federal Government of a useful venue and platform for input and pushback on the encroachment of the Federal Government into state and local affairs.

Our legislation seeks to reconstitute an evolved Commission on Intergovernmental Relations. The bill language includes several key reforms to the original ACIR, many of which are recommendations of then-Speaker Ryan's task force chaired by Rob Bishop, which we received from intergovernmental partners and other stakeholders.

The reforms to the bill include the addition of town and Tribal representatives on the Commission, as well as expanded membership for state legislatures and counties, to reach parity with state

executive representation; new responsibilities that include examining Supreme Court decisions that impact on the intergovernmental relationship, actually a very critical thing by way of addition, because there are a lot of Supreme Court rulings that have lots of impact at the state and local government level; a requirement that Congress hold hearings to examine the Commission's annual report; new authorities that ensure the Commission receives written responses from agencies on the recommendations it provides them. These new provisions generate a new level of accountability and functionality for the Commission, placing it on a par with the way in which other agencies currently engage with the Government Accountability Office, the GAO.

With that, I now recognize my partner on this subcommittee, the former chairman of the subcommittee and now ranking member, Mr. Meadows.

Mr. MEADOWS. Thank you, Mr. Chairman. Thank you for your leadership on this bill, this important piece of legislation. In the interest of time, I'm just going to submit my opening remarks for the record, and I will yield back.

Mr. CONNOLLY. I thank the distinguished ranking member. And I thank him in advance for his support for collegial effort on this subcommittee.

We're going to now introduce our panel. We're pleased to welcome Teresa Gerton, who's the executive director of the National Academy of Public Administration; Carl Stenberg, III, former staff member of the U.S. Advisory Commission on Intergovernmental Relations—he actually served on ACIR—and a James Holshouser, Jr., distinguished professor of public administration and government at the University of North Carolina, very prestigious; and Matthew Chase, the executive director of the National Association of Counties. In the interest of disclosure, I headed the Virginia Association of Counties and I was an active member of NACo until the day I was sworn into this job.

So welcome all of you. If the three of you would rise and raise your right hand to be sworn in. It is the custom of our committee to swear in witnesses.

Do you affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Let the record show that our three witnesses answered in the affirmative.

We welcome you. We urge each of you to summarize your testimony in five minutes. Of course, we will submit your full statement for the record.

Ms. Gerton, why don't we begin with you. Welcome.

**STATEMENT OF TERESA GERTON, EXECUTIVE DIRECTOR  
NATIONAL ACADEMY OF PUBLIC ADMINISTRATION**

Ms. GERTON. Thank you. Mr. Chairman and members of the committee, I appreciate the opportunity to testify today. I'm a fellow of the National Academy of Public Administration, and I've served as its president and chief executive officer since January 2017. Established in 1967 and chartered by Congress in 1984, the Academy is an independent, nonprofit, and nonpartisan organization with a proven record of improving the quality, performance,

and accountability of government at all levels, and expertise in the intergovernmental system is one of our most enduring characteristics.

Our congressional charter precludes the organization itself from taking an official position on legislation, and so my testimony today will reflect the Academy's views of opportunities for improved intergovernmental relations. Much has changed from the mid 1990's, when the ACIR stood down.

State and local governments have even more responsibility for the implementation of Federal domestic programs, both directly and through partners; but new laws often make the intergovernmental system more complex, adding confusion, conflict, and unanticipated consequences. The ballooning costs of healthcare are squeezing state budgets, and unprecedented partisan polarization challenges our ability to focus on major policy problems and develop effective governance. But, against this background, it is important to remember that our intergovernmental system retains considerable capacity for adaptation and flexibility, and it may remain our greatest strength in addressing these complex governance challenges.

From its founding, the Academy has fostered collaboration across all levels of government, to deliver better outcomes for the Nation. I want to focus here on current opportunities for impact.

The Trump administration's 2018 Presidential management agenda established 14 cross-agency priority goals. While these focus on improving performance at the Federal level, success in many of them will require collaboration and integration with state, local, and Tribal governments, and will offer prime opportunities to expand intergovernmental partnerships.

Two of these CAP goals can serve as representative examples. CAP goal two identifies data accountability and transparency as one of three drivers of transformation. Emergency and disaster management policy is just one area in which tremendous amounts of data are already collected and analyzed and from which voluminous research is produced.

This public policy area, however, suffers like many others. Simply put, the massive amount of data and research produced is impossible to filter down to practical strategies for solving the problems of any one government, agency, or public function. We need an institution that can function as a filter through which data and research flow, with the end result being relevant, actionable strategies that all governments can use to prepare for and manage effectively through future disasters.

Creation of such an institution would take modern data analytics to a new level. The role of this institution would not be to develop additional primary data, but, rather, to scan the environment of data already collected, along with extant research, and assess this collection for convergence on the state of practice, to inform and advance intergovernmental relationships and effective management strategies. This could lead to more proactive and cost-effective approaches to community resiliency.

The focus of CAP goal eight is on standardizing grant reporting data and improving data collection. The Federal Government spends over \$600 billion annually on grant programs administered

by state and local governments and their nonprofit partners, to improve the lives of low-income populations in their communities.

Yet, the fragmented and complex nature of Federal and state funding and administrative requirements makes it extremely difficult for states, localities, and service delivery partners to coordinate services, increase efficiency, and improve outcomes for low-income individuals, families, and communities. No congressional committee, or any Federal agency, is accountable for helping states and localities strengthen their capacity to coordinate low-income programs involving multiple agencies, and to deliver services more effectively and efficiently. There is a tremendous need for an institution that can collaborate with major stakeholders to identify promising opportunities for collective problem-solving, to develop consensus on high-impact solutions, and co-create feasible action plans.

By involving key executive and legislative branch decision-makers in the planning and execution of these efforts, this institution could help to ensure that its recommendations could be implemented by relevant agencies, and that gaps requiring legislative solution would be identified for Congress.

Leveraging data and improving the outcomes of Federal grants are simply two illustrations of the desperate need today to improve collaboration between all levels of our government. I believe that the approaches outlined above can help us ensure that our national system of government works better for all of us. The National Academy of Public Administration stands ready to assist in these efforts.

Mr. Chairman, that concludes my statement, and I would be pleased to answer any questions you or the committee members may have.

Mr. CONNOLLY. Thank you very much, Ms. Gerton.

Dr. Stenberg.

**STATEMENT OF CARL W. STENBERG III, FORMER STAFF MEMBER U.S. ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS**

Mr. STENBERG. Thank you, Chairman Connolly, Ranking Member Meadows, members of the subcommittee. I am delighted to be with you today to share my thoughts on the future of federalism in America and, in particular, through the Restore the Partnership Act.

