MEETING OF THE

UNITED STATES ADVISORY COMMISSION
ON INTERGOVERNMENTAL RELATIONS

800 K Street, N.W.
Suite 450, South Building
Washington, D.C. 20575

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TUESDAY, MARCH 26, 1996

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A meeting of the United States Advisory Commission on Intergovernmental Relations was held on Tuesday, March 26, 1996, convening at 9:04 a.m., in Room 2154 of the Rayburn House Office Building, William F. Winter, Chairman of the Commission, presiding.
IN ATTENDANCE:

William F. Winter, Chairman
Peter Lucas
Randall Franke
Senator Craig Thomas
Representative James P. Moran
Ms. Shelly Metzenbaum
Henry M. Smith
William Davis, Executive Director
Phil Dearborn
CHAIRMAN WINTER: Ladies and gentlemen,

let me thank you for being present today. We welcome all of you.

My name is William Winter. I am from Jackson, Mississippi. I serve as the Chairman of the Advisory Commission on Intergovernmental Relations.

The hearing that we are conducting today on ACIR's preliminary report, "The Role of Federal Mandates in Intergovernmental Relations," was directed by an act of Congress, passed a year ago. It directs ACIR to investigate and review the role of federal mandates in intergovernmental relations and to make recommendations to the President and the Congress to retain, modify, suspend or terminate specific mandates.

This hearing today is only one part of a much larger process by which the Commission is soliciting comments and views on its preliminary report. In addition to this hearing, the Commission is receiving comments on its report by mail, by fax,
by Internet message and by telephone.

And, for anyone who could not be
physically present for this hearing today and who
wants to present testimony, the Commission has
offered to allow a representative to read that
person's testimony or to receive an audio taped
message.

This preliminary report, which is the
subject of today's hearing, has been based upon
information received by the Commission from a great
many sources. There were optional recommendations on
each of the 14 federal mandates discussed in the
preliminary report. They were considered and are
contained in Appendix A to the report.

The preliminary report was published by
direction of the Commission in order to elicit as
much public comment as we could receive.

Let me emphasize that it is intended to
be, and it is, only a preliminary report; that is, a
draft, a work in progress, a report subject to your
critique, your comment, your criticism and your
input. We will take what you present to us today and
include it in our further deliberations in terms of arriving at a final report.

Those of you who have read this report know that it reflects the concerns that have been expressed to the Commission by state and local government officials from all over the country about problems that they have experienced in complying with federal mandates. And, indeed, the Unfunded Mandates Reform Act of 1995 specifically directed ACIR to review the impact of these mandates on state, local and tribal governments and to recommend appropriate measures of relief.

Much of the information received in the early stages of the Commission's work and contained in the Commission's preliminary report reflects reports from these governments. We hope today that by exposing these problems and issues to public attention the Commission will get suggestions from you on ways that might best be addressed to alleviating some of the difficulties that have been encountered.

I want to also state to you that the
preliminary report that is the subject of this
hearing covers only some of the subjects which the
Commission was directed by the Congress to study.
It's not intended to cover all of the matters
included in Title 3 of the Unfunded Mandates Reform
Act.

Now, let me briefly review the procedures
that I would like for us to follow today. Obviously,
there has been a great deal of interest from a great
many sources and individuals who want to testify.

We have over 50 people who have indicated
a desire to testify today. That means that we are
not going to be able to devote as much time to each
individual as we would like to.

Since we have so many, I am suggesting
that each person who testifies limit his or her oral
testimony to five minutes. However, we invite your
submission of a written statement if you desire to do
that.

We are going to move through the testimony
in the order in which you have requested to testify.
And, I hope that you will observe the five minute
limitation as to the length of your testimony.

Let me now present my colleagues. We expect to be joined by other members of the Commission, but let me present those who are here at the outset of this hearing.

To my right is Shelly Metzenbaum, representing the Honorable Carol Browner, who heads the Environmental Protection Agency. Ms. Metzenbaum is a voting member of the Commission and represents Secretary Browner at all meetings of the Commission when the Secretary is unable to appear.

And, to my left, Mr. Peter Lucas of Boston, a member, a private citizen who is a member of the Commission.

We also have Mr. Bill Davis, who is the Executive Director of the Commission; Mr. Phil Dearborn, who headed the research for the preparation of this preliminary report.

Now, without any further ado, and in order to try to stick to our schedule, I want to call on the first witness. And, according to the information presented to me, that is Mr. Harold Shakeburger of ACE-FEDERAL REPORTERS, INC.
the International Association of Fire Fighters.

Is he present? And, will he come around?

Welcome, sir.

STATEMENT OF BARRY KASINITZ

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS

MR. KASINITZ: Thank you. And, I

appreciate this opportunity.

Mr. Shakeburger was not able to join us

this morning. My name is Barry Kasinitz. And, I am

the Legislative Assistant for the International

Association of Fire Fighters.

We represent over 225,000 fire fighters

and emergency responders throughout the United

States. And, we do appreciate this opportunity to

appear and express our reasons for opposing some of

the recommendations in the preliminary report.

Our members are not insensitive to the

fiscal constraints that state and local governments

face. Throughout the years, we have witnessed

decreasing fire department budgets, coupled with

increasing fire fighter responsibilities. These

burdens have affected us all.
But, we are adamantly opposed to any recommendations for alleviating such burdens that would cut basic workplace protections in the name of so-called fairness to state and local governments. The concept of fairness must also be considered as it applies to workers.

We, therefore, strongly oppose recommendations that coverage for public employees under the Fair Labor Standards Act and the Occupational Safety and Health Act be repealed.

The Fair Labor Standards Act guarantees workers a minimum wage and a reasonable work week, basic rights that are no less necessary today than they were in 1938 when FLSA was enacted.

Over the next 50 years, Congress recognized that with certain very limited exceptions all employees should be entitled to the same fundamental protections. We have, therefore, seen FLSA extended to cover federal employees, including congressional employees as well as state and local employees.

The courts have affirmed that Congress not
only has the authority to extend FLSA coverage to
these workers but was acting in the national public
interest to ensure that all workers are treated
equally. There is no fairness or reason in now
exempting a large section of the work force from the
FLSA.

Indeed, FLSA should not even be considered
an unfunded mandate. An unfunded mandate entails the
federal government requiring states and localities to
provide services without providing necessary funding.

FLSA is not a service. It is a law that
applies to all employers from the largest
corporations to the smallest shops. It ensures that
all employers treat their employees fairly and
according to certain minimum standards.

The Commission counters that, "The
collective bargaining powers of employee unions will
provide adequate protection for workers." But, I
wonder if anyone bothered to check the facts?

In reality, state and local government
employees are the only workers in America who do not
have basic collective bargaining rights. In many
states, public agencies would be free to unilaterally abolish the whole notion of overtime pay or minimum wage if the FLSA no longer applied to them.

Likewise, the assessment of OSHA as an unfunded mandate makes little sense. As you explicitly state in the report, OSHA protections do not necessarily extend to state and local governments. States choose whether or not to administer the federal OSHA program. Those that do, extend federal protections to their own employees.

OSHA protections are especially important to the nation's most dangerous profession -- firefighting. Several states have formally adopted OSHA's fire brigade standards, but others use lesser safety standards or even no standards at all.

For fire fighters, this is literally a matter of life and death. For instance, the Respiratory Protection Standard, commonly referred to as "two in/two out," requires that four fire fighters be involved in emergency operations during interior structural firefighting.
This staffing level is not the optimum. It is the minimum.

Study after study has proven that inadequate staffing directly causes higher risk for victims, loss of effectiveness in fire suppression and increased danger to fire fighters. Denying this basic life-saving protection to America's fire fighters is as heartless as it is illogical.

The opposition to OSHA becomes even more incomprehensible when we examine the stated reasons for the recommendation. One of the Commission's major complaints is not that an OSHA requirement may actually have an impact but that there is a perception of an impact and "a widespread misunderstanding about the law's coverage."

To deny fire fighter's OSHA coverage on the basis of such an argument is simply untenable. As this Commission pointed out in your report, OSHA standards were established to ensure safe, health and productive workplaces.

And, you acknowledged that those standards are largely responsible for a 57 percent decline in
workplace fatalities since the program's inception.

You do not dispute that workplace safety is in the national public interest.

Yet, you still seek to deny this protection to fire fighters.

Exempting state and local governments from laws they deem inconvenient, even ones that apply to all employers, both public and private, flies in the face of an important American doctrine -- equal protection under the law. No employers receive payments from the federal government to cover their costs of complying with FLSA and OSHA. And, there is no logic to exempting public sector employers for lack of adequate funding.

Allow me to conclude by urging this Commission to rescind the recommendations of the preliminary report that would strip America's fire fighters of the fundamental protections afforded by OSHA and FLSA. They deserve no less.

I thank you very much for your attention to our views.

CHAIRMAN WINTER: Thank you, Mr. Kasinitz.
I assure you those views will be considered very seriously by us.

The next presenter, the next witness, is from my home state of Mississippi, Ms. Mandy Rodgers.

Ms. Rodgers, welcome.

I’m glad to see you. I had to come all the way to Washington to get to see you to see you.

STATEMENT OF MANDY RODGERS

PARENT OF CHILD WITH DISABILITIES FROM MISSISSIPPI

Ms. Rodgers: My name is Mandy Rodgers.

And, I’m from Madison, Mississippi.

My husband and I have two sons, ages 7 and 11, who have disabilities. Our oldest son has been enrolled in a special education program since the age of 2.

Shortly after your working paper was released, my husband and I had the opportunity to meet with Governor Winter and share with him at length some of the experiences we have had in dealing with getting our child an education and our concerns related to IDEA.

I am impressed with the work you have put
into your review and analysis of IDEA. And, your
work is certainly a positive step in the right
direction for the future of our children.

My primary concerns are that IDEA will
continue unchanged and the rights and protection it
provides for us and our children and that it will be
appropriately funded by Congress. Our greatest fear
is that the current prevailing attitudes in Congress
will convince its members that IDEA should be
substantially weakened, thus call into serious
question the future of our children.

It is sad that we have to have a law for
our children just to get an education.

I agree with your recommendation that IDEA
should be modified to remove funding provisions that
encourage and reward the overclassification and
segregation of students with disabilities. We agree
with you it needs to be funded at the 40 percent
level.

Because of our personal experiences, we
cannot agree with elimination of the statutory right
of individuals to bring court actions to enforce
rights provided by IDEA. If not for this right, I
have serious doubts as to IDEA continuing to be a
meaningful law.

It is only because of this right that my
oldest child now receives an appropriate education
and not a very expensive baby-sitting service. We
have had to go through due process procedures twice,
including the filing of one court action.

However, if properly utilized, alternative
dispute resolution procedures can be helpful in
eliminating lengthy and costly due process hearings.
When we filed for our second due process hearing, an
out-of-state consultant was brought in to review our
child's program and make recommendations. It was
very positive, helpful and cost efficient.

Deferring implementation decisions to
state and local governments would prove disastrous to
the children of Mississippi.

Our Special Education Advisory Committee
recently prepared a report on the unmeet needs of our
children. It's 24 pages long. If we didn't have
this law, it would be massive.
Once again, I just would thank you for letting me come up here. And, just, you know, keep our children in mind.

Thank you.

CHAIRMAN WINTER: Thank you so much for coming. And, I want to say to you here that we regret that we had to change the date of this hearing.

And, we are glad you are back. We are glad you are here.

The next witness is Mr. Robert Herman, representing the Paralyzed Veterans of America. Mr. Herman, welcome, sir.

STATEMENT OF ROBERT HERMAN

PARALYZED VETERANS OF AMERICA

MR. HERMAN: Thank you. Chairman Winter, members and staff of the Commission, good morning.

My name is Robert Herman. And, I am advocacy attorney for the Paralyzed Veterans of America and Co-Chair of the Rights Task Force of the Consortium for Citizens with Disabilities.

I am here today to respond to ACIR's
recommendations about Title II of the ADA in its preliminary report entitled, "The Role of Federal Mandates in Intergovernmental Relations."

PVA is a congressionally-chartered veterans service organization with over 16,000 members. All of PVA's members have incurred spinal cord injury or disease and are individuals with disabilities under the Americans with Disabilities Act.

The Consortium for Citizens with Disabilities is a working coalition of over 110 national organizations representing the interests of people with disabilities.

As you know, the ADA was passed by overwhelming majorities in the Senate and House of Representatives in 1990 and represents America's commitment to end discrimination against millions of people with disabilities in all facets of their lives. The commitment is broad and deep, which explains why the disability community is so outraged at the debilitating nature of ACIR's recommendations.

As an initial matter, PVA believes that
ACIR does not have authority to make recommendations about the ADA. While it is true that Title 3 of the Unfunded Mandates Reform Act expands the range of existing laws which fall within ACIR's scope of review, the language and legislative history of the Act established that Congress does not consider civil rights laws such as the ADA to be unfunded mandates. Since only unfunded mandates are subject to the Act's requirements, ACIR has no authority to make recommendations about other laws.

ACIR states in its report that the ADA was chosen for review because state and local governments labeled the ADA troubling. But, the report does not state which state and local governments found compliance with the ADA troubling and why.

According to a report published by the United States Conference of Mayors entitled, "Implementing the Americans with Disabilities Act, Case Studies of Exemplary Local Programs," Arlington Heights, Illinois, Austin, Texas and Greensboro, North Carolina were among 15 communities nationwide cited by the U.S. Conference for their use of
thoughtful financing and staffing, prompt planning and close consultation with the local community of people with disabilities to comply with Title II. Perhaps compliance has been a challenge to these and other communities but not troubling.

The report implies, without support, that cities and towns find it too troublesome to accommodate tax-paying citizens by moving a town council meeting to an accessible location, having an accessible entrance to city hall, printing materials in alternative formats or providing a sign language interpreter upon advanced request. These and other methods of providing program access are the building blocks of compliance and take full advantage of the flexible nature of Title II.

PVA and CCD are appalled by the report's recommendation that the ADA should be temporarily or permanently suspended or made voluntary for communities without the fiscal capacity to comply. This recommendation stems from three fundamental misunderstandings about the ADA.

First: The ADA is a civil rights law.
And, civil rights are not dependent upon the appropriation of funds.

PVA opposes the concept embodied in this recommendation that people with disabilities have civil rights only if implementation of Title 2 is paid for by the federal government or a higher state government. By ACIR’s reckoning, the statutory civil rights of 49 million Americans with disabilities would be subject to the monetary whims of thousands of elected representatives at all levels of government.

Second: The ADA does not rigidly impose obligations without accounting for fiscal reality. The ADA was carefully drafted to provide flexibility to those state and local governments which encounter legitimate financial difficulties while making good faith attempts to comply with Title 2.

Title 2 of the ADA specifically states that public entities need not take any action that creates an undue financial or administrative burden.

Third: Title 2 of the ADA and its implementing regulations did not take cities and
states by surprise. Terms, such as undue financial
burden, were taken directly from regulations

Most, if not all, public services have
been required to provide program access under Section
504 since 1973. Title 2 of the ADA was required
because of the inconsistency and continuing
discrimination found among state and local government
programs years after 504 was enacted.

What a gross injustice it would be for
Americans with disabilities if the very state and
local governments who for years have ignored their
legal obligations are rewarded by the further delay
or suspension of legislative and regulatory
requirements.

Finally, ACIR's attempt to strip people
with disabilities of the ability to enforce their own
civil rights is particularly objectionable. No other
protective class of citizens is without the right to
individually enforce civil rights protections.

Discrimination on the basis of disability
is no more or less repugnant than discrimination on
the basis of race, color or national origin. The elimination of discrimination on the basis of disability is a goal worthy of the full range of enforcement remedies.

For all these reasons, PVA and CCD believe that ACIR should abandon its ADA recommendations and issue a written statement acknowledging that the ADA is a law well worth retaining in its present form. We urge the ACIR to consult closely with those who know the truth about the ADA.

PVA and CCD are always ready to help search for ways to make the ADA even more effective and efficient. We cannot, however, tolerate ill-considered responses to perceived problems or problems not created by implementation of the ADA.

ACIR's recommendations do not solve problems. They simply gut the civil rights protections that millions of Americans fought for years to obtain.

Thank you for your time and attention.

CHAIRMAN WINTER: Thank you very much, Mr. Herman, for being here and for that very good
We shall next hear from Mr. Richard Treanor. Mr. Treanor, welcome. It's nice to see you.

STATEMENT OF RICHARD TREANOR

LAWYER

MR. TREANOR: Thank you, Governor Winter; and, thank you, members of the Commission and staff.

My name is Richard B. Treanor. Thank you for the opportunity of speaking briefly.

I am a self-employed attorney. Although I am not affiliated directly with any disability organization, possibly some of the 40 million plus disabled Americans might agree with possibly some of my comments.

I recently wrote a book, "We Overcame," the story of civil rights for disabled people, which I like to peddle but never mind about that. I lobbied for ADA. And, there are two chapters in the book about ADA.

The emperor of Austria, on hearing Mozart play for the first time, said, "Too many notes, too
many notes." The Advisory Commission has recommended that individual disabled people not be allowed to sue state and local governments for noncompliance with ADA. Too many suits, too many suits.

Under Title 2 of ADA, state and local governments may not discriminate against disabled people with respect to programs or services such as the courthouse, library, city hall and so forth. The ACIR is saying, "Too many suits. Too many suits."

The solution they propose is to get rid of all suits under Title 2 and suits may be brought only by the Attorney General. I personally heard Attorney General Janet Reno say last July on the fifth anniversary of ADA that there were not too many suits.

The proposal to eliminate the right to sue by disabled people under either ADA or IDEA is an outrageous trampling on our hard-won civil rights and ought to be given a decent but quick burial.

ADA has always been regarded as civil rights legislation and not an unfunded mandate. And, there is a serious question whether ACIR has any
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Section 504 was never paid any attention to. It is not parents nor the children that have twisted the sterling intent of Congress to help children that have very severe needs.

It was the bureaucracies that created for itself a parallel education system called "special education." Congress' wisdom was derailed by a bureaucracy which was self-created into building an administrative bureaucracy that derailed monies and the help that our teachers needed.

As far as education is concerned, a child's need must clearly be diagnosed. And, we do not see this happening.

We just see children being chastised for their behaviors. Sometimes, this is warranted. And, at other times, it is the result of total unawareness of children's literacy problems.

The child is acting out from humiliation. An intelligent child is going to act out due to the humiliation of not understanding why they are not learning.

Illiteracy is the main problem of the
Recommend that a percentage of federal monies be spent where it will help the children the most -- in teacher training. IDEA funds are supposed to be limited to only paying for excess costs to state and local education agencies.

Most local education agencies will not pay for good teaching training in methods that have been proved to work for the learning disabled students.

Recommend that federal monies go into the colleges and universities and cease if they do not start teaching the student teachers how to teach with methods that have been proven to work.

IDEA should not be weakened. If each of you truly understood IDEA and what Congress' original intent was, then your recommendation would be that the federal government make all state and local governments come into compliance with IDEA and that it be honestly monitored.

Most local education agencies have abused IDEA by using it as a dumping place for children that are not learning to read, because schools are using
the whole language method.

To recommend that any challenge in a state or federal court should be brought by state or federal agencies, not by individuals, in our opinion, is denying parents and children of their constitutional rights. Parents have had to be the watchdog of IDEA.

State and federal agencies have only been covering and whitewashing for local education agencies.

We are asking that you recommend that IDEA be implemented as Congress originally intended.

Thank you.

CHAIRMAN WINTER: Thank you very much, Ms. Livingston.

Let me welcome to the panel our colleague, Randy Franke from Salem, Oregon, representing the National Association of Counties. Randy, thank you so much for being here.

Next, I want to recognize Mr. Barry Weintraub, representing Disability Rights, Incorporated. Welcome, sir.

Thank you for coming.
STATEMENT OF BARRY WEINTRAUB

DISABILITY RIGHTS, INCORPORATED

MR. WEINTRAUB: I would like to thank the Committee for having these hearings. My name is Barry Weintraub.

I am an attorney in Woodbridge, Virginia, who practices in the field of ADA law and Fair Housing law. I am also the Secretary of a group called "Disability Rights, Inc."

My remarks are directed solely to the proposal to only allow the Attorney General to bring suit to enforce Title 2 of the Americans for Disabilities Act. The proposal to eliminate the right of individuals to bring direct suit against state and local governments is, from my view, a back doorway to repeal Title 2.

While the Justice Department does some fine work, it clearly does not have the resources to be the sole enforcing agent of Title 2. I doubt that the Justice Department, based on the reports I've read from it, have filed more than 20 Title 2 suits in any one year.
The Department can only do so much and can't help everyone directly. That's one of the reasons the Justice Department describes itself as the President's law firm and not the people's law firm.

The people who support taking away the rights of Americans to go directly to court to protect their rights know that the Justice Department can't enforce Title 2 by itself. When enforcement becomes theoretical and highly improbable, compliance becomes nil.

This disingenuous proposal, which focuses on governmental roles and ignores the merits of Title 2, provides political cover for those who really don't care whether a person in a wheelchair can enter a courthouse or whether a mute or deaf person can report a fire or burglary.

In addition, the proposal is uncalled for, as there has been relatively little private litigation against state and local governments. After all, how many people in wheelchairs have the resources to pay an attorney to file suit against a
city or county who have a whole host of attorneys already working for them?

My experience has taught me there are few lawyers able to litigate against local governments even with a contingency fee.

The complaints by some state and local government officials is about the cost of compliance and not about litigation costs. After all, litigation very often arises because compliance does cost.

Unfortunately, litigation also arises because of ignorance, bigotry and apathy about examining all long-term costs.

If there are problems with Title 2, let's address those problems openly. This proposal, however, begins by destroying Title 2 and returns us to the days when local governments always promised to do something to help the handicapped.

This proposal will injure many people. Balanced solutions are not found in political dogma. After all, some might view the Bill of Rights as an unfunded federal mandate.
Metaphysical models about government do not meet challenges and opportunities. We can't sit around and discuss Adams Smith and the Articles of Confederation all day long.

If you don't like the present programs for making city halls, schools and hospitals accessible, then tell me what you propose instead. Please don't tell me about magic words and wands.

Tell me what you are going to do about accessibility for millions of Americans. And, finally, explain to me why the civil rights of disabled people should be less important and less protected than the rights of others who face discrimination because of race, religion, age and sex.

Thank you very much.

CHAIRMAN WINTER: Thank you for your statement.

MR. WEINTRAUB: And, I thank the other speakers I've heard this morning, too.

CHAIRMAN WINTER: I recognize next Ms. Billie Jean Hill for the National Council on
STATEMENT OF BILLIE JEAN HILL
NATIONAL COUNCIL ON DISABILITY

MS. HILL: Good morning, sir. My name is Billie Jean Hill.

And, I’m a civil servant. And, all civil servants have in their position description other duties as assigned.

And, this morning at quarter to nine, I was assigned to come over here. And, I had a chance to read the remarks one time.

So, I would ask you to look at our written remarks rather than the ones that I remembered when I was sent over here.

I am here in the place of John Kemp, who is ill, who is a member of the National Council.

Also, I am originally from Mississippi. So, I want to put that in.

I work for the National Council on Disability. We are an independent federal agency.

There are 15 members who are appointed by the President and confirmed by the Senate. And, we
have a unique mandate.

We are to look at all the laws that impact on people with disabilities. And, even more important, to make recommendations to the President and to the Congress on ways that these laws impact on 49 million Americans with disabilities.

And, in looking at your preliminary report, the National Council strongly opposes any changes that would lessen the rights of people with disabilities. And, we think it would impact on probably one out of five Americans in this country.

We consider that the Americans with Disabilities Act and the Individuals with Disabilities Education Act is a civil right. They are both civil rights statutes and, therefore, would not come under the unfunded mandate statute.

I want to thank you for the opportunity to be here for John Kemp. And, I'm glad that we are having the opportunity to voice something that is very, very important to us.

Thank you.

CHAIRMAN WINTER: Thank you, Ms. Hill, for
a very fine statement.


Thank you for coming.

STATEMENT OF JUSTINE MALONEY
AMERICAN SPEECH, LANGUAGE AND HEARING ASSOCIATION
AND THE LEARNING DISABILITIES ASSOCIATION

MS. MALONEY: Well, thank you very much for listening to us. I'm speaking on behalf of, and support, the comments of the American Speech, Language and Hearing Association.

This is a professional organization representing over 82,000 speech/language pathologists, audiologists and speech and hearing scientists nationwide. ASHA members are engaged in services, research and training that benefit persons of all ages who have speech, language and hearing disorders.

Over 42 million Americans have a communication disorder, making these the nation's
most prevalent disabilities. ASHA's areas of concern, therefore, include health care, education, rehabilitation, anti-discrimination on the basis of disability and safety in the workplace and in the environment.

Accordingly, we speak out in strong opposition to the preliminary report of the Advisory Commission on Intergovernmental Relations entitled, "The Role of Federal Mandates in Intergovernmental Relations." Specifically, ASHA challenges the Committee's recommendations on the Americans with Disabilities Act, the Occupational Safety and Health Act, the Family and Medical Leave Act and the Individuals with Disabilities Education Act.

More extensive comments will be submitted for the record. However, for the purposes of this hearing, testimony will focus on the ACIR recommendations for the Individuals with Disabilities Education Act.

These recommendations clearly demonstrate the faulty conclusions based -- or contained in the preliminary report. The most blatant inaccuracy with
regard to IDEA, as well as the ADA, is its identification as an unfunded mandate.

The Unfunded Mandates Reform Act specifically excluded certain types of statutes from its purview. For the following reasons, IDEA is one of the exempted statutes:

First, the Unfunded Mandates Reform Act does not affect laws that protect constitutional rights. IDEA is, therefore, exempted since it helps states comply with their constitutional duty to provide appropriate public education for children with disabilities.

