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MEETING OF THE

UNITED STATES ADVISORY COMMISSION

ON INTERGOVERNMENTAL RELATIONS

800 K Street, N.W.

Suite 450, South Building

Washington, D.C. 20575

\* \* \*

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.

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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

P R O C E E D I N G S

(9:04 a.m.)

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,

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1 by Internet message and by telephone.

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

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

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

18 Let me emphasize that it is intended to  
19 be, and it is, only a preliminary report; that is, a  
20 draft, a work in progress, a report subject to your  
21 critique, your comment, your criticism and your  
22 input. We will take what you present to us today and

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1 include it in our further deliberations in terms of  
2 arriving at a final report.

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

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

22 I want to also state to you that the

1 preliminary report that is the subject of this  
2 hearing covers only some of the subjects which the  
3 Commission was directed by the Congress to study.  
4 It's not intended to cover all of the matters  
5 included in Title 3 of the Unfunded Mandates Reform  
6 Act.

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

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

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

20 We are going to move through the testimony  
21 in the order in which you have requested to testify.  
22 And, I hope that you will observe the five minute

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1 limitation as to the length of your testimony.

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

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

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

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

19 Now, without any further ado, and in order  
20 to try to stick to our schedule, I want to call on  
21 the first witness. And, according to the information  
22 presented to me, that is Mr. Harold Shakeburger of

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1 the International Association of Fire Fighters.

2 Is he present? And, will he come around?

3 Welcome, sir.

4 STATEMENT OF BARRY KASINITZ

5 INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS

6 MR. KASINITZ: Thank you. And, I

7 appreciate this opportunity.

8 Mr. Shakeburger was not able to join us  
9 this morning. My name is Barry Kasinitz. And, I am  
10 the Legislative Assistant for the International  
11 Association of Fire Fighters.

12 We represent over 225,000 fire fighters  
13 and emergency responders throughout the United  
14 States. And, we do appreciate this opportunity to  
15 appear and express our reasons for opposing some of  
16 the recommendations in the preliminary report.

17 Our members are not insensitive to the  
18 fiscal constraints that state and local governments  
19 face. Throughout the years, we have witnessed  
20 decreasing fire department budgets, coupled with  
21 increasing fire fighter responsibilities. These  
22 burdens have affected us all.

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

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

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

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

22          The courts have affirmed that Congress not

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1 only has the authority to extend FLSA coverage to  
2 these workers but was acting in the national public  
3 interest to ensure that all workers are treated  
4 equally. There is no fairness or reason in now  
5 exempting a large section of the work force from the  
6 FLSA.

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

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

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

20 In reality, state and local government  
21 employees are the only workers in America who do not  
22 have basic collective bargaining rights. In many

1 states, public agencies would be free to unilaterally  
2 abolish the whole notion of overtime pay or minimum  
3 wage if the FLSA no longer applied to them.

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

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

17           For fire fighters, this is literally a  
18 matter of life and death. For instance, the  
19 Respiratory Protection Standard, commonly referred to  
20 as "two in/two out," requires that four fire fighters  
21 be involved in emergency operations during interior  
22 structural firefighting.

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1                   This staffing level is not the optimum.  
2                   It is the minimum.

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

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

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

21                  And, you acknowledged that those standards  
22                  are largely responsible for a 57 percent decline in

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1 workplace fatalities since the program's inception.  
2 You do not dispute that workplace safety is in the  
3 national public interest.

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

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

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

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

22 CHAIRMAN WINTER: Thank you, Mr. Kasinitz.

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1 I assure you those views will be considered very  
2 seriously by us.

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

6 I'm glad to see you. I had to come all  
7 the way to Washington to get to see you o see you.

8 STATEMENT OF **MANDY RODGERS**

9 PARENT OF CHILD WITH DISABILITIES FROM MISSISSIPPI

10 Ms. Rodgers: My name is Mandy Rodgers.  
11 And, I'm from Madison, Mississippi.

12 My husband and I have two sons, ages 7 and  
13 11, who have disabilities. Our oldest son has been  
14 enrolled in a special education program since the age  
15 of 2.

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

22 I am impressed with the work you have put

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1 into your review and analysis of IDEA. And, your  
2 work is certainly a positive step in the right  
3 direction for the future of our children.

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

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

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

20 Because of our personal experiences, we  
21 cannot agree with elimination of the statutory right  
22 of individuals to bring court actions to enforce

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1 rights provided by IDEA. If not for this right, I  
2 have serious doubts as to IDEA continuing to be a  
3 meaningful law.

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

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

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

19 Our Special Education Advisory Committee  
20 recently prepared a report on the unmet needs of our  
21 children. It's 24 pages long. If we didn't have  
22 this law, it would be massive.

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1                   Once again, I just would thank you for  
2 letting me come up here. And, just, you know, keep  
3 our children in mind.

4                   Thank you.

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

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

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

14                   STATEMENT OF ROBERT HERMAN

15                   PARALYZED VETERANS OF AMERICA

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

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

22                   I am here today to respond to ACIR's

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1 recommendations about Title II of the ADA in its  
2 preliminary report entitled, "The Role of Federal  
3 Mandates in Intergovernmental Relations."

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

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

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

22 As an initial matter, PVA believes that

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1 ACIR does not have authority to make recommendations  
2 about the ADA. While it is true that Title 3 of the  
3 Unfunded Mandates Reform Act expands the range of  
4 existing laws which fall within ACIR's scope of  
5 review, the language and legislative history of the  
6 Act established that Congress does not consider civil  
7 rights laws such as the ADA to be unfunded mandates.

8 Since only unfunded mandates are subject  
9 to the Act's requirements, ACIR has no authority to  
10 make recommendations about other laws.

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

16 According to a report published by the  
17 United States Conference of Mayors entitled,  
18 "Implementing the Americans with Disabilities Act,  
19 Case Studies of Exemplary Local Programs," Arlington  
20 Heights, Illinois, Austin, Texas and Greensboro,  
21 North Carolina were among 15 communities nationwide  
22 cited by the U.S. Conference for their use of

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1 thoughtful financing and staffing, prompt planning  
2 and close consultation with the local community of  
3 people with disabilities to comply with Title II.  
4 Perhaps compliance has been a challenge to these and  
5 other communities but not troubling.

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

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

22           First: The ADA is a civil rights law.

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1 And, civil rights are not dependent upon the  
2 appropriation of funds.

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

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

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

21 Third: Title 2 of the ADA and its  
22 implementing regulations did not take cities and

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1 states by surprise. Terms, such as undue financial  
2 burden, were taken directly from regulations  
3 enforcing Section 504 of the Rehab Act of 1973.

4 Most, if not all, public services have  
5 been required to provide program access under Section  
6 504 since 1973. Title 2 of the ADA was required  
7 because of the inconsistency and continuing  
8 discrimination found among state and local government  
9 programs years after 504 was enacted.

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

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

21 Discrimination on the basis of disability  
22 is no more or less repugnant than discrimination on

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1 the basis of race, color or national origin. The  
2 elimination of discrimination on the basis of  
3 disability is a goal worthy of the full range of  
4 enforcement remedies.

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

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

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

20 Thank you for your time and attention.

21 CHAIRMAN WINTER: Thank you very much, Mr.  
22 Herman, for being here and for that very good

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1 testimony.

2 We shall next hear from Mr. Richard  
3 Treanor. Mr. Treanor, welcome. It's nice to see  
4 you.

5 STATEMENT OF RICHARD TREANOR

6 LAWYER

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

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

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

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

21 The emperor of Austria, on hearing Mozart  
22 play for the first time, said, "Too many notes, too

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1 many notes." The Advisory Commission has recommended  
2 that individual disabled people not be allowed to sue  
3 state and local governments for noncompliance with  
4 ADA. Too many suits, too many suits.