I'd like to offer what I call a "pracademic" perspective on these topics. Before my university affiliations, as the chairman mentioned, I spent 16 years as a staff member of the former ACIR, so I have kind of that insider perspective on the actual work of the Commission and the functioning of the membership. I followed that with six years as executive director of The Council of State Governments, one of the key Big Seven stakeholders of ACIR. I've also been a fellow of the National Academy of Public Administration since 1984, the year Congress chartered the Academy.

My remarks today do not represent the School of Government at UNC, or NAPA, they're personal. But, in my judgment, the Restore the Partnership Act is a promising point of departure for rebuilding the Federal Government's capacity to address current intergovern-

mental issues and emerging challenges. This capacity has diminished significantly since the demise of ACIR in 1996.

As I'll point out, the former ACIR model is a good beginning point, but it needs to be aligned with some of the changes in the political and policy environments that have affected intergovernmental relationships over the past two or more decades. There are at least five of these changes that have been impactful: First, the complexity of understanding and solving problems, both horizontally and vertically, has increased substantially, with more non-governmental players involved. The problems are wicked. They're more intergovernmental, interdisciplinary, and intersectoral than ever before.

Second, we've been in a period of coercive federalism, as we talked with the task force about last May, featuring the growth of preemptions and under-funded mandates. The potential for intergovernmental friction has become much more pervasive.

Third, the number of think tanks in Washington has grown significantly. The intergovernmental policy and advocacy fields have become more crowded.

Fourth, the influence and impact of the Big Seven organizations representing states and localities in Washington, DC. has been partly undermined by special interests, politics, and campaign finance. Sometimes the Big Seven are treated more like a special interest group than the representatives of general-purpose grassroots governments.

And fifth, confidence the American public has in governments has steadily declined. Some believe that government is the problem, not the solution.

So I think in this environment, it's fair to ask whether a commission, like the proposed Commission on Intergovernmental Relations, could actually make a difference. Establishing a new partnership is a bold undertaking and an important one, but it's one of a number of steps that probably could be taken over the years ahead.

What evidence is there available to show that such an organization could have an impact? I would look back to the record of the former ACIR for some examples. The ACIR was always a respected honest information broker. Again, in this world of policy think tanks, the need for an honest information broker is imperative. The Commission issued some 130 policy reports, some of which were influential or instrumental, in developing congressional legislation or improving the administration of Federal grants and aid. Some examples: The Demonstration Cities and Metropolitan Development Act, block grant design and implementation, the Intergovernmental Cooperation Act, the Intergovernmental Personnel Act, the Uniform Relocation and Real Property Acquisition Act, general revenue sharing, the Unfunded Mandates Reform Act, the Federal Financial Assistance Management Improvement Act, the Regulatory Right-to-Know Act.

More examples are in my statement. From the standpoint of grants administration improvement, OMB Circular A95 and OMB Circular A102, again, were areas where ACIR's work saw the light of day.

The ACIR was also a valued adviser to Presidents, Governors, state legislators, and local officials. So ACIR was a thought leader,

but also a policy influencer. And the chairman has already indicated how, in the legislation that has just been introduced, much of the bill does reflect the mission, the organization, and functions of the former ACIR; but a number of important changes have been made that give it more teeth, more credibility, and a potential for greater impact.

So, finally, I'd like to just conclude by offering three lessons that I've learned in terms of kind of more than the structure of the organization, but the functioning of the Commission: The Federal members really need to be committed to and value intergovernmental consultation and engagement; strong support from the Big Seven is crucial, as five of the organizations nominate representatives for appointment; and third, and perhaps a key factor for its success and maybe even survival, is that the new commission needs to be mindful of the research agenda, the technical assistance, the convening work that it convenes. The challenge is to be timely and relevant, but not too close to the political fray, or not too distant from the real world.

So, Mr. Chairman, that concludes my formal statement. I'd be happy to answer any questions that you might have.

Mr. CONNOLLY. Thank you so much, Dr. Stenberg. I just want to say, it really resonated with me when you said that increasingly, because of lots of other actors, that the Big Seven, who represent the people like we do, are treated like just another special interest. That actually happened to me once. I remember representing my county and the Virginia Association of Counties going down to Richmond, and I actually had a state Senator say to me about counties: We just view you as another special interest. I was stunned by the statement, and it told us a lot about need for improvement in intergovernmental relations.

Mr. Chase.

#### **STATEMENT OF MATTHEW D. CHASE, EXECUTIVE DIRECTOR NATIONAL ASSOCIATION OF COUNTIES**

Mr. CHASE. Good afternoon, Chairman Connolly, Ranking Member Meadows, and members of the subcommittee. Thank you for the opportunity to discuss the topic of federalism in America. More specifically, our ideas to strengthen the intergovernmental partnership of Federal, state, local and Tribal officials.

My name is Matt Chase. I am the executive director of the National Association of Counties, which represents the 3,069 counties across America, including over 40,000 elected county officials. Today, I am also honored to represent the Big Seven coalition of state and local elected official associations that was just referenced by the chairman.

Our national associations of state and local officials support the formation of a new, modern, national commission to facilitate improved intergovernmental dialog, engagement, and problem-solving. Our Founding Fathers established a brilliant form of federalism, with multiple layers of checks and balances across the three Federal branches, but also between the Federal Government and state governments.

While there is a clear distinction and separation of powers and duties among these levels of government, there is also a deep inter-

connectedness and interdependence. As we face new pressing public policy challenges and opportunities, our Nation will need the collective efforts of our Federal, state, local and Tribal governments, all working together. These economic, political, and social issues range from the future of work, especially with advanced automation and artificial intelligence, to cyber-security, including with our election systems, to disaster mitigation and resilience, to transportation and infrastructure upgrades, to dealing with multigenerational impacts of our Nation's aging population, our mounting crisis with substance abuse, often with co-occurring mental health issues, and our challenges with uneven economic growth and competitiveness.

We must pursue a more modern, practical approach to forging intergovernmental partnerships, with an emphasis on solutions. After all, government works best when we work together. And this includes with our colleagues in the private, nonprofit, academic and philanthropic sectors.

We are deeply appreciative of the bipartisan efforts by the chairman and Representative Rob Bishop to kick-start and refresh a serious national dialog on intergovernmental relations, especially through the Restore the Partnership Act.

In recent decades, we have witnessed a significant decline in a structured intentional dialog of Federal, state, and local government officials, especially at the broader policy level. As the chairman just mentioned, we are often viewed as a special interest group, rather than as a public sector counterpart.