Second, the Unfunded Mandates Reform Act does not affect statutory anti-discrimination laws. IDEA is, therefore, exempted since it is an anti-discrimination law enacted to prevent states from denying children with disabilities equal access to a quality education.

Third, IDEA is a condition of a federal assistance law that imposes obligations on states when the federal government gives them money. Since the program is involuntary by definition, they cannot
be considered unfunded mandates.

The ACIR's incorrect conclusion of IDEA aside, of even greater concern is the report's recommendation to relieve states from prescriptive and costly administrative mandates. ASHA strongly opposes any reduction in the fundamental precepts of IDEA, including the provision of a free, appropriate public education as defined in federal statute.

We urge you to rethink the preliminary recommendations before issuing a final report. It is our understanding that the ACIR was established by federal law in 1959 to strengthen the American federal system and to improve the ability of federal, state and local governments to work together cooperatively, efficiently and effectively.

We feel that the ACIR's actions with regard to its duties under the Unfunded Mandates Reform Act have been contrary to this mission.

Again, we reserve the right to submit more comprehensive comments for the record.

As far as the Learning Disabilities Association is concerned, we are a volunteer
organization of over 60,000 individuals with learning
disabilities, their families and friends and the
professionals who support them. We strongly support
the comments of ASHA on the preliminary report.

We would like to reemphasize: (A) IDEA
is not an unfunded mandate. Children with
disabilities have a constitutional right to an
education. The responsibility for providing that
education rests with state and local school
districts.

IDEA was passed in 1975 to assist states
in meeting the excess costs of educating children
with disabilities. The requirements and procedural
safeguards of IDEA are not a mandate but a
contractual obligation for receiving those federal
funds.

Although LDA agrees that the federal
government should live up to its promise of funding
up to 40 percent of excess costs, its failure to do
so does not lessen the responsibility of state and
local school districts to meet the requirements of
the law as long as they accept the federal money.
Secondly, claims that state and local school districts over-identify children as disabled in order to collect federal funds is irrational. Children may be over-identified for a number of reasons, but the financial incentive is not one of them.

Even if IDEA were fully funded at 40 percent of excess cost, the state and local education agencies would still have to pick up the other 60 percent of excess costs. The argument of financial incentive is irrational.

Unless the current funding allocation based on the count of children with disabilities actually served is changed to one based on the percentage of population, this we would oppose because then there would be an incentive not to identify children with disabilities. And, we are very concerned that under those circumstances, students with learning disabilities who have need of IDEA but whose disabilities are less obvious would no longer be served. This, indeed, is already happening.
We also feel that relaxing costing requirements should be a justification for eliminating the provisions and protections of IDEA. Although the report does not specify the requirements which should be relaxed, the assurance of an appropriate education and the development of an IEP by a team of parents and educators seem to be targeted.

These provisions are the cornerstones on which the ability of a child with a disability to benefit from an education are built. LDA vehemently opposes any efforts to reduce a requirement for an appropriate education as identified by the IEP.

Lastly, claims that the IDEA is a litigious law are unfounded. We challenge the assumption of the ACIR report that it causes too many lawsuits.

The statistics speak for themselves. In the 20 years since the passage of the law, despite the fact that over 5 million children with disabilities have been served, there have been fewer than 1,200 reported court cases.
LDA does support the use of mediation instead of a due process as an option for parents. However, we would oppose any requirement that parents must go to mediation.

Above all, LDA is appalled at the recommendation that the parent's private right to action in the courts be denied. If this proposal were accepted, there would no longer be any assurance that citizens could be protected against the arbitrary actions of government agencies.

Children with disabilities grow up to be adults with disabilities. Therefore, we are also very much opposed to the proposal under the Americans with Disabilities Act which would remove the private right to action by citizens with disabilities.

We urge you to rethink the preliminary recommendations before issuing a final report. Failure to do so may be interpreted as a denial of equal opportunity and an attack on the civil rights of citizens with disabilities.

Thank you very much.

CHAIRMAN WINTER: Thank you, Ms. Maloney.
I next recognize Mr. Paul Marchand with the ARC.

STATEMENT OF PAUL MARCHAND

THE ARC

MR. MARCHAND: Thank you, Mr. Chairman. I am Paul Marchand.

And, I'm here to represent the ARC of the United States. The ARC is the nation's largest volunteer organization dedicated solely to issues of mental retardation, representing over 7 million people with mental retardation and their families.

I would like to begin by thanking you for the opportunity to present testimony before you today. However, the ARC and other disability groups, as you've heard here this morning and you will hear later, quite frankly wish they wouldn't have to be here today to once again protect from assault two of the disability communities most cherished civil rights laws, the Americans with Disabilities Act and the Individuals with Disabilities Education Act.

I was personally involved in the enactment of both of these statutes and will always remember...
the strong bipartisan effort by the Congress to create these laws.

Since IDEA was implemented over 20 years ago, over 15 million children with disabilities have benefited from the right to a free and appropriate public education. This vital law opened the schoolhouse doors for hundreds of thousands of children with mental retardation who had previously been totally denied access to our public schools.

The 94th Congress ended a shameful tradition of blatant discrimination in our nation’s schools and provided children with severe disabilities their first real opportunities to learn and to be productive and participating members of our society. For the second time this century, America had examined and rejected separate and decidedly unequal education as an intolerable effrontery to what this country stands for.

Enactment of the ADA in 1990 closed the door on decades of overt and widespread discrimination on the basis of disability. During the legislative process leading up to the passage of
ADA, Congress heard countless stories of totally offensive, yet completely legal, discrimination in the workplace, in public settings like recreation facilities and programs, and in public transportation.

Congress reacted to this fundamental unfairness by asserting its role as the ultimate protector of civil rights and by passing the ADA.

Yet, despite these legislative victories, parents of people with mental retardation still face roadblocks in securing their children's rights.

State and local officials insist that there isn't enough money for these rights to be exercised. Our parents say, "How come only people with disabilities have a price tag on their rights? Since when does the United States only confer rights to its citizens if there are ample funds?"

You must always remember that the primary reason groups like ours sought redress from the United States Congress for ADA and IDEA was because many state and local governments had chosen to view people with disabilities as second-class citizens.
And, many of these governments would prefer to continue this practice today.

Time does not permit me to thoroughly respond to the ACIR preliminary report. I will, therefore, limit my remarks to several of the draft report findings and recommendations.

First and foremost, the ARC strongly believes that neither of these laws are unfunded mandates. The very law which provides the impetus for the ACIR report makes this clear.

The ADA is a rights statute. And, no rights statute can be called an unfunded mandate.

The IDEA is grounded in the United States Constitution and the Fourteenth Amendment and also cannot be framed as an unfunded mandate. Even if the Congress didn’t allocate a single dime to the ADA and the IDEA, state and local governments would still be required to fulfill their mandates.

To say that the 120,000 members of our Association, most of whom are parents of individuals with mental retardation, are greatly upset and disappointed with this Commission’s draft
recommendations would be an understatement. To add
insult to injury, many of the Commission’s findings
and recommendations appear to be based on the same
misunderstandings and bias people with disabilities
have faced forever.

They are particularly distraught that most
of the Commission’s recommendations are not backed up
by any evidence whatsoever. For example, the ACIR
preliminary report states that the IDEA has become
overly litigious.

On what basis is that statement made?

Data available to us indicate that slightly more than
150 special education cases are heard in federal
court annually.

Out of 5.5 million children in special ed
on an annual basis, 150 cases is minuscule, below
one-thousandth of 1 percent. And, the number of
these cases continues to decrease.

This is not to say that many parents of
special ed children don’t face significant challenges
in obtaining an appropriate education for their
child. Thousands have such problems, but the vast
majority are resolved, as they should be, during administrative proceedings as required by the law.

The very low number of cases that are brought to federal court are a strong indicator of how well the system works. Yet, the ACIR makes a recommendation that under IDEA any court challenge based on the federal law should be brought by state and federal agencies and not by individuals.

This recommendation is a direct assault on the rights of parents with children with disabilities and would have the effect of locking parents out of key elements of their child's education. At a time when this country needs more parents to be involved in their child's education, the ACIR would move schools in exactly the opposite direction.

In regards to the ADA, the preliminary report recommends that the federal government increase federal funding to state and local governments regarding ADA compliance or modify some of the ADA's deadlines and requirements. From the ARC's perspective, this translates to pay up or get lost.
This recommendation disregards both history and the requirements of the ADA. State and local governments have been covered by Section 504 of the Rehabilitation Act for more than 20 years.

Most of the accommodations required of them from the ADA are similar, if not identical, to Section 504. Hence, many state and local governments should have solved most of the ADA requirements many years ago.

The ARC does recognize that some compliance issues are problematic. So does the statute. In fact, the ADA was written to protect entities from such burdens.

The undue hardship and other provisions in the law provide sufficient and appropriate safeguards so that covered entities do not suffer financially. But, we will not allow entities to use these provisions as a means of shirking their responsibilities.

The Commission also ought to remove the private right of action under the ADA. Again, this recommendation is punitive.
Putting the onus exclusively on the federal government to pursue ADA remedies in the courts can only be seen as a back door means of gutting enforcement of ADA. How in the world could a shrinking federal government possibly carry out this recommendation? It couldn't and it wouldn't.

The intent of this recommendation is clear -- prohibit the public from pursuing their rights and overwhelm and overload the federal government to such an extent that the law is virtually useless.

In closing, the ARC wishes to clearly state its recommendation to this Commission in regards to this report, in regards to IDEA and ADA. Your recommendations are seriously flawed and they should be totally dropped from the final report.

But, even dropping all references to your draft recommendations is not enough. This Commission owes it to the disability community and to the public to clearly state in its final report that the ADA and the IDEA are not unfunded mandates, that most of your findings in the draft lack supporting data and that your draft recommendations are withdrawn for the
aforementioned reasons.

Again, on behalf of the ARC, I greatly appreciate the opportunity to share our views.

CHAIRMAN WINTER: Thank you, Mr. Marchand.

Thank you for a very strong presentation.

Next, I recognize Mr. Karl Bell and Ms. Linda Garrett of the National Education Association.

Thank you for being here today.

MS. GARRETT: Thank you.

STATEMENT OF KARL BELL

NATIONAL EDUCATION ASSOCIATION

MR. BELL: Mr. Chairman, members of the Commission, I am Karl Bell. I am Chairperson of the Educational Support Personnel Caucus of the National Education Association.

I am a head custodian at Southfield Lathrope Senior High School in Southfield, Michigan.

The National Education Association represents some 250,000 non-instructional school employees, including bus drivers, cafeteria workers, custodians, secretaries and many, many others. I appreciate this opportunity to speak with you today.
about the preliminary report on the U.S. Advisory Commission on Intergovernmental Relations.

The NEA has submitted a written statement, which I ask to be presented for the record of this hearing. In brief, the statement criticizes the Commission's lack of a consistent standard as far as recommendations, for lack of evidence for its findings and the Commission's disregard of the benefit of any of the standards it recommends repealing.

For this hearing, however, I would like to emphasize the National Education Association's support for the health and safety of children and the employees at American schools. And, I would like to urge the Committee to maintain and extend the protections for children and workers across the country.

The National Education Association believes that among the essential conditions for quality education is the ability of school districts to recruit, to hire, to retrain qualified employees for every position in our school life. For many
school employees in the United States, the Fair Labor Standards Act maintains a standard that assures public employers are competitive with the private sector.

If the FLSA were to be repealed, the minimum standards for wages and fair standards for hours worked would not be extended to public employees. Similarly, the Family and Medical Leave Act protects employees from losing their jobs when serious family or medical circumstances require that they take time off from work.

The FMLA provides a significant protection for workers and their families at a minimal cost, approximately $5 per covered worker per year. Without this protection, individuals would lose their jobs permanently because of short-term circumstances generally beyond their own control.

The fact that many employees have recourse to collective bargaining was used as an argument against the enactment of these laws. And, it is advanced as an argument for repealing coverage of state and local employees.
The National Education Association has long supported collective bargaining for education employees as a means of engaging employees and employers in a dialogue about wages, terms and conditions of employment. And, yet, public employees do not enjoy the same rights to recognition their private sector employees enjoy. At least one-third of the National Education Association's members do not have the rights to bargain under state law.

We believe that protections of the FLSA and the FMLA are so vital that they should be the minimum standard for any employee in the United States, public or private. In addition, the National Education Association has long supported extending the protections of the Occupational Safety and Health Act to all state and local governments.

Without such standards, many education employees today must work in conditions that are less safe than private employees who do comparable work. This is all the more important an issue because of the potential harm to children in our schools.

After all, the working conditions for...
public school employees are the learning conditions
for our public school children. We urge the
Committee to reject the report and maintain the vital
protection for workers and school children
nationwide, public and private.

I would like to introduce to you my
colleague, Linda Garrett.

CHAIRMAN WINTER: Thank you, sir.

STATEMENT OF LINDA GARRETT

NATIONAL EDUCATION ASSOCIATION

MS. GARRETT: Thank you, Mr. Chairman and
members of the Commission.

I am Linda Garrett, school secretary,
working with students serving under the Individuals
with Disabilities Act in Dothan, Alabama. I am also
currently enrolled in Alabama State University,
pursuing a degree in special education.

And, Governor Winter, I’m happy to say
that I’m your neighbor to the east.

(Laughter.)

MS. GARRETT: In addition, I am a member
of the Board of Directors of the National Education

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Association. And, I do appreciate the opportunity to speak with you this morning.

The National Education Association was instrumental in the enactment of the Education of All Handicapped Children Act of 1975. And, our members have played a key role in the implementation of this measure since the beginning.

We believe the education of students with disabilities is a moral and economic imperative for the nation. Those of us who work with students with disabilities share the frustration of the authors of the Advisory Commission on Intergovernmental Relations preliminary report, that federal resources have not been in keeping with the requirement that all students with disabilities be afforded a free appropriate education in the public schools.

The federal government has retreated significantly from its partnership with state and local governments. But, the answer is not to do away with the standard of access.

Such a move would, in the short-term, lead to a hodgepodge of differing state and local
standards, ultimately leading to more litigation which would lead back to the need for federal legislation. Instead, the federal government should increase its financial commitment to help state and local governments pay the cost of these programs.

Enrollment of students with disabilities has, indeed, grown faster than the average rate of enrollment, not for the nefarious reasons alluded to in the report but, in large part, because of the rising rate of poverty and its effects on children's development.

Federal standards to serve students with disabilities has opened the doors to a better life for millions of children. They have helped to bridge the gap affording the greater understanding for all Americans of the challenges and strengths of people with disabilities.

They have encouraged significant parental involvement in education. And, they have helped individuals with disabilities become full partners in our economic growth.
We cannot afford to abandon these long-term benefits for short-term economizing.

NEA is now engaged in efforts to address concerns about litigation costs and the reauthorization of IDEA underway in this Congress. Let's allow this legislation to be improved through the normal reauthorization process rather than bringing an abrupt halt to a successful effort.

We urge the Commission to recommend extending IDEA and work to add federal resources to this important national education effort.

Thank you so much.

CHAIRMAN WINTER: Thank you, Ms. Garrett.

Are you from Dothan?

MS. GARRETT: Yes, sir.

CHAIRMAN WINTER: I was there last -- I was in Enterprise last week. Thank you for that statement.

Let me call now on Mr. Lee Saunders of the American Federation of State, County and Municipal Employees. Thank you, sir. Thank you for coming.

STATEMENT OF LEE SAUNDERS

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AND MUNICIPAL EMPLOYEES

MR. SAUNDERS: Good morning, Mr. Chairman

and members of the Commission.

My name is Lee Saunders. And, I am an
assistant to President Gerald McEntee of the American
Federation of State, County and Municipal Employees.

AFSCME represents 1.3 million state and
local government workers in the United States, all of
whom would be adversely affected by the
recommendations the Commission has put forth in its
mandate study. The Commission's recommendations come
at a curious time.

While the U.S. Congress applied many labor
laws to federal employees through passage of the
Congressional Accountability Act in 1995, this report
advocates moving in the other direction for state and
local employees. We believe that any government in
its role as employer should be treated like any other
employer and that all employees should be treated the
same.

As Labor Secretary Reich said in his
comments on the report, "If the recommendations in
the report were implemented, state and local
government workers would become second-class citizens
deeded unworthy of the same basic protections as
their neighbors, friends and family who work in the
private sector or for federal agencies."

We are disappointed that the Commission,
in completing this report, did not adopt an inclusive
redesigning government style approach. That’s
similar to what the Clinton Administration and Vice
President Gore have done.

In the ACIR’s case, its thinkers and
critics sessions never reached out to state and local
government employees or their representatives for
input, comment or recommendations nor were
representatives of groups that benefit from the other
federal laws under scrutiny invited to participate,
such as the disability and environmental communities.
Obviously, we are most disappointed in the substance
of the report.

The report responds to the alleged
financial burden of unfunded federal mandates, yet

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includes no cost data for the worker protections it seeks to repeal.

Additional comments on the three laws most affecting state and local public employees follow:

The ACIR recommends deleting the Fair Labor Standards Act provisions that extend coverage to state and local government employees. These protections govern such items as the minimum wage, the 40-hour work week and overtime pay. No similar recommendation is made for employees with exactly the same jobs who work in the private sector.

The U.S. Supreme Court found in its 1985 decision in Garcia versus San Antonio Transit Authority that efforts to distinguish between governmental and proprietary functions were unsound in principle and unfair in practice.

Moreover, Congress amended the FLSA in 1985 to provide state and local governments more flexibility in applying the law. It allowed them to grant compensatory time instead of overtime pay, included special rules for the use of volunteers and delayed the implementation of compliance obligations.
The ACIR claims that under the FLSA, a state or local government cannot amend its personnel policies to accommodate situations unique to government employment or to reduce its budgets. In fact, nothing in the Act denies employers the flexibility to change work schedules, work shifts, operation schedules and hiring practices for the purpose of controlling overtime hours.

As in the private sector, controlling overtime in the public sector relies primarily on good management. There is little reason to believe that state and local governments will automatically adopt provisions similar to federal law if coverage under FLSA is repealed.

Thirteen states currently lack a minimum wage law applicable to state and local government or have one that sets the wage lower than the federal minimum wage. Thirty-two states lack overtime provisions in their laws that apply to state and local government workers.

The Commission's argument that public employee unions will negotiate these protections even
if Congress repeals them is without merit.Nearly
two-thirds of state and local government workers do
not belong to labor unions.

And, nearly 5.5 million lack collective
bargaining rights altogether. In fact, 24 states do
not have collective bargaining laws covering public
employees or state workers or local workers.

ACIR recommends that coverage under the
Occupational Safety and Health Act be eliminated for
state and local government employees. OSHA is not a
mandate, because the only state and local government
workplaces covered by this Act are located in states
where the state legislature has voluntarily agreed to
participate.

Indeed, 27 states have not chosen to cover
public employees under the Act.

Other criteria ACIR used in its analysis
also argue that OSHA should not be included in this
discussion. First, the Commission was to focus on
laws that involved substantial expenditure for state
and local government. Federal grants can fund up to
50 percent of the administrative costs for those
states that chose to cover public sector workers.

Moreover, extending OSHA coverage to state and local employees may actually save money. A study by Ruttenberg and Associates found that expanding OSHA coverage to all public employees would, in fact, save state and local governments at least $600 million annually.

Finally, the ACIR recommends that Congress repeal coverage for state and local government employees under the Family and Medical Leave Act.

Contrary to ACIR's assertion, the FMLA does not represent a financial burden related to revising leave policies and continuing health insurance policies.

According to DOL, the bipartisan Commission on Leave reported very different findings in two reports released in October 1995. Over an 18 month period, 90 percent of private sector employers reported little or no cost associated with administration, hiring and training and continuation of benefits under the statute. Eighty-five percent reported no noticeable effect on employee turnover,
absence or productivity.

We find it difficult, if not impossible, to accept that the experience in the public sector is so dramatically different, especially since state and local governments offered more extensive family medical leave than the private sector prior to FMLA's enactment.

Moreover, state and local governments are granted flexibility under FMLA for several implementation issues including whether to require medical certifications for leave, whether to require employees to exhaust accrued paid sick and annual leave and whether to allow employees to use accrued sick or annual leave during leave and how to treat benefits other than health insurance during leave.

I appreciate your giving me an opportunity to address you today. If there is dignity in public service -- and we, at AFSCME, believe that there is -- let state and local government workers benefit from the same protections that the private sector enjoys.

Thank you.

CHAIRMAN WINTER: Thank you, Mr. Saunders.

Thank you for coming today. Welcome.

STATEMENT OF JUDITH LICHTMAN

WOMEN'S LEGAL DEFENSE FUND

MS. LICHTMAN: Thank you so much for having me. My name is Judith Lichtman. And, I am the President of the Women's Legal Defense Fund.

I testify today on behalf of the 66 organizations representing women and our families, children, parents, working people, senior citizens, people of faith, health professionals and people with disabilities and their parents.

In 1993, Congress passed the Family and Medical Leave Act to provide a safety net for families in times of crisis, ensuring that when family or health needs require that employees be out of work temporarily they do not lose their jobs and their financial security. Yet, in its preliminary report, the ACIR proposed to repeal the Family and Medical Leave Act for state and local government employees.
The ACIR used no scientific methodology, offered no facts or statistics and cited no studies to support this proposal. To the contrary, the evidence shows that the Family and Medical Leave is working well to state and local employers and employees alike.

In fact, of the hundreds of submissions to the ACIR, that the ACIR received from state and local governments, no more than 20 even mentioned family and medical leave.

First: The ACIR was wrong when it concluded that a compelling national purpose does not justify the FMLA’s application to state and local governments. As Congress found when it passed the FMLA, its justification is the dramatic increase in the number of women working outside the home in recent decades, which means that most American parents have both job responsibilities to meet and families to support and nurture, and the fact that many employers did not provide employees with job security during the periods of family and medical leave.
State and local employees are no exception, which is why a congressional committee specifically rejected exempting state and local employees from the Family and Medical Leave Act. Now, one in two million American employees can be expected to use the Family and Medical Leave Act each year.

Today, with me is Velma Parness, a member of the Women's Legal Defense Fund's Work and Family Action Council and a state employee at the University of California, Berkeley extension. She is going to tell you her personal story of how the Family and Medical Leave Act made it possible for her to take the time off she needed to be with her husband when he was dying from leukemia.

I also submit with my statement summaries of the experiences of eight other state and local employees who have relied on the Family and Medical Leave Act to meet their families needs. All these dedicated community workers, men and women, black and white and Hispanic, who come from across the United States and from a variety of occupations illustrate
the crucial difference that the Family and Medical
Leave Act makes in the lives of state and local
employees.

Second: The ACIR was wrong in its claim
that Family and Medical Leave imposes too many
administrative costs on employers. New,
statistically representative research on private
employers by the Family Leave Commission found that
significant percentages of employers experienced only
a small increase or no increase at all in FMLA
related costs to comply with the Family and Medical
Leave Act.

And, you will have attached to your
statements pie charts that show some of these figures
in a much more graphic and specific way.

There is no evidence whatsoever to suggest
that public sector employees incurred any greater
costs as a result of family and medical leave. To
the contrary, state and local governments had even
more expensive family and medical leave policies in
place prior to the passage of Family and Medical
Leave than the private sector.
Thus, they had fewer adjustments to make to come into compliance with the Family and Medical Leave Act and, therefore, incurred fewer costs.

Moreover, the ACIR failed to consider the benefits side of the cost benefit equation. The Family and Medical Leave Commission found that some large employers actually experienced savings due to FMLA and without the FMLA taxpayers would pay an additional billions of dollars annually for public benefits programs for employees who lose their jobs because they don’t have family and medical leave.

And, the ACIR was flatly incorrect that small state and local government employers are overwhelmed by the Family and Medical Leave’s administrative costs. Employees of state and local governments with fewer than 50 employees within a 75 mile radius are expressly exempt from the law.

Third: The ACIR’s claim that state and local governments have little flexibility in implementing the Family and Medical Leave is also incorrect. In my written testimony, I cite some of the myriad decisions that state and local employers
have the discretion to make about how they provide
family and medical leave to their employees.

   Indeed, a number of states have taken the
opportunity to make just such decisions. For
example, after passage of the Family and Medical
Leave in 1993, Ohio provided state employees with up
to four weeks of leave for birth or adoption at 70
percent pay.

   Let me conclude by pointing out that this
report and recommendation are, of course,
preliminary. Now that you have the evidence before
you, you cannot, in good conscience, adopt the
preliminary recommendation that Congress repeal
provisions of FMLA for state and local employees.

   There is no justification for giving these
hard-working, government employees less protection
than that enjoyed by employees of the private sector
and of Congress.

   Thank you very much for hearing my
testimony.

CHAIRMAN WINTER: Thank you, Ms. Lichtman,
for that very strong and very persuasive argument
today. Thank you.

MS. LICHTMAN: Thank you.

CHAIRMAN WINTER: Let me welcome to the panel our distinguished colleague, United States Senator Craig Thomas of Wyoming. Senator, thank you for coming.

Next, we shall hear from Mr. Mark Glaiber of the National Association of Fleet Administrators. Mr. Glaiber, welcome, sir.

STATEMENT OF MARK GLAIBER

NATIONAL ASSOCIATION OF FLEET ADMINISTRATORS

MR. GLAIBER: Good morning. Good morning, Mr. Chairman and members of the Commission.

For a change of pace, I am going to ask you to go ahead and include something in the ACIR final report.

I am the Fleet Manager of Dade County. And, I am representing the National Association of Fleet Administrators, which represents many of the 40,000 cities and counties in the United States.

In preparing the testimony, I used the ACIR report, which listed criteria that would make
the mandating of alternate fuels from the 1992 Energy
Policy Act to municipalities to be among those items
that should receive further scrutiny from your
Committee. It's not that NAFA is against clean air
or dependence on foreign oil, but we are against
using municipalities as the implementor for this
project.