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

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

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

20 ADA has always been regarded as civil  
21 rights legislation and not an unfunded mandate. And,  
22 there is a serious question whether ACIR has any

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1                   Section 504 was never paid any attention  
2 to. It is not parents nor the children that have  
3 twisted the sterling intent of Congress to help  
4 children that have very severe needs.

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

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

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

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

22                   Illiteracy is the main problem of the

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1 public school systems nationally.

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

7 Most local education agencies will not pay  
8 for good teaching training in methods that have been  
9 proved to work for the learning disabled students.  
10 Recommend that federal monies go into the colleges  
11 and universities and cease if they do not start  
12 teaching the student teachers how to teach with  
13 methods that have been proven to work.

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

20 Most local education agencies have abused  
21 IDEA by using it as a dumping place for children that  
22 are not learning to read, because schools are using

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1 the whole language method.

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

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

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

12 Thank you.

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

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

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

22 Thank you for coming.

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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.

1           The Department can only do so much and  
2 can't help everyone directly. That's one of the  
3 reasons the Justice Department describes itself as  
4 the President's law firm and not the peoples' law  
5 firm.

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

12           This disingenuous proposal, which focuses  
13 on governmental roles and ignores the merits of Title  
14 2, provides political cover for those who really  
15 don't care whether a person in a wheelchair can enter  
16 a courthouse or whether a mute or deaf person can  
17 report a fire or burglary.

18           In addition, the proposal is uncalled for,  
19 as there has been relatively little private  
20 litigation against state and local governments.

21 After all, how many people in wheelchairs have the  
22 resources to pay an attorney to file suit against a

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1 city or county who have a whole host of attorneys  
2 already working for them?

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

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

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

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

19 This proposal will injure many people.  
20 Balanced solutions are not found in political dogma.  
21 After all, some might view the Bill of Rights as an  
22 unfunded federal mandate.

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1 Metaphysical models about government do  
2 not meet challenges and opportunities. We can't sit  
3 around and discuss Adams Smith and the Articles of  
4 Confederation all day long.

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

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

16 Thank you very much.

17 CHAIRMAN WINTER: Thank you for your  
18 statement.

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

21 CHAIRMAN WINTER: I recognize next Ms.

22 Billie Jean Hill for the National Council on

1 Disability. Ms. Hill.

2 STATEMENT OF BILLIE JEAN HILL

3 NATIONAL COUNCIL ON DISABILITY

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

6 And, I'm a civil servant. And, all civil  
7 servants have in their position description other  
8 duties as assigned.

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

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

15 I am here in the place of John Kemp, who  
16 is ill, who is a member of the National Council.  
17 Also, I am originally from Mississippi. So, I want  
18 to put that in.

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

21 There are 15 members who are appointed by  
22 the President and confirmed by the Senate. And, we

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1 have a unique mandate.

2 We are to look at all the laws that impact  
3 on people with disabilities. And, even more  
4 important, to make recommendations to the President  
5 and to the Congress on ways that these laws impact on  
6 49 million Americans with disabilities.

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

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

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

21 Thank you.

22 CHAIRMAN WINTER: Thank you, Ms. Hill, for

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1 a very fine statement.

2 Let me recognize now Ms. Justine Maloney,  
3 representing the American Speech, Language and  
4 Hearing Association and the Learning Disabilities  
5 Association.

6 Thank you for coming.

7 STATEMENT OF JUSTINE MALONEY

8 AMERICAN SPEECH, LANGUAGE AND HEARING ASSOCIATION  
9 AND THE LEARNING DISABILITIES ASSOCIATION

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

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

21 Over 42 million Americans have a  
22 communication disorder, making these the nation's

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1 most prevalent disabilities. ASHA's areas of  
2 concern, therefore, include health care, education,  
3 rehabilitation, anti-discrimination on the basis of  
4 disability and safety in the workplace and in the  
5 environment.

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

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

20           These recommendations clearly demonstrate  
21 the faulty conclusions based -- or contained in the  
22 preliminary report. The most blatant inaccuracy with

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1 regard to IDEA, as well as the ADA, is its  
2 identification as an unfunded mandate.

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

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

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

19           Third, IDEA is a condition of a federal  
20 assistance law that imposes obligations on states  
21 when the federal government gives them money. Since  
22 the program is involuntary by definition, they cannot

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1 be considered unfunded mandates.

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

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

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

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

21           As far as the Learning Disabilities  
22 Association is concerned, we are a volunteer

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1 organization of over 60,000 individuals with learning  
2 disabilities, their families and friends and the  
3 professionals who support them. We strongly support  
4 the comments of ASHA on the preliminary report.

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

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

17 Although LDA agrees that the federal  
18 government should live up to its promise of funding  
19 up to 40 percent of excess costs, its failure to do  
20 so does not lessen the responsibility of state and  
21 local school districts to meet the requirements of  
22 the law as long as they accept the federal money.

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1                   Secondly, claims that state and local  
2 school districts over-identify children as disabled  
3 in order to collect federal funds is irrational.  
4 Children may be over-identified for a number of  
5 reasons, but the financial incentive is not one of  
6 them.

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

12                   Unless the current funding allocation  
13 based on the count of children with disabilities  
14 actually served is changed to one based on the  
15 percentage of population, this we would oppose  
16 because then there would be an incentive not to  
17 identify children with disabilities. And, we are  
18 very concerned that under those circumstances,  
19 students with learning disabilities who have need of  
20 IDEA but whose disabilities are less obvious would no  
21 longer be served. This, indeed, is already  
22 happening.

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1 We also feel that relaxing costing  
2 requirements should be a justification for  
3 eliminating the provisions and protections of IDEA.  
4 Although the report does not specify the requirements  
5 which should be relaxed, the assurance of an  
6 appropriate education and the development of an IEP  
7 by a team of parents and educators seem to be  
8 targeted.

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

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

18 The statistics speak for themselves. In  
19 the 20 years since the passage of the law, despite  
20 the fact that over 5 million children with  
21 disabilities have been served, there have been fewer  
22 than 1,200 reported court cases.

1 LDA does support the use of mediation  
2 instead of a due process as an option for parents.  
3 However, we would oppose any requirement that parents  
4 must go to mediation.

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

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

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

21 Thank you very much.

22 CHAIRMAN WINTER: Thank you, Ms. Maloney.

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1 I next recognize Mr. Paul Marchand with  
2 the ARC.

3 STATEMENT OF PAUL MARCHAND

4 THE ARC

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

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

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

21 I was personally involved in the enactment  
22 of both of these statutes and will always remember

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1 the strong bipartisan effort by the Congress to  
2 create these laws.

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

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

19           Enactment of the ADA in 1990 closed the  
20 door on decades of overt and widespread  
21 discrimination on the basis of disability. During  
22 the legislative process leading up to the passage of

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1 ADA, Congress heard countless stories of totally  
2 offensive, yet completely legal, discrimination in  
3 the workplace, in public settings like recreation  
4 facilities and programs, and in public  
5 transportation.

6 Congress reacted to this fundamental  
7 unfairness by asserting its role as the ultimate  
8 protector of civil rights and by passing the ADA.  
9 Yet, despite these legislative victories, parents of  
10 people with mental retardation still face roadblocks  
11 in securing their children's rights.

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

18 You must always remember that the primary  
19 reason groups like ours sought redress from the  
20 United States Congress for ADA and IDEA was because  
21 many state and local governments had chosen to view  
22 people with disabilities as second-class citizens.

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1 And, many of these governments would prefer to  
2 continue this practice today.

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

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

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

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

19 To say that the 120,000 members of our  
20 Association, most of whom are parents of individuals  
21 with mental retardation, are greatly upset and  
22 disappointed with this Commission's draft

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1 recommendations would be an understatement. To add  
2 insult to injury, many of the Commission's findings  
3 and recommendations appear to be based on the same  
4 misunderstandings and bias people with disabilities  
5 have faced forever.