The Restore the Partnership Act is an essential pillar in rebuilding and re-balancing our Nation's intergovernmental system. A new national commission would shine a spotlight on areas where intergovernmental collaboration, analysis, and debate is necessary, and even succeeding and would create a much-needed forum for advancing common priorities and issues.

Two areas of immediate interest to the Big Seven coalition include creating a new commission on intergovernmental relations of the United States, and updating the Unfunded Mandates Reform Act, especially Title 2, with a consistent early and transparent consultation process for Federal rulemaking involving state and local governments.

While establishing a new commission by itself may not solve all of our federalism issues, we are long overdue for a new infusion of thinking and commitment to improving our Nation's intergovernmental principles and practice. As our Founding Fathers demonstrated, we can have intense, rigorous debates and viewpoints while still fostering a boundary-crossing institution that can facilitate intergovernmental relations and effective intergovernmental performance.

Chairman Connolly and Ranking Member Meadows, thank you again for hosting this hearing today. NACo and our Big Seven coalition partners stand ready to work with you and your other Federal colleagues to ensure the health, safety, and well-being of the American public. Thank you.

Mr. CONNOLLY. Thank you so much, Mr. Chase. Listening to your testimony, one of the things that struck Mr. Bishop and myself in putting together the legislation is how much has changed.

I mean, in 1996, when the Commission was dissolved, we weren't worried about election security. We weren't worried about cyber hacking and attacks. The internet was embryonic. You know, technology has just transformed the landscape, and we have so many different challenges in this whole discussion of federalism. So, trying to tee up those issues, we've got to have a vehicle.

The chair would ask unanimous consent to enter into the record at this point the statement from the Big Seven endorsing the legislation, statement from the Western Governors Association endorsing the legislation, and the hearing transcript from May 17, 2018, of the task force hearing on the subject of the partnership and the possibility of this legislation. Without objection, it is so ordered.

Mr. CONNOLLY. The chair now recognizes the distinguished ranking member—the chair now recognizes Mr. Hice of Georgia.

Mr. HICE. Thank you, Mr. Chairman. I appreciate each of you being here today. Just kind of a question across the board, because this is an extremely important topic, as we all know, but at the same time, there's no question we have seen such a massive growth in our Federal Government that it dictates all the way down in ways it was never intended.

So just in your respective opinions, is there a point, or maybe are we already at that point, where the Federal Government is so big that the model of federalism is really not possible or feasible?

Mr. STENBERG. One of the changes that has occurred, certainly over the last two or three decades, has been the continued growth of the Federal role in the Federal system, chiefly, through grants and aid and regulations. At the same time that we've seen the growth in the dollars and requirements that are going out to states and localities, we've seen a decline of intergovernmental institutions to help ensure that that money is well-spent, those regulations serve the intended purpose and don't add burdens and costs.

I think a question at this point is, can the rate of growth be sustained and should it be sustained?

Mr. HICE. Well, that's not my question. That is a question; that's not my question. My question is, the role of Federal Government, is there a point where it gets so big that its dictate—I mean, there's no way we're going to have the state governments fulfilling their role within the sphere that they're given in our Constitution.

Please be quick. I want to move forward.

Mr. STENBERG. Four Ds could change things in terms of the Federal role. Demographics—we're a grain Nation, we're living longer, we're taking advantage of entitlement programs; defense commitments, deficits, and debt, raise a question of can this role be sustained and, if not, who is going to shoulder the responsibility. Will it be states? Will it be local governments? And if the answer is perhaps, or yes, how are they going to do the job? Who's going to kind of sort out responsibilities and figure out who does what?

Mr. HICE. Let me hear from others. Ms. Gerton.

Ms. GERTON. Yes, sir. Before I was at the National Academy of Public Administration, I served in the Department of Labor and ran a grant-making agency. One of the things that surprised me was how complex the space of grantee—Federal agencies that were involved in the veterans programs—was, and we didn't even know which other agency was involved.



So as you speak about the growth of the Federal Government, I think it doesn't obviate the need for more federalism, it increases it. But at the same time, we've got to do a better job at the Federal level in the interagency process of sharing and collaborating on particular topics, so that we get a streamlined Federal approach, and then we engage our state and local partners so that there's a better collaboration to deliver outcomes.

Mr. HICE. Okay. Mr. Chase, real quickly.

Mr. CHASE. I can't speak to the size, but I can also echo the complexity, that of the Federal investments we get today, they could be much more efficient. The challenge for counties, in particular, if you think about our 3,000 counties, 50 percent of the American population lives in 140-plus counties. The other 50 percent live in 2,900 counties. And the ability for those rural communities to tap into the Federal Government is becoming increasingly difficult.

Mr. HICE. Sure. I mean, but even more difficult in all of this is what the Constitution enumerates. The powers of the Federal Government is only like 18 areas. Everything else is to be left to the states and to the people. And we're not seeing that. We are so far outside our constitutional jurisdiction here on the Federal level, and we continue to swallow up more and more and more authority all along the way.

Has there ever been an example where the Federal Government has taken an authority that they were not supposed to have, and then they relinquished it back? I'm not aware of that happening. I mean, so we keep gobbling up more and more and more authority to where we think that those of us up here in Congress, we're supposed to take care of everybody's problem in the entire Nation, all the states' problem, local problems, individual problems. We've become the daddy figure of everyone.

And my question is, is there a point that we have grown this thing too big that we can't get back to the constitutional roles of the states? I fear for that. We've got to get back to that. It is what makes this country so powerfully unique from every other country in the world, and yet, we are trampling the very thing that protects our freedoms and guards us from become swallowed by Federal Government.

Mr. CHASE. Mr. Chairman, I would just say, and Congressman, one of the biggest issues facing county governments is our county jails have become hospitals. And one of the issues right now is you actually lose access to Federal benefits, including CHIP for juvenile, VA benefits, and Medicaid. Under the Fifth and 14th Amendments to the Constitution, we would argue you shouldn't lose those at arrest; you should lose them post adjudication.

So there are also issues where we think the Federal Government should help counties with their core responsibilities under the Constitution. Right now, we are running programs because people are losing their constitutional rights at arrest, not through due process. That is costing counties billions of dollars in healthcare.

Mr. HICE. Thank you. I yield.

Mr. CONNOLLY. I thank my friend. I think he makes the argument for why we need to have a commission that tees up those very issues, because they are very much arguable points.

Mr. Grothman.