Assuming the numbers I'm going to throw
out to you -- and they are a little scary to us, but
that's why I'm here -- in Dade County, we have over
6,100 vehicles that would be affected by the Act. At
$5,100 each to convert a vehicle, that would be $32
million dollars or over a six year period $5.4
million a year.

There is no payback for governments. The
price that the public pays, say, at the gas tank is
about $1.18 for fuel.

Palm Beach County, which has alternate
fuels, compressed natural gas, is paying 48 cents.
So, that leaves 70 cents, which is a considerable
savings.

The local government gets a break on
buying fuel. And, we only pay 78 cents. So, the
savings is mitigated, and we are only talking about
30 cents.

The nature of a local government
surrounded by boundaries is that we don't put a lot
of gallons on per year. Therefore, we might use
about 600 gallons a year, making the savings about
$200.

What that means, in effect, is that it
would take 25 years to have a payback on the
conversion. And, 25 years is longer than most local
governments keep their vehicles, although it seems
like we are getting that way.

Funding infrastructure. Unlike the
federal government and state government, almost all
cities of any size have their own fueling operation.

As an example, in Dade County, we have 28
fueling sites for police, water and sewer,
sanitation. We can't use the slow-fill that CNG
would like us to use.

An average price on a fuel station is
probably $375,000 to keep the same capability of
fuelling vehicles that we currently use. Again, using
Dade County as an example, over six years, it would
cost us $1.7 million plus the $5.4 million on
conversions for an additional $7.2 million a year.

I also checked with the Cities of Boca
Raton and Coral Gables, because they are more of an
average size city than Dade County, and what this all
comes to is that it would raise our fleet management
budgets by about 20 percent a year. And, that’s
virtually impossible on the local level, as we are
all cutting back on funding.

Criteria Number 3 is to impose
requirements that are difficult or impossible to
implement. If the cities and counties of America
started tomorrow, the infrastructure would not be in
place by 1999. It just takes local government so
long to do these types of things.

As an example, in South Florida, the
federal GSA in the State of Florida, while purchasing
alternate fuel vehicles, have no place to fuel. We
are building the first compressed natural gas fuel
line, but it has taken us over two years to do that.
Criteria Number 4 is subject to widespread opposition. Most public and private fleet managers are adamantly against the alternate fuel mandates as costly, impractical and lacking logic.

Where is the private fleet? The private fleet would be covered by the 1998 rule-making by the Secretary of Energy, but they don't attend the meetings. They are nowhere basically to be seen.

The reason is that they look at the bottom line. Unfortunately, in government, we don't look at the bottom line as much.

If, in fact, private fleets were included, they would probably decentralize, go to mileage reimbursement and no longer be part of a fleet service.

In the infrastructure nationwide, if we looked at it, if only half of the municipalities, let's say, 20,000 were to go ahead and build fuel stations over the next six years, it would cost $7.5 billion or a billion and a quarter a year. There's roughly 1.4 million government vehicles in the United States.
If we assume 25 percent belong to federal and state and 30 percent are not in cities of 250,000 or more which are not covered by the Act, we would still have to convert 120,000 vehicles a year. This would cost another $612 million.

And, it would cost local governments in America, between conversion at $612 million a year and infrastructure of a billion and a quarter a year, a cost of $1.8 billion or $11 billion for the six years of implementation.

In conclusion, comparing the costs, which are of an ongoing operational nature, could make the mandating of alternate fuels in the cities of America the single most costly unfunded mandate proposed. It's certainly worth your while to study and add to your list of mandates to be repealed or modified.

Thank you.

CHAIRMAN WINTER: Thank you very much. We shall now hear from Mr. Gary Bass of OMB Watch.

Mr. Bass, thank you for coming today.

STATEMENT OF GARY BASS

OMB WATCH

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MR. BASS: Thank you. Mr. Chairman, I'm Gary Bass.

And, not only do I represent OMB Watch today but Citizens for a Sound Economy, which is a coalition of a number of the players that have spoken today and will be speaking later today. And, I must admit that prior to your preliminary report, many of us probably never heard of ACIR.

I don't know whether it has worked out the way you wanted that we've got to know what you do, but nonetheless we are here.

I think what I would like to start with is two principles, if you will. I think that the issue of unfunded mandates is a difficult issue.

I think it's very true that what is one entity's unfunded mandate is another entity's rights or safeguards. And, I think you've heard that already around the issue of the Americans with Disabilities Act where no doubt for a locality it costs money, but by the fact that citizens and residents of that locality live there they feel that their right as an American citizen is to ensure that...
basic civil, if not constitutional, right.

And, I think you also heard that from AFSCME in terms of OSHA not being a mandate. And, I think you are going to hear that theme throughout.

And, I think that's a problem, if you will, with your report. What you construe an unfunded mandate many people in the public will construe a basic right.

And, that's a difficult issue to resolve but one that is very apparent in your report.

And, the second principle, if you will, is that many of us in the public interest community are sensitive to the issue that local governments face budget crunches. We recognize that problem.

And, with shrinking federal resources, that problem is becoming exacerbated. The answer, however, is not to gut public protections.

The answer is to find a solution to that problem to meet the federal requirements that are established after a long debate and passage of federal law. So, that also is a difficult problem but one that calls for not repeal but improvement and
flexibility, which is very different again than your preliminary report calls for.

Having said those two points, you have already received the coalition's report, "Shirking Responsibility," which lays out many of the problems from the coalition's perspective with your preliminary report. I would like to highlight a few of the overall problems with the report.

There are at least six identified in this report and in my written statement. Let me just highlight a couple.

First and foremost, which you've already heard from several of the speakers, is the report really has a lack of or, frankly, ignores critical empirical evidence about the issues you are addressing. You heard it in the sense that the Women's Legal Defense Fund just spoke about Family Medical Leave and the fact that your preliminary report doesn't even address the Family Leave Commission's finding, one of its many findings, that there is actually very little, if no, cost increase for following that federal law. And, in fact, 89
percent of employers indicated that.

Similarly, in your report dealing with safe drinking water, the Congressional Budget Office's -- one of its primary findings, one of its primary findings was that there is no data to support that it's a burdensome mandate. And, in fact, goes further to indicate that there are actually modest costs of complying with the law.

On top of that, admittedly it may be because of lack of funding for ACIR or for the limited time frame, but ACIR conducted no new research in any of the areas in which you investigated.

So, the first point is a lack of, or even ignoring, empirical evidence.

And, the second, which you heard also from AFSCME and from many in the disability community, is your recommendations, your preliminary recommendations, would create a really crazy quilt, if you will, of protections for some and not for others. Based on where you are employed, you may be protected and you may not.
For example, you have a situation where, as AFSCME described, if you work in a state government, the potential exists that you don’t have OSHA protections. If you work in the private sector, then you may or will.

That kind of unevenness is particularly ironic, given Congress just went and implemented federal laws to apply to yourselves. And, I find that it’s ironic, especially that ACIR at that particular moment would recommend repeal of such critical laws for state and local governments.

Thirdly, your report, especially in light of the fact that I just made that what is needed is not gutting of public protections but finding mechanisms to assist state and local governments to meet those protections, your report does not look at alternative ways for state and local government to meet those needs. For example, the report doesn’t even acknowledge some of the things you’ve already heard this morning such as the ADA already has in statute flexibility at the local level; the Family and Medical Leave doesn’t even apply in certain cases.
where there are small entities; Safe Drinking Water has exemptions for small entities, on and on.

There are already statutory provisions that provide for waiver. On top of it, as your surrogate for Commissioner Browner, Ms. Metzenbaum, could easily attest to, many of the agencies are actively working on alternatives in trying to find ways of making regulation more flexible while still achieving the primary mission of the regulation and the law.

So, I find it frustrating that we don't look at the flexibility; and, instead, what we do is we cut off citizen suits.

And, the final point I want to make is the process that we've gotten to. You have already taken some criticism publicly for the fact that your conference was $400. In the "Federal Register," you had made note that the conference was actually to serve as the public hearing.

I am very pleased that you decided to have this hearing today. I think it is clear that with the number of people who have come in from out of
town that there is a great deal of concern about the
preliminary recommendations.

I'm also concerned about the process that
led up to it, the fact that you had a December 19th
meeting where there was not a quorum. The method
which you pursued to go to the next step to issue the
preliminary recommendations seems to face some
confusion among even your own Commission members when
we've called as to what the purpose of that was.

So, all of that is not to belabor the
point about a process but to raise the question about
what will be the process to develop the final rules,
the final recommendations. And, that brings me
really to the conclusion here with two final points.

On Page 3 of your preliminary report, you
indicate that you intend, or you recommend, to review
additional mandates. I strongly encourage you to
reconsider that point.

In the manner in which you have pursued
the first batch, I am highly suspect of the manner in
which you would go after additional issues. You are
just seeing a small smattering of the public
constituencies that are affected by the initial report that you have.

And, that leads me to the second point. You heard from the ARC earlier saying that, in essence, you must at this point literally repudiate the preliminary findings that you had.

The report itself has done great damage. And, that’s why you have such energy from the public to come here today.

You must put out a statement indicating that the direction you headed with flat out repeal or no money/no mandate which, in essence, is much of what your modifications call for, is the wrong approach today. And, I hope -- and actually I put this as a question.

Where most of us are speaking to you today, I put it as a question to you. What will be the process for developing the final recommendations? Will your meeting, if you have a meeting, be open to the public? Will it be announced?

What will be the process? We are all now quite aware that ACIR is exempt from the Federal
Advisory Committee Act, FACA, which is quite shocking.

I would hope that in light of the seriousness and the enormous ramifications and repercussions for your report that some open process is developed.

Thank you.

CHAIRMAN WINTER: Thank you, Mr. Bass. We hear now from Mr. Justin Dart of Justice for All.

Mr. Dart, welcome, sir. We are glad to have you.

STATEMENT OF JUSTIN DART
JUSTICE FOR ALL

MR. DART: Mr. Chairman, as an American, as a taxpayer, I want to tell you how much I appreciate your undertaking this task. I know it's not a popular task.

I consider it to be an act of patriotism. It's something that this country needs to have done. And, I appreciate it.

And, I appreciate your meeting our justice for all colleagues in Jackson. And, these words go...
for all of your colleagues.

CHAIRMAN WINTER: Thank you, sir. It's a harder task than we thought it was, Mr. Dart.

Go ahead, sir.

MR. DART: Mr. Chairman, the recent preliminary ACIR report on unfunded mandates made several positive recommendations. It also included misleading and otherwise irresponsibly negative references to the Americans with Disabilities Act and the Individuals with Disabilities Education Act.

Related press coverage contains statements that were extremely damaging to the rights of 49 million Americans with disabilities. We, of the disability community, respectfully demand that the final report be suitably corrected and that the public media be informed of those corrections.

The ADA, the IDEA and other basic disability rights laws are sacred to people with disabilities. ADA and IDEA are not unfunded mandates.

They are civil rights laws which simply guarantee to people with disabilities the same equal
protection of the laws provided to all Americans by
the United States Constitution. ADA and IDEA were
rightly exempted from the recent unfunded mandate
legislation and should not be addressed by the ACIR
report on that subject.

For almost two decades, communities have
been required by the Rehabilitation Act of 1973 to
make their facilities accessible. It is misleading
to imply that the requirements of the ADA are
unreasonably abrupt.

ADA specifically states that no community
can be forced to make changes which would impose an
undue economic hardship. It is misleading to imply
that the opposite is true.

Communities call for flexible
implementation. That remedy is already written into
the law.

Your suggestion that people with
disabilities and their families should not have the
right to initiate legal action to remedy infringement
of their rights is profoundly disturbing. A
principal purpose of civil rights laws is to protect
citizens against oppressive government. A right with no citizen remedy is no right.

The ACIR staff working paper recommendation that "ADA requirements should be temporarily or permanently suspended or made voluntary" is alarming. Voluntary rights for black people following the Civil War resulted in 100 years of Jim Crow segregation. And, it was a national tragedy. Let's not do it again.

People with disabilities call on national, state and local government, the private sector and the public media, to make full implementation of the ADA and the IDEA a first priority. We, who have disabilities, will cooperate 100 percent to achieve harmonious implementation of the ADA and the IDEA.

We will work with individuals, businesses and government at all levels to create common sense solutions that meet the particular needs of different parties and situations. But, we will fight to the end of time any change in law, regulation or enforcement that weakens our fundamental equality, as set out in the ADA and the IDEA.
Finally, Mr. Chairman, it is self-evident that every person in this nation has a vested interest in the success of the ADA and the IDEA. Disability will occur at some point in the lives of most individuals, certainly in the life of every American family.

Former President George Bush estimated that discrimination against people with disabilities cost America $200 billion cash every year. Enabling people with disabilities to move from welfare to employment, from isolation to active participation in their communities will profit governments, businesses, families and taxpayers.

It will strengthen America's ability to compete in world markets. It will increase the prosperity and the quality of life of every family and community.

ADA and IDEA are laws for all Americans. We call on all Americans to join us in keeping this sacred pledge -- one nation under God, indivisible, with liberty and justice for all.

CHAIRMAN WINTER: Thank you, sir. That's
a very compelling statement that you've made.

We thank you for being here.

MR. DART: Thank you.

CHAIRMAN WINTER: I want to recognize now another of my fellow Mississippians, Mrs. Margaret Dunaway.

Mrs. Dunaway, thank you for coming today.

Where are you from?

MRS. DUNAWAY: Madison.

CHAIRMAN WINTER: It's good to see you.

STATEMENT OF MARGARET J. DUNAWAY PARENT OF CHILD WITH DISABILITIES

MS. DUNAWAY: Good morning, Mr. Chairman and members of the Commission.

I come to you today with great concern. I understand that our current IDEA law is in jeopardy and it could be weakened if careful consideration is not taken to protect the requirements that define the IEP service.

The IEP is the core of the IDEA, for IEP along with related services enhance the education that serves our children and helps them overcome
obstacles that could suppress their learning and to
protect the children's constitutional rights and to
keep their freedom of speech from being smothered out
because someone wants to make a change.

What change? A change best for who?

Let's look at this very basically. When
we have a child when born, did you ask yourself, "I
will only love him provided this child is perfect?"

Now, define perfect. Who here is perfect?

Which of us, whether in Congress, an
educator, mother or father, have been told that in
our past we would be limited to our education because
our nation did not think they had to provide? Where
would our future be?

Like the birth of our newborn comes a
deep, strong, committed love with no limit, with
unconditional love and support. Maybe this needs to
be the focus in the United States of America, the
unconditional love that will be provided for
education for her children and their future.

I would like for you to meet Ashley, who
is now 13. She has been attending school since she
was six months old.

The IEP process, with the necessary evaluations to see what limitations she may have to overcome -- she is profoundly deaf. She is still trying very hard to speak.

She also has weak motor skills and needs occupational physical therapy. And, about five years ago, we learned she had ADD.

Now, you ask, "Where did you go from here?" Let me take you through her life when she started with speech school and later she went on to our public schools along with her interpreter.

There were children, along with faculty, that learned sign language. She was so determined to maintain honor roll and to be the best in sports she could be.

I wish you could witness the aggressive nature of Ashley along with Jason, who is mainstream in Madison public schools. Ashley has felt that there is nothing she couldn't achieve.

Along with good grades, she plays sports.

And, she performed in the Madison Civic Ballet in the
"Nutcracker." Later, she entered the Little Ms. Madison pageant and placed first.

She never ceases to amaze us. The gifts these children have, I wish time would allow me to share more stories about her life.

She and many children like her accept all the challenges. The stories -- the tasks are great.

The determination are forever strong.

The school, the teachers, the IDEA, the IEP, the related services, all the children combined with goals set high can only enhance a very determined Ashley and many, many children across the United States of America, help lead to the success and the security of our children. The IDEA works.

The IEP and related services are the backbone to our children's educational, emotional and social growth. Don’t challenge something that could directly smother our children's dreams.

Their goals are ever so high, their will ever so strong. Don’t let them down.

They are our children, yours and mine, our future tomorrow.
Thank you.

CHAIRMAN WINTER: Thank you very much for that statement.

Let me recognize Mr. Al Bilik of the AFL-CIC Public Employee Department. Welcome sir. I'm glad to see you.

STATEMENT OF AL BILIK

AFL-CIO PUBLIC EMPLOYEE DEPARTMENT

MR. BILIK: Thank you very much, Governor.

It's good to see you again.

The last time I had an opportunity to appear before a group headed by you was a wonderful experience, as a matter of fact, educational --

CHAIRMAN WINTER: Yes, indeed.

MR. BILIK: -- and useful, when you headed up the Commission reviewing state and local governments.

CHAIRMAN WINTER: We thank you for your contributions in that instance. And, we thank you for this statement today.

We welcome your presence.

MR. BILIK: Thank you. My name is Al
I am President of the AFL-CIO's Public Employee Department. It's a department that comprises 35 national unions, representing approximately 4.5 million public employees at all levels of governments -- federal, state and local -- throughout the United States.

I want to thank you for allowing me to present my views on intergovernmental relations and the question of devolution, which has percolated to the top of our lexicon this week.

What I do want to say, I want to mention that although we, at the AFL-CIO's special convention yesterday, endorsed President Clinton for reelection, I think back to the days when the Intergovernmental Relations Advisory Commission was established. It was in the Eisenhower Administration and, I think, the way it should be.

That is, we ought to, on a bipartisan basis, look at our relationships in the various governments. But, it was in the Eisenhower
Administration, as we will remember, that the first important verbal battles took place beyond the 30s on the question of what role the federal government should play.

And, education became a battleground. And, the first important piece of legislation beyond the 1863 land grant program took place at that time in the name of the National Defense Education Act.

And, the highway system became national, not only in scope but in responsibility as well. And, so there is nothing new about what we are talking about.

But, on the issue of devolution itself, I participated in a conference not long ago here in Washington on that question. And, speaker after speaker was concerned that the idea of devolution had not taken hold sufficiently, that people weren't talking about it enough.

And, I couldn't help but respond that when the issue of teaching devolution in the schools is raised, then we will really have made it.

But, to get on with this question. You've
heard from several people today who, in effect, would be saying the same thing I'm saying. So, I'm not going to repeat all that.

But, you know our concern about the Fair Labor Standards Act. You know that far, far too many public employees in the United States don't even have the right to participate in collective bargaining so that through a contractual relationship they might accomplish what otherwise we have to have through governmental action.

And, we also know that too many states totally ignored the basic minimum wage and overtime concerns for public employees which, of course, culminates in the necessity for the federal government to take some action.

Both Congressman Moran and Payne wrote recently that ACIR's proper role is to smooth the bumps in the intergovernmental system, identify the problems, build a consensus on appropriate remedies. And, we wholeheartedly agree with that. Yet, during the past several months, the Commission has sought refuge from the political process which should
determine appropriate governmental roles.

While the preliminary report -- and I trust it will be changed substantially -- proposes methods to reduce regulatory responsibility on the part of the feds, it does not provide solutions to smooth the bumps in our system. Contrary, the report, for example, indicates that our nation's public employees do not need or deserve standard wage and hour or workplace safety benchmarks.

The report's recommendations clearly undermine the working conditions of public employees and rejects the basic premise of federalism that national standards should exist to solve intractable national problems such as unemployment. The Commission's preliminary report seems to pursue a predetermined direction, failing to consider obvious evidence and offers radical solutions to nonexistent problems.

For example, the Family and Medical Leave Act. It is not a financial hardship on employers at all. And, the evidence is clear.

And, on the other issues, which I've
already mentioned in passing, we really need to recognize that the states have simply not carried out their responsibilities to their own employees. Having served as an organizer and a negotiator and whatever else I’ve done in the public sector labor movement for a very long time, the argument has always been, "We would like, through collective relationships with our employers, to pursue, on the one hand, the best interests of the workers because that’s our job."

But, we also have recognized that if employers in the public sector would respond in a civilized fashion -- that is, sit down and talk with their own employees and the employer representatives about conditions of work, that much would be accomplished in that fashion. We would not need to seek out all levels of government involvement.

And, we would be able to pursue what basically most workers want to do. And, that is, their own interests, of course, which include pursuing a better service, a better public service.

We have recommended it to our employers.
We are available at all times to participate with them.

We have a labor management program that is extravagant in its scope and has received recent recognition from the Ford Foundation and the Casey Foundation. We are working at that level to improve public service.

But, we need a partner. And, that partner is our direct employer. And, if our direct employer is not available, then government at higher levels has to insist that employers work with us.

An illustration, however, beyond our own self-interests: We’ve talked over the years about unemployment insurance. And, that’s assumed to be a federal program administered by the states.

But, in "The Washington Post" editorial recently, which was labeled "Crawling to the Bottom," the editorial noted that the result of a continuing lowering of payroll taxes, limiting of benefits and length of benefit duration in the states, that around 30 percent of the unemployed now qualify for benefits at all. And, in Virginia, which is at the bottom of
the national list, only 18 percent of the unemployed qualify for benefits.

Now, that's a national program administered by the states. But, more important, state legislatures have almost total control at this stage over benefit length, benefit amount and eligibility for benefits.

So, we are at that point. We are not talking now about the extreme poverty stricken. We are talking about workers fully employed normally that find themselves in a laid off situation and now unable to collect unemployment benefits.

Now, that's another advisory commission, not yours, that made this recent report. Now, that's the kind of problem that we need to face.

And, what I would like to suggest finally is that instead of the quotation -- or, instead of the question that's raised by your Commission in your report -- and the question is, "Does the national purpose justify federal intrusion in state or local affairs?" I would suggest, respectfully, that you should ask the following questions:
First, declare that the complexity of modern life intensifies the need in a federal form of government for the fullest cooperation of activities between the levels of government.

And, because population growths and scientific developments portend an increasingly complex society in future years that this is necessarily so, to bring together representatives of the federal, state and local governments for the consideration of common problems; to provide the forum for discussion of administrative and coordinating elements involving federal grants and other programs; give critical attention to the conditions and controls involved in the administration of federal programs; make available technical assistance; encourage discussion and study at an early stage of emerging public problems -- in other words, anticipate problems, not simply react to them; and, recommend, within the framework of the Constitution, the most desirable allocation of governmental functions, responsibilities and revenues among the several levels of government.
In a nutshell, to do what you were told to do in 1959. This is the general statement of responsibility for your Commission.

I suggest strongly that you revert to your original mandate. Thank you very much.

CHAIRMAN WINTER: Thank you, Mr. Bilik.

Thank you for being here.

Let me welcome to the panel Congressman Jim Moran. Thank you, Congressman. I'm glad to have you.

I would call on Ms. Christine Woodell of the Mississippi Coalition of People with Disabilities, another of my fellow Mississippians.

Thank you for being here today.

STATEMENT OF CHRISTINE WOODELL

MISSISSIPPI COALITION OF PEOPLE WITH DISABILITIES

MS. WOODELL: Thank you. I am from Ocean Springs.

My name is Christine Woodell. And, I am with the Coalition for Citizens with Disabilities in Mississippi.

For the past several years, I've worked in
the area of ADA compliance, including training and technical assistance. I was trained under a federal grant sponsored by the EEOC and the DOJ with the obligation to take my knowledge back into my community and state to assist in positive implementation of this law.

In 1990, Justin Dart asked us to go into our communities with a spirit of positive partnership to make this law work. Many of these efforts have resulted in positive, cost effective changes allowing true inclusion for all citizens.

Sometimes our efforts are ignored or rebuffed. This is not the fault of the law or Congress. State and local governments may not all be fully utilizing available resources.

Recently, a member of this Commission was interviewed by a reporter and asked why this Commission even took up the ADA and the IDEA. These important laws are expressly excluded from consideration as unfunded mandates. They are civil rights legislation, not unfunded federal mandates.

The response of the Commission member
alluded to freedom of speech. What about our rights and our freedom as citizens of this great democracy?

Comment is made in the preliminary report about the cost of compliance and the limited and inflexible time frames of this law. Most of the requirements of the ADA have been in existence since Section 504 of the Rehab Act of 1973.

Accessibility was addressed in revenue sharing plans during the 70s and 80s. The ADA was signed in 1990, almost six years ago, and implementation dates were four years ago.

How long would you want to wait to find a job, to register to vote, to state your opinion in a city council meeting or to use a bathroom?

Some feel that the ADA has vague and overly broad terms which may invite lawsuits. But, in fact, it has generated very few lawsuits.

Regardless of the language used, any document can be considered confusing or ambiguous. For example, the Bill of Rights was passed by Congress in 1789. While most agree that it is the foundation of our democracy, pure and clear in its
intent, the language is still being debated by citizens and courts across our nation.

This Commission suggests retaining the law but examining further its implementation. How much longer can people with disabilities wait for full inclusion and a chance to reach for the American dream?

How much longer are many of us expected to exist on SSI when we want to become fully participating taxpaying citizens? If it were you, your wife, your husband, your child, how long would you be content to wait?

Even more importantly, how much longer can this nation afford to ignore the talents and abilities of 49 million Americans with disabilities?

You asked for flexibility for state and local governments and a change from the rigid requirements of this law. You obviously fail to recognize the inherent flexibility built into this law and the provisions to protect any entity from undue financial or administrative burden.

The requirement for state and local ACE-FEDERAL REPORTERS, INC.
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government entities is program access. Many of these changes are easily accomplished and not expensive. Just as the business of the theatre is entertainment, isn't the business of government inclusion of all people, whether that means moving a council meeting or providing a sign language interpreter or allowing a man who uses a wheelchair to coach baseball? Isn't this inclusion the essence of what makes our country great?

We have worked for several years to inform businesses about the ADA. How are we to retain our credibility with businesses who have been urged to comply and have spent money doing so when our government takes such a negative attitude?

We have assured business that they will have additional customers. But, this might not be true if people with disabilities cannot get on city sidewalks or find appropriate parking in downtown areas.