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

11 On what basis is that statement made?  
12 Data available to us indicate that slightly more than  
13 150 special education cases are heard in federal  
14 court annually.

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

19 This is not to say that many parents of  
20 special ed children don't face significant challenges  
21 in obtaining an appropriate education for their  
22 child. Thousands have such problems, but the vast

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1 majority are resolved, as they should be, during  
2 administrative proceedings as required by the law.

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

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

16           In regards to the ADA, the preliminary  
17 report recommends that the federal government  
18 increase federal funding to state and local  
19 governments regarding ADA compliance or modify some  
20 of the ADA's deadlines and requirements. From the  
21 ARC's perspective, this translates to pay up or get  
22 lost.

1                   This recommendation disregards both  
2 history and the requirements of the ADA. State and  
3 local governments have been covered by Section 504 of  
4 the Rehabilitation Act for more than 20 years.

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

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

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

20                   The Commission also ought to remove the  
21 private right of action under the ADA. Again, this  
22 recommendation is punitive.

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1                   Putting the onus exclusively on the  
2 federal government to pursue ADA remedies in the  
3 courts can only be seen as a back door means of  
4 gutting enforcement of ADA. How in the world could a  
5 shrinking federal government possibly carry out this  
6 recommendation? It couldn't and it wouldn't.

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

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

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

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1       aforementioned reasons.

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

4                   CHAIRMAN WINTER: Thank you, Mr. Marchand.  
5       Thank you for a very strong presentation.

6                   Next, I recognize Mr. Karl Bell and Ms.  
7       Linda Garrett of the National Education Association.  
8       Thank you for being here today.

9                   MS. GARRETT: Thank you.

10                                   **STATEMENT OF KARL BELL**

11                                   **NATIONAL EDUCATION ASSOCIATION**

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

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

18                   The National Education Association  
19       represents some 250,000 non-instructional school  
20       employees, including bus drivers, cafeteria workers,  
21       custodians, secretaries and many, many others. I  
22       appreciate this opportunity to speak with you today

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1 about the preliminary report on the U.S. Advisory  
2 Commission on Intergovernmental Relations.

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

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

18 The National Education Association  
19 believes that among the essential conditions for  
20 quality education is the ability of school districts  
21 to recruit, to hire, to retrain qualified employees  
22 for every position in our school life. For many

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1 school employees in the United States, the Fair Labor  
2 Standards Act maintains a standard that assures  
3 public employers are competitive with the private  
4 sector.

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

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

18 The fact that many employees have recourse  
19 to collective bargaining was used as an argument  
20 against the enactment of these laws. And, it is  
21 advanced as an argument for repealing coverage of  
22 state and local employees.

1           The National Education Association has  
2 long supported collective bargaining for education  
3 employees as a means of engaging employees and  
4 employers in a dialogue about wages, terms and  
5 conditions of employment. And, yet, public employees  
6 do not enjoy the same rights to recognition their  
7 private sector employees enjoy. At least one-third  
8 of the National Education Association's members do  
9 not have the rights to bargain under state law.

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

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

22           After all, the working conditions for

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1 public school employees are the learning conditions  
2 for our public school children. We urge the  
3 Committee to reject the report and maintain the vital  
4 protection for workers and school children  
5 nationwide, public and private.

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

8 CHAIRMAN WINTER: Thank you, sir.

9 STATEMENT OF **LINDA GARRETT**

10 NATIONAL EDUCATION ASSOCIATION

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

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

18 And, Governor Winter, I'm happy to say  
19 that I'm your neighbor to the east.

20 (Laughter.)

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

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

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

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

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

21 Such a move would, in the short-term, lead  
22 to a hodgepodge of differing state and local

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1 standards, ultimately leading to more litigation  
2 which would lead back to the need for federal  
3 legislation. Instead, the federal  
4 government should increase its financial commitment  
5 to help state and local governments pay the cost of  
6 these programs.

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

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

19 They have encouraged significant parental  
20 involvement in education. And, they have helped  
21 individuals with disabilities become full partners in  
22 our economic growth.

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1           We cannot afford to abandon these long-  
2 term benefits for short-term economizing.

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

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

12           Thank you so much.

13           CHAIRMAN WINTER: Thank you, Ms. Garrett.  
14 Are you from Dothan?

15           MS. GARRETT: Yes, sir.

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

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

22           STATEMENT OF LEE SAUNDERS

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1                   AMERICAN FEDERATION OF STATE, COUNTY  
2                                   AND MUNICIPAL EMPLOYEES

3                   MR. SAUNDERS: Good morning, Mr. Chairman  
4 and members of the Commission.

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

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

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

22                   As Labor Secretary Reich said in his

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1 comments on the report, "If the recommendations in  
2 the report were implemented, state and local  
3 government workers would become second-class citizens  
4 deemed unworthy of the same basic protections as  
5 their neighbors, friends and family who work in the  
6 private sector or for federal agencies."

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

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

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

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

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

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

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

17 Moreover, Congress amended the FLSA in  
18 1985 to provide state and local governments more  
19 flexibility in applying the law. It allowed them to  
20 grant compensatory time instead of overtime pay,  
21 included special rules for the use of volunteers and  
22 delayed the implementation of compliance obligations.

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1           The ACIR claims that under the FLSA, a  
2 state or local government cannot amend its personnel  
3 policies to accommodate situations unique to  
4 government employment or to reduce its budgets. In  
5 fact, nothing in the Act denies employers the  
6 flexibility to change work schedules, work shifts,  
7 operation schedules and hiring practices for the  
8 purpose of controlling overtime hours.

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

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

21           The Commission's argument that public  
22 employee unions will negotiate these protections even

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1 if Congress repeals them is without merit. Nearly  
2 two-thirds of state and local government workers do  
3 not belong to labor unions.

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

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

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

17 Other criteria ACIR used in its analysis  
18 also argue that OSHA should not be included in this  
19 discussion. First, the Commission was to focus on  
20 laws that involved substantial expenditure for state  
21 and local government. Federal grants can fund up to  
22 50 percent of the administrative costs for those

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1 states that chose to cover public sector workers.

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

8           Finally, the ACIR recommends that Congress  
9 repeal coverage for state and local government  
10 employees under the Family and Medical Leave Act.  
11 Contrary to ACIR's assertion, the FMLA does not  
12 represent a financial burden related to revising  
13 leave policies and continuing health insurance  
14 policies.

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

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1 absence or productivity.

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

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

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

21 Thank you.

22 CHAIRMAN WINTER: Thank you, Mr. Saunders.

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1 I next recognize Ms. Judith Lichtman of the Women's  
2 Legal Defense Fund.

3 Thank you for coming today. Welcome.

4 STATEMENT OF JUDITH LICHTMAN

5 WOMEN'S LEGAL DEFENSE FUND

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

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

14 In 1993, Congress passed the Family and  
15 Medical Leave Act to provide a safety net for  
16 families in times of crisis, ensuring that when  
17 family or health needs require that employees be out  
18 of work temporarily they do not lose their jobs and  
19 their financial security. Yet, in its preliminary  
20 report, the ACIR proposed to repeal the Family and  
21 Medical Leave Act for state and local government  
22 employees.

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1           The ACIR used no scientific methodology,  
2 offered no facts or statistics and cited no studies  
3 to support this proposal. To the contrary, the  
4 evidence shows that the Family and Medical Leave is  
5 working well to state and local employers and  
6 employees alike.