Mr. GROTHMAN. Sure. It seems to me a little bit of the underlying problem here is that people are coming to Washington for money and programs that clearly our forefathers never would have anticipated would be Federal programs. Of course, you can be helpful in that, because, of course, some of the people who come to us for more money are, sadly, local government officials. You know, you can talk about intergovernmental commissions or partnerships, but, you know, partnerships or intergovernmental commissions inevitably mean the Federal Government is going to tell you what you can do with your money.

Just so you guys understand, right now, it seems to vary from month to month. We're borrowing something like 17 or 18 percent of our budget. At least in the state of Wisconsin, we went into this budget with a big surplus. Do you find, each one of the three of you, that right now, we're, in general, in pretty good fiscal health on the states and local governments, but the Federal Government is broke out of its mind?

Just right across, Ms. Gerton, then Dr. Stenberg, then Mr. Chase.

Ms. GERTON. I think we're certainly seeing budget squeezes at the state and local level as the tax bases change, as the sources of revenue change.

Mr. GROTHMAN. Are you sure? I mean, at least in Wisconsin, as the economy booms—and state budgets largely operate off income and sales taxes. Usually, they're getting increases. But that's not true for you?

Ms. GERTON. Sir, I think we see a general trend that state budgets are being squeezed by, as Mr. Chase notes, a number of the local programs that are addressing the needs of the low income and needy in the community. At the same time, the Federal Government is challenged with that as well. So, as the Federal Government asks states and localities to do more, that fiscal balance gets out of balance.

Mr. CHASE. I would just say, from a county perspective, each county is individual. Some are doing okay. Others are really struggling, based on their local economy. We are primarily a property tax-based government, depending on the state. There are some where it's sales tax. But our funding through property tax tends to stay a little stable, but we certainly have counties across the country that are struggling, and some are prospering.

Mr. GROTHMAN. Okay. I'm going to go through a few of the things, and it drives me up a wall. I always have people in my office asking for more for these things. Each one of you can tell me whether you think the Federal Government should put more money in these areas.

Education, what do you think about Federal funding of education? We'll start with Ms. Gerton.

Ms. GERTON. Sir, we certainly think that there should be—the states and localities are responsible for delivering the education systems, and so, there needs to be an agreement about what those roles and responsibilities are, how much they cost, and who funds them.

Mr. STENBERG. The Federal share of education has been around six or seven percent for K-12 over the years. One of the concerns

is that the number of Federal regulations is disproportionate to the amount of the financial contribution. So the financial contribution will continue.

Mr. GROTHMAN. Would each one of you come out then? I am inclined to agree there's a lot of mandates that come out with it. Would each one of you then be in favor of getting—well, Dr. Stenberg, would you be in favor of getting the Federal Government out of education?

Mr. STENBERG. I would not. I think K-12 education is primarily a local-and state-funded activity, but there are needs that sometimes cannot be met. For example, Federal K-12 education money oftentimes is targeted to poor communities that do not have the ability to support their schools.

Mr. GROTHMAN. States can't do that?

Mr. STENBERG. States can do that. Whether they do it is another question.

Mr. GROTHMAN. Okay. How about what we refer to as welfare, income sort of equalization, do you feel that's a Federal problem? I'm going to give each one of you the question.

Mr. CHASE. I would just say, from a county perspective, we definitely need a Federal partner. We are just seeing—it's an interesting phenomenon for us, where we have incredibly strong GDP, low unemployment, and, yet, our demand for county services in some areas is through the roof. The opioid epidemic is a classic case study, where we are seeing with the No. 1 cause of accidental death now being drug overdose, our foster care caseloads are at a record high. Our treatment for Hep C, HIV, and stuff in our jails is through a record high.

Federal policy played a huge role in driving prescription drugs. So, we would strongly argue that if the Federal Government incentivized, through Federal policy, the prescription of these medications and now we have to pay in our jails——

Mr. GROTHMAN. I'll give you one final question real quick, and then I'll shut up. Is there anything the Federal Government pays for right now that, you know, we use the counties or schools or whatever as a conduit, that you would be in favor of reduced Federal spending and reduced Federal role?

Ms. GERTON. I don't think that I can name a specific program, but I would argue that the more we do integrated conversation about these topics, the better we'll have a division of labor and cost-sharing between the different levels of government. I think right now, there's not a lot of opportunity to collaborate on what states might provide, what the Federal Government can provide——

Mr. GROTHMAN. No suggestions where we could spend less money and you'd rather pick up the ball? None? From the three——

Mr. CONNOLLY. The gentleman's time has expired, but you may answer the question.

Mr. STENBERG. The former ACIR tackled that question, sir, in terms of the "who should do what?" An example, it did recommend that public education K-12 be shifted to a greater extent to the state level. At the same time, it recommended that [for] Medicaid-

type health programs, there should be a greater Federal role played. Kind of a sorting out of responsibility.

That's one of the jobs of the Commission that is being proposed, I understand, to kind of identify, in particular, functional areas. What should the relative roles and responsibilities be? Who should pay for what? And make the adjustments accordingly, or at least recommend the adjustments for your consideration.

Mr. CHASE. I would just say for counties, our biggest challenge with the Federal Government are more rules and regulations. We're not always here asking for money. In fact, we're asking for relief. One of our biggest priorities this year is to restore advance refunding of municipal bonds so we can—[with] our own borrowing—that we can refinance our bonds, which was recently taken away.

So we have many things that aren't Federal dollars. It's actually more Federal guidelines and regulations—and handcuffing our ability to be flexible at the local level.

Mr. CONNOLLY. I think the gentleman from Wisconsin's question, again, makes the case for why we need to revive the Commission, because there are so many issues like this that really need to be addressed.

For example, I'd say to my friend from Wisconsin, his question on education is a really good one, because the Federal Government is only about a six percent, seven percent, participant in school budgets, right, at the county level, but they have all kinds of requirements as conditions for that six or seven percent.

I can remember, in trying to implement No Child Left Behind in counties with very diverse and large immigrant populations, trying to get everyone on a level playing field in terms of the language so that they are performing like anybody else, in our county, takes about two years. We sought a waiver to acknowledge that, allow us a little time, so we could get everyone on a level playing field.

And the then-Secretary of Education, Mr. Grothman, not only said no, but she threatened the Federal funding. Although the Federal funding wasn't a lot of money, at the margin, our property tax simply wouldn't—the increase required to make up for it was not doable. So, they held us hostage for bad policy that didn't take into account diverse counties with big and growing immigrant populations that didn't speak English as a first language.

This happens all the time. That's why I say I think there is potential common ground between Republicans and Democrats, because those kinds of things need to be addressed.

Mr. Norman.