The government should be in the forefront of showing commitment to all citizens. You speak of a fear that this law is so
complex and difficult to interpret that it may result in unintentional discrimination. In virtually all cases, notice is made that an individual feels a discrimination has occurred and opportunity is given to address this issue.

At that time, information can be sought. As we are often told, ignorance of the law is no excuse to break the law.

This is civil rights legislation. It has simply extended civil rights to another oppressed minority.

In our nation’s history, extending civil rights to minorities has made our nation prosper.

The fundamental purpose of civil rights legislation is not simply to guarantee the equal pursuit of happiness but to empower people to make free choices and to take concrete actions which actually create happiness and prosperity in real life.

It is essential to have strong protections and strong remedies. But, this is just a means to an end. And, that end is empowerment.

A change in the attitude of paternalism
toward people with disabilities will require a
profound change of attitude. And, our government
entity should be in the forefront setting the example
for others.

Change can occur. And, it must occur.

The ADA will save us money. But, there is
no way to assess the benefit of inclusion and the
quality of life for 49 million Americans with
disabilities.

Government entities have had over 20 years
to make changes for accessibility. And, many have
chosen to ignore this responsibility.

How can we feel any assurance that
voluntary compliance will occur in the future? Why
are some communities near compliance when others view
it as economically impossible?

Could there be a difference in local
priorities that needs to be reevaluated? Is this
another example of the way attitudes differ about the
roles that people with disabilities should play in
their communities?

Please use the power and influence of this
Commission to help change these attitudes.

Thank you very much.

CHAIRMAN WINTER: Thank you so much. We would next like to hear from Ms. Debra Johnson of the Idaho Parents Unlimited.

Ms. Johnson.

STATEMENT OF DEBRA JOHNSON

IDAHO PARENTS UNLIMITED, INCORPORATED

MS. JOHNSON: Mr. Chairman, members of the Committee, my name is Debra Johnson. And, I am from Boise, Idaho.

I am the parent of a daughter with severe disabilities. I serve on the Board of Directors for the National Parent Network on Disabilities.

And, I am the Executive Director for Idaho Parents Unlimited.

Idahoans are conservative by our very nature. Therefore, last year when Senator Kempthorne, the senior senator from Idaho and a member of this Commission, explained the overview of his unfunded mandates legislation, many of us agreed with the concept and we agreed that it was sound.
In responses to querying context, hundreds of Idaho families of children with disabilities received these same letters from Senator Kempthorne assuring them that IDEA and ADA would not be considered as unfunded mandates. In fact, these same assurances were provided to persons with disabilities and their families in many other states by their representatives and senators.

As families of children with disabilities, we accepted these letters in good faith and believed the promises they contained exempting IDEA and ADA from the unfunded mandates legislation. That was last year.

This morning, standing here before you, I, and the families of the 49 million Americans with disabilities, want you to know that we feel deceived and we feel betrayed. Contained in this document are recommendations that virtually annihilate the very laws that provide the supports that allow our sons and daughters to become taxpaying citizens and contributing members of society.

As Commission members, I implore you to
keep the promises that you made last year to
Americans with disabilities by deleting the
references to IDEA and ADA from this report.

The one recommendation contained in this
report that is extremely disturbing to me centers
around the concept that people with disabilities and
their families should not have the right to initiate
legal action to remedy infringements of their rights.
I can only assume that the rationale for this blatant
infraction of the Fourteenth Amendment to the
Constitution of the United States is grounded in the
false assumption that IDEA fosters excessive
lawsuits.

This Commission must understand that IDEA
is not a litigious law. In 1993, out of the
3,227,000 students served in states with available
data, only 654, which is less than one-hundredth of 1
percent, required due process hearings. And, of
those, only 81 entered into court appeals.

The Fourteenth Amendment of the United
States Constitution provides that states may not
deprive individuals of rights without due process of
law. In 1972, the federal courts examined the implications of the due process clause for children with disabilities in schools in two landmark cases.

In both cases, the courts found that the decisions excluding children with disabilities from regular classes raised constitutional issues which could be addressed by private actions in the court. It's important to note that these cases preceded IDEA and were based on constitutional principles only.

When Congress passed Public Law 94-142, the predecessor of IDEA, it included language that stated the congressional intent to assist states with fulfilling their constitutional duties under the Fourteenth Amendment.

Federal legislation, which is enacted pursuant to the Fourteenth Amendment, creates rights which, by their nature, are enforceable in courts, by the people whom they are intended to protect. To create rights for individuals and then deny them the ability to enforce those rights in court violates the due process clause.

If state or local governments make
decisions which affect the rights of private
citizens, the citizens must have recourse to the
courts to redress those rights.

If this recommendation is enacted, it
could serve to force parents of children with
disabilities back to litigation under Section 504 of
the Rehabilitation Act of 1973 and Section 18 --
Instead of decreasing the burdens of litigation,
people will turn to statutes where litigation is
available, potentially increasing court actions.

Under the current law, the courts have not
allowed action under Section 504 or the ADA to go to
court if these could be addressed under IDEA's
administrative procedures. If the right to court
action is removed under IDEA, it will open up these
other avenues of the courts.

When a state or local government
interferes with a person's federally guaranteed right
to liberty, property or equal protection of the laws,
the individual's right to seek recourse in the courts
is of constitutional origin. It cannot be removed at
the whim of Congress.

Therefore, at the very least, I am respectfully insisting that the recommendation listed on Page 11 to eliminate the statutory right of individuals to bring court action be stricken from this report.

The recommendation contained in the ACIR report that I do support addresses the need to provide funding assistance to state and local governments for compliance. For the past 20 years, parents of children with disabilities, educators, administrators and even school board members have been painfully aware that federal funding of IDEA has not met the 40 percent federal funding that was intended by Congress when the law was enacted.

We pledge to work with this Commission in any way or any manner necessary to assure that the federal government meets its funding commitment.

It's also important to remember and to recognize that this Commission must understand that IDEA is a voluntary requirement. It establishes a process for states to access federal money to assist
them in their responsibility of educating children
with disabilities. It is not a mandate.

As a parent of a child with severe
disabilities, these laws are crucial to my child's
future. In 1981, our daughter, Lindsey, was born
with cri-du-chat syndrome.

At that time, we were given a paper full
of statistics which portrayed a child that would
never walk, would never talk and probably would never
even recognize her parents. As we struggled to
accept our daughter's disability, we were being
counselled by doctors and encouraged by family
members to place our daughter at the Idaho State
School and Hospital.

We came very close to placing her there at
ISSH only because we were not aware of the
educational opportunities or options that awaited us
at our neighborhood school under IDEA. Lindsey has
received special education services under IDEA since
she was five years old.

And, she is a wonderful example of
successful collaboration efforts on her behalf. She
is currently a seventh grade student at Fairmont
Junior High in Boise which, by the way, is the same
school that her brother attended three years prior to
that.

She uses sign language to communicate.
She is mobile. She has many friends. And, with
modifications to curriculum, she is able to attend
regular school classes.

Lindsey will grow up to be a taxpaying
citizen and a contributing member of society due
solely to the special education and related services
provided to her under IDEA.

Yes, the services provided under IDEA and
ADA do cost money. However, these dollars are cost-
effective and they save money in the long run.

If we had placed Lindsey at ISSH 15 years
ago, her care alone would have cost the State of
Idaho an average of $120,000 a year. At this point,
it would be $1.8 million.

Again, I would share the words of Justin
Dart. The ADA and IDEA are not unfunded mandates.
They are civil rights laws which simply guarantee the
right of people with disabilities the same equal
protection of laws provided to all Americans under
the Constitution.

ADA and IDEA are rightfully exempted from
the recent unfunded mandate legislation and should
not be addressed in this ACIR report.

Thank you.

CHAIRMAN WINTER: Thank you, Ms. Johnson.

We next will hear from Ms. Terri Dawson of the Parent
Information Center of Wyoming.

Welcome.

STATEMENT OF TERRI DAWSON

PARENT INFORMATION CENTER, WYOMING

MS. DAWSON: Mr. Chairman, members of the
Commission, my name is Terri Dawson. I live in
Buffalo, Wyoming, which is a small, rural community
of 3,500 people in northern Wyoming.

I am the parent of Ted, my 10 year old
son, who has Down's syndrome. I am here to testify
to you today not only as Ted's mom but as a
representative of 2,600 families in Wyoming who have
children with disabilities, since I direct the Parent
Information Center, a state-wide center for information, support and referral to families of children with disabilities.

After having read the ACIR report, I would like to address some concerns the families in Wyoming have. First of all, we are concerned that the Individuals with Disabilities Education Act and the Americans with Disabilities Act were even included in this preliminary report, since they are civil rights laws that protect fundamental equality and were exempted from the recent unfunded mandate legislation.

Besides, IDEA is a voluntary mandate, giving more reason to exclude it from this report.

IDEA has worked for my son, Ted. He is now included in a regular third grade class with special education supports in our neighborhood school.

However, we are concerned if you weaken the language of IDEA to relieve states from prescriptive and costly administrative mandates other states will not provide the same consistent
educational services across their borders.

When I was growing up, my father was an officer in the Air Force. So, I lived in many different states and attended many different schools.

I would like to think if my family and I moved from Wyoming that my son Ted would receive the same free, appropriate public education in the least restrictive environment whether we moved to California, Mississippi or even New York. The federal government must maintain a strong presence in special education so students with disabilities have the same opportunity in every state.

We urge you to support the states' requests for better financial support for IDEA programs so services can be consistent and appropriate from state to state. Without adequate funding and support, situations arise which lead to conflict and litigation.

I know a family with a son who is deaf in a rural ranch community in Wyoming. Just a few years ago, the state convinced mom her son would be more appropriately served in the state school for the
deaf, approximately 200 miles from home.

After a few years in that residential school, mom wanted her son to be educated in his own community. And, the state and local school districts promised to support.

This second grade deaf boy was inappropriately placed in a self-contained resource room with children who had mental disabilities. Neither the teacher nor the other children knew sign language, which was this boy's only language.

Needless to say, after two years, the little boy tried to communicate in any way he knew how, which was perceived as very bad behavior problems. The local school district wanted to relabel him as severely emotionally disturbed and wanted to place him in an expensive out-of-district residential facility.

Luckily, with IDEA mom was given information about her due process rights. And, the situation was mediated before any hearing took place.

The school district hired a teacher for the deaf and costly litigation was avoided. This
little boy is now doing well in a regular classroom
with special education supports.

With proper implementation of IDEA and
federal monitoring and enforcement, situations like
this one should never come to litigation.

We strongly support alternative resolution
practices by believing districts should be required
to offer mediation. But, it must be voluntary.

Twenty years ago before IDEA and before
local and state school districts nationally were
educating all children, my nephew, J.R., was born.

J.R. is now serving our country in the U.S. Navy on
the U.S.S. Nemitz in the waters around Taiwan.

As a nation, we have always valued the
maintenance of a strong defense. J.R. is defending
the rights of us all.

Let us, as a nation, maintain a strong
educational system for all children. I would hate to
see this Commission proceed with a recommendation to
eliminate the statutory right of individuals to bring
court action and to reduce state and local
governments' compliance obligations under those
Let J.R. serve his country proudly knowing back at home his cousin is getting an appropriate education funded at the full 40 percent higher level Congress originally intended. Let my son, Ted, grow up with not a good education but a great education to become an independent, taxpaying citizen regardless of his disability.

Thank you.

CHAIRMAN WINTER: Thank you, Ms. Dawson.

Let me call on Mr. Jaydee R. Hanson of the General Board of Church and Society of the Methodist Church.

Thank you, Mr. Hanson, for being here.

STATEMENT OF JAYDEE R. HANSON

GENERAL BOARD OF CHURCH AND SOCIETY, METHODIST CHURCH

MR. HANSON: Thank you for coming. And, I'm glad to be here.

Good morning. I am Jaydee Hanson, the Assistant General Secretary of the General Board of Church and Society of the United Methodist Church.

I am here to convey the opposition of the
General Board of Church and Society of the United Methodist Church to the recommendations contained in the preliminary report of the Advisory Commission on Intergovernmental Relations on Federal Mandates. The General Board of Church and Society is the social/justice program Board of the United Methodist Church.

As such, we are charged with working to implement the social principles of the United Methodist Church, a denomination of some 38,000 churches in the United States. As United Methodists, we acknowledge the vital function of government as the principal vehicle for ordering society.

And, we hold governments responsible for the protections of rights of the people. And, we believe that the church should consciously exert a strong ethical influence on the states, supporting programs and policies deemed to be just and compassionate and opposing policies and programs which are not.

We reject all careless, callous or discriminatory enforcement of law. And, we denounce as immoral an ordering of life that would perpetuate
injustice.

The United Methodist policy clearly states where health and human life are at stake, economic gain must not take precedence. Our social policy unequivocally supports public policies that promote the Family and Medical Leave Act, Individuals with Disabilities Education Act, the American with Disabilities Act, Alcohol Testing of Commercial Drivers, Occupational Safety and Health Act, the Davis-Bacon Act, the Fair Labor Standards Act, the Clean Water Act, the Safe Water Drinking Act and the Endangered Species Act, all of which would be more difficult to implement under the recommendations of this report.

The preliminary report of the Advisory Commission on Intergovernmental Relations on unfunded mandates strikes us as an attempt to reduce governments’ responsibility to ensure equal protection of rights such as safe drinking water, clean air, workers’ safety, family and disability rights and the right to survival for all of God’s creation. If the Commission’s recommendations were
to become reality, we would have a nation where the
enforcement of public safety and protection laws
would be distributed in a callous, careless and
discriminatory fashion.

A child born in one state should have the
same rights to a safe and diverse environment, a safe
workplace, the possibility of family and medical
leave and disabled rights as children born in any
other state. The Commission’s recommendations would
guarantee that these rights would not be equally
distributed.

The recommendations would, in our opinion,
create an ordering of society which would be unjust
and, therefore, immoral.

In times of economic uncertainty,
governments may search for ways to balance budgets.
But, we cannot condone the Commission’s report which
would create an unjust society in the name of
economic expediency.

As United Methodist Bishop Felton May of
the Harrisburg area in Pennsylvania states, "We
believe in a balanced budget but a budget that is
balanced in terms of social needs."

The no money/no mandate philosophy inherent within the Commission’s report would be felt mostly by the most vulnerable in our society -- the poor, the disabled, the worker, the child, God’s creation. This philosophy balances federal, state and local budgets on the lives of the least powerful within our society and world.

We would ask you to reevaluate the values behind your recommendations. Are they just?

Will they cause a better society to emerge in the United States? Are these recommendations in keeping with governments’ role to protect the common good?

Are they in keeping with our call to protect all of God’s creation? Do they convey, in the words of Micah, "This is what Yahweh asks of you: only this, to act justly, to love kindness and to walk humbly with your God?"

In our overview of the report, our answer to these questions is no. We would ask the Commission to reexamine the preliminary report and
reconsider its final recommendations.

We looked at the particular recommendations, as well, on the Family and Medical Leave Act. We would say that the United Methodist's ardent belief is that family is a basic unit of human community through which persons are nurtured and sustained and that the health of the family is a cornerstone of our society.

The United Methodist Church is a multinational church. As a U.S. member of that church, I am frequently embarrassed that I come from a country that is one of the few that does not have paid family and medical leave.

Therefore, weakening provisions of the Family and Medical Leave Act that cover state and local government employees is a step backwards and one that the General Board does not support.

We supported passage of this important legislation for eight years until it became law and have wholeheartedly supported it since it became law, adding its provisions to our own personnel policies.

On the Individuals with Disabilities Act,
our Board has always favored authorization of federal funds to provide free appropriate education for children with disabilities. We have long supported the need for a federally approved plan for educating children with disabilities before a state may receive federal funds, as well as the ability of parents and legal guardians to challenge their children’s educational placement.

We take this stand from the United Methodist Church position that all children have the right to quality education, as well as our belief that educational functions can best be fulfilled through public policies which ensure access for all for free public education in schools of their choice.

The Americans for Disabilities Act is one of the most important civil rights and human rights Act ever passed in the United States. Let me remind you of the scripture that tells us that whatever we do for the least of these we do for the rest of us.

The General Board of Church and Society was a colleague in helping pass this legislation and putting in place strong regulations for its implementation.
compliance. It is the United Methodists' strong position on holding governments accountable for the protection of civil and human rights for all of its people.

The ADA was written to ensure guarantees of compliance by having many entities of the governments involved, ensuring that it works for persons with disabilities. Modifying deadlines and requirements to allow state and local governments to meet ADA goals and allowing only the federal government to bring legal action against state and local governments would leave our most vulnerable citizens to struggle alone for their rightful place in society.

It's a deeply moral law. It should remain as it was written and passed.

On Occupational Safety and Health and Labor Standards, the United Methodist's social policy unequivocally supports policies that promote the dignity of workers. We are the first denomination with a social creed.

In 1908, we committed to work for the

The United Methodist policy states that God's covenant with people includes the mandate to protect the community from dangers that protect the health of people. It's disturbing that the Commission's recommendations on labor and workplace laws are based on the concerns of public employers and not the beneficiaries of these laws.

It's even more disturbing that the Commission appears to be looking at only one segment of the community. We are concerned that what industry has not been able to do in Congress it might do through a commission and that the Commission may be listening to only one side of this discussion.

On Safe Drinking Water, Clean Air and the Endangered Species Act, the United Methodist policy states that every individual has a right to a safe and healthy environment unendangered by a polluted natural world and that the common heritage of all of us to these resources is deeply rooted in our
understanding of creation as being interdependent.

Our covenant with God requires us to be stewards and protectors and defenders of all creation.

So, we have worked hard to pass strong and effective federal policies that protect our water, our air and our environment. Our covenant, as God's people, requires us to be stewards, not out of narrow, self-interest but in the defense of our common interest of all.

This is especially important when we are dealing with resources of common heritage like air, water, endangered species, which we cannot abuse without affecting all who live on the Earth. A state-by-state approach to protecting common resources would be disastrous.

These resources can be protected with uniform federal and, in some cases, international policies.

Finally, as the Commission does its work -- and I will pray for you; you have a hard job -- I would urge you to look to the future. It's wonderful that this country has a rich tradition from our past.
But, very often when we look to the past and rewrite the past, we look to the past with a particular vision. I would ask you to look to the future with a vision of how we make our future even better.

Thank you. And, God bless you.

CHAIRMAN WINTER: Thank you, sir. We hear now from Mr. Terry Bumpers of the National Alliance for Fair Contracting.

Mr. Bumpers, thank you for being here.

STATEMENT OF TERRY BUMPERS

NATIONAL ALLIANCE FOR FAIR CONTRACTING

MR. BUMPERS: Good morning, Mr. Chairman and members of the Commission. My name is Terry Bumpers.

I represent 21,000 union and non-union contractors. And, I appear before you today to speak on the Commission’s recommendations relative to the Davis-Bacon Act.

We are emphatically opposed to the recommendations pertaining to both the Davis-Bacon and related Acts. It’s apparent to us that the
Commission has made these recommendations without any input from anyone in the construction industry that bids and completes projects in the public sector.

Had this Commission consulted with our contractors, it would have been informed that our contractors coalition for Davis-Bacon is in the process of attempting to get reform of the Davis-Bacon Act in the form of H.R. 2472 and S. 1183. To reform the Act, we have addressed many of the issues raised by the Commission in the report.

H.R. 2472 currently has 100 co-sponsors. And, S. 1183 has some 17 co-sponsors in the Senate.

For the better part of a year, our labor and management group has been endeavoring to pass this legislation that greatly reduces the paperwork burden, eliminates from coverage more than two-thirds of current projects subject to the Act, defines instances where unskilled helpers may be employed and streamlines enforcement activity.

Additionally, we have testified before Congress relative to the survey process. And, we are willing, in the context of the reform legislation, to
have discussions pertaining to the deficiencies outlined in the report of the survey process.

It's very apparent from reading the ACIR report that the Commission and/or its staff has a basic misunderstanding of Davis-Bacon and its related Acts. As I've indicated, our reform proposal addresses many of the concerns listed in the report and should be considered when making the final recommendations.

Your recommendations were made on the basis of many erroneous assumptions. First, the ACIR report statement that "some governments report significantly increased costs because the prevailing wage is usually higher than some actual wages paid in the area" is just another unsubstantiated claim that our coalition has addressed time and time again over the past year.

We have heard so many different cost claims relative to the Davis-Bacon Act that we are getting tired of addressing this issue. If there is any documentation to prove that the Act increases cost, then where is it?
The reason none exists is simple. Productivity is a major component of labor cost and it cannot be measured with any degree of accuracy in construction.

To predict future construction costs, you would need a crystal ball that would tell you not only the future wage rates but would tell you the availability and skill levels of manpower in all markets in future years where the government builds its projects. Further, buildings are different. They are all different. They are not widgets.

One contractor or an individual that doesn't build a project cannot prove that he would have built the project for less than someone that did build it. Low wages do not translate into lower building costs.

I submit to you that if you ask any economist, including the CBO, the Congressional Budget Office, and the General Accounting Office, your answer will be that costs cannot be accurately predicted due to so many unknown factors.

Recently, we reviewed 2,232 wage decisions...
issued by the U.S. Department of Labor and found that a full 47 percent of those or 1,038 contain a wage rate of $6 per hour or under. In 21 states, over one-half of the wage decisions contain a rate of $6 per hour or under.

That translates into a lot of construction workers making a poverty level wage. And, that hardly lends credence to those who say that Davis-Bacon increases costs.

Changing the Davis-Bacon Act, as you are recommending, may, in fact, become an unfunded mandate itself. The ACIR’s suggestion that a related Act could apply to only projects with a total dollar cost in excess of $1 million and which federal grant funding exceeds 50 percent of the total project costs is tantamount to repeal of the Act.

Since most covered projects are funded through a related Act, your recommendation would leave state and local governments to creatively fund their projects to exclude coverage which would force our contractors to discontinue training programs, estimated currently to be in the neighborhood of $700
million annually, eliminate health coverage and
pension plans in order to compete in the marketplace.
Discontinuing these privately funded programs will
cause a cost shift to the public sector, the costs of
which is unknown but could be greater than repealing
the Davis-Bacon Act.

The federal, state and local governments
would be forced to replace these privately funded
programs and would be forced to provide indigent
health care for workers with no health coverage. You
can imagine the cost of construction when government
must pay for training, indigent health care and
provide all retirement costs which are now paid by
responsible contractors that I represent.

Further, your statement contending that
the scarcity of survey data means that wage rates
from distant areas often must be used in small, rural
communities shows that ACIR has no understanding of
the Act and its regulations. At the request of the
Reagan Administration in the 1980s, the Department of
Labor promulgated regulations that prohibits using
urban rates in a rural community when issuing rates
as a result of the survey process.

Once more, the report states that local and state governments can identify the use of federal and non-federal monies separately so that non-federal monies are not subject to Davis-Bacon rules. This contract splitting you refer to is not only illegal but, in fact, the $2,000 coverage threshold that we see today was reduced in -- reduced to $2,000 in 1935 from $5,000 because governmental agencies were actually splitting contracts on that small amount.

Our question is: How can anyone make so many erroneous assumptions regarding a piece of legislation on which you base recommending these drastic changes?

These erroneous assumptions, coupled with repeal zealots in Congress, are making an honest debate on the Davis-Bacon issue virtually impossible. I guess that if you have no proof of your allegations and people believe your rhetoric, which seems to be the case, then there is no need for debate.

An example of this unsubstantiated rhetoric was given by the National School Boards

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Association before this Commission. Michael Resnick testified that in 1995, the survey of school board members indicated that half of the respondents said the Act increased costs as much as 20 percent.

To throw construction cost numbers around is easy but irresponsible, especially for those who do not bid construction projects or have any knowledge of the industry. To ask school board members what Davis-Bacon costs is like asking members of Congress how much will be spent on congressional campaigns this year. Just like construction projects, they cannot know the costs until it's completed.

A community that values the training and economic security of its citizens harms the community by establishing a procurement system that rewards firms that invest the least in employee training, health care and pensions. Without Davis-Bacon, communities will become more populated with low wage, low skill workers who have no health care or pensions, which will cause them to bear the burden of higher social services costs.
Shifting the employers' costs to the taxpayer rather than to the bid does not make good economic sense. And, it's bad for the community, the taxpayer and the construction industry.

We believe President Clinton is on the right track in discussing ways to reward and encourage responsible employers who provide benefits to their workers. A system that rewards CEOs for boosting stock prices at the expense of workers will surely lead to lower wages and eventually eliminate the middle class.

In the case of the Davis-Bacon and its related Acts, there are many in Congress who want to make the choice of low wages over training and providing benefits for productive construction workers.

We urge you to withdraw your recommendations and support our reform legislation that is endorsed by a majority of the construction industry and the majority of both the House and Senate and the United States.

Thank you very much for listening to my ACE-FEDERAL REPORTERS, INC.
testimony.

CHAIRMAN WINTER: Thank you, sir.

MR. BUMPERS: Thank you.

CHAIRMAN WINTER: We would like to hear now from Ms. Velma Parness from the University of California. Is that right?

Thank you so much for coming.

STATEMENT OF VELMA Parness

UNIVERSITY OF CALIFORNIA

MS. PARNESS: Good morning. My name is Velma Parness. And, I work for the University of California in Berkeley, California as a continuing education specialist.

In 1987, my husband, Ramesh, was diagnosed with chronic myelogenous leukemia. After seven years of relatively normal life, his condition changed dramatically in March of 1994.

He became extremely weak. And, we were told that his leukemia had changed from chronic to acute almost overnight and that he may not live for more than two weeks.

I immediately asked for family leave so I
could stay at home and take care of my husband and
spend time with him. We were both terribly
frightened.

I felt I would be able to work part-time
from my home. It was difficult to get much
information about the Family Medical Leave Act.

And, fortunately, I was able to obtain a
copy of the Act. And, so I spent hours trying to
figure out my rights and then weave my way through
the bureaucratic maze of the University.