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

11           First: The ACIR was wrong when it  
12 concluded that a compelling national purpose does not  
13 justify the FMLA's application to state and local  
14 governments. As Congress found when it passed the  
15 FMLA, its justification is the dramatic increase in  
16 the number of women working outside the home in  
17 recent decades, which means that most American  
18 parents have both job responsibilities to meet and  
19 families to support and nurture, and the fact that  
20 many employers did not provide employees with job  
21 security during the periods of family and medical  
22 leave.

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1 State and local employees are no  
2 exception, which is why a congressional committee  
3 specifically rejected exempting state and local  
4 employees from the Family and Medical Leave Act.  
5 Now, one in two million American employees can be  
6 expected to use the Family and Medical Leave Act each  
7 year.

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

16 I also submit with my statement summaries  
17 of the experiences of eight other state and local  
18 employees who have relied on the Family and Medical  
19 Leave Act to meet their families needs. All these  
20 dedicated community workers, men and women, black and  
21 white and Hispanic, who come from across the United  
22 States and from a variety of occupations illustrate

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1 the crucial difference that the Family and Medical  
2 Leave Act makes in the lives of state and local  
3 employees.

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

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

16 There is no evidence whatsoever to suggest  
17 that public sector employees incurred any greater  
18 costs as a result of family and medical leave. To  
19 the contrary, state and local governments had even  
20 more expensive family and medical leave policies in  
21 place prior to the passage of Family and Medical  
22 Leave than the private sector.

1                   Thus, they had fewer adjustments to make  
2 to come into compliance with the Family and Medical  
3 Leave Act and, therefore, incurred fewer costs.

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

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

18                   Third: The ACIR's claim that state and  
19 local governments have little flexibility in  
20 implementing the Family and Medical Leave is also  
21 incorrect. In my written testimony, I cite some of  
22 the myriad decisions that state and local employers

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1 have the discretion to make about how they provide  
2 family and medical leave to their employees.

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

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

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

19           Thank you very much for hearing my  
20 testimony.

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

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1 today. Thank you.

2 MS. LICHTMAN: Thank you.

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

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

10 STATEMENT OF **MARK GLAIBER**

11 NATIONAL ASSOCIATION OF FLEET ADMINISTRATORS

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

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

17 I am the Fleet Manager of Dade County.  
18 And, I am representing the National Association of  
19 Fleet Administrators, which represents many of the  
20 40,000 cities and counties in the United States.

21 In preparing the testimony, I used the  
22 ACIR report, which listed criteria that would make

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1 the mandating of alternate fuels from the 1992 Energy  
2 Policy Act to municipalities to be among those items  
3 that should receive further scrutiny from your  
4 Committee. It's not that NAFA is against clean air  
5 or dependence on foreign oil, but we are against  
6 using municipalities as the implementor for this  
7 project.

8           Assuming the numbers I'm going to throw  
9 out to you -- and they are a little scary to us, but  
10 that's why I'm here -- in Dade County, we have over  
11 6,000 vehicles that would be affected by the Act. At  
12 \$5,100 each to convert a vehicle, that would be \$32  
13 million dollars or over a six year period \$5.4  
14 million a year.

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

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

22           The local government gets a break on

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1 buying fuel. And, we only pay 78 cents. So, the  
2 savings is mitigated, and we are only talking about  
3 30 cents.

4 The nature of a local government  
5 surrounded by boundaries is that we don't put a lot  
6 of gallons on per year. Therefore, we might use  
7 about 600 gallons a year, making the savings about  
8 \$200.

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

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

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

21 An average price on a fuel station is  
22 probably \$375,000 to keep the same capability of

1 fueling vehicles that we currently use. Again, using  
2 Dade County as an example, over six years, it would  
3 cost us \$1.7 million plus the \$5.4 million on  
4 conversions for an additional \$7.2 million a year.

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

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

18 As an example, in South Florida, the  
19 federal GSA in the State of Florida, while purchasing  
20 alternate fuel vehicles, have no place to fuel. We  
21 are building the first compressed natural gas fuel  
22 line, but it has taken us over two years to do that.

1                   Criteria Number 4 is subject to widespread  
2                   opposition. Most public and private fleet managers  
3                   are adamantly against the alternate fuel mandates as  
4                   costly, impractical and lacking logic.

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

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

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

16                  In the infrastructure nationwide, if we  
17                  looked at it, if only half of the municipalities,  
18                  let's say, 20,000 were to go ahead and build fuel  
19                  stations over the next six years, it would cost \$7.5  
20                  billion or a billion and a quarter a year. There's  
21                  roughly 1.4 million government vehicles in the United  
22                  States.

1                   If we assume 25 percent belong to federal  
2 and state and 30 percent are not in cities of 250,000  
3 or more which are not covered by the Act, we would  
4 still have to convert 120,000 vehicles a year. This  
5 would cost another \$612 million.

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

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

17                   Thank you.

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

20                   Mr. Bass, thank you for coming today.

21                   STATEMENT OF GARY BASS

22                   OMB WATCH

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

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

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

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

15 I think it's very true that what is one  
16 entity's unfunded mandate is another entity's rights  
17 or safeguards. And, I think you've heard that  
18 already around the issue of the Americans with  
19 Disabilities Act where no doubt for a locality it  
20 costs money, but by the fact that citizens and  
21 residents of that locality live there they feel that  
22 their right as an American citizen is to ensure that

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1 basic civil, if not constitutional, right.

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

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

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

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

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

18 The answer is to find a solution to that  
19 problem to meet the federal requirements that are  
20 established after a long debate and passage of  
21 federal law. So, that also is a difficult problem  
22 but one that calls for not repeal but improvement and

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1 flexibility, which is very different again than your  
2 preliminary report calls for.

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

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

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

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1 percent of employers indicated that.

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

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

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

16                   And, the second, which you heard also from  
17 AFSCME and from many in the disability community, is  
18 your recommendations, your preliminary  
19 recommendations, would create a really crazy quilt,  
20 if you will, of protections for some and not for  
21 others. Based on where you are employed, you may be  
22 protected and you may not.

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1                   For example, you have a situation where,  
2 as AFSCME described, if you work in a state  
3 government, the potential exists that you don't have  
4 OSHA protections. If you work in the private sector,  
5 then you may or will.

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

12                   Thirdly, your report, especially in light  
13 of the fact that I just made that what is needed is  
14 not gutting of public protections but finding  
15 mechanisms to assist state and local governments to  
16 meet those protections, your report does not look at  
17 alternative ways for state and local government to  
18 meet those needs. For example, the report doesn't  
19 even acknowledge some of the things you've already  
20 heard this morning such as the ADA already has in  
21 statute flexibility at the local level; the Family  
22 and Medical Leave doesn't even apply in certain cases

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1 where there are small entities; Safe Drinking Water  
2 has exemptions for small entities, on and on.

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

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

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

20 I am very pleased that you decided to have  
21 this hearing today. I think it is clear that with  
22 the number of people who have come in from out of

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1 town that there is a great deal of concern about the  
2 preliminary recommendations.

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

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

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

19 In the manner in which you have pursued  
20 the first batch, I am highly suspect of the manner in  
21 which you would go after additional issues. You are  
22 just seeing a small smattering of the public

1       constituencies that are affected by the initial  
2       report that you have.

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

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

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

16              Where most of us are speaking to you  
17      today, I put it as a question to you. What will be  
18      the process for developing the final recommendations?

19              Will your meeting, if you have a meeting,  
20      be open to the public? Will it be announced?

21              What will be the process? We are all now  
22      quite aware that ACIR is exempt from the Federal

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1 Advisory Committee Act, FACA, which is quite  
2 shocking.

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

7 Thank you.

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

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

12 STATEMENT OF JUSTIN DART

13 JUSTICE FOR ALL

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

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

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

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1 for all of your colleagues.

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

4 Go ahead, sir.

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

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

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

21 They are civil rights laws which simply  
22 guarantee to people with disabilities the same equal

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1 protection of the laws provided to all Americans by  
2 the United States Constitution. ADA and IDEA were  
3 rightly exempted from the recent unfunded mandate  
4 legislation and should not be addressed by the ACIR  
5 report on that subject.