Mr. NORMAN. Thank you, Mr. Chairman, and thank each one of you for coming. You know, as I read kind of why we're having this hearing, [which] is to hold a hearing to propose and evaluate ways to improve cooperation among Federal, state, and local governments. It's my understanding that the last year that the Commission was in existence was in 1996. The funding was \$600,000.

What do you all—do any of you have an idea what the funding cost level is going to be for this if this Commission is put back into place?

Ms. GERTON. I'm sorry, sir. We haven't estimated a calculation for that.

Mr. NORMAN. Okay. I guess the other thing, too, that we would strive to do is to evaluate how state and local groups can advocate for a return to cooperative federalism to address Federal and national issues. If each of you had to break down exactly what you would do to achieve this, what would that be to justify your existence? Give me a one, two, three order, each of you, on what you would do to make this happen.

Mr. STENBERG. I would emphasize improved intergovernmental consultation.

Mr. NORMAN. Define that.

Mr. STENBERG. Federal agencies, before issuing rules, would consult with representatives of state and local government around the impacts of those rules and regulations on the operations of states and counties, municipalities, towns and townships and tribal organizations. They would do so in advance of going public, so that there could be some negotiation, so the negative impacts could be recognized, and perhaps the language modified to deal with them. That's one of the voids now as a result of no ACIR. There is no consultation that's meaningful.

Mr. NORMAN. So with 50 states, you would gather who to try to make—to make that cooperation happen?

Mr. STENBERG. I would rely on the Big Seven representatives, together with some of the additional members on the Commission, the Tribal Nation representatives, town and township representatives.

Mr. NORMAN. That's a big task, isn't it?

Mr. STENBERG. Yes, it is.

Mr. NORMAN. I mean, what teeth would this Commission have other than—and let me tell you, I'm from the private sector. I'm tired of forming a committee to study a committee when nobody has any power. I mean, this is noble, but tell me exactly what you're going to do to justify the funding, whatever it is?

Mr. CHASE. So, Congressman, if I can give you an example, there is a highly politically charged regulation called Waters of the United States—

Mr. NORMAN. Correct.

Mr. CHASE [continuing]. that defines Federal versus state waters. Right now, half of our counties are operating under one law, and half of our counties are operating under a different law, because we are now legislating through the courts.

We have used an executive order that the Clinton Administration actually put in place—it's still there today—to demand a seat at the table with EPA for our county engineers, our attorneys, our public works experts, to sit down with EPA's professionals and say, We're not here as the left or the right. We are here as level of government that owns 45 percent of the roads, 40 percent of the bridges, and right now, we can't clean our culverts without a Corps of Engineers or EPA permit under this regulation.

Mr. NORMAN. You can't cut a logging road in some parts of the country without getting silt fences on a logging road on 5,000 acres of land.

Mr. CHASE. But through the consultation process, we filtered out kind of the political rhetoric and said, Let's look at this regulation as practitioners and how can we protect the environment, not have

just countless studies and permits that we have to pay for. These 404 permits with the Army Corps can be incredibly expensive. How can we just look at this regulation through a practical lens?

Mr. NORMAN. Where's your teeth other than recommending—I mean, to get that many people on Waters of the United States, that my eyes get red on that particular thing. How are you going to make any kind of impact that could possibly get the states together as far as—and my time is running out, but I'll just say, if this thing, if this Commission is put back in, you need to have some concrete examples.

I don't see the teeth in it. I see just another meeting to have a meeting to—and I don't see how in the world you're going to justify your funding on this that really has an effect other than maybe education on maybe put some common sense back into it.

Mr. CHASE. Well, Congressman, we would always welcome more teeth. Right now, we don't even have a seat at the table. So, particularly in the rulemaking process, we are being treated like the general public rather than intergovernmental partners, who are operating and own vast majorities of the public infrastructure in the case I gave you. What we want is early, continuous, and transparent. We're not looking to meet in a back room with these agencies. We're fine with public meetings, but we just don't want to be treated as a special interest group. We want—counties in our case on the environment, we're regulators, we're operators, and we have to also comply with the Federal Government. But we were just being treated just like the general public.

Mr. CONNOLLY. The gentleman's time is up, but I would say to him, we don't have a mechanism for teeing up these issues right now. The issues, since 1996, have gotten far more complex. Since 1996—I think I'm right here—the only legislative remedy that has been provided was by this committee, and that was the unfunded mandate legislation. I actually testified before this committee when I was the chairman of my county, representing NACo. This committee was then chaired by my predecessor, Mr. Davis.

Teeing up issues before they become big issues has merit. Teeing up issues when there are problems so that we get some guidance on legislative remedy like the unfunded mandates legislation is great. That's important. We don't have it right now. There's so much that can be done, in terms of being more efficient, avoiding needless regulation, catching unfunded mandates before they get out of control, flagging for each other issues that are going to matter. There are just a myriad of issues that I would suggest to my friend we would benefit from.

My friend, Rob Bishop, after two years of looking at this, hardly a liberal Democrat, came to the same conclusion: We've got to have a mechanism. We changed the old mechanism to make it more relevant, and we certainly—I take my friend's point, we could look at other things to shore it up as well. But if we don't have something that deals with this complex federalism issue, I think we're asking for trouble as we move forward.

Mr. NORMAN. Mr. Chairman.

Mr. CONNOLLY. Yes, sir.

Mr. NORMAN. Can you indulge me for a minute?

Mr. CONNOLLY. Of course.

Mr. NORMAN. If we do—if this commission is put in order, I suggest we sunset it, sunset, have some sunset time on it, and have specifics that we can measure the success after a year, or two years, because these are noble causes, but I just don't know—I mean, I've been on the state level. I don't know how you get people together. Every bureaucrat can justify why this or that shouldn't be put in place.

An argument? I just don't see the teeth in it. But if it is, I would ask to sunset it and have some measurable outcomes that they have to meet. Thank you.

Mr. CONNOLLY. Certainly. I thank the gentleman. A sunset clause may very well be a wise idea. Let me take my five minutes.

Mr. CONNOLLY. Let me ask you, Dr. Stenberg and Mr. Chase, in particular. What we haven't talked about here is—two things. One is how the states can sometimes be the culprits. I'll cite my own state of Virginia.

So a game is played in sloughing off responsibility to localities who have to pay for things, and then we take enormous pride in being one of the lowest tax-burden states in the country. Yes, because we don't pay the education bill, even though we mandate at the state level what has to be done.

So the state mandates what's called standards of learning, and the state mandates standardized tests called standards of quality to which you will teach. And your kids have to pass these tests every year or you have a failing school. But we don't pay for them. In fact, they're committed to pay 55 percent of those costs and they don't even meet that.