Fortunately, both my Department Chair and
Dean were extremely supportive and pushed the issue
with the appropriate academic unit at the campus.
And, finally I was told that I could use my accrued
vacation and sick leave, work part-time at home and
then take unpaid leave through the end of the year,
if necessary.

With all the things that I suddenly had to
manage and worry about, I needed all my time, energy
and emotional resources to deal with this sudden
nightmare that appeared in my life. Believe me, you
don't want to use those resources on making
arrangements for family leave when there is this kind of crisis going on.

Through the next five months, I was usually able to work about four hours a day from home while taking care of my weakening husband. We had really quality time together in our comfortable home.

On the morning of August 24th, 1994, my husband died at home. And, I was able to be right there with him.

It was the Family Medical Leave Act that allowed us to have that quality time together. And, without it, I feel I might just have gone over the edge and not have been able to be there and take care of him.

It was really a blessing for us both. And, for this, I will always be grateful.

My husband was a self-employed architect and could no longer work. And, I had become the sole wage earner of our family and carried our health insurance through my employer.

The loss of job and benefits would have been terrible for us. And, after he was gone, quite
frankly, I don't know what I would have done if I
didn't have my job and my work to go back to.

And, I might add that my employer, the
University of California, also benefited by granting
my leave. I was able to get most of my essential
work done at home.

My work really didn't suffer in any major
way. What I wasn't able to do, my colleagues gladly
helped with. And, now my employer has a very loyal
employee who works even harder than before.

I believe that the Family Medical Leave
Act is humane. It's pro-family. And, it's the right
thing to do.

Thank you.

CHAIRMAN WINTER: Thank you so much.

That's a very moving statement. Thank you for

coming.

I would like to call on Mr. Erik Olson of
the Natural Resources Defense Council. Welcome, sir.

STATEMENT OF ERIK OLSON

NATURAL RESOURCES DEFENSE COUNCIL

MR. OLSON: Thank you. I would like to

ACE-FEDERAL REPORTERS, INC.
address some of the environmental recommendations that are made by the Commission report.

But, I would like to give an overarching question that I think is worth posing. And, that is: What is an unfunded mandate?

I think one could call the Constitution of the United States an unfunded mandate. One could call the Fourteenth Amendment an unfunded mandate. One could call the Ten Commandments an unfunded mandate.

The question is: Are these basic rights? Are these basic human rights and basic civil rights that people deserve?

And, it’s our view that many of these things that are protected under the laws that the Commission has recommended changes to are basic rights that all Americans deserve.

First of all, we are concerned, deeply concerned, about the way that the Commission went about generating its recommendations. I would certainly recommend to the Commission members that they read a report that was done by the Citizens for ACE-FEDERAL REPORTERS, INC.
But, I would like to point out the way that the Commission went about generating its information by going to the National Governors' Association and several other advocates of unfunded mandates legislation, simply asking them what they thought and what their impressions were, is not exactly the best way to go about fact-finding. And, I think it speaks poorly for the Commission, which in the past has done a very scholarly job of developing some of its reports and in the past has developed excellent reports on some issues, to have issued this preliminary report that was, frankly, not very well founded in fact and didn't include a single footnote and relatively little in the way of citation or factual material.

We are concerned also about the approach that's taken, that very often it seems that the Commission developed an agenda and rather than having factual material to back it up simply quoted things like the -- I will quote a few of the phrases that are used here: It is perceived that these
requirements create problems. It is felt by state
officials and local officials that there is a
problem.

I don't think that that kind of research
is worthy of the Commission. And, I would certainly
urge that in development of the final report they
take a somewhat more scholarly approach.

Secondly, we are concerned about the crazy
quilt of protections that would result if the
Commission's recommendations were put into place. If
we were to simply ignore why these laws were put into
place, I think we've missed much of why these
mandates or these laws exist.

We need to -- I would urge the Commission
to take a serious look at what the benefits are of
these laws as well as the costs, to look at why the
laws were put into place in the first place. And,
let me give you an example.

The Commission says in its report that
states were generally implementing the federal
voluntary standards for drinking water in the early
1970s. Yet, Congress established the Federal Safe
Drinking Water Act.

Well, in fact, contrary to what the Commission says, only 14 states had adopted the federal drinking water standards before the Act was passed. And, in fact, there is ample evidence due to disease outbreaks and due to public health problems that a federal law was necessary.

Unfortunately, the Commission has failed to go back and document the rationale behind creating some of these major environmental and other statutes in the first place. And, I think you need that kind of documentation and that kind of background in order to justify changes that are being proposed.

In addition, we feel it's very important to recognize the existing flexibility in many of these laws. Again, very often, the Commission complains, I think sometimes with credibility and with reason, about inflexibility in federal mandates.

However, I believe that it's quite clear that some of the agencies in the last few years have made major strides in adding additional flexibility and in listening to state and local complaints about
some of the laws. And, I will give some examples and specific laws later on in my statement of how they do include flexibility that is not recognized in the Commission's report.

Specifically, I would like to recognize the six major recommendations of the Commission. One is that detailed procedural requirements are too tight a set of strictures and that they fail to recognize the needs of local and state governments.

Again, I think if you look and walk through each individual federal program that is being addressed, at least in the environmental arena, there generally is substantially more flexibility in these programs than the Commission seems to recognize.

Secondly, the lack of federal concern about costs. For example, the Commission says that - I would like to quote a statement.

The Commission says that costs generally are not considered in developing many of the federal mandates. But, if one looks at the specific laws, taking again the Safe Drinking Water Act as an example, it's quite clear that the laws do consider
And, in fact, costs are a major consideration for all of the major environmental statutes.

Third, the Commission speaks to the failure to recognize state and local governments and their political accountability. Again, I think there is a morsel of truth to the fact that state and local governments do have some political accountability.

But, there are things that the federal government must do to assure that that accountability is in place and to assure that basic rights are not violated, because obviously there are reasons to have some of these federal laws. As I said earlier, many of the laws were necessitated because state and local governments simply failed to act.

One example, again, being that 36 states had failed to even adopt basic public health standards for drinking water before the federal law was put into place.

Fourth, the Commission recommends that
lawsuits against state and local governments for failure to enforce these federal laws should not be allowed. It’s our view that if there are federal environmental or other laws and there are enforcement deficiencies due to a lack of resources at the federal level, due to a lack of political will at the federal level or due to other reasons, that citizens should be able to assure that their environment is protected or that their rights are protected.

It is well documented that these lawsuits have not been overused and that, in fact, they have had very beneficial, positive effects in getting people to the table and in moving public health and environmental protection forward.

Fifth, the inability of small governments to comply. Again, I think that there is a modicum of truth to the issue that some small governments find it difficult to comply with all the different federal laws.

But, I also believe it’s important to recognize some of the substantial flexibility that has been added to many of these federal programs in
recent years, including some of the EPA efforts to recognize local governments' needs, the enforcement discretion that is often used by EPA and other agencies and other programs to fund and to assist, through technical assistance and other means, local government actions.

We believe also that it's fundamental that we not have second-class citizens, second-class people that are getting low quality drinking water, low quality air, low quality recreational water simply because they live in a small community.

And, finally, the Commission recommends a lack of -- that since there is a lack of coordinated federal policy that we need improved coordination. We agree, clearly, that there is a need for improved federal coordination in some cases.

But, we also believe that this should not be used as an excuse to eliminate basic fundamental requirements for protection of wetlands or for protection of other basic environmental requirements.

I don't propose to go into details of a review of the individual statutes, but I would...
commend to the Commission's attention the Citizens for Sensible Safeguards report that goes through the recommendations on the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act and the Endangered Species Act.

Just to give one final set of examples, in the drinking water arena, as well as in the clean water and clean air arena, it's important for the Commission to recognize that very often the reason for these laws was that the states failed to act, that there was competition to the bottom, that states were competing to lower their standards in order to attract or retain industry. In addition, collusion often knows no boundaries.

And, to regulate or to control contamination in one community might be called an unfunded mandate. But, if you are downstream or if you breathe the air from a community up wind, you feel that that protection is not an unfunded mandate but that it's a basic protection for your community.

So, with those overarching concerns and the concerns that are mentioned in the written
testimony and report, I would thank the Commission for allowing us to testify.

CHAIRMAN WINTER: Thank you, Mr. Olson.

Mr. Gus Estrella of the United Cerebral Palsy Association.

Mr. Estrella, we will be pleased to hear from you, sir.

STATEMENT OF GUS ESTRLELla

UNITED CEREBRAL PALSY ASSOCIATIONS

MR. ESTRLELla: Good afternoon, Mr. Chairman, members of the Advisory Commission. My name is Gus Estrella.

Thank you for the opportunity to appear before you this afternoon on behalf of United Cerebral Palsy Associations. UCPA is a national organization that works in many ways to advance the independence of individuals with cerebral palsy and other disabilities.

I am currently serving a two year fellowship with UCPA. The fellowship is sponsored by Print-a-Rome (phonetic) Company, the company that makes the liberator, the device that I am talking to.
you, along with Semantic Compaction Systems, the company that developed the software for my liberator and, of course, UCPA.

When the unfunded mandates legislation was debated in Congress, UCPA joined with others in the public interest community in strong opposition to the no money/no mandate bills.

For more than 20 years, our society has made tremendous progress in removing the shackles of dependency and segregation from the lives of individuals with disabilities. That progress is largely due to a very strong role of the federal government.

The fact that many individuals are now living and working in the community with a wide array of supports can be directly traced to civil rights protections and federal resources that have funded the infrastructure of a system of disability services and supports in the state and local governments. When we hear folks wanting to eliminate federal protections from our lives, we become very frightened.
During the unfunded mandates legislation debates, we argued successfully that certain federal protections simply cannot be relinquished to the states. To do so would be an act of relinquishing the U.S. Constitution itself.

When President Clinton signed the legislation, he signed the statute that undeniably excluded statutes protecting constitutional rights from consideration as an unfunded mandate. The Americans with Disabilities Act and the Individuals with Disabilities Education Act were included in this exemption.

We have included in our written testimony the colloquy in the Senate and documents from the Congressional Research Service which clearly confirms the protected status of these two civil rights laws for individuals with disabilities.

UCPA was astounded to learn that ACIR had nonetheless included ADA and IDEA in the list of the most threatening unfunded mandates. UCPA officially objects to this charge and questions ACIR's authority for eliminating the sanctions and protections of
these two laws.

ADA and IDEA include requirements with which some states do not wish to comply. Are they costly for states and localities?

Our response is that it is too costly not to have full benefit of the promise of ADA and IDEA for individuals with disabilities and their families and the American taxpayers. Independence is much less costly in bureaucratic and economic terms than dependency.

ACIR was not charged with the task of creating a hierarchy of laws that some states feel are too costly or troublesome. ACIR was charged with identifying unfunded mandates. And, ADA and IDEA do not fit that definition.

I will try to highlight for you the magnitude of this issue for individuals with disabilities and their families. You need to know that your draft report is viewed as potentially very damaging to the lives of tens of millions of individuals with disabilities in this nation.

Let me read a compilation of comments that
we have received at UCPA about the potential consequences of your draft report. From a mother in Georgia: I am the mother of three children. My youngest son, Zachery, has spinal muscular atrophy disease which leaves him physically disabled. With my two oldest children, the experience with the education system has been wonderful. With the child with the disability, it is a different story altogether.

I have seen ramps that were built for the milkman to deliver milk to the lunchroom, but the child could not get in or out of the classroom door to the outside with his classmates. I have seen a child have to sit all day in the office without any activities. He had not been allowed to participate in school. I have seen a teenager who had to drag himself across the bathroom floor because the door was too narrow for the wheelchair.

I have been told repeatedly to "just trust us." I ask you why I have never seen a government or local agency effectively police themselves? With the present safeguards, the above situation still
What will we, as families, have to look forward to if the local and state school systems are the only ones to have the rights of due process?

I am an individual whose life experience is in temporary and severe disability and who works with individuals with disabilities. When I go to work, I expect the subway will be running and that I will be able to get to it safely.

I expect those items to be safe. I am sure that there is a demand that the escalators and such be safe. And, I suspect the safety of those items is required by unfunded mandates.

I expect the train to come in at ground level so that I do not trip and fall. The last time you stumbled at a poorly designed entrance or exit, I have no doubt you were incensed. I always am.

Imagine being denied any access to that entrance or exit. I can remember the days when my wife wouldn’t drink water before going to the movies, because she couldn’t get to the bathroom in the basement.
What would it do to your lives if you
couldn’t use the public facilities? Think about what
it is that you believe you are entitled to and now
take for granted.

Why is it that we have become entitled to
that access but people with disabilities are not?

How has the average American become so
convinced of their right to these things and become
so selfish that they do not want to extend these
rights to others? The things you take for granted
are amazing.

And, finally, the parent from Texas: To
the extent that Rice, who is eight years old and has
cerebral palsy, has access to an education and to the
community, she will be able to make a contribution
and to be just a consumer of public support programs.
To the extent that the community prevents him from
gaining levels of independence, the community will
then be saddled with his care.

Please don’t gut IDEA and ADA. Rice has a
chance for freedom.

In closing, Honorable Chair and members of
the Advisory Commission, we cannot take back the
damaging statements that you have already circulated,
the erroneous claims that ADA and IDEA are unfunded
mandates. We implore you to do damage control by
removing them from your final report.

Thank you.

CHAIRMAN WINTER: Thank you, Mr. Estrella.

That’s a very moving statement that you’ve made. And,
we appreciate your being here.

I would now like to recognize Ms. Kathryn
McMichael of the National School Boards Association.

STATEMENT OF KATHRYN L. McMICHAIL
NATIONAL SCHOOL BOARDS ASSOCIATION

MS. McMICHAIL: Good afternoon, Chairman
Winter and members of the Advisory Commission on
Intergovernmental Relations and also the staff of the
Commission.

I am Kathryn McMichael, Director of
Federal Relations for the National School Boards
Association. NSBA represents the 95,000 local school
board members who are responsible for governing the
nation’s local public school districts.
The nation's 16,000 local school districts across this country spend upwards of $300 billion per year to educate over 40 million school children in 80,000 school buildings. And, we employ over 4.8 million employees.

I cite those statistics to give you an idea of why federal mandates are very, very important on local school districts. Any mandate on an enterprise as large as our public school system will have a significant impact on the use of public dollars to achieve our primary mission, which is education.

In addressing mandates, NSBA fully acknowledges that the federal government does have an interest in regulating certain activities within the public school setting. However, at the same time, given our constitutional system of government, the federal government should exercise restraint when it does regulate the public functions of state and local governments, including those of our local school systems.

Further, in areas of legitimate federal
interests, Congress must show self-restraint in the scope of the mandated costs involved, including the creation of duplicative administrative systems for which local school districts means time and money that otherwise could be committed to the education of our nation's children.

Finally, and most important for today's hearing, if Congress imposes a mandate on local school systems, it should bear the financial costs. ACIR recognizes that in their preliminary report. And, we commend the Commission for many of its recommendations concerning the costs of federal mandates on local public agencies. Thus, if a mandate is truly in the national interest, then Congress should be willing to pay for it.

Because the federal government is disconnected from the financial responsibility of its mandates, we believe that it has little incentive to set priorities among, or within, mandates, to engage in meaningful cost benefit analysis or to reevaluate existing mandates once they are put on the books. Again, that is why this ACIR Commission report is so
very important, because it is evaluating the existing
mandates that have been on the books and have
affected school systems.

Meanwhile, school systems across the
country are struggling to find the money to pay for
the programs the federal government has required.
Too often, the consequences of implementing costly,
federal mandated programs means that school boards
face unpalatable tradeoffs -- larger class sizes,
postponing purchases of up-to-date curriculum
material or even eliminating educational programs --
especially in those communities that do not have the
capacity to raise taxes.

The Economic Policy Institute study,
entitled "Where Is the Money Going," released in
1995, estimated that 26 cents of every new dollar
spent by school systems between 1967 and 1991 were
invested in general education programs, while 38
cents was spent on mandated special education
programs. Of the remaining 36 cents, a substantial
portion was spent on other unfunded federal or state
mandates.
Most taxpayers would be surprised to know how much of their local property tax dollars, which they thought were being spent for basic education, were being preempted to meet unrelated federal mandates.

Local school boards across America are trying to ensure that our students obtain the education they deserve. But, the federal government must understand that every dollar we spend to fulfill an unfunded or underfunded mandate either comes at the expense of an increasingly resistant local property taxpayer or at the expense of an educational program.

We are very pleased that Congress has passed the Unfunded Mandates Reform Act to stop the flow of future mandates. And, we are very pleased that ACIR has been delegated in that report to examine existing mandates.

And, I am now going to comment on three of the mandates that you lifted in your report that directly affects school systems. Contrary to popular belief, with the exception of the Individuals with
Disabilities Act, IDEA, most federal mandates on school systems are imposed by agencies other than the U.S. Department of Education.

Examples would be the Department of Labor, EPA. Basically, those are the two major agencies that we have to deal with.

Consistent with ACIR's finding regarding local governments, in general, two examples that I am going to use are the Davis-Bacon Act and the Occupational Safety and Health Act, which do affect school systems.

The Davis-Bacon Act: The repeal of the Davis-Bacon Act would permit school districts across the country to repair or replace aging school buildings at a much faster pace than is currently being done, because scarce tax dollars, local tax dollars, would go farther in school construction projects. NSBA found, in a 1995 survey of school board members, that more than 60 percent who responded said that federal and state Davis-Bacon laws had increased the cost of a recent construction project. More than half of the respondents said that
the increase was as much as 20 percent.

NSBA advocates the repeal of this outdated federal mandate so that scarce taxpayer dollars can be used to repair or upgrade 20 percent more school facilities.

Occupational Safety and Health Act, OSHA:

NSBA opposes any effort to extend OSHA coverage to federal, state and local public employees. This is consistent with your ACIR finding.

Earlier this month, however, an unfunded federal mandate was added in the Senate Labor and Human Resources Committee markup of the OSHA Reform Act. And, this amendment will be the first real test of the Unfunded Mandates Reform Act when the bill reaches the Senate floor. It extends the coverage of OSHA to state and local public employees.

In 1992, the Texas Association of School Boards estimated that it would cost more than $10 million to implement only selected OSHA regulations in the Texas public school system. This is just one state's estimate of the onerous cost burdens this unnecessary and duplicative federal mandate would
impose. Few argue that OSHA coverage would improve
the safety in schools while creating a duplicative
structure.

Finally, ACIR identifies the Individuals
with Disabilities Education Act, IDEA, as one of the
major unfunded federal mandates. NSBA agrees that
this is one of our most expensive underfunded federal
mandates.

But, at the same time, we supported the
law when it was enacted. And, we still fully support
its goal of providing an appropriate education for
all children with disabilities.

However, our support for this goal was not
matched by the federal commitment to funding its own
mandate. When Congress originally passed the law, it
pledged to pay 40 percent of the annual cost of the
special education mandate.

Instead, the federal government pays only
7 percent, leaving school districts to pay almost $30
billion in additional costs from local and state
resources. Overall, our nation has a $50 billion
special ed system that is built upon the IDEA

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mandate.

There are major areas where this highly
regulated program can be strengthened without
diminishing appropriate services for children. But,
for 20 years, Congress has resisted.

Currently, the program is being
reauthorized but only with modest efforts to save
school systems what we believe are billions of
dollars in costs that they should not bear.

Again, while NSBA fully supports the goals
of the law, we fault the Congress for not living up
to its financial commitment and, as a result, not
having the incentive to make cost benefit decisions
about its mandate. As a result, IDEA is
unnecessarily preempting school districts from making
the best expenditure of its funds for children in
both regular and special education.

NSBA is very pleased that ACIR has begun
this project of examining current federal mandates,
both for their relative priority and scope, to
ensuring that local public school districts can
devote their financial resources to their mission for

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public education. Thank you very much.

CHAIRMAN WINTER: Thank you for that statement, Ms. McMichael.

Let me welcome to the panel the Honorable Henry Smith, who is the voting representative of Secretary of Education, Dick Riley. Henry, welcome.

I am glad you are here.


STATEMENT OF KATHERINE NEAS
CONSORTIUM FOR CITIZENS WITH DISABILITIES
EDUCATION TASK FORCE

MS. NEAS: Good morning or good afternoon, I guess. My name is Katherine Neas. I am with the National Easter Seals Society.

And, I am speaking today on behalf of the Consortium for Citizens with Disabilities Education Task Force. Our task force has a membership of 60 national organizations.

And, our coalition is a working coalition comprised of consumer, advocacy, provider and professional organizations which advocate on behalf
of people of all ages with physical and mental
disabilities and their families.

I am going to focus my comments on the
Individuals with Disabilities Education Act. The
IDEA is a civil rights law and, as such, is
specifically excluded from the scope of the Unfunded
Mandates Reform Act. Thus, we hope that the ACIR
final report will not include recommendations on
IDEA.

I would like to focus some of my comments
on the preliminary report which, in fact, did make
recommendations on IDEA, which we believe were based
on incomplete data. First, the report states that,
"IDEA has provided millions of students with
disabilities access to a free and appropriate public
education, but the law imposes significant costs and
administrative burdens on state and local
governments."

In fact, IDEA has resulted in significant
savings to government. Because of its support to the
states, millions of children with disabilities have
been able to reside at home with their families and
attend school.

In 1994, the number of children and youth with developmental disabilities living in state institutions was less than 6 percent of the children and youth living in state institutions in 1974, which was the year before IDEA or 94-142 was enacted. The average annual 1994 state institution expenditure of over $82,000 per person, the over 66,000 fewer children and youth who resided in state institutions in 1994 as do in 1974, would have cost approximately $5.48 billion per year had that many children and youth remained institutionalized. Because state institution expenditures are cost-shared with Medicaid, the total non-federal contributions would have been approximately $2.48 billion per year.

Second, the preliminary report finds that the resolution of disputes under the Act has also become overly litigious and added to the implementation costs. Currently, local agency decisions may be challenged in either state or federal court. And, in some cases, parents bringing action on behalf of their children may be entitled to
reimbursement for their costs, including attorney and
court fees.

As with other civil rights laws,
plaintiffs who prevail on the merits of any action or
proceeding under IDEA may be awarded attorneys fees.

Attorneys fees are only awarded when parents prove
that the education agency failed to provide their
child with a free, appropriate public education.

Currently, there are more than five
million children with disabilities receiving special
education and related services under IDEA. In most
states, there was less than one court case per year.

In 1994, there were 150 cases in the
country, representing 1.3 cases for every 100,000
children served. Moreover, in 1994, the number of
cases declined by more than 20 percent from the
previous two years. The task force does not believe
that these statistics reflect a system that is
overburdened by litigation.

Finally, IDEA is possibly the only civil
rights law that actually comes with money for states
to implement it. When Congress enacted it in 1975,
it was because local school systems were excluding
millions of children with disabilities from receiving
an education.

We appreciate the opportunity to testify
and look forward to working with you on the final
report.

CHAIRMAN WINTER: Thank you very much for
that statement.

We want to hear -- we will hear from any
other person who desires to testify before this
Commission. However, I take note of the fact that it
is past the noon hour, so I will suggest that we
stand in recess until 1 p.m., at which time we will
resume testimony and hear from anyone who has either
previously indicated a desire to testify or who today
indicated a desire to testify.

We do not want to preclude anyone from
presenting testimony to this Commission. So, we will
stand in recess until 1 p.m.

(Whereupon, a luncheon recess is taken at
12:20 p.m., to reconvene at 1:10 p.m., this same
date.)
AFTERNOON SESSION

(1:10 p.m.)

CHAIRMAN WINTER: We will be pleased to hear from Mr. John H. Sullivan of the American Water Works Association. Mr. Sullivan, welcome.

STATEMENT OF JOHN H. SULLIVAN

AMERICAN WATER WORKS ASSOCIATION

MR. SULLIVAN: Thank you, gentlemen. I kind of welcome the opportunity to just chat with you a little bit.

Our formal comments are in. We submitted them on the 19th of March. And, they will make some light reading on some muggy summer night.

The Commission's efforts reported appear to be consistent with both the President's effort to reinvent government and the efforts by Congress to reduce the burden on states and governments, local governments. In general, the report, we feel, is well directed.

However, I would suggest that there have been many recent improvements made in some of the programs touched on in the report. And, they should
be noted.

There is far more flexibility at the local
government today than there was five years ago. And,
I think there should be some credit given in those
regards.

I would further suggest that the report be
flavored with some positive aspects of joint
government efforts towards solutions and tempered
with a balance of bipartisan approach.

Obviously, there are some highly emotional
issues in your report. And, I will attempt to avoid
those if I can and simply highlight some of the items
from our comments.

First, some comments on your common
issues. On the detailed procedure requirements, we
feel strongly that it should be limited to providing
national impact research and technical advice and let
the states and the local entities implement as best
they can.

Some key issues associated with the Safe
Drinking Water Act, which we are intimately familiar
with, are in the standard-setting arena and the
proliferation of monitoring requirements that are affecting very small governments to a very adverse degree. Over a year ago, we met with the White House and were discussing with them whether or not the entire Drinking Water program should be turned over to the states. Our response to that was a resounding no.

The federal government should always retain the responsibility for doing research and the responsibility for setting consistent standards. However, the implementation of those standards belongs to the states. That's why we delegated the primary enforcement responsibility to the states.

Another common element you touched on, lack of federal concern about mandates' costs. The range of costs for the Safe Drinking Water Act, cancer case avoidance, can go from less than $1 million to several billion dollars per case.

But, that's not really the issue. What is the issue is using the principles of relative risk reduction in order to establish reasonable priorities so we put our critical dollars where they are going
to do the most good.

And, that's really driven by local
considerations when you are talking about drinking
water or many of the environmental issues.

The concerns expressed by some about cost
benefits and whether or not they can be quantified,
in our dealings, that concern is not really verified
by the academic community. It is difficult.