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

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

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

18 Your suggestion that people with  
19 disabilities and their families should not have the  
20 right to initiate legal action to remedy infringement  
21 of their rights is profoundly disturbing. A  
22 principal purpose of civil rights laws is to protect

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1 citizens against oppressive government. A right with  
2 no citizen remedy is no right.

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

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

16 We will work with individuals, businesses  
17 and government at all levels to create common sense  
18 solutions that meet the particular needs of different  
19 parties and situations. But, we will fight to the  
20 end of time any change in law, regulation or  
21 enforcement that weakens our fundamental equality, as  
22 set out in the ADA and the IDEA.

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1                   Finally, Mr. Chairman, it is self-evident  
2 that every person in this nation has a vested  
3 interest in the success of the ADA and the IDEA.  
4 Disability will occur at some point in the lives of  
5 most individuals, certainly in the life of every  
6 American family.

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

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

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

22                   CHAIRMAN WINTER: Thank you, sir. That's

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1 a very compelling statement that you've made.

2 We thank you for being here.

3 MR. DART: Thank you.

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

7 Mrs. Dunaway, thank you for coming today.  
8 Where are you from?

9 MRS. DUNAWAY: Madison.

10 CHAIRMAN WINTER: It's good to see you.

11 STATEMENT OF **MARGARET J. DUNAWAY**

12 PARENT OF CHILD WITH DISABILITIES

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

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

20 The IEP is the core of the IDEA, for IEP  
21 along with related services enhance the education  
22 that serves our children and helps them overcome

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1 obstacles that could suppress their learning and to  
2 protect the children's constitutional rights and to  
3 keep their freedom of speech from being smothered out  
4 because someone wants to make a change.

5 What change? A change best for who?

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

9 Now, define perfect. Who here is perfect?

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

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

21 I would like for you to meet Ashley, who  
22 is now 13. She has been attending school since she

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1 was six months old.

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

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

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

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

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

21 Along with good grades, she plays sports.  
22 And, she performed in the Madison Civic Ballet in the

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1 "Nutcracker." Later, she entered the Little Ms.  
2 Madison pageant and placed first.

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

6 She and many children like her accept all  
7 the challenges. The stories -- the tasks are great.  
8 The determination are forever strong.

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

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

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

21 They are our children, yours and mine, our  
22 future tomorrow.

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1 Thank you.

2 CHAIRMAN WINTER: Thank you very much for  
3 that statement.

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

7 STATEMENT OF AL BILIK

8 AFL-CIO PUBLIC EMPLOYEE DEPARTMENT

9 MR. BILIK: Thank you very much, Governor.  
10 It's good to see you again.

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

14 CHAIRMAN WINTER: Yes, indeed.

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

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

21 We welcome your presence.

22 MR. BILIK: Thank you. My name is Al

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1 Bilik.

2 I am President of the AFL-CIO's Public  
3 Employee Department. It's a department that  
4 comprises 35 national unions, representing  
5 approximately 4.5 million public employees at all  
6 levels of governments  
7 -- federal, state and local -- throughout the United  
8 States.

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

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

20 That is, we ought to, on a bipartisan  
21 basis, look at our relationships in the various  
22 governments. But, it was in the Eisenhower

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1 Administration, as we will remember, that the first  
2 important verbal battles took place beyond the 30s on  
3 the question of what role the federal government  
4 should play.

5 And, education became a battleground.

6 And, the first important piece of legislation beyond  
7 the 1863 land grant program took place at that time  
8 in the name of the National Defense Education Act.

9 And, the highway system became national,  
10 not only in scope but in responsibility as well.

11 And, so there is nothing new about what we are  
12 talking about.

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

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

22 But, to get on with this question. You've

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1 heard from several people today who, in effect, would  
2 be saying the same thing I'm saying. So, I'm not  
3 going to repeat all that.

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

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

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

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1 determine appropriate governmental roles.

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

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

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

22           And, on the other issues, which I've

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1 already mentioned in passing, we really need to  
2 recognize that the states have simply not carried out  
3 their responsibilities to their own employees.

4 Having served as an organizer and a negotiator and  
5 whatever else I've done in the public sector labor  
6 movement for a very long time, the argument has  
7 always been, "We would like, through collective  
8 relationships with our employers, to pursue, on the  
9 one hand, the best interests of the workers because  
10 that's our job."

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

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

22 We have recommended it to our employers.

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1 We are available at all times to participate with  
2 them.

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

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

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

16 But, in "The Washington Post" editorial  
17 recently, which was labeled "Crawling to the Bottom,"  
18 the editorial noted that the result of a continuing  
19 lowering of payroll taxes, limiting of benefits and  
20 length of benefit duration in the states, that around  
21 30 percent of the unemployed now qualify for benefits  
22 at all. And, in Virginia, which is at the bottom of

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1 the national list, only 18 percent of the unemployed  
2 qualify for benefits.

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

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

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

16 And, what I would like to suggest finally  
17 is that instead of the quotation -- or, instead of  
18 the question that's raised by your Commission in your  
19 report -- and the question is, "Does the national  
20 purpose justify federal intrusion in state or local  
21 affairs?" I would suggest, respectfully, that you  
22 should ask the following questions:

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1           First, declare that the complexity of  
2 modern life intensifies the need in a federal form of  
3 government for the fullest cooperation of activities  
4 between the levels of government.

5           And, because population growths and  
6 scientific developments portend an increasingly  
7 complex society in future years that this is  
8 necessarily so, to bring together representatives of  
9 the federal, state and local governments for the  
10 consideration of common problems; to provide the  
11 forum for discussion of administrative and  
12 coordinating elements involving federal grants and  
13 other programs; give critical attention to the  
14 conditions and controls involved in the  
15 administration of federal programs; make available  
16 technical assistance; encourage discussion and study  
17 at an early stage of emerging public problems -- in  
18 other words, anticipate problems, not simply react to  
19 them; and, recommend, within the framework of the  
20 Constitution, the most desirable allocation of  
21 governmental functions, responsibilities and revenues  
22 among the several levels of government.

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1           In a nutshell, to do what you were told to  
2 do in 1959. This is the general statement of  
3 responsibility for your Commission.

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

6           CHAIRMAN WINTER: Thank you, Mr. Bilik.  
7 Thank you for being here.

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

11           I would call on Ms. Christine Woodell of  
12 the Mississippi Coalition of People with  
13 Disabilities, another of my fellow Mississippians.  
14 Thank you for being here today.

15                           **STATEMENT OF CHRISTINE WOODELL**

16           **MISSISSIPPI COALITION OF PEOPLE WITH DISABILITIES**

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

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

22           For the past several years, I've worked in

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1 the area of ADA compliance, including training and  
2 technical assistance. I was trained under a federal  
3 grant sponsored by the EEOC and the DOJ with the  
4 obligation to take my knowledge back into my  
5 community and state to assist in positive  
6 implementation of this law.

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

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

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

22 The response of the Commission member

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1 alluded to freedom of speech. What about our rights  
2 and our freedom as citizens of this great democracy?

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

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

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

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

18 Regardless of the language used, any  
19 document can be considered confusing or ambiguous.  
20 For example, the Bill of Rights was passed by  
21 Congress in 1789. While most agree that it is the  
22 foundation of our democracy, pure and clear in its

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1 intent, the language is still being debated by  
2 citizens and courts across our nation.

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

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

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

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

22 The requirement for state and local

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1 government entities is program access. Many of these  
2 changes are easily accomplished and not expensive.