So what happens? The localities are left to their own devices. And, as Mr. Chase said, well, if you're in a county with a good, solid commercial tax base, you can bear that burden. But if you don't have a commercial tax base, even though you may be an affluent county by income, we don't access income at the local level, and so it's property tax that has to make up that difference.

That's a real Sophie's choice for many counties or even cities: Okay, how high can I raise that tax burden before I drive people out of the county or, you know, I have a tax revolt and I end up doing what California did years ago, which clearly hurt the educational system of California?

So sometimes states are part of the problem—or are the problem. It's not just the Federal Government that is imposing unfunded mandates.

I thought you might want to comment.

Mr. CHASE. Yes, so I will take off my Big Seven hat representing state and local governments and just put on my county hat.

That certainly is a challenge for us at the local level. Currently, we have over 40 states where the state legislatures have capped our property tax income and yet the mandates continue.

Where we see coming back to this commission are issues like elections, for example, where counties pay the vast majority of the election equipment, and it is costing us tens of millions of dollars. It's something the Federal Government historically has not paid us for. In some cases, the states may or may not.

So we think the commission would be a great forum to talk about these issues, like elections, that have a Federal-state-local intersec-

tion and have a good dialog. We aren't asking for the Federal and state governments just to bail us out, but oftentimes those mandates are imposed and we do have to carry those out and often in very quick time-frames where you can't adjust your tax base.

So we certainly agree with your perspective from your——

Mr. CONNOLLY. Yes. It's a good example you're mentioning, elections, because in most cases it's absolutely the responsibility of the local jurisdiction——

Mr. CHASE. Right.

Mr. CONNOLLY [continuing]. not a state responsibility, even though the state will set standards that you have to meet, but you're on your own in terms of paying for voting machines, paying for election judges, training those election judges, trying to make sure you meet with state standards, and then making sure there's an accurate count. Those are all local burdens usually not helped by state compensation.

Did you want to comment, Dr. Stenberg?

Mr. STENBERG. Yes, Mr. Chairman.

I think you're absolutely right that the states can do a pretty good job at preempting and imposing requirements and not living up to financial obligations that are associated with them.

It varies from state to state and area to area, but research surveys that the National League of Cities conducted last year and the year before have shown a steady increase in state preemptive activity in a wide range of areas, from environmental standards to health, to minimum wage, broadband, ride-sharing. The list goes on.

The issue here is, what is a state-wide problem or issue as opposed to a local problem or issue? That's a tough question to answer just in the examples I've given. And here, again, is where a commission, such as the one that's been proposed, can in a thoughtful way begin to answer those questions and advise policy-makers in terms of: Is this something that warrants a state-wide, uniform approach, whether it's for business conditions or safety or some other thing? And is this an area where we should urge new local innovation and creativity? And what is the cost burden or financial responsibility that goes along with those decisions?

Mr. CONNOLLY. You know, one of the things we talked about on the task force which had not been a topic originally assigned to it, but because of my local government background, you know, I think we have to discuss in America the Dillon rule versus home rule. Because the Dillon rule in a modern, 21st-century environment, frankly, does not make sense. It just puts local governments, who have the primary burden of delivery of services, in a straitjacket. You know, somebody once described it as a "Mother May I?" approach to government.

I can remember, in my county, you know, the state statute, for example, required all school buses to be painted yellow. We discovered that by painting the roof white it made the buses more efficient, more fuel-efficient, and warmer in the winter and cooler in the warm months for the kids riding the buses. And so it was an energy, you know, move. We had to go to Richmond and get legislation passed to get an exemption from the state code. We could not do it on our own.



Then there are other states where the opposite rule is the case; you have broad authority to govern unless we say you may not. So long as local governments are seen as nothing more than a creature of a state, a creation of the state, no real sovereign standing on their own—which is kind of a myth about government.

But those are real issues. And I can tell you, at a local level—sometimes we have debates up here about “let’s just take this big Federal grant program and make it a block grant.” Well, if you are from where I’m from, you know, that sends terror up and down your spine, because funding formulas coming out of the state capitol are never fair to big, urban counties like mine in our state. So we know we lose if that happens. We’d rather have, frankly, a direct—a formula from the Federal agency that issues the grants, Ms. Gerton, than have it go through the state.

But up here, we almost never have that conversation. Everyone just assumes that would be a good thing; states would like that. Well, they might, but localities might not like it, because there are problems with funding formulas at the state level that discriminate against certain parts of the state sometimes.

Let me ask one final question, which I think is also why we need to have the commission we’ve been talking about. We don’t often have conversations about impacts of Supreme Court rulings. Dr. Stenberg, you’ll have to help me remember the name of it, but there was a famous case that affected local governments’ ability to control solid waste. I’m having a senior moment about the name. It would’ve happened in the 1990’s.

It was an extraordinary case that said, even though solid waste is generated in your jurisdiction, you can’t make haulers bring their waste to your incinerator or your dump. They’re free to take it, under interstate commerce, anywhere they want.

So, because of that ruling, on the East Coast, we had a plethora of trash trucks going up and down to places that were preferable to them, bypassing established treatment plants, for example, and really wreaking havoc on local economies, because many of the facilities that had been developed were financed by municipal bonds, and now you were jeopardizing the bonds because you weren’t able to meet the input required to keep that, you know, facility going.

It was—have we got the name? Oh, Carbone. It might have been Carbone.

Anyway, it was an extraordinary decision, I thought immensely wrong-headed, by the Supreme Court, not one of whom had ever served in a local government and understood the ramifications. But it’s the kind of thing that has never been the subject, really, of our conversation, like, “Well, what does that do to you?”

I just wondered if you wanted to comment on the impacts of the Supreme Court’s decisions on this topic we’re talking about, and then I’ll be quiet.

Mr. CHASE. Mr. Chairman, actually, the Big Seven coalition, along with some other groups, actually funds what’s called the state and Local Legal Center. We work together to actually participate in Supreme Court cases through amicus briefs—

Mr. CONNOLLY. We think the name of the case I’m trying to remember is Carbone.

Mr. CHASE. Carbone.

Mr. CONNOLLY. Yes.

Mr. CHASE. Yes.

Well, going back to your commission, recycling is a huge issue at the local level, and local governments, particularly counties, spend a lot of money on recycling. But because of Federal trade negotiations right now, our recycling markets have actually crashed. In county governments across the Nation, it went from a revenue source, where you might get paid to sell some of your recycled goods, to today counties are actually having to absorb that cost.

I think that's another great issue that the commission could talk about, the intersection of global trade policy and how it actually filters down to the local level.