It's just as difficult on the benefits
side as it is on the cost side or vice-versa. But,
it is doable with today's technology and today's
science.

And, it should be a consideration, not the
ultimate or the only consideration but certainly a
consideration.

On your comments of lawsuits by
individuals against state and local governments to
enforce federal mandates, we feel very strongly that
we just cannot continue to encourage frivolous
litigation in our society. Citizen suits, where
appropriate compliance action has already taken
place, must be discouraged.
As a minimum, it must be discouraged.

And, in some cases, it should be prohibited by law.

And, I am talking about now where action has been taken by a duly constituted governmental entity, whether that's a local government or a state government. If those governments cannot be trusted to implement the law, then we ought to replace those governments. And, I think we will.

Another common issue that you touched on was the inability of very small local governments to meet mandated standards and timetables. This is extremely evident in the Safe Drinking Water Act.

The Safe Drinking Water Act amendments of 1986 were developed for large systems. In the legislative history of that law, it dictates that those systems to be considered in setting standards and applying technology are for communities that serve a million people or more.

Do you know how many thousands of governmental entities we have in the United States that are far smaller than that? I mean, of the roughly 40,000 governmental entities in the United States.
States, I would wager that 99 percent of them are below that level. And, the law has disregarded that body of governmental entities.

Another issue that you brought up in your report on the common areas was the lack of coordinated federal policy with no federal agency to make binding decisions about a mandated requirement. This is no more evident than in the simple water allocation issue.

There is no common policy on allocating water in the United States. There are some places in the United States today that water is a real fierce competitive item between people, fish, faunae and many, many other type of requirements.

Whether it's recreation, whether it's navigation, it doesn't really matter. There is no good policy. And, there needs to be.

A recent development of the Bay Delta area in the Oakland/San Francisco area, it took some three and a half years for the federal agencies and the local agencies and the state agencies to get together.
to come up with a solution on just how to deal with
that water allocation issue. It’s an enormous issue.

Now, some of the comments on specific
federal laws -- OSHA. I won’t say anymore about
OSHA, because OSHA tends to be an emotional law with
some people. I’m not sure why.

Certainly, there are some reforms needed.
Those reforms in OSHA should be moderate reforms.
And, we would support moderate reforms along lines of
the Gregg and Kassebaum bill, S. 1423.

The Clean Water Act. Suggestions by the
Committee are generally in line with ours.

The important point, as far as we are
concerned and I would suspect many others, we need
pollution prevention programs to assure the quality
of our drinking water sources and the protection of
our ecosystems. So, pollution prevention is a key
issue.

In your comments, it certainly is a key
issue to us. And, that’s the driving force and the
way we should be going.

The Safe Drinking Water Act. We feel we
have some expertise in our organization, since we've been doing safe drinking water issues since 1881 as an educational and scientific association.

The law needs to be modified. It needs to be modified very badly. I think everyone is aware of that.

There needs to be good science and other considerations put into the standard-setting process and how contaminants are selected. People on the Hill kind of look at us with a blank stare when we say that two-thirds of the current contaminants that are regulated under that Act had no business being regulated at all.

They were mandated in the law. And, that's the only reason why they were regulated. So, that needs to be adjusted.

There also needs to be far more flexibility given to the states and the local governments, where it's called for. And, the small systems issue needs to be addressed in a realistic way.

And, those are the basic things. I could
go on and on and on about the Safe Drinking Water Act. I won't bore you with that in the interest of time.

The Endangered Species Act is another issue that we feel is important. And, it's important because of the water allocation issues that go with it. It's just as important there as the survival of species when you are talking about water type species.

Water allocation -- you know, some of the nay-sayers and some of the people who speak of dooms day have been saying for years that water is going to be a critical issue. It's just tomorrow, tomorrow, tomorrow, tomorrow.

Water is going to be the next battle in the Middle East. Water is already a deep concern in the Pacific northwest where everyone thought water was an abundant element.

Water is super critical in many states in the west. It's critical in Florida.

It's critical in Delaware. It's critical right here in Washington and the Potomac.
And, those issues need to be considered.

And, there needs to be a balance between human needs, sustainable development and survival of the species, as well as the ecosystems.

I won't go on. I would be very happy to answer any questions that anybody may have associated with anything that we can offer.

If you would like any additional detailed information from our Association, we would be happy to furnish that.

CHAIRMAN WINTER: We thank you very much for that very reasonable presentation. And, in the interest of time, we will not delay the hearing with questions.

But, we invite you to submit any additional information that you may have to the Commission.

MR. SULLIVAN: Thank you, Governor.

CHAIRMAN WINTER: Thank you, Mr. Sullivan.

Next, we would like to hear from Mr. Paul Schwartz of the Clean Water Action initiative.

Welcome, Mr. Schwartz. Thank you for ACE-FEDERAL REPORTERS, INC.
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STATEMENT OF PAUL D. SCHWARTZ
NATIONAL CAMPAIGNS DIRECTOR
CLEAN WATER ACTION

MR. SCHWARTZ: Thank you all for
forbearing in this hearing process and listening to a
lot of divergent points of view. I think Jack
Sullivan and I share at least a couple of things.

One is that I think both of us want what
is best for the nation's water supply. And, we speak
for different constituencies. A lot of the folks who
are members of Clean Water Action in the 15 states
where we are located, about 700,000 members are
ratepayers to the American Water Works Association
member, water utilities, and certainly are folks who
are affected by the quality of the water that is
served up.

Just a couple of things on the fine piece
of testimony that Jack just gave before I go into my
formal testimony. One is that under the current Safe
Drinking Water Act, cost is already taken into
consideration, as is feasible technology.
As a matter of fact, if you look back at the legislative history and from the beginning of the Act in 1974 to the debates in 1985 and 1986 to the debates now, cost consideration has always been thought of by the environmental and public health community to be too much of a factor in containment and selection and in standard setting. This is not a new issue for us.

We care very much about the issue of affordability, the issue of scale for big and small communities. Our concern right now is that you can get a statistic from Jack that 99 percent of the governments in the country are less than a million people.

The fact is that 80 percent of the water drinkers in the country are served by the largest 20 percent of the utilities. And, those utilities have the efficiency breaks and the capacity to employ the best available technology to make sure that we have safe and affordable drinking water.

I would venture to say that you don't know that in the pitcher of water that you have in front...
of you, that coming out of the Washington aqueduct, if that isn’t bottled water, that we are running at 97 parts per billion or 98 parts per billion of trihalomethanes. Now, trihalomethanes are associated in 14 human immunological studies with around 10,700 bladder and rectal cancers each year.

Now, that number by itself doesn’t mean too much. But, that is twice as many people as die by fire nationally and just about as many people as die by handgun across the country.

I venture to say that’s the byproduct of a disinfection process that we use all around the country on purpose to deal with some real hazards in our drinking water.

But, there you go. You know, if you are Jack, you can quote a 99 percent statistic that doesn’t mean a heck of a lot in terms of the quality of water and who is getting it from where.

We shouldn’t be setting standards and doing a contaminant selection process that is focused on what the capacity of a trailer park is to deliver safe drinking water. And, we think that the AWWA and
other large utility associations are, in essence, hiding behind the skirts of the smaller systems.

It is true that we need both new technological packages and we need directed in terms of financial assistance through the new SRF program for rural and hard-pressed communities.

Let me now just turn to the ACIR report. We think that the Advisory Committee on Intergovernmental Relations preliminary report recommendations that are going out across the land are a clarion call to stop unfunded federal mandates.

And, after watching federal assistance for a vast array of social programs dry up over the last 15 years, the Commission, ya'll, made up mostly of current and former governors and mayors from across the country, have found a scapegoat, at least in environmental protections, which require a good share of local and state funding. The rallying cry has become "no money/no mandates."

Not surprisingly, as evident in the thinly argued and supported set of conclusions in this set of recommendations, this "no money/no mandate"
movement is being fueled, in part, by those who are not interested in a solution to the funding problem but whose primary interest is in denouncing and demanding repeal of strong federal laws no matter how urgently needed or popularly supported. If successful, this movement of which the ACIR is on the cutting edge, could weaken or eliminate laws which provide for safe waters for drinking, fishing and swimming at a time when threats to the nation's water resources are escalating.

Over three years ago, approximately 400,000 residents of Milwaukee became ill and several died from drinking water contaminated from poisonous agricultural runoff. Two years ago, right here in the nation's capitol, one million Washington, D.C. residents were forced to boil their water for four days when high turbidity or cloudiness levels were discovered.

Now, the sources of these and other water pollution problems are not exotic. They are runoff from farms and factories, construction, mining and other sources poisoned with a dizzying array of
toxic chemicals and other contaminants.

Inadequately treated sewage is another problem. Each year, billions of gallons of poorly treated sewage are dumped into water systems.

Destruction of watershed areas and wetlands, which serve as our water system's kidneys by filtering out polluted runoff, compounds this problem. Jack talked about pollution prevention and the necessity for doing pollution prevention. In the current debate on the Safe Drinking Water Act, source water protection, which is the Safe Drinking Water Act's version of pollution prevention or runoff control, is, incredibly as it might seem, weakened in the Senate version of the law. And, the proposals that are being floated in the House seek further to weaken already voluntary and inadequate source water protection controls.

Here, we've got God's plan to clean up the drinking water. And, the water utilities, on the one hand, come up and speak for how they are for more pollution prevention; and, on the other hand, are lobbying against that in the halls of Congress. And,
we think that's hypocritical.

Facilities, laws and programs designed to prevent and control water pollution are not keeping pace, never having recovered from the Reagan-era budget cuts. Deteriorating sewage and drinking water treatment plants, shortage of program and enforcement personnel and inadequate funding at all levels point to the need for major national reinvestment in water quality.

For those more interested in being part of the solution to the three-pronged problems of threatened water quality, budget crises and skyrocketing individual water bills than adding to the problem, there is an almost obvious answer. And, that's to make the polluters pay their fair share of the bill.

Currently, the victims of pollution, individual ratepayers and taxpayers, are being forced to pay more and more to clean up the polluters' mess through escalating sewer bills and water bills. Sewer bills have gone up two to three times the rate of inflation on average and drastically higher in
sor.e areas.

Just a couple of years ago, Representative Gerry Studds took the lead on the House side in Congress by introducing a bill which would have helped to alleviate the growing burden on state and local governments, as well as individual ratepayers. His "polluters pay" bill would have raised $4 billion a year to assist local water quality improvements by making polluters pay by the ton for toxic contaminants discharged into rivers, streams and lakes.

It would have also placed a fee on the production of chemical pesticides and fertilizers, the major ingredients of polluted runoff from agriculture. In making it more expensive for polluting industries to discharge their wastes, the "polluters pay" bill offered strong incentives to reduce toxic wastes and to conserve resources.

The current system rewards pollution as a rational economic decision by making it more expensive to control the discharges than to pay the
nominal fees for permits, or no fees in some states, which allow dumping into rivers. As the old saying goes, "An ounce of prevention is worth a pound of cure."

Clean water and a reduced financial burden on cities are not the only reasons that the Studds "polluter pays" approach makes so much sense. Another reason on the benefits side is job creation.

The National Utility Contractors Association -- no environmental group the last time I checked -- estimates that $1 billion in water and sewer investment generates from between 34,000 to 57,000 jobs. Affordable water and sewer service is essential for economic development and is a major consideration for new investment.

So, who pays, the taxpayer or the polluter? From jobs to clean water to city budgets, there is clearly a lot at stake this year.

We already lost $1.3 billion in funds that were to go out, appropriated money that was to go out, to cities and states under the Safe Drinking Water Act, because some portions of the so-called
Coalition for Safe Drinking Water, made up of water utilities and local and state government associations, decided that they would go for the brass ring at the end of the last Congress.

Ultimately, all of this boils down to one choice and one question. The choice is: Do we eliminate standards which protect water quality and the public health because we can’t afford them, or do we make clean water a national priority by finding the necessary resources?

If we choose the latter route, the question is: Who should pay for this protection, the polluters or the victims of the pollution, the taxpayers?

The solution to the problem is clear. Make the polluters pay their fair share to clean up the mess that they created, in the first place, and keep our water supply safe and affordable.

I would urge you today, as Commissioners of the ACIR, to consider supporting adequate funding for environmental protection instead of scrapping the mandates. We believe that the "polluter pays" path
is the only logical source to tap.

I would be happy to take questions. I understand that your patience is wearing thin with all of us and you want to move on in the day.

Thank you.

CHAIRMAN WINTER: Our patience is not wearing thin. Our list remains long.

Thank you so much, Mr. Schwartz.

MR. SCHWARTZ: Thank you.

CHAIRMAN WINTER: We would love to hear now from Ms. Angela Antonelli of The Heritage Foundation. Thank you for coming today.

STATEMENT OF ANGELA M. ANTONELLI

DEPUTY DIRECTOR FOR ECONOMIC POLICY STUDIES

THE HERITAGE FOUNDATION

MS. ANTONELLI: Thank you. I have submitted a written statement, and I will talk off of that statement.

Thank you very much for the opportunity to talk about this draft report and offer my comments. Let me just say that the views that I am expressing are my own, and they do not necessarily represent the
views of The Heritage Foundation.

One year after Congress has passed the Unfunded Mandates Act, this report demonstrates that there is still a very long way to go before states and localities and the private sector will see any real relief from the burden of federal mandates. It will be even longer if the ACIR fails to issue this report in final form.

If anything, the report needs to be strengthened. It can’t be made any weaker.

However weak, this report still highlights some of the most burdensome mandates and identifies hundreds of others. And, even if you disagree with the recommendations in this report, an inventory of these unfunded mandates is desperately needed and very valuable.

The ACIR report just barely scratches the surface of a huge problem. The costly requirements that are imposed by Washington are the biggest problems undermining the fiscal health of state and local governments.

Unfunded federal mandates and highly
prescriptive federal programs have backed many states and localities into a fiscal corner, forcing them to sacrifice their own programs and priorities in order to comply with standards set by a distant federal government. Expanding federal requirements can put states and localities in a real fiscal bind, forcing states to either enact dramatic tax increases, reduce state spending on education, infrastructure, law enforcement or some other service, or some combination of the two.

ACIR has heard this over and over again.

And, it must make sure that any information it has collected on the cost of unfunded mandates is made available to Congress and the public.

This report is weaker, because it lacks that kind of information.

Unfortunately, the Commission is somewhat misguided in its position that simply more money or more flexibility or exemptions for states and localities are the only answers to this problem.

ACIR focused solely on "intergovernmental issues associated with the mandates and did not evaluate the
specific mandate requirements."

Thus, the report recommends that states and localities should be exempt, for example, from the OSHA Act even though it recognizes more fundamental problems inherent in the Act itself. The Commission recognizes this, such as the questionable scientific basis for some of the standards in the Act.

Asking Congress to exempt states and localities from ill-conceived statutes or regulations is simply bad precedent. And, it creates a double standard for the treatment of the private sector.

In some cases, reform is more fundamental than just providing more money or exempting states and localities. Reform means asking whether or not there is a problem, assessing the magnitude of the problem. Is it in need of a government solution? If it is, should it be a federal role? If not, it should be left to states and localities.

The report also has other shortcomings. ACIR, fortunately, acknowledges 186 other environmental, health and education mandates, some
arguably more burdensome than what you have chosen to include in your report that it does not address but that need to be addressed.

In addition, the report does not consider whether its relief efforts should also extend to the private sector and what impact the recommendations it does make might have on the private sector, even though the Act asks for it. Nevertheless, ACIR is to be applauded for making an attempt to inventory unfunded mandates and for its bravery -- and I will be so bold as to comment on -- in including the Americans with Disabilities Act among the mandates that it includes and gives careful scrutiny.

The Commission has been subjected to strong criticism for looking at the Americans with Disabilities Act. But, it has done the right thing. The inclusion of the Act among the recommendations does nothing more than simply acknowledges the fact that the implementation of the Act may not have been as well thought out as it should have been. No one questions the importance of the Act or its goals.
Over and over again, states and localities have reported to ACIR, and others, the difficulties and the huge expenses that must be incurred, often with little benefit. There are clearly more flexible and sensible ways to achieve the goals of expanded access.

Those who criticize the Commission for its actions are those who believe that the implementation of this Act, and along with a lot of other Acts, environmental Acts, should be done at any cost and without regard to cost. And, that’s simply unreasonable. None of us make decisions that way.

And, the costs are borne by someone. Lives can be jeopardized when communities are forced to divert scarce resources away from important public services such as police and fire. Yet, this is never to be considered.

For states and localities, balancing the federal budget with the spending reductions that it demands cannot be done without confronting the problems of unfunded mandates. If the federal government plans to slow the increases in money
in our view, they embody a congressional effort to
give local governments wide discretion in
accommodating individuals, given limited resources.

In fact, Title II requires only program
access. In other words, the programs of state
agencies must be accessible as a whole.

The concept of program access came about
in recognition of the fiscal constraints of entities
covered under Section 504. Therefore, none of this
should be unfamiliar to the states.

It is, however, indicative of the cavalier
lack of compliance with Section 504 by the states.
Title II was enacted precisely because of the
inconsistency of compliance and the continuing
discrimination found among state and local government
programs years after Section 504 was enacted.

At the heart of the ACIR report is
skepticism about the role the federal government
should play in local and state affairs. Although, on
its face, such a concern may seem to be justified, to
the extent that the report undercuts the civil rights
of American citizens, it must be carefully
flowing to states and local communities, those local
communities need the flexibility to prioritize and
implement mandates as they see fit while still
achieving the desired social goals.

That does not mean you have to abandon the
goals. Otherwise, if we don't give them that
flexibility, they potentially could face huge
financial catastrophes.

They have the resources. They need the
flexibility to figure out. Given limited resources --
the world does not have unlimited resources. How
can we best achieve the goals that are important to
us?

The issuance of this ACIR report in its
final form is of critical importance to states and
localities. Despite its shortcomings, despite the
criticisms, the report does two very important
things, things that it was intended to do -- confirm
that the burden of unfunded federal mandates is real
and significant and it serves as an important and
useful starting point for reform.

The problem of unfunded mandates needs a
solution. And, if states and localities expect change from Washington, they must also realize that they will have to continue to pursue it through other legislative avenues, because the Unfunded Mandates Act does not provide a vehicle for it.

This report would serve as a foundation for a new round of legislative initiatives. This could range from full federal funding to repeal of some existing mandates.

As we already know, there will certainly be considerable debate. And, that's precisely why this report needs to move forward in its final form.

The Commission has been subject to harsh criticism by public interest groups and the Clinton Administration for this report. These attacks have deteriorated to the level of attacking the competence of the Commission rather than the substance of the report.

I urge the Commission not to give up any ground. State and localities were not making this stuff up.

And, the report plays a critical role in
formally acknowledging and legitimizing their concerns. The President and the Congress would have a much harder time continuing to pass the buck.

Thank you very much.

CHAIRMAN WINTER: Thank you very much for that presentation.

We hear now from Ms. Cherie Takemoto of Arlington, Virginia. Ms. Takemoto, would you please come around?

STATEMENT OF CHERYL R. TAKEMOTO

ARLINGTON, VIRGINIA

MS. TAKEMOTO: Hi. My name is Cherie Takemoto. I am not representing anybody but myself and my family today.

Before -- as a transition to the last report and as an introduction to my testimony, my name is Cherie Takemoto. I am Margaret and Peter's mom.

Peter was born eight years ago with a host of disabilities and no firm diagnosis about how or why or what he's going to be. Like most families that include a parent, a child, a brother, a sister
or a grandparent with a disability, we thought that

disabilities were something that happened to other
people.

Before Peter, my little baby girl, my dog
and I would take our daily jaunts around the
neighborhood and give thanks to the good work of the
folks who use wheelchairs and the disability
advocates for those wonderful curb-cuts that helped
us get around the block. For us, it was a
convenience. For people who use wheelchairs, it's a
necessity.

When Peter was born, I found that I
couldn't just take those curb-cuts and other things
in life for granted. I found out that even though
others may discriminate against people with
disabilities, no group, either privileged or
underprivileged, is immune from disability and its
effects.

Thanks to IDEA, which is the Individuals
with Disabilities Education Act, Peter has received
early intervention and special education services.
He is now in the second grade.
He is reading. And, one of his classmates, Megan, was saying that Pete is the smartest kid in his math group because he doesn't use those manipulatives that they are using in school now. He knows how to add with his head.

Without IDEA and special education resources to support him in the regular class, which is something that this Commission did support, he would be now on the fast track for failure.

Is it more expensive to educate kids like Peter? A little bit. Average increases over the typical student ranges from $2,000 to $6,000 annually. Is this a wise investment? Without a doubt.

By providing Peter with the education and tools he needs to learn, we are now looking at a child who has a future as a self-sufficient taxpayer and is going to paying your and my social security benefits. Without that educational support, Peter -- and you can talk to his doctors about this -- would face a future of dependency and despair.

One or two years in a residential facility...
would more than make up any special education costs he has incurred.

Has Peter’s school provided him with a free and appropriate public education? Thankfully, yes.

But, ask the school why and they will honestly tell you that his inclusion in the regular classroom has to do with the provisions in the law that have to do with something called educating him in the least restrictive environment. The federal laws protect the student’s interests through the due process rights for the student and parent. It gives the parents a voice in how their children will be educated.

The ACIR seems to have concerns about school districts having to pay legal fees when parents prevail in a due process case. Well, first of all, either the school or the parents can initiate due process. It’s not just the parents that are taking the schools to due process.

The judge only considers legal fees when the parents prevail. If you investigated a bit, you
would find that school systems prevail in the vast majority of the cases.

They know what they are doing. And, they have the lawyers to pay for that.

And, in too many cases, the schools will keep appealing until the parent runs out of funds to pay the lawyer who needs to argue their case, because it is, as you said, a highly legalistic process.

When the schools complain about attorney fees, I begin to ask why they are spending their money on lawyers instead of doing the right things for our children.

Now, if I walked into the school and slipped on the wet floor, I could sue the school for legal fees along with pain and suffering and all that other neat stuff that everyone is complaining about with these frivolous lawsuits. And, if I won, I would get my legal fees paid, no questions asked.

But, if I needed to file a due process case on behalf of my child because the schools were not fulfilling their requirements or because they were discriminating against my child, I would have to
win and then a judge would have to determine whether
or not my attorney could collect legal fees. We are
not talking about large amounts of money here.

No one gets any money for pain and
suffering or any of that other neat stuff that they
have in civil courts. And, currently the judge has
the discretion to award what reasonable attorney fees
are versus what the attorney might present as the
bill.

Leave this decision in the hands of an
unbiased party like a judge. Don’t tip the scale
against parents like me who can’t afford attorneys
and school districts who can, and will.

In the current law, the good of the
children is decided upon by both the parents and the
school system together. When the good of our
children was last left to state and local
jurisdictions, our children were excluded from school
and languished at homes or in institutions.

The investment in special education is
small compared to a lifetime of dependency.

I heartily support the suggestion that the
federal government pay 40 percent of the costs of IDEA. However, don't kill Peter's future and the future of all the other children with special needs that depend upon IDEA if the Congress cannot or will not pay what I consider to be a ransom. It's not one of those things, you pay us or your kids don't get to come.

The ACIR must take responsibility for their recommendations and do the right thing for our most vulnerable children who have many abilities and much potential when schools and parents work in an equal, respectful partnership.

Thank you very much.

CHAIRMAN WINTER: Thank you very much for coming today and for sharing with us your own personal experience. Thank you.

We would like to hear from Mr. James Sheedy of the American Federation of Teachers. Thank you, sir. Thank you for coming.

STATEMENT OF JAMES SHEEDY

AMERICAN FEDERATION OF TEACHERS

MR. SHEEDY: Good afternoon. My name is
James Sheedy.

I am the President of the 55,000 member, New York State Public Employees Federation and a Vice President of the American Federation of Teachers. My union represents New York State's professional, scientific and technical work force -- the doctors, nurses, the researchers and engineers who make New York work.

We take pride in our union slogan, "New York Works Because We Do."

Counted among PEF's members are almost 2,000 professionals at the State Department of Environmental Conservation. They are the hard working air and water scientists and engineers who have helped form New York into a state with an admirable environmental record.

Our members at that agency pride themselves on being experts and advocates for their fellow citizens and for New York's resources. Part of their ability to positively shape New York's future comes from a close working relationship between their agency and the federal authorities.
They have seen how that cooperation benefits all Americans.

When I received a copy of your report, I asked several PEF members who work in the air quality protection to review your recommendations about the Clean Air Act. Quite frankly, they were appalled at the direction recommended in this report.

Our members, who are the environmental engineers and scientists that run New York’s air pollution control program, vehemently oppose the Advisory Commission on Intergovernmental Relations staff recommendations to permit states to develop their own ways of meeting federal air quality standards. This is exactly the course that has been the problem and why air pollution in the United States, generally acknowledged by the reputable scientific community as a growing threat, has not been solved.

Strong federal leadership is a must.

History in this field shows the folly of taking a so-called states rights approach.

Let me briefly outline the story. As your
staff's working paper points out, the federal
government did not exert control over air pollution
control policy until 29 states failed to submit plans
to implement to achieve the national air quality

Why does ACIR staff feel it would be any
different in 1996 when states are even more strapped
for resources and are vigorously competing to attract
private industry, often lauding their business
friendly approach to protecting the environment?

In 1977, Congress mandated, in the Clean
Air Act, that the federal EPA control all
contaminants capable of injuring the public health or
the environment within 90 days of understanding the
threat. They have, in 29 years, promulgated less
than a dozen standards despite the fact that tens of	housands of chemicals are routinely released into
the environment.

Chemicals of varying toxicity, to be sure,
but chemicals which the academic and scientific world
knows should not be released to the ecosystem
unfettered and uncontrolled. Why has this happened?
PEF members who work in this field strongly speculate that the situation is another demonstration of the power of corporate political action committees, campaign contributions and intense lobbying over the past 30 years to maximize the talk about saving the environment while minimizing the actions actually taken to stop it.