3 Just as the business of the theatre is  
4 entertainment, isn't the business of government  
5 inclusion of all people, whether that means moving a  
6 council meeting or providing a sign language  
7 interpreter or allowing a man who uses a wheelchair  
8 to coach baseball? Isn't this inclusion the essence  
9 of what makes our country great?

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

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

20 The government should be in the forefront  
21 of showing commitment to all citizens.

22 You speak of a fear that this law is so

1 complex and difficult to interpret that it may result  
2 in unintentional discrimination. In virtually all  
3 cases, notice is made that an individual feels a  
4 discrimination has occurred and opportunity is given  
5 to address this issue.

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

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

12 In our nation's history, extending civil  
13 rights to minorities has made our nation prosper.  
14 The fundamental purpose of civil rights legislation  
15 is not simply to guarantee the equal pursuit of  
16 happiness but to empower people to make free choices  
17 and to take concrete actions which actually create  
18 happiness and prosperity in real life.

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

22 A change in the attitude of paternalism

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

5 Change can occur. And, it must occur.

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

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

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

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

22 Please use the power and influence of this

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1 Commission to help change these attitudes.

2 Thank you very much.

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

6 Ms. Johnson.

7 STATEMENT OF DEBRA JOHNSON

8 IDAHO PARENTS UNLIMITED, INCORPORATED

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

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

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

17 Idahoans are conservative by our very  
18 nature. Therefore, last year when Senator  
19 Kempthorne, the senior senator from Idaho and a  
20 member of this Commission, explained the overview of  
21 his unfunded mandates legislation, many of us agreed  
22 with the concept and we agreed that it was sound.

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1                   In responses to querying context, hundreds  
2 of Idaho families of children with disabilities  
3 received these same letters from Senator Kempthorne  
4 assuring them that IDEA and ADA would not be  
5 considered as unfunded mandates. In fact, these same  
6 assurances were provided to persons with disabilities  
7 and their families in many other states by their  
8 representatives and senators.

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

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

22                   As Commission members, I implore you to

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1 keep the promises that you made last year to  
2 Americans with disabilities by deleting the  
3 references to IDEA and ADA from this report.

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

14           This Commission must understand that IDEA  
15 is not a litigious law. In 1993, out of the  
16 3,227,000 students served in states with available  
17 data, only 654, which is less than one-hundredth of 1  
18 percent, required due process hearings. And, of  
19 those, only 81 entered into court appeals.

20           The Fourteenth Amendment of the United  
21 States Constitution provides that states may not  
22 deprive individuals of rights without due process of

1 law. In 1972, the federal courts examined the  
2 implications of the due process clause for children  
3 with disabilities in schools in two landmark cases.

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

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

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

22 If state or local governments make

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1 decisions which affect the rights of private  
2 citizens, the citizens must have recourse to the  
3 courts to redress those rights.

4           If this recommendation is enacted, it  
5 could serve to force parents of children with  
6 disabilities back to litigation under Section 504 of  
7 the Rehabilitation Act of 1973 and Section 18 --  
8 excuse me, 1983 of the Civil Rights Act of 1968.  
9 Instead of decreasing the burdens of litigation,  
10 people will turn to statutes where litigation is  
11 available, potentially increasing court actions.

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

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

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1 the whim of Congress.

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

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

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

19 It's also important to remember and to  
20 recognize that this Commission must understand that  
21 IDEA is a voluntary requirement. It establishes a  
22 process for states to access federal money to assist

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1 them in their responsibility of educating children  
2 with disabilities. It is not a mandate.

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

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

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

21 And, she is a wonderful example of  
22 successful collaboration efforts on her behalf. She

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1 is currently a seventh grade student at Fairmont  
2 Junior High in Boise which, by the way, is the same  
3 school that her brother attended three years prior to  
4 that.

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

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

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

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

20 Again, I would share the words of Justin  
21 Dart. The ADA and IDEA are not unfunded mandates.

22 They are civil rights laws which simply guarantee the

1 right of people with disabilities the same equal  
2 protection of laws provided to all Americans under  
3 the Constitution.

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

7 Thank you.

8 CHAIRMAN WINTER: Thank you, Ms. Johnson.  
9 We next will hear from Ms. Terri Dawson of the Parent  
10 Information Center of Wyoming.

11 Welcome.

12 STATEMENT OF **TERRI DAWSON**

13 PARENT INFORMATION CENTER, WYOMING

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

18 I am the parent of Ted, my 10 year old  
19 son, who has Down's syndrome. I am here to testify  
20 to you today not only as Ted's mom but as a  
21 representative of 2,600 families in Wyoming who have  
22 children with disabilities, since I direct the Parent

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1 Information Center, a state-wide center for  
2 information, support and referral to families of  
3 children with disabilities.

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

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

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

19 However, we are concerned if you weaken  
20 the language of IDEA to relieve states from  
21 prescriptive and costly administrative mandates other  
22 states will not provide the same consistent

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1 educational services across their borders.

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

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

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

19           I know a family with a son who is deaf in  
20 a rural ranch community in Wyoming. Just a few years  
21 ago, the state convinced mom her son would be more  
22 appropriately served in the state school for the

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1 deaf, approximately 200 miles from home.

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

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

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

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

21 The school district hired a teacher for  
22 the deaf and costly litigation was avoided. This

1 little boy is now doing well in a regular classroom  
2 with special education supports.

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

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

9 Twenty years ago before IDEA and before  
10 local and state school districts nationally were  
11 educating all children, my nephew, J.R., was born.  
12 J.R. is now serving our country in the U.S. Navy on  
13 the U.S.S. Nemitz in the waters around Taiwan.

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

17 Let us, as a nation, maintain a strong  
18 educational system for all children. I would hate to  
19 see this Commission proceed with a recommendation to  
20 eliminate the statutory right of individuals to bring  
21 court action and to reduce state and local  
22 governments' compliance obligations under those

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1 statutes.

2 Let J.R. serve his country proudly knowing  
3 back at home his cousin is getting an appropriate  
4 education funded at the full 40 percent higher level  
5 Congress originally intended. Let my son, Ted, grow  
6 up with not a good education but a great education to  
7 become an independent, taxpaying citizen regardless  
8 of his disability.

9 Thank you.

10 CHAIRMAN WINTER: Thank you, Ms. Dawson.  
11 Let me call on Mr. Jaydee R. Hanson of the General  
12 Board of Church and Society of the Methodist Church.

13 Thank you, Mr. Hanson, for being here.

14 STATEMENT OF JAYDEE R. HANSON

15 GENERAL BOARD OF CHURCH AND SOCIETY, METHODIST  
16 CHURCH

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

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

22 I am here to convey the opposition of the

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1 General Board of Church and Society of the United  
2 Methodist Church to the recommendations contained in  
3 the preliminary report of the Advisory Commission on  
4 Intergovernmental Relations on Federal Mandates. The  
5 General Board of Church and Society is the social/  
6 justice program Board of the United Methodist Church.

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

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

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

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1       injustice.

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

15                      The preliminary report of the Advisory  
16 Commission on Intergovernmental Relations on unfunded  
17 mandates strikes us as an attempt to reduce  
18 governments' responsibility to ensure equal  
19 protection of rights such as safe drinking water,  
20 clean air, workers' safety, family and disability  
21 rights and the right to survival for all of God's  
22 creation. If the Commission's recommendations were

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1 to become reality, we would have a nation where the  
2 enforcement of public safety and protection laws  
3 would be distributed in a callous, careless and  
4 discriminatory fashion.

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

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

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

20 As United Methodist Bishop Felton May of  
21 the Harrisburg area in Pennsylvania states, "We  
22 believe in a balanced budget but a budget that is



1 balanced in terms of social needs."

2 The no money/no mandate philosophy

3 inherent within the Commission's report would be felt

4 mostly by the most vulnerable in our society -- the

5 poor, the disabled, the worker, the child, God's

6 creation. This philosophy balances federal, state

7 and local budgets on the lives of the least powerful

8 within our society and world.