But on the Supreme Court, because we don't really have a functioning intergovernmental commission, more and more groups are now using the courts to legislate. I think that's important for the congressional branch to really think about, where you're giving power, actually, to the courts.

The Marketplace Fairness Act was a great example where we tried, as a coalition, for years to get through this online sales tax issue. Finally, we worked a bill through the South Dakota legislature that made its way to the courts, and, ultimately, the Supreme Court ruled in our favor. But we would've much preferred to go through Congress to work on a bipartisan, sustainable solution to something that was an existing tax. It wasn't even a new tax.

Mr. CONNOLLY. Again, from a local government point of view, you know, what else do we not control? So we don't control solid waste. We don't control cable franchises, or there are, you know, real circumscribing measures on that. You know, we don't control water rights. We don't—you know, on and on and on. Well, at what point does local government become nonviable, then, if we don't control our own destinies?

I mean, some things, obviously, can't only be addressed at a local level; they have regional or broad geographic impact. But there are lots of other things where control over our own destiny is a fundamental democratic principle.

Dr. Stenberg?

Mr. STENBERG. In my days with the Council of State Governments, I can recall Governors and legislators talking about federalism from the standpoint of the Supreme Court decisions that made the 10th Amendment a hollow shell. It's meaningless. Their concern was that Congress pretty much had a green light to go into any area it chose in terms of domestic affairs.

That's why I think the provision in the bill which authorizes the commission to monitor the decisions of the U.S. Supreme Court that have federalism impacts and kind of be a canary in the coal mine, if you will, in terms of calling attention to some of the impacts that the State and Local Legal Center, the Big Seven and others, and advocates in the Congress could address.

So, to me, that's maybe not teeth, but that's a new role and an important role given the changes that have occurred.

I think the monitoring function of the commission is really important, looking at not just trends but behaviors. You know, we have good language in, for example, Executive Order 13132, really good language. If it were implemented, we probably wouldn't be

saying we need more consultation. We would know what consultation means and when it occurs and who's consulted. Those questions haven't been addressed.

And so that, together with the Federal offices of intergovernmental affairs, again, looking at them from the standpoint of this commission that doesn't have an axe to grind other than for the improvement of intergovernmental relations, I think could raise some important issues, questions, and provide some insights that would be beneficial to, again, the other stakeholders.

Mr. CONNOLLY. Yes. To me, that's almost self-evident because—to this enormous question—but we haven't had a seat at the table. We haven't even been talking to each other except on an ad hoc basis.

When I first got to Congress, for example, you know, I'd been chairman of my county until the day I was sworn in. We were in the midst of the recession, and one of the things that happened was the catastrophic collapse of the municipal bond market. Well, what happens when municipal bonds are no longer financed on Wall Street? You don't build schools, you don't build community centers, you don't build police stations or fire stations or anything else.

By the way, the dollar amounts were so enormous, when you add up the impact of local governments and state governments, for that matter, when you dry up the municipal bond market, it was offsetting the stimulus. The drag was offsetting the stimulus.

I could not get colleagues to focus on it. Like, we had to provide some relief here. But we can. We could back it up and—you know—those issues weren't even considered as part of the stimulus. Nobody looked at it. A couple of committees might have had some hearings, but there was no legislative relief.

Had we had a commission that, you know, a red light going off, flashing, "This is a big deal," we could've at least had the opportunity to have a significant hearing on that issue and the consequences that could flow and how it was offsetting the good work we were trying to do on the stimulus. But—

Mr. CHASE. Mr.—

Mr. CONNOLLY [continuing]. we never got that opportunity.

Yes, Mr. Chase.

Mr. CHASE. And that's the point I was making earlier, was on the—when we lost, in the tax bill, the advanced refunding, now when we take out the debt through the municipal bond market, we are stuck with that interest rate. We lost the ability, because of a Federal action, to refinance. That's like telling a homeowner, "You can buy a house, but you can never refinance your interest rate. You are stuck with it for the next 30 years."

Mr. CONNOLLY. Yep.

Mr. CHASE. Most of our bonds are locally voter approved or the elected officials have to vote to approve it. It is on our balance sheet. And we have lost that flexibility to build those schools, public hospitals, airports, and other critical infrastructure.

Mr. CONNOLLY. I will end with this anecdote.

Oh, I didn't see you. I'm so sorry.

Mr. Khanna has joined us. Let me just end—I'll end my time with this anecdote and then call on Mr. Khanna.

When we were doing the stimulus bill in 2009, we had money in there to help local governments do school construction. We felt they'd be shovel-ready. Everybody has a CIP and a waiting list for new construction and renovation. An injection of Federal money would help soften the municipal bond problem and get projects right underway and hire locally. And there'd be the, you know, return on the investment of a new facility.

There were three critical Members in the Senate who were controlling everything that went in or came out of the stimulus bill for their votes. They said it was unprecedented to have the Federal Government involved in school construction, it had never happened before, and it was a bad road to go down.

I can remember going to our caucus meeting, as a freshman, fresh from local government, and I heard that. I mean, it was accepted as gospel truth, and no one challenged it.

So, as a freshman, I got up and I said, well, you know, if you think the Federal Government has never been involved in school construction, I'll be glad to take you to Mount Vernon High School in Mount Vernon District near Mount Vernon, where George Washington is buried and where he had his plantation, and that high school was built with Federal money.

I said, but just to be sure that's not unique, I checked, and there are at least 2,700 schools all around America built by Federal money. So, other than that, you're right, it's a unique idea, unprecedented.

But a policy decision to cut that money and not allow any of the stimulus money to go to school construction occurred because of ignorance. People just accepted an assertion that was factually untrue because they didn't know the history of the relationship between Federal funds and school construction at the local level.

Bad things can happen if we're not having a regular dialog and a mechanism to have that. That's what this act—I mean, we're not going to solve everything, but it gets us back and gives us a mechanism, hopefully, we can update and use to our advantage.

Mr. Khanna, I'm so sorry.

Mr. KHANNA. No, I appreciate it.

Mr. CONNOLLY. I was filling time until you got here. We're glad to have you.

Mr. Khanna from California.

Mr. KHANNA. Well, thank you, Mr. Chairman. I'm here largely to say how much I support this legislation, your legislation, on the Restore the Partnership Act and how necessary it is. And, yet again, another piece of legislation from you that seems common-sense and that's bipartisan and that can actually help improve things.

I want to share very briefly an anecdote from my time in the Commerce administration that leads me to believe why this is important and have Dr. Stenberg and the panel comment.