In the face of federal inaction noted above, over the past 20 years numerous states have attempted to develop their own comprehensive program for the responsible control of chemical contaminants known to be toxic by science but left unaddressed by the federal EPA. These contaminants have become to be known as air toxics by the air pollution control community.

The programs developed by the states to control them are called air toxic control programs. New York has been a leader.

California and several other states have had reasonable success in inventing their own state-specific programs. However, the entire story of leaving the development of these control programs to
the states has been a case history of 20 responsible 
states trying to invent the wheel while some other 
states took economic advantage of their responsible 
actions by luring corporate polluters to their do-
nothing-against-the-polluter states.

From a purely scientific, logistical point
of view, all arguments support the development of a
strong, centralized program to control air toxics.
For example, the basic scientific data for developing
standards for individuals are scientific facts, not
opinions.

Currently, the federal national toxicology
program is the primary developer and founder of
credible use toxicology data. It would be foolish to
expect each of the states to duplicate this time
consuming and expensive work.

As for the oft-heard cry to privatize
government activities increasingly, this very area
provides a lesson to be learned. The chemical
manufacturers some time ago banded together to
support so-called Impartial Research Institute to
provide toxicology data, called the CIIT. Just like
the current press concerning the integrity of the tobacco industry, more scientific hanky-panky has clouded the work of the CIIT than any other source of toxicology data.

Another extremely important factor blowing the ACIR staff's recommendations apart is the fact that air moves. Air pollution travels from place to place with the winds.

Sure, some pollutants are washed out of the air over time by rain and other natural forces. But, even then we must ask when. How long after being released? Over the same state that released it? Over a neighboring state?

Many New Yorkers in Staten Island and New York City feel they have been breathing New Jersey's gaseous wastes for years. Air pollution is a global problem, not a local problem.

Air pollution from Ohio in the midwest is known to cause the acid rain that has killed the New York and New England lakes and waterways. Your staff's argument would deny these truths and pretend that states should be empowered to take care of their...
own little problems. History shows this will just
not happen.

Another disastrous aspect of taking the
local approach to fighting air pollution like this
paper proposes is that without uniform, nationwide
rules, it sets a scene for bidding for jobs and their
pollution by the locality or municipality or state
most controlled by corporate interests. Let me give
you an example.

In the current Clean Air Act, most major
sources of air pollution are subject to something
called MACT standards. MACT means maximum achievable
control technology.

Although, in reality, it’s not really a
maximum as you and I use the word. It’s just a
legal, bureaucratic kind of maximum.

The federal law, the 1990 Clean Air Act
amendment, says that, at a minimum, if your
industrial operation is of a certain size or
capacity, it must have at least MACT level pollution
control equipment installed and operational. For
most states, except what I have referred to as the
responsible or progressive states, this recently-invoked level of MACT pollution control might very well be the first pollution control requirements these operations have ever had to install.

Remember, many states like Louisiana, Mississippi and, unfortunately, too many others have not had any real state programs. Why should they?

Up to 1990, the federal program just covered a handful of the worst pollutants. It was easy for corporate forces in some of these states to avoid effective state enforcement of even these few rules.

Please remember that the EPA, just like many other federal programs, generally does not administer its own program but instead delegates them to the states, the counties or the localities.

Almost all of the states now have federal EPA-delegated authority to run the pollution programs in their states.

The problem is not that EPA is too strict with the states. The problem is they are not strict enough when it comes to quality, equally enforcing
environmental rules to curb air pollution.

And, don’t think it’s just the smaller states who have poor pollution histories. Sometimes, other economic factors favor poor environmental records.

In the late 1980s and the early 1990s, the entire Ohio River Valley area fought tooth and nail to kill any federal electric power plant emission standards designed to limit sulfur emissions which feed the chemical reaction process which causes acid rain. Why?

The Ohio Valley is full of mines which produces high sulfur coal. The Ohio Valley is full of fossil fuel burning electric plants, which burn this cheap local fuel and provide cheap power to the industrial complexes which dot the Ohio Valley rust belt.

The Ohio Valley’s rust belt industrial complexes are already under severe economic stresses due to the aging infrastructure, failure to invest in new technology, competing with labor costs which are higher than Mexico or the Pacific Rim.
The last thing these states think they need from a local state point of view is the economic cost of installing pollution equipment to control their sulfur emissions. Why?

Everyone knows the acid rain doesn't fall in the Ohio Valley. Natural chemical reactions converting sulfur dioxide into sulfuric acid and acid rain take a few days to occur.

By this time, Ohio's position is that pollution, excuse me, is at least over Pennsylvania or New York or New England. Why would an Ohio State pollution program want to saddle Ohio's businesses and residents with such anti-pollution cost burdens?

They won't, which is why we need a national approach to the problem. Local control, block grants, they all sound seductively appealing. History and science show local control to work best only on issues having only local effect and then only some of the time.

Air pollution, indeed, any environmental assault, cannot honestly be viewed solely as a local problem. To do so would be to ignore reality.
To adopt this paper's recommendations would be to turn back the clock on the environment and the federal government's responsibility to protect our citizens and their children and grandchildren.

We also have many concerns with several other areas of this report, namely the Fair Labor Standards Act, the Family and Medical Leave Act, Metric Conversion for Plans and Specifications, the Clean Water Act and, last but certainly not least, the Occupational Safety and Health Act. But, we will submit written testimony on these issues.

Thank you for the opportunity to speak today on this important issue.

CHAIRMAN WINTER: Thank you, Mr. Sheedy.

Let me recognize now Ms. Laura Rouner, the National Association of the Deaf. Thank you for coming.

STATEMENT OF LAURA ROUNER

NATIONAL ASSOCIATION OF THE DEAF

MS. ROUNER: Thank you for inviting me.

Good afternoon.
My name is Laura Rouner. I am a staff attorney with the National Association of the Deaf on a fellowship provided from the National Association for Public Interest Law and the Mobil Corporation.

The National Association of the Deaf is the nation's oldest and largest organization safeguarding the accessibility and civil rights of 28 million deaf and hard of hearing individuals, in education, employment, health care and telecommunications. The National Association of the Deaf is a private nonprofit federation of 51 state association affiliates, including the District of Columbia, organizational affiliates and direct members.

Our comments do not merely contain the thoughts of a few advocates within the Beltway of Washington, D.C. but reach far and wide across the nation.

On February 22nd to the 26th, the presidents of our state association affiliates gathered in Washington, D.C. to discuss critical issues that face our membership. State association
affiliates represent over 22,000 dues-paying members across the nation.

During this meeting, state association leaders were presented with the details on the ACIR preliminary report as it pertains to the Americans with Disabilities Act and the Individuals with Disabilities Education Act. The recommendation of your Commission, as well as the analysis of the ADA and IDEA done by the ACIR staff, was presented to the group.

This meeting provided us with a keen opportunity to educate and poll our national leaders as to the impact and overall reaction of the ACIR preliminary report. It is fair to say that that reaction was unanimous and very much in dismay.

The NAD represents deaf and hard of hearing individuals in America, the majority of whom are taxpayers impacted by the federal deficit. Many are employed by state and local government entities.

All of our members are impacted as citizens in need of access to state and local government services and all of whom have interest in
being served as first-class citizens. But, most important, basic disability rights laws such as the ADA are sacred to our membership, as we seek to exercise our rights as American citizens.

It is pertinent that we ask why does the preliminary ACIR report clearly ignore the exemption within the Unfunded Mandates Reform Act of 1995 that governs the ADA and IDEA? It seems to us that the intent of Congress has clearly been ignored.

Congressional members acknowledge the fact that the ADA is clearly a civil rights law which guarantees to individuals with disabilities the equal protection of the law guaranteed by the Constitution. The ADA as well as IDEA were rightfully exempt from the recent unfunded mandate legislation and should not be addressed by the ACIR report in this regard.

Further, ADA and IDEA and other basic disability rights laws are sacred to people with disabilities. It is not truthful to imply the implementation periods for ADA requirements are unreasonably abrupt.

It is also troubling that the report
states that more time is needed with temporarily or permanently suspended deadlines or, worse yet, voluntary compliance. If voluntary compliance was the answer, civil rights laws such as the ADA and the Rehabilitation Act of 1973 would never have been needed in the first place.

We all know clearly that leveling the playing field and providing communication and program access is a requirement that needs national attention. In the deaf community, we have just in recent years gained access to the most basic telecommunications service, a working dial tone which Americans who can hear have for so long taken for granted.

One important ACIR recommendation was the recognition that educational and technical assistance resources need to be increased. Education and technical assistance will go a long way in helping to reduce the misunderstandings and bring about broad-based implementation of the ADA that exists across our country.

Education is the key to clearing up these
misconceptions about the ADA held by the public at large, state and local governments, business entities and the media.

The ADA presently contains language that protects entities from having to incur changes that would impose an undue economic hardship on those that are not readily achievable. It is dishonest to imply that the opposite is true.

Communities are calling for flexible implementation. That flexibility is already written into the law.

The recommendation that all legal action against state and local governments be brought only by the U.S. Attorney General infringes on individual rights and is deeply disturbing. A right with no citizen remedy is too much of a controlled right to be a right at all.

The Department of Justice and other agencies that enforce the ADA simply have many more complaints than they can handle. Consequently, many instances of discrimination are unaddressed and unremedied.
One clear example of this is the right of deaf and hard of hearing individuals to appear in front of state courts as plaintiffs, defendants, witnesses, et cetera. Although Title II of the ADA requires all courts to be accessible, over 30 of our nation's states have statutes that do not guarantee sign language interpreters or other accommodations without charge to a deaf person.

The result of this is that our nation's deaf and hard of hearing individuals are literally forced to pay for their day in court. This is discrimination.

And, it is prohibited by the ADA.

But, many individuals continue to suffer from it everyday.

We implore you to continue to help us work to safeguard the rights of individuals with disabilities by not eviscerating the ADA.

Additionally, we believe that an important and appropriate avenue for empowerment on equal opportunity and rights is through the provision of technical assistance and through enforcement of the
ADA. Such actions will bring about an accessible environment rather than a litigious environment.

Our country continues to prosper through improved medical technology, thus increasing the time that each of us spends on Earth. Disability will occur at some time in the lives of most individuals, if not in their families.

The ADA protects the rights of individuals with disabilities, including those who become temporarily disabled. As President Clinton stated on the Fifth Anniversary of the ADA, "We haven't a person to waste."

Congress clearly wants to move Americans from welfare to employment and from isolation to active participation so that every American has an equal opportunity to live the American dream. This can only become possible with strong civil rights laws such as the ADA and IDEA that protect individuals with disabilities.

The only answer to correct the woes of discrimination due to lack of program access, structural access and communications access is the
elimination of barriers as new programs and structures are created. It is simply too costly and too precious a waste of human lives to ignore this need and delay implementation further.

Our experience has shown that local option for program implementation has been uneven and often not forthcoming in most areas of the country without federal mandates. In your report, you state that you want to meet ADA goals in a manner that recognizes state and local government budget constraints without abridging the national commitment to the rights of individuals with disabilities.

Temporarily or permanently suspending ADA requirements is not the way to do this. We cannot and must not set back disability rights for 200 years. We do not have a person to waste.

A couple of comments on the Individuals with Disabilities Education Act. The provision of a free appropriate public education for students with disabilities is a state responsibility.

Parents and their children are entitled to due process under the IDEA. This basic right must be
supplanted -- must not be supplanted, eliminated or 
reduced in any way.

A recommendation that Congress provide 
increased funding that will enable federal, state and 
local government entities to fulfill their 
obligations effectively and efficiently is both 
warranted and necessary. We call upon Congress to 
provide increased funding that will enable federal, 
state and local agencies to fulfill their ADA and 
IDEA monitoring responsibilities efficiently.

Resources spent on education about the law 
and proactive enforcement will also serve to greatly 
reduce litigation and other expensive subsidy 
programs. ADA and IDEA are laws for all Americans. 

We call upon ACIR, Congress and all 
Americans to join us in ensuring quality, 

independence and justice for all. We demand that the 
final ACIR report be corrected and that it 
incorporate our concerns.

The public should not be misled. The 
recent ACIR preliminary report included misleading 
information and otherwise irresponsible references to
the ADA and IDEA.

Related press coverage contains statements that were extremely damaging to the rights of 28 million deaf and hard of hearing Americans. Favoring funding that helps education and implementation of the ADA is desirable.

Termination of rights must not be a part of our future. Life can only progress and improve if we move forward.

Take the foundation and build on it, but don't tear it down and then expect it to serve its intended purpose.

These comments reflect the unified concern of our state association affiliates. We are all counting on ACIR to issue a final report that is fair, within the domain of its task and with contents that do not water down, block or slow the implementation of the ADA and IDEA.

Likewise, the media should receive the truth about the benefits of the ADA and IDEA for all Americans, not just individuals with disabilities.

Thank you.
CHAIRMAN WINTER: Thank you so much for that excellent statement, Ms. Rouner.

Let me call on Ms. Gail Hunt of the National Alliance for Care Givers. Thank you for coming today.

STATEMENT OF GAIL HUNT

NATIONAL ALLIANCE FOR CARE GIVING

MS. HUNT: Thank you. It's the National Alliance for Care Giving. They may have misspelled it.

We are a new national aging organization that focuses on not developing national programs to support family care givers of the elderly. And, I'm here today to talk a little bit about some of the productivity issues that might be -- are concerned with the Family and Medical Leave Act, which the ACIR report is interested in repealing for state and local government employees.

I have done work in researching on corporate elder care services for both governmental agencies and also for the corporate sector for the National Institute on Aging and the Social Security
Administration, Fairfax County, Montgomery County, some other organizations. And, just so that you all are a little bit aware of this -- I’m sure that you’ve heard of some of these statistics, but about 75 percent of the family care givers are women and about 55 percent of family care givers work full or part-time.

And, the estimated prevalence of care givers of the elderly among employees in the work force is somewhere between like 8 and 12 percent.

So, we are not talking about an inconsequential employee population.

About 1 percent of family care givers will quit due to the stresses of care giving in any one year. It’s estimated that the percentage of employees who are care givers who are absent three or more days in the past six months due to their care giving burden was about 10 and one-half percent.

And, this represents aggregate hours that they commonly report they spend taking older relatives to the doctors and other health care professions, visiting facilities, arranging for
services. And, just looking at the average age up here, I would say that the chances are that some of you have had experiences with being care givers for family members or perhaps your spouses have.

About 60 percent of working care givers that provide personal care -- that is, hands-on care to an older relative -- have experienced an elder care crisis in the past six months. For example, the parent goes into the hospital or has a severe health care crisis or they have to move their residence from Miami here to Washington.

And, the employees also lose an additional three days per year due to loss of concentration, extra incoming and outgoing phone calls during the day and partial absenteeism.

And, in most of the elder care studies that have been done of employees, it's estimated that somewhere between 5 and 17 percent reduce their time on the work force from part-time -- from full time to part-time work or they change jobs because of care giving and work conflicts. And, this doesn't even count what you would call lost opportunities --
promotions passed up, travel that they don’t go on
that is work related.

Typically, health issues are also involved
for care givers. The percentage of non-care giving
employees who are under a physician’s care is about
16 percent typically versus 20 percent for family
care givers.

And, many family care givers report
negative health impacts, including greater
depression, colds, flu and more physician visits.
Also, care givers report using two to three times as
many over-the-counter prescription drugs.

The reason the Family and Medical Leave
Act is important in this, it’s one -- certainly not a
panacea, but it is one possible solution that family
care givers can use, because they are allowed -- if
their parent is seriously ill, they are allowed to
take off the 12 weeks of unpaid leave. And, I’m sure
you all have had a report from the Department of
Labor which did an analysis that shows that a very
few number -- somewhere between 2 and 4 percent of
the eligible employees -- actually use the Family and
And a very tiny percentage of that used it for elder care. And, the study that the Women's Bureau did indicated that the reason was that the eligible employees just didn't know that they could use this for other than their own sickness, which is what the vast majority of them used it for.

So, we would like to say that we would support the idea that this is not an incredible cost certainly to state and local governments. It's a relatively small cost.

It may grow in the future if more and more employees know about it. But, it's one option. The Family and Medical Leave Act is one option that family care givers have that they would find -- that they do find very valuable.

Thank you.

CHAIRMAN WINTER: Thank you so much, Ms. Hunt, representing the National Alliance for Care Givers. Thank you.

MS. HUNT: Care giving.

CHAIRMAN WINTER: For Care Giving?
MS. HUNT: Yes.

CHAIRMAN WINTER: I will make that change in my notes here. Thank you so much for that excellent statement.

We would like to hear now from Ms. Dolores Phillips of the New Jersey Environmental Federation.

Ms. Phillips, welcome to the hearing.

STATEMENT OF DOLORES PHILLIPS
NEW JERSEY ENVIRONMENTAL FEDERATION

MS. PHILLIPS: Thank you, Mr. Chairman.

Thank you for the opportunity to comment.

I am from the State of New Jersey and down here to talk to several members of our delegation. And, certainly you are quite aware that our delegation has been all over the "New York Times" recently, because they specifically have put the environment as a major concern for their constituents.

And, I am the legislative and policy director for the New Jersey Environmental Federation, which is a statewide, nonprofit, advocacy organization. We represent 94,000 members in the
State of New Jersey. And, we have an adjunct coalition of 71 member groups.

Obviously, as an environmental organization, you know that my comments are going to be geared towards the environment. And, certainly you are probably quite aware that we do not want any weakening changes to the Clean Air Act, the Clean Water Act or the Endangered Species Act.

One of my reasons for taking the time to come here to talk to you today is because in New Jersey the whole issue of unfunded mandates is, in fact, one that is being debated on a daily basis. And, what we have found is that -- we have a unique situation.

New Jersey has actually promulgated some of the toughest environmental regulations in the nation. One of the reasons that that has occurred is because we have the most -- we are the most densely populated state in the nation and we have some of the most severe problems.

You are probably aware that we have the highest number of superfund sites in the state, not
to mention another 13,000 contaminated sites that have still not been cleaned up. In addition to that, we have the second worst quality of air in the nation.

My experience as an environmental lobbyist down in the State House has been quite interesting mostly because as we've watched this debate on unfunded mandates occur in New Jersey, we additionally have, on a daily basis, worked in the same room with the Chemical Industry Council -- known down here as the CMA; the Chemical Industry Council is the New Jersey version of that organization -- the New Jersey Business and Industry Association, the League of Municipalities, which down here you might know also as the League of Cities. What we often hear is a call for the state to roll back its tough environmental standards recently.

And, interestingly enough, those who have come forward to ask for that are asking for federal standards only and not tougher state standards. That request has been denied by the people of New Jersey, because there are -- last year, in fact, in New
Jersey we had two polls, one that we commissioned ourselves, which was a statewide poll, that resulted in over 70 percent of voters in New Jersey asking for tougher, not weaker, environmental standards and also asking for more funding for environmental protection even if it meant they had to pay more.

We specifically put that question on there. And, certainly all of you have probably done polls and have done some polling yourself.

You know that you can certainly manipulate the statistics depending on the questions that you ask. But, we tried to be very objective about this.

We were quite surprised by the results.

Last fall, a research institute in New Jersey, the Center for Analysis in the Public Interest -- not related to us at all and, in fact, is just a nonprofit that does research -- did another poll and actually corroborated our results. And, because of this, what we found is that the call to roll back state standards has been denied.

My point here today to come to you is to have you understand that if we don’t have these
federal minimum standards that we have now -- and I
would probably make an argument that they are not
fully enforced, as it is; we are often asking the EPA
to be much tougher than it is -- that we would be in
a real serious situation; that if we were to roll
back the state standards and we don't have federal
minimum standards, we would have exacerbated problems
with our air and water quality.

As a result of this debate, we realized
that the key issue here really is one of funding.
Local municipalities certainly don't want to be
raising their property taxes if there's a mandate.

They claim that this has, in fact,
happened with some of the New Jersey's mandates.
And, I don't know how many of you are aware that we
have a 60 percent recycling law in the State of New
Jersey which has, in fact, brought in money for the
municipalities.

And, I think here's a good example of a
mandate that has not only lowered cost in many
instances but also has been making money for the
municipalities. If, indeed, that mandate were not
there for a 60 percent recycling law in the State of New Jersey, what we would probably see happening is one municipality would do 20 percent, another would do 30 percent.

And, what ends up happening is we do not create the markets, because there is no collective agenda and goal. And, that's the purpose of having the standards that we specifically have.

And, when we looked further at this funding issue, we decided to be somewhat more proactive on this. And, we are in the process now of asking the Legislature within the State of New Jersey -- and it has now passed the Assembly and we are working on the State Senate; our House there is actually called the Assembly -- to dedicate 6 percent of the corporate business tax revenue to cleaning up contaminated sites and also dedicating it to cleaning up waterways and improving our water quality in New Jersey, which has been hampered for some time by inadequate funding.

We are moving forward on this. And, we intend to have this as a constitutional amendment in
the State of New Jersey.

It will be on the ballot. It does not have to go to the Governor for approval in the State of New Jersey. So, we've decided to look at this from a different perspective.

And, we do have tax revenue shortfalls this year. We knew that we would not be able to find another source of new fees, which we actually believed very strongly that, in fact, we wanted to increase our spill fund tax and we wanted to increase our direct discharge tax. And, we felt that was the fairest way is to have those who were discharging directly into waterways pay for the funds that were necessary.

But, because of partisan politics we were not able to do that this year, because while the Republicans are in control in the State of New Jersey, the Democrats wouldn't give us a vote for it either. So, as a result, we now have a constitutional amendment that we are going to be working on.

And, we are finding this to move forward
and to be quite favorable as a way of providing additional funding to make these standards that we have in New Jersey work and happen and provide the money to our Department of Environmental Protection.

So, I wanted to point out to you that, in fact, there are other ways to find monies that are necessary for environmental protection. We would urge you to, in fact, in your final report withdraw, please, the recommendations that you have made on the Clean Water Act, the Clean Air Act, the Endangered Species Act.

On behalf of our members, we thank you for listening and hope that you do consider our appeal from New Jersey to not weaken the federal minimum standards.

Thank you.

CHAIRMAN WINTER: Thank you, Ms. Phillips.

Thank you very much for a good statement.

We would like to hear now from Brette Browning of the Coalition for Texans with Disabilities. Ms. Browning, welcome. Thank you for coming.
STATEMENT OF BRETT BROWNING

COALITION FOR TEXANS WITH DISABILITIES

MS. BROWNING: Thank you.

CHAIRMAN WINTER: Where are you from?

MS. BROWNING: I'm from Austin, Texas.

CHAIRMAN WINTER: Austin? We are glad to have you.

MS. BROWNING: Forgive me for being rather informal. I hadn't planned on coming. I was just in the neighborhood, so to speak.

We are here for multiple sclerosis. The National Foundation of MS is meeting on issues and empowerment. And, it just so happened it was happening at the same time.

Mainly -- I mean, I don't want to take any time away from anybody else, but one thing that we are definitely -- we've got about 3.5 million people with disabilities in Texas. And, that's what the Coalition of Texans with Disabilities represents.

I just want to get in my two cents that the Americans with Disabilities Act and the Individuals with Disabilities Education Act are civil
rights. And, they are very important.

You know, it struck me last night watching
the Academy Awards, which I wasn't going to do
because I was going to get a good night's sleep, but
you know how that goes. When Christopher Reeve came
on -- and it upset me a bit that -- you could tell by
the panning of the faces that so many people felt
sorry for him -- oh, what a terrible thing.

And, I mean, I can't speak to that issue.

But, he was up there because of the Americans with
Disabilities Act.

And, when you think about it, the
wheelchair that he was in, that cost a lot of money.

And, unfortunately, this is a civil rights law that
has costs attached to it.

We all wish we could be well. We wish
that we didn't have problems. But, we do.

And, not all of us have the kind of money
that Christopher Reeve does, not being Superman.

But, it just struck me that he made a call to the
media to pay attention to this issue and that normal
people -- anybody, it's not a partisan, political,
not religious, nothing. It's just the way it is.

And, I would ask you to respect the ADA
and the IDEA that are civil rights laws and to please
rescind your statements regarding your
recommendations to weaken them.

Thank you.

CHAIRMAN WINTER: Thank you very much for
coming. We welcome your presence here and your
testimony.

Let me inquire if there are others here
who desire to make a statement at this time? We
would be delighted to hear from you.

(No response.)

CHAIRMAN WINTER: I have no other names on
the list other than a number who had indicated a
desire to testify but apparently, for whatever
reason, are not able to be here.

Yes, sir.

ATTENDEE: Are you prepared to describe
what you are going to do next for the final report?

CHAIRMAN WINTER: We will take under
advisement what we have heard here today, assemble
this array of testimony that we have received and
will proceed to take that into account in formulating
the basis for a final report. And, we -- let me say
this to all of you and to those who have preceded you
in testifying: I assure you this has not been an
idle exercise on our part.

This has been very helpful. You have
provided us with some very excellent information.

I can say candidly that, speaking as the
Chair of this Commission, I wish we had had this kind
of hearing earlier. But, it is certainly not too
late to take into account the positions that have
been stated here on all sides.

We have not heard just one side. It is
obviously a very, very complex problem that we are
dealing with.

I speak as one who has been involved in
state government for many years. I think we must
take into account a wide range of opinions, get all
of the information that we possibly can, as we are
seeking earnestly to do here today, take that
information and using it come out with a final report
that hopefully will be constructive.

I have no illusions that that will be easy
to do. I have no illusions that we will come out
with a final report that will be unanimously adopted
by this Commission or unanimously accepted by
everyone in this country.

It's not that kind of a problem. If it
were a simple problem, Congress would not have given
ACIR the responsibility for dealing with it.