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

11 Will they cause a better society to emerge  
12 in the United States? Are these recommendations in  
13 keeping with governments' role to protect the common  
14 good?

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

20 In our overview of the report, our answer  
21 to these questions is no. We would ask the

22 Commission to reexamine the preliminary report and

1 reconsider its final recommendations.

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

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

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

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

22 On the Individuals with Disabilities Act,

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1 our Board has always favored authorization of federal  
2 funds to provide free appropriate education for  
3 children with disabilities. We have long supported  
4 the need for a federally approved plan for educating  
5 children with disabilities before a state may receive  
6 federal funds, as well as the ability of parents and  
7 legal guardians to challenge their children's  
8 educational placement.

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

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

20 The General Board of Church and Society  
21 was a colleague in helping pass this legislation and  
22 putting in place strong regulations for its

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1 compliance. It is the United Methodists' strong  
2 position on holding governments accountable for the  
3 protection of civil and human rights for all of its  
4 people.

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

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

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

22 In 1908, we committed to work for the

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1 protection of rights of workers and disadvantaged  
2 people. Our founder, John Wesley, worked for the  
3 rights of children and animals in mines in England.

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

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

17 On Safe Drinking Water, Clean Air and the  
18 Endangered Species Act, the United Methodist policy  
19 states that every individual has a right to a safe  
20 and healthy environment unendangered by a polluted  
21 natural world and that the common heritage of all of  
22 us to these resources is deeply rooted in our

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1 understanding of creation as being interdependent.

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

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

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

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

19 Finally, as the Commission does its work  
20 -- and I will pray for you; you have a hard job -- I  
21 would urge you to look to the future. It's wonderful  
22 that this country has a rich tradition from our past.

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1           But, very often when we look to the past  
2 and rewrite the past, we look to the past with a  
3 particular vision. I would ask you to look to the  
4 future with a vision of how we make our future even  
5 better.

6           Thank you. And, God bless you.

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

10           Mr. Bumpers, thank you for being here.

11                           **STATEMENT OF TERRY BUMPERS**

12                           **NATIONAL ALLIANCE FOR FAIR CONTRACTING**

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

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

20           We are emphatically opposed to the  
21 recommendations pertaining to both the Davis-Bacon  
22 and related Acts. It's apparent to us that the

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1 Commission has made these recommendations without any  
2 input from anyone in the construction industry that  
3 bids and completes projects in the public sector.

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

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

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

20 Additionally, we have testified before  
21 Congress relative to the survey process. And, we are  
22 willing, in the context of the reform legislation, to

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1 have discussions pertaining to the deficiencies  
2 outlined in the report of the survey process.

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

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

18 We have heard so many different cost  
19 claims relative to the Davis-Bacon Act that we are  
20 getting tired of addressing this issue. If there is  
21 any documentation to prove that the Act increases  
22 cost, then where is it?

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1           The reason none exists is simple.  
2           Productivity is a major component of labor cost and  
3           it cannot be measured with any degree of accuracy in  
4           construction.

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

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

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

22          Recently, we reviewed 2,232 wage decisions

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

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

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

17 Since most covered projects are funded  
18 through a related Act, your recommendation would  
19 leave state and local governments to creatively fund  
20 their projects to exclude coverage which would force  
21 our contractors to discontinue training programs,  
22 estimated currently to be in the neighborhood of \$700

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1 million annually, eliminate health coverage and  
2 pension plans in order to compete in the marketplace.  
3 Discontinuing these privately funded programs will  
4 cause a cost shift to the public sector, the costs of  
5 which is unknown but could be greater than repealing  
6 the Davis-Bacon Act.

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

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

1 as a result of the survey process.

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

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

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

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

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

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

14 A community that values the training and  
15 economic security of its citizens harms the community  
16 by establishing a procurement system that rewards  
17 firms that invest the least in employee training,  
18 health care and pensions. Without Davis-Bacon,  
19 communities will become more populated with low wage,  
20 low skill workers who have no health care or  
21 pensions, which will cause them to bear the burden of  
22 higher social services costs.

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1                   Shifting the employers' costs to the  
2 taxpayer rather than to the bid does not make good  
3 economic sense. And, it's bad for the community, the  
4 taxpayer and the construction industry.

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

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

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

22                   Thank you very much for listening to my

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1 testimony.

2 CHAIRMAN WINTER: Thank you, sir.

3 MR. BUMPERS: Thank you.

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

7 Thank you so much for coming.

8 STATEMENT OF VELMA PARNESS

9 UNIVERSITY OF CALIFORNIA

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

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

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

22 I immediately asked for family leave so I

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1 could stay at home and take care of my husband and  
2 spend time with him. We were both terribly  
3 frightened.

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

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

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

18 With all the things that I suddenly had to  
19 manage and worry about, I needed all my time, energy  
20 and emotional resources to deal with this sudden  
21 nightmare that appeared in my life. Believe me, you  
22 don't want to use those resources on making

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1 arrangements for family leave when there is this kind  
2 of crisis going on.

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

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

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

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

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

21 The loss of job and benefits would have  
22 been terrible for us. And, after he was gone, quite

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1 frankly, I don't know what I would have done if I  
2 didn't have my job and my work to go back to.

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

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

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

14 Thank you.

15 CHAIRMAN WINTER: Thank you so much.  
16 That's a very moving statement. Thank you for  
17 coming.

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

20 STATEMENT OF ERIK OLSON

21 NATURAL RESOURCES DEFENSE COUNCIL

22 MR. OLSON: Thank you. I would like to

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1 address some of the environmental recommendations  
2 that are made by the Commission report.

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

6 I think one could call the Constitution of  
7 the United States an unfunded mandate. One could  
8 call the Fourteenth Amendment an unfunded mandate.  
9 One could call the Ten Commandments an unfunded  
10 mandate.

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

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

18 First of all, we are concerned, deeply  
19 concerned, about the way that the Commission went  
20 about generating its recommendations. I would  
21 certainly recommend to the Commission members that  
22 they read a report that was done by the Citizens for

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1       Sensible Safeguards.

2                       But, I would like to point out the way  
3       that the Commission went about generating its  
4       information by going to the National Governors'  
5       Association and several other advocates of unfunded  
6       mandates legislation, simply asking them what they  
7       thought and what their impressions were, is not  
8       exactly the best way to go about fact-finding. And,  
9       I think it speaks poorly for the Commission, which in  
10      the past has done a very scholarly job of developing  
11      some of its reports and in the past has developed  
12      excellent reports on some issues, to have issued this  
13      preliminary report that was, frankly, not very well  
14      founded in fact and didn't include a single footnote  
15      and relatively little in the way of citation or  
16      factual material.

17                      We are concerned also about the approach  
18      that's taken, that very often it seems that the  
19      Commission developed an agenda and rather than having  
20      factual material to back it up simply quoted things  
21      like the -- I will quote a few of the phrases that  
22      are used here: It is perceived that these

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1 requirements create problems. It is felt by state  
2 officials and local officials that there is a  
3 problem.

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

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

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

19 The Commission says in its report that  
20 states were generally implementing the federal  
21 voluntary standards for drinking water in the early  
22 1970s. Yet, Congress established the Federal Safe

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1 Drinking Water Act.

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

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

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

19 However, I believe that it's quite clear  
20 that some of the agencies in the last few years have  
21 made major strides in adding additional flexibility  
22 and in listening to state and local complaints about

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1 some of the laws. And, I will give some examples and  
2 specific laws later on in my statement of how they do  
3 include flexibility that is not recognized in the  
4 Commission's report.

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

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

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

18 The Commission says that costs generally  
19 are not considered in developing many of the federal  
20 mandates. But, if one looks at the specific laws,  
21 taking again the Safe Drinking Water Act as an  
22 example, it's quite clear that the laws do consider

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1 costs.

2 And, in fact, costs are a major  
3 consideration for all of the major environmental  
4 statutes.

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

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

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

22 Fourth, the Commission recommends that

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1 lawsuits against state and local governments for  
2 failure to enforce these federal laws should not be  
3 allowed. It's our view that if there are federal  
4 environmental or other laws and there are enforcement  
5 deficiencies due to a lack of resources at the  
6 federal level, due to a lack of political will at the  
7 federal level or due to other reasons, that citizens  
8 should be able to assure that their environment is  
9 protected or that their rights are protected.

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

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

20 But, I also believe it's important to  
21 recognize some of the substantial flexibility that  
22 has been added to many of these federal programs in

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1 recent years, including some of the EPA efforts to  
2 recognize local governments' needs, the enforcement  
3 discretion that is often used by EPA and other  
4 agencies and other programs to fund and to assist,  
5 through technical assistance and other means, local  
6 government actions.

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

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

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

21 I don't propose to go into details of a  
22 review of the individual statutes, but I would

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1 commend to the Commission's attention the Citizens  
2 for Sensible Safeguards report that goes through the  
3 recommendations on the Clean Air Act, the Clean Water  
4 Act, the Safe Drinking Water Act and the Endangered  
5 Species Act.

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

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

21 So, with those overarching concerns and  
22 the concerns that are mentioned in the written

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1 testimony and report, I would thank the Commission  
2 for allowing us to testify.

3 CHAIRMAN WINTER: Thank you, Mr. Olson.  
4 Mr. Gus Estrella of the United Cerebral Palsy  
5 Association.

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

8 STATEMENT OF GUS ESTRELLA

9 UNITED CEREBRAL PALSY ASSOCIATIONS

10 MR. ESTRELLA: Good afternoon, Mr.  
11 Chairman, members of the Advisory Commission. My  
12 name is Gus Estrella.

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

19 I am currently serving a two year  
20 fellowship with UCPA. The fellowship is sponsored by  
21 Print-a-Rome (phonetic) Company, the company that  
22 makes the liberator, the device that I am talking to

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1 you, along with Semantic Compaction Systems, the  
2 company that developed the software for my liberator  
3 and, of course, UCPA.

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

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

14           The fact that many individuals are now  
15 living and working in the community with a wide array  
16 of supports can be directly traced to civil rights  
17 protections and federal resources that have funded  
18 the infrastructure of a system of disability services  
19 and supports in the state and local governments.  
20 When we hear folks wanting to eliminate federal  
21 protections from our lives, we become very  
22 frightened.

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1                   During the unfunded mandates legislation  
2 debates, we argued successfully that certain federal  
3 protections simply cannot be relinquished to the  
4 states. To do so would be an act of relinquishing  
5 the U.S. Constitution itself.

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

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

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

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1 these two laws.

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

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

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

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

22 Let me read a compilation of comments that

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1 we have received at UCPA about the potential  
2 consequences of your draft report. From a mother in  
3 Georgia: I am the mother of three children. My  
4 youngest son, Zachery, has spinal muscular atrophy  
5 disease which leaves him physically disabled. With  
6 my two oldest children, the experience with the  
7 education system has been wonderful. With the child  
8 with the disability, it is a different story  
9 altogether.

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

19 I have been told repeatedly to "just trust  
20 us." I ask you why I have never seen a government or  
21 local agency effectively police themselves? With the  
22 present safeguards, the above situation still

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1 occurred.

2           What will we, as families, have to look  
3 forward to if the local and state school systems are  
4 the only ones to have the rights of due process?

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

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

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

18           Imagine being denied any access to that  
19 entrance or exit. I can remember the days when my  
20 wife wouldn't drink water before going to the movies,  
21 because she couldn't get to the bathroom in the  
22 basement.

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1                   What would it do to your lives if you  
2 couldn't use the public facilities? Think about what  
3 it is that you believe you are entitled to and now  
4 take for granted.

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

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

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

20                  Please don't gut IDEA and ADA. Rice has a  
21 chance for freedom.

22                  In closing, Honorable Chair and members of

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1 the Advisory Commission, we cannot take back the  
2 damaging statements that you have already circulated,  
3 the erroneous claims that ADA and IDEA are unfunded  
4 mandates. We implore you to do damage control by  
5 removing them from your final report.

6 Thank you.

7 CHAIRMAN WINTER: Thank you, Mr. Estrella.  
8 That's a very moving statement that you've made. And,  
9 we appreciate your being here.

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

12 STATEMENT OF **KATHRYN L. McMICHAEL**

13 NATIONAL SCHOOL BOARDS ASSOCIATION

14 MS. McMICHAEL: Good afternoon, Chairman  
15 Winter and members of the Advisory Commission on  
16 Intergovernmental Relations and also the staff of the  
17 Commission.

18 I am Kathryn McMichael, Director of  
19 Federal Relations for the National School Boards  
20 Association. NSBA represents the 95,000 local school  
21 board members who are responsible for governing the  
22 nation's local public school districts.

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1           The nation's 16,000 local school districts  
2 across this country spend upwards of \$300 billion per  
3 year to educate over 40 million school children in  
4 80,000 school buildings. And, we employ over 4.8  
5 million employees.

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

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

22           Further, in areas of legitimate federal

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

7 Finally, and most important for today's  
8 hearing, if Congress imposes a mandate on local  
9 school systems, it should bear the financial costs.  
10 ACIR recognizes that in their preliminary report.

11 And, we commend the Commission for many of  
12 its recommendations concerning the costs of federal  
13 mandates on local public agencies. Thus, if a  
14 mandate is truly in the national interest, then  
15 Congress should be willing to pay for it.

16 Because the federal government is  
17 disconnected from the financial responsibility of its  
18 mandates, we believe that it has little incentive to  
19 set priorities among, or within, mandates, to engage  
20 in meaningful cost benefit analysis or to reevaluate  
21 existing mandates once they are put on the books.

22 Again, that is why this ACIR Commission report is so

1 very important, because it is evaluating the existing  
2 mandates that have been on the books and have  
3 affected school systems.

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

14           The Economic Policy Institute study,  
15 entitled "Where Is the Money Going," released in  
16 1995, estimated that 26 cents of every new dollar  
17 spent by school systems between 1967 and 1991 were  
18 invested in general education programs, while 38  
19 cents was spent on mandated special education  
20 programs. Of the remaining 36 cents, a substantial  
21 portion was spent on other unfunded federal or state  
22 mandates.

1                   Most taxpayers would be surprised to know  
2 how much of their local property tax dollars, which  
3 they thought were being spent for basic education,  
4 were being preempted to meet unrelated federal  
5 mandates.

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

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

19                   And, I am now going to comment on three of  
20 the mandates that you lifted in your report that  
21 directly affects school systems. Contrary to popular  
22 belief, with the exception of the Individuals with

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1 Disabilities Act, IDEA, most federal mandates on  
2 school systems are imposed by agencies other than the  
3 U.S. Department of Education.

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

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

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

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1 the increase was as much as 20 percent.

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

6 Occupational Safety and Health Act, OSHA:

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

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

17 In 1992, the Texas Association of School  
18 Boards estimated that it would cost more than \$10  
19 million to implement only selected OSHA regulations  
20 in the Texas public school system. This is just one  
21 state's estimate of the onerous cost burdens this  
22 unnecessary and duplicative federal mandate would

1 impose. Few argue that OSHA coverage would improve  
2 the safety in schools while creating a duplicative  
3 structure.

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

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

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

18 Instead, the federal government pays only  
19 7 percent, leaving school districts to pay almost \$30  
20 billion in additional costs from local and state  
21 resources. Overall, our nation has a \$50 billion  