When I was at the Commerce Department, the President, President Obama, said, "We need to have a SelectUSA program," which made total sense, that we want to make sure companies are staying in the United States instead of going to China or Brazil or elsewhere. And we had all these reports that these other countries

would roll out the red carpet for companies, whereas, in the United States, often we didn't even know if a company was leaving.

So we started to implement it, and it turns out that the biggest obstacle was that none of the states wanted the Federal Government to intervene on behalf of one state over the other. Now, that's a legitimate issue, but I thought: Someone has got to resolve this. While China is competing and has a coordinated response in how to attract business, we're stifled because our Federal Government can't get its act together with state and local governments to make sure companies stay in America instead of go overseas.

I think your act would exactly address this issue, and that's something I'd like to see the commission address. How do we have an American competitiveness strategy? I mean, I think, you know, I want all the businesses to go to California, but I'd rather they even be in Texas than in China. Somehow we've got to make sure that we can do that.

Dr. Stenberg and Mr. Chase, Ms. Gerton, could you comment on that and what this act may do to help that?

Ms. GERTON. Sir, I think that the opportunity to use this commission to address critical national development strategies is a key one. We think the infrastructure is right along those lines, economic development strategies and understanding, then, the national objectives and the state and local impacts of those, as we've been discussing throughout, is a critical function of the commission.

So understanding what the incentives are, the disincentives, and the opportunities to collaborate so that we get the best outcome for the Nation but also for each of the communities that's involved is critical, and it's a great example what this commission could do.

Mr. STENBERG. I would agree that that's a great example of an opportunity.

I think a commission like this can add value in a number of different ways. It can provide insights and information to Federal policymakers that will help them make better decisions in terms of the impacts as well as the outcomes that are being sought.

Right now, those views aren't really being solicited. In fact, state and local representatives often aren't even in the room when it's decided. So it's not surprising that there's sometimes a misalignment between what the Federal goal or policy is and the state and local outcomes.

So, kind of, better aligning those, I think, would be something the commission could do, again, using that convening authority that the bill grants to it, but also knowing who should be at the table. That's something that I think is going to be just as important as the process that's used. And, again, this commission, I think, can be helpful in that respect.

Mr. CHASE. Congressman, I personally worked with SelectUSA in my previous role and actually was engaged in a lot of those conversations and actually went to Hanover, Germany, to one of the big trade shows, and the American booth was not the highlight of the show. I can promise you the Federal Government was not overspending on that booth.

But we agree with you where there are appropriate Federal, state, and local roles, particularly in economic development. But when we look at the future of work and how the supply chain

works nowadays, we think it's really important that Federal, state, and local policymakers, including in the private sector, have a table for those discussions.

We are seeing that every day with companies approaching us wanting—we just launched a new partnership with Walmart, for example, about the future of work and how they are becoming a technology company, not a retail company. What is that going to do to county governments who have put out municipal bonds for water and sewer for transportation interchanges? What is going to happen to the disability community if they're going to move to a technology platform rather than storefront, with workers, on Main Street? And those are really complex issues.

We're a property-tax-base government, so it's also going to have a dramatic impact on our revenue sources. We're not asking for the Federal Government to bail us out. We're just asking for a thoughtful conversation about: What is the future of work going to look like? What's the future of commerce? How should we build our transportation networks? And those are Federal, state, local policymakers coming together with a vision for the country.

We think the tensions between government are healthy, but what we really applaud the Congressman for and the chairman is, we just need a table to have grownup conversations about what should American policy look like and to really deal with what Dr. Stenberg called these wicked problems.

Mr. KHANNA. Thank you. Thank you, Mr. Chairman.

Mr. CONNOLLY. Thank you, Mr. Khanna. And I want to thank all three of you for being here.

We may want to submit some written questions to you. And let me invite one right now. I'd love your reaction on the changes we've made to the commission to try to make it more flexible, updated, and hopefully useful. Also, any thoughts you may have on, well, let's just start listing all of the new issues that we confront that did not exist in 1996.

Ms. GERTON. Mr. Chairman, I would mention two particular provisions in the bill that I think are important. One is adding the new state and local memberships and Tribal membership to the committee so that its majority is actually now not Federal.

Mr. CONNOLLY. Right.

Ms. GERTON. I think that sends an important signal about the value of those opinions and input into the commission's decision.

I think the second point is that it does have more teeth than it did before, that it requires Federal agencies to comply with commission requests for information and to address commission report recommendations, and it requires Congress to have hearings within 90 days of commission reports. So that, again, conveys to stakeholders that this is a commission that people are going to pay attention to.

Mr. CONNOLLY. I believe it also requires that agencies must provide written responses to the commission's recommendations.

Ms. GERTON. Yes. So I think those are both really important signaling features, and they will be important to the effectiveness of the commission.

In terms of listing possible agenda topics, there's no end to them. But you mentioned something in your opening statement that I

think is important, and that is the use of technology, the changes in technology.

We really have no system of technology sharing and management in the intergovernmental space. And as we look to the future, as Mr. Chase has just addressed the future of work, really understanding how to use technology and use data to streamline program administration, to streamline reporting, to really simplify the cost of delivering programs in the intergovernmental space could reap tremendous benefits. The grant and aid programs underlie many of the issues that we would put on an agenda topic.

So I think using the commission to kind of fundamentally understand capacity as it relates to technology and data would be one of the first orders of priority.

Mr. CONNOLLY. Well said. And I'll give you one more, the Census.

Ms. GERTON. Yes. Absolutely.

Mr. CONNOLLY. I mean, if there's a place where we have the intersection between the Federal Government and state and local governments, it's the Census.

I had a roundtable yesterday, and it became so clear to me how the Census Bureau is completely dependent on the networks that exist in local governments—the faith community, immigration advocates, the organizations, and the local governments.

For example, we were talking about, well, how are we going to translate the Census into all of the many languages? My community has well over 100 languages that are spoken. Our school district sends notices home in at least six or eight official languages, including Urdu and Farsi as well as Korean and Vietnamese and Spanish. And it seemed to us that the Census Bureau was not yet up to snuff on how to do that.

Well, it turns out that both of the counties I represent have the technological capacity to very quickly take something and translate it into the targeted languages. I think we had the capability of 59. This was news to the Census Bureau.

Instead of reinventing the wheel, you could partner with your local governments that have that capability technologically and save a lot of time, trouble, and money and get that Census where it needs to be gotten. So there are practical benefits from being able to have this dialog.

Anyway, my hope is we will get this bill on a bipartisan basis so that we can get back to work and expand the dialog and make sure that our state and local governments are no longer seen as special interests.

Thank you so much for being here today.

The hearing is adjourned.

[Whereupon, at 5:36 p.m., the subcommittee was adjourned.]