We admit it's a difficult problem. There
are differences among the members of the Commission
as to how to approach it.

But, we are going to do so as honestly as
we can, as forthrightly as we can. And, what you
have presented to us today will represent a very,
very helpful addition to the store of information
that we think is important to devising a final report
that we can give to the Congress and to the
President.

We thank all of you for the testimony that
you have given today. And, we shall look forward to
hearing from you further.
We hope that if you have other information that you want to leave with the Commission, we will be glad to get it.

Are there others who would like to make a statement?

(No response.)

CHAIRMAN WINTER: Do you know of others who would like to make a statement who have not arrived yet? We said we would be here a little while longer.

ATTENDEE: Yes. The National League of Cities, she was thinking that it was going to go until about 5 today with the number of people that were scheduled to testify.

Unfortunately, she is not here. But, we have submitted comments at this point already. And, we will submit her testimony in written form to you.

CHAIRMAN WINTER: Do you expect her to arrive?

ATTENDEE: I left a message.

CHAIRMAN WINTER: Okay. Well, we will stick around a little while longer. Some of us have
to catch a plane soon.

You tell her that we would like to hear her. We will stay as long as we can.

ATTENDEE: Yes, sir.

CHAIRMAN WINTER: Let me suggest that we take a brief recess. And, we will be available to hear anyone else who may come in.

(Whereupon, a recess is taken at 2:33 p.m., to reconvene at 2:47 p.m., this same date.)

CHAIRMAN WINTER: Mr. Mitchell, welcome, sir.

MR. MITCHELL: Thank you.

CHAIRMAN WINTER: Let me present Mr. Bob Mitchell of the National Association of Home Builders. Thank you for coming, sir.

And, we welcome your testimony.

STATEMENT OF BOB MITCHELL

NATIONAL ASSOCIATION OF HOME BUILDERS

MR. MITCHELL: Thank you, Mr. Chairman.

And, thank you, members that are here.

I am Bob Mitchell. And, I am a home builder from Rockville, Maryland.
I represent today the National Association of Home Builders, 185,000 corporate members strong or member firms, I should say, who are involved in the development and construction industry. We build single family homes, townhouses, apartments and light construction. Our members employ approximately 7.5 million people.

There are three areas which I will briefly address today. First, the effect that we believe that unfunded mandates have on private parties and then provide the Commission with information on two of the specific federal mandates, namely the Endangered Species Act and the Clean Water Act, which we believe directly affect our members.

It is clear that the private sector and ultimately the housing consumer is unfairly burdened by unfunded mandates. When the federal government imposes requirements on state and local governments without providing the funding necessary for compliance, local governments respond often by imposing greater fees for building permits, water and sewer hookups and subdivision approvals.
Localities have also imposed development impact fees for roads and schools and libraries and many other off-site general public facilities that total thousands of dollars and eventually affect the new home buyer. These fees have increased in recent years because of more and more requirements from federal mandates coupled with decreased federal assistance, decreased state assistance, localities and the reluctance of voters to accept further property tax increases.

I often say that obviously it is politically more acceptable for a local politician or local officeholder to sell this cost to a very specific non-present constituency, being the new home builder, than it is to spread it over all taxpayers. As an example, in the State of California, if you are building a new subdivision, school impact fees are assessed, as well as traffic impact fees, fees for fire protection facilities, fees for drainage and flood control, fees for parks, sewer and water systems and so on.

A large portion of these fees take the
form of development impact taxes which localities use to pay for public works which they choose not to fund from increased local income and property taxes. The costs associated with fees, permits and regulatory costs drive up the cost of a new home.

In California, this amount can mean an astounding $20,000 a house. In Maryland, where I build, it's an average of more than $3,000 a house. And, many of the houses which I build, fees total as much as $8,000 and more per house.

The unfunded federal mandates prohibit builders from being able to provide affordable housing at all levels. For every $1,000 increase in the price of a home, 20,000 people are priced out of the market.

Now, in the very limited time that I have, I would like to offer some specific comments on two of the federal mandates cited in your report, namely the Endangered Species Act and the Clean Water Act, which are two of many of the mandates listed, plus those that were not listed in your report, that directly affect the members of our industry.
The Endangered Species. With respect to the Endangered Species Act, we agree that the Commission -- we agree with the Commission's finding that the Act impacts significantly on state and local governments without allowing their input into the decision-making process.

NAHB strongly supports the Commission's recommendation that state and local governments should be given an official role in the management and planning decisions affecting the listing process beyond the sparse requirements that are currently in effect.

The biggest problem represented by the Endangered Species Act is the listing process. As identified in the report, the federal government standard of relying on the best available scientific and commercial data has resulted in poor listing decisions based on insufficient data.

The fact is that best available data we don't believe always represents the most scientifically reliable data.

When the federal government lists a
species as endangered, state and local governments are affected because private development is stopped. Loss of development or delayed development means the loss of thousands of dollars in property tax revenues.

As an example, in Travis County, Texas, the county appraisal district estimated that land values in that area fell from $335 million to less than $57 million merely upon the listing of the golden cheek warbler. There are also lost revenues for abandoned business ventures and foregone taxes to the city, school districts and county government.

In addition to costs created by the listing process, there are the more expensive costs that are needed to protect habitat and hopefully recover the species.

The costs associated with developing and implementing habitat conservatory plans and recovery plans also pose significant problems to state and local governments. The federal government has dictated highly stringent guidelines to follow in developing these plans, yet it plays a minor role in
either developing or in their funding.

   In addition, these plans take years to
prepare during which time development is often
stopped, further straining state and local government
budgets.

As respects the Clean Water Act, the
Commission has accurately portrayed the excessive
cost to state and local governments, costs which are
often passed on to the consumer, usually the new home
buyer. In 1993, in direct response to the
unavailability of federal funding for the
administration of the NPDES permit storm water
program, the Maryland Department of the Environment
proposed permit fees ranging from $700 to $2,500 per
lot. This would have directly affected the cost for
us to do business in the State of Maryland.

Funding, however, is not the only problem.
The other problem is the lack of flexibility given to
the states to identify and address their priorities
instead of the federal government's priorities.

In its 305(b) report to EPA, the State of
Maryland has identified excess nutrients as being its
most serious water quality problem. Due to this inflexibility, however, the State may have to put off addressing the excess nutrients until it complies with all the requirements of the Clean Water Act.

In order for these difficulties to be overcome, NAHB urges the Commission to expand your recommendation to both restore federal funding and give state and local governments greater flexibility for implementing the federal mandates for clean water. The members of NAHB truly care about their communities. They care about the environment. And, they care about affordable housing. And, that's why we have been pleased to make these short comments on this very pressing issue.

Thank you for allowing me to speak. Thank you, sir.

CHAIRMAN WINTER: Thank you, Mr. Mitchell, for that very incisive statement. And, we appreciate you taking the time to share it with us.

MR. MITCHELL: Thank you.

CHAIRMAN WINTER: Thank you, sir. Are there others who would like to be heard?
Have you been able to --

ATTENDEE: I have contacted her. And, she

is on her way as fast as the cab can get her here.

CHAIRMAN WINTER: Okay. Well, we will

wait a few minutes.

ATTENDEE: At 3 o'clock, you can go on

your merry way if she isn't here.

CHAIRMAN WINTER: Let's say we will stay

until 3 o'clock. Mr. Franke and I have to catch an

airplane.

He has to go all the way back to Salem,

Oregon. And, I have to go to Jackson, Mississippi.

Well, we will stand in recess for five

minutes and hope that we have a final witness up

here.

(Whereupon, a recess is taken at 2:55

p.m., to reconvene at 2:58 p.m., this same date.)

CHAIRMAN WINTER: I am advised that we

have Christy Willis of the Association on Higher

Education and Disability here. We would be pleased

to hear from you.

Let me say there has been more members of
the Commission here earlier today. And, we are sorry
that we are so limited in number right now.

But, we welcome you.

STATEMENT OF CHRISTY WILLIS

THE ASSOCIATION ON HIGHER EDUCATION AND DISABILITY

MS. WILLIS: Terrific. Thank you. Good
afternoon.

My name is Christy Willis. And, I am a
member of the Association on Higher Education and
Disability. I have been asked by the Board of
Directors to deliver these remarks.

The Association on Higher Education and
Disability, AHEAD, is made up of professionals
working in the area of support services for students
with disabilities. Our perspective is also informed
by the educational experiences of our students who
have been educated since the passage of the
Individual with Disabilities Act, IDEA, and by the
experiences of many of our members who have
previously been educators at the K through 12 level.

Therefore, our remarks will focus on the
recommendations advanced by the U.S. Advisory
Commission on Intergovernmental Relations, ACIR, or Commission, in its preliminary report, the report, as it relates to the Americans with Disabilities Act, ADA, and IDEA. AHEAD wishes to express its concern with the report which, in our opinion, demonstrates a lack of familiarity with the purposes and realities of the ADA and the IDEA.

First and foremost, the ADA is a civil rights statute, passed pursuant to Congress' powers under both the Fourteenth Amendment and the Commerce clause. The IDEA also has its basis in the Constitution.

In passing the Unfunded Mandates Reform Act of 1995, the Act, Congress specifically excluded from the Act's review civil rights laws and other laws enforcing the constitutional rights of individuals. Therefore, to the extent that the Commission has addressed the ADA or the IDEA, it has done so beyond the scope of its authority. And, its recommendations cannot be permitted to remain in any final report issued by the Commission.

Furthermore, both the ADA and the IDEA

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were passed after years of extensive public hearings before both houses of Congress. As a funding statute, the IDEA is reauthorized every three years. Indeed, Congress has considered few statutes more fully than the ADA and the IDEA.

In addition, integral aspects of the Commission's analysis of both the ADA and the IDEA are based on faulty premises and misconceptions. And, a certain irony pervades the report.

In a political climate, which is hostile to government intrusion in citizens' lives, the ACIR's recommendations for federal government oversight and the assumption by the governmental agencies of legal representation of private, individual civil rights actions must be viewed with skepticism. Many of the ACIR remarks are contradictory.

That having been said, AHEAD wholly supports some of the suggestions contained in the ACIR report with respect to implementation of the ADA. In particular, we agree that the state and local governments, as well as private institutions,
would benefit greatly from increased technical assistance and education.

Research conducted thus far suggests that much of the fear about the ADA is based on lack of knowledge. In fact, a careful review of case law, which AHEAD has analyzed, indicates that the courts have been extremely conservative in their interpretation of the ADA and that the judiciary, in general, has not extended ADA protection to persons not intended to be covered by the ADA.

The reality, then, is that state and local governments have not been held to unreasonable standards of compliance with the ADA but, nevertheless, need a great deal more technical assistance to remove the handicap of ignorance as a barrier to compliance.

AHEAD also fully supports the extension of federal financial support to public institutions in order to retrofit buildings to come into compliance with the applicable regulations. However, the Commission has mistakenly looked to all titles of the ADA when, in fact, only Title II applies to state
governments.

Therefore, to the extent the report addresses the EEOC and other agencies, it has acted beyond the scope of the task it was assigned. Few of the agencies the report lists have enforcement -- lists as having enforcement powers do, in fact, have such powers.

Therefore, AHEAD wishes to express its concern with the ACIR recommendation that there be one single enforcement agency. First of all, it falsely assumes that the Department of Justice, DOJ, is capable of enforcing the individual civil rights of 49 million Americans.

As it is, the U.S. Department of Education's Office for Civil Rights, OCR, has been a leader in ensuring equal opportunity for students with disabilities in all educational arenas and has a proven track record of knowledge regarding disabilities, in particular, in post-secondary educational settings. The Department of Justice, DOJ, does not, which is why we surmise DOJ delegated its enforcement responsibilities under Title II of...
the ADA to OCR with respect to claims lodged against school districts and public colleges and universities.

We have found this workable. Indeed, we would support DOJ delegating Title III enforcement to OCR, since OCR retains Section 504 jurisdiction over these same private institutions.

In this way, the federal government would avoid duplication of effort and utilize the resources it has more effectively.

AHEAD strongly objects to ACIR's recommendation curtailing the private right of action remedy to redress violations of the ADA. It is axiomatic that the doctrine of separation of powers provides a system of checks and balances.

In a tri-partite system of government, the concepts of judicial review and a private right of action are fundamental and were enunciated early in our history by the first Chief of Justice of the U.S. Supreme Court. Without these protections, an administrative officer or board would, in essence, be given a blank check to enforce the law as he or she
personally saw fit.

A private right of action is necessary to avoid that eventuality. Furthermore, the doctrine of separation of powers demands that current enforcement mechanisms of the ADA, which are the same as all other civil rights statutes, remains intact.

It violates basic principles of the separation of powers for the federal government to act as the sole investigator, finder of fact and legal representative of individual citizens in private civil rights actions.

Furthermore, the practical realities are that while DOJ is currently entitled to bring litigation on behalf of the citizenry, a careful review of the cases brought by DOJ demonstrate the limited role this body can necessarily play due to a lack of resources. This is not to suggest the vital role that DOJ does play in its educational and enforcement roles.

Indeed, DOJ has been instrumental in attacking wide-scale abuse and challenging practices where a positive ruling is likely to have a ripple
effect throughout society.

As the law is being enforced now, many consumers are frustrated at the inability of the EEOC and the DOJ to process their complaints. Due to limited resources, DOJ does not file claims on behalf of single consumers unless the ruling is expected to have broad impact.

For the vast majority of individuals with disabilities, their claim is important, if not vital to their lives, even if a positive ruling does not establish any precedent beyond their case.

There can be no dispute that much of the discrimination that goes on in society continues, even under existing ADA law, due to a lack of enforcement.

Thus, any effort to curtail what limited enforcement exists will strike a terrible blow to equal opportunity for individuals with disabilities.

The Commission has mistakenly assumed that terms contained in the ADA such as reasonable accommodation, undue burden and readily achievable are "vague and overly broad." These terms, imported
directly from Section 504 of the Rehabilitation Act of 1973, have applied to the states for over 20 years.

An extensive body of law gives specific guidance regarding the application of these terms. And, they form the basis of defenses available to the states.

Definitions must be broad enough to allow for compliance by entities with varying needs and abilities. Therefore, AHEAD objects to any weakening of definitions such as reasonable accommodation.

The nature of disabilities requires a flexible approach. One size fits all will never do justice to the treatment of persons with disabilities.

Moreover, there is no evidence that court decisions have interpreted this language in anything but a reasonable manner. Similarly, the phrase "undue burden" allows state and local governments and the judiciary to examine each situation on a case by case basis.

The ACIR's objections are ironic because,
Left to their own devices, we have no doubt that many states and local communities would not act to ensure equal protection under the laws. Even read in its broadest sense, the ADA significantly compromises the rights of individuals with disabilities.

Congress recognized that a true equality would require that all buildings be made accessible but understood that such a mandate was not feasible. This is why Congress chose to place stricter requirements upon "new construction" while permitting mere program access for existing facilities.

An example may be illustrative. Jane, who uses a wheelchair, is thrilled at the opportunity to go on to college at the University of State. For the first time, she, like her other peers, will be living away from home.

However, because all of the residential housing on campus falls within the existing facilities language of the ADA, Jane is merely entitled to program access. In other words, Jane
will not be given the full range of options enjoyed
by all other students on campus.

Thus, if there are three residence halls
which serve women, it is very likely that Jane will
be relegated to a choice of one and will likely end
up living on the first floor.

What else is Jane denied? The opportunity
to go upstairs next door and visit her best friend,
who lives on the third floor of that building; or,
evven to meet her in the hall’s cafeteria, which is
inaccessible.

Jane is also denied the opportunity to
attend a party on one of the floors in a co-ed
residence because she either cannot get in the door
or up the stairs. Thus, even at its best, the ADA,
as it is currently written, denies true equal
protection for individuals with disabilities.

Therefore, AHEAD cannot support any
efforts to weaken what must be viewed, at best, as a
first step in equal protection for persons with
disabilities.

In addressing the IDEA, the Commission has
again exceeded the scope of its charge. As mentioned earlier, the IDEA has its roots in constitutional rights and has, without a doubt, been fully considered by Congress.

In addition, the IDEA is not an unfunded mandate. It is a funding statute which has not been funded to its fullest extent.

We wholly support the Commission's recommendations for increasing this funding. We do not support the Commission's recommendations which would neutralize the statute's purposes.

The ACIR's recommendations evidence a lack of familiarity with the IDEA. The fact that litigation occurs and that school districts have been compelled to live up to their responsibilities is not evidence that the due process rights of children and their parents or legal guardians should be abridged in some way.

The Commission would do well to recognize that the IDEA is procedural. The remedies are in the nature of due process pursuant to parents' basic fundamental rights to educate their children and the
children's rights to free and appropriate public education.

The Commission would also do well to recognize that what the local school districts cannot fund, the state must; that not educating disabled children in the least restrictive environment costs more than segregated special education or institutionalization; and, that educating disabled children to become productive, taxpaying citizens is cheaper than ignoring their education and consigning them to permanent status in the welfare state.

The ACIR is apparently unfamiliar with the practical realities of IDEA compliance. In reality, school districts tend to avoid classifying children as needing special educational services.

The potential for increased funding is not sufficiently lucrative to make it worthwhile to classify children as disabled. And, the Commission's report gives a false impression of what is really happening in the schools.

Parents and school districts are not equal bargaining parties. School districts are represented
School districts spend money litigating cases that never would have been filed if the district had provided these children with a free appropriate public education when they were first identified.

Furthermore, AHEAD does not support the elimination of parents' rights to judicial review.

Again, the Commission's lack of familiarity with the realities of IDEA compliance is clear.

Most impartial hearing officers are former school officials who are anything but impartial. In many areas, it is a foregone conclusion that the parents will lose at the impartial hearing level.

And, in many states, the only level of administrative process is the impartial hearing. Most parents cannot afford representation and are unable to assert their children's rights on their own.

Without the ability to appeal to the courts and the possibility of attorneys' fees as a remedy, parents and disabled children will be at the
mercy of a biased system.

In sum, AHEAD appreciates that certain aspects of the ADA place financial burdens upon public institutions. And, to the extent that the federal government has the resources to offer financial and technical assistance to state and local governments, we wholeheartedly support such measures.

We cannot, however, support legislation that would condition the exercise of one's civil rights based upon financial considerations alone. To do otherwise is fundamentally at odds with this country's civil rights laws.

CHAIRMAN WINTER: Thank you very much, Ms. Willis.

We would like to hear now from Barrie Tabin of the Public Sector Fair Labor Standards Coalition.

STATEMENT OF JEANINE MARKOE

PUBLIC SECTOR FAIR LABOR STANDARDS ACT COALITION

MS. MARKOE: Actually, there are two of us on this that would like to present before the Commission. My name is Jeanine Markoe. I am with ACE-FEDERAL REPORTERS, INC.
the Government Finance Officers Association.

And, I am here with Barrie Tabin of the National League of Cities. And, we are here on behalf of the Public Sector Fair Labor Standards Act Coalition.

And, we would like to thank you very much for giving us a chance to testify before the Commission.

CHAIRMAN WINTER: Thank you for coming. We welcome your testimony.

MS. MARKOE: The Public Sector Fair Labor Standards Act Coalition was formed in response to the many difficulties encountered by public sector employers in implementing the Fair Labor Standards Act. The coalition includes state and local government associations, along with individual states, counties and cities, and represents local elected officials and state and local government managers in virtually every state.

The application of the Fair Labor Standards Act to the public sector has created a number of concerns for state and local governments,
particularly surrounding the professional, executive and administrative exemptions. The resulting exposure to litigation has produced enormous liabilities for state and local governments and taxpayers and continues to threaten jurisdictions' fiscal solvency.

Conflicts between the Fair Labor Standards Act regulations and state and local government policies and accountability laws have disallowed numerous management level employees, often earning between $40,000 and $100,000 annually, from qualifying under the white collar exemption tests. Ambiguity of the regulations have made it nearly impossible for public employers to discern who should and should not be receiving overtime compensation.

And, the unsuccessful attempts by the Department of Labor to revise the Fair Labor Standards Act after its extension in 1985 and 1986 to non-federal public employees have left the outdated regulations subject to various and often inconsistent judicial interpretations throughout the country.
The coalition's efforts to seek comprehensive legislative or regulatory reform have been met with resistance. As a result, federal courts continue to find many highly paid managerial employees entitled to back overtime pay.

The existing liability for many states and localities is in the millions, while the potential liability threatens to cause fiscal disaster.

The coalition, therefore, greatly appreciates the insightfulness behind ACIR's recommendations on this difficult and costly unfunded mandate. Our coalition continues to work for comprehensive reform of the Act amenable to the public employers and employees.

However, the grave impact of this mandate on states and localities and the hesitation of the Administration or Congress to alleviate this liability underscores the importance of ACIR's recommendation for repeal. It is a recommendation that should be carefully considered by Congress.

Thank you.
STATEMENT OF BARRIE TABIN

PUBLIC SECTOR FAIR LABOR STANDARDS ACT COALITION
NATIONAL LEAGUE OF CITIES

MS. TABIN: Again, thank you very much for allowing us the opportunity to come before you. I just wanted to take a moment to reiterate a little bit about what Jeanine said and then maybe to comment briefly on some of the criticism we have seen of the Commission's report, criticisms that, of course, we disagree with.

Again, we very much appreciate the insightfulness behind the Commission's report concerning the FLSA. We think it's important for people to understand that there have been groups, like the Public Sector FLSA Coalition, that have been urging comprehensive reform of this Act for many years and, in fact, since 1985 when it became applicable to the public sector.

And, since 1985, both Congress and the Department of Labor have actually acknowledged that the Act, the way it's written, the regulations the way they are written, were never really intended to
apply to the public sector. Yet, despite the fact
that they come forward with these acknowledgements,
they failed to make any attempt to redo the Act or
the regulations to suit the needs and address the
needs of the public sector.

That is why we were so pleased when we saw
the issue of repeal being raised. In fact, it may be
one of the few ways to resolve the great burden that
has been placed on the public sector by the FLSA.

Another example that I would like to raise
is that we have been -- despite the fact that the
Department of Labor has said that there is a problem
with the Fair Labor Standards Act and has
acknowledged that the Act needs to be revisited and
revamped to meet the needs of the public sector, our
Public Sector Coalition has filed many briefs and
lawsuits on behalf of municipalities and states,
lawsuits that are brought by other plaintiffs,
individuals and union suing municipalities for
violations of the FLSA. And, in each case we file a
brief on the side of the municipality, the Department
of Labor, despite the fact that they have
acknowledged problems with the Act, has been filing a
brief on behalf of the union.

So, it’s important, I think, for people to
realize that the solutions come, in part, because
although there is recognition of a problem there is
not much resolution being done -- much being done in
the way of resolution to address the problem.

We have also reviewed some of the White
House criticism of the report. And, we just wanted
to comment briefly on that.

The White House had reached a conclusion
that the draft report had focused on the requirements
of specific statutes without establishing the
sufficient framework for their consideration. And,
we believe in the case of ACIR, that’s the Public
Sector Coalition, that a sufficient framework was
clearly established to urge repeal.

And, this is just something that was
quoted in the report. The report notes that the
Act’s "overtime pay provisions, in particular, have
resulted in substantial litigation with many state or
local employees winning retroactive pay for work
deemed by a court to qualify as overtime. The
liability for many states and local governments is in
the millions and could go much higher."

The report also mentions that the
Department of Labor fails to assist state and local
governments in dealing with burdens imposed by the
FLSA. The report goes on to mention that questions
of applicability of the FLSA by state and local
governments generally are not raised out of dispute
with the basic goal of the Act, rather questions have
been raised over the intrusiveness of the federal law
into matters that fall exclusively within the
jurisdiction of state or local government.

We think that this clearly lays the
groundwork for why repeal was suggested, that it
wasn't something simply pulled out of thin air. And,
might I mention that although we are with the Public
Sector Coalition, the National League of Cities was
involved in a lawsuit many years ago, the National
League of Cities versus Usry, where we actually were
litigating the issue of the Tenth Amendment’s
applicability to the Fair Labor Standards Act, the
fact that it shouldn’t apply to state and local
governments because it’s a violation of the Tenth
Amendment.

We believe that general intrusiveness into
authority of state and local governments, in
combination with the Act’s extremely high financial
cost to state and local governments, and DOL’s
failure to address the problem through regulations --
where addressing the problem through new regulations
would certainly be possible -- is what led ACIR to
conclude that repeal is the best resolution.

And, our coalition, while perhaps some
members feel slightly differently about the nature of
repeal -- and let me just go on record as saying that
the National League of Cities supports repeal, we all
believe that this is an option that should be
examined by Congress.

So, thank you very much. And, if you have
any questions, we would be happy to answer them at
any time.

CHAIRMAN WINTER: We thank you both for
that testimony. Thank you for your interest.
Are there others who desire to testify at this time?

(No response.)

CHAIRMAN WINTER: Hearing that there is no other person who desires to testify, let me thank all of you who have testified, and those who have preceded you, for expressing your interest in these proceedings. And, we thank you for the contribution that you have made.

I can assure you that they have been listened to, have been duly recorded and will be taken into account as we attempt to formulate a final report.

Let me say to my colleagues on the Commission that I appreciate very much their attendance here today. We had had others earlier.

Mr. Franke has come farther than anybody else, from Salem, Oregon. Henry Smith has been a very, very faithful member of this Commission, representing the Secretary of Education, Dick Riley.

And, Henry, we thank you for your participation today.
I want to thank the members of the staff, Bill Davis and Phil Dearborn, Bruce McDowell, and all the others who have worked on this report. It has been a difficult process, one that I can assure you that we have labored conscientiously at and will continue to do so.

But, if there is no other testimony to be heard, I will declare this hearing adjourned, with appreciation to everyone who has been involved in it.

Thank you very much.

(Whereupon, the hearing is adjourned at 3:25 p.m., Tuesday, March 26, 1996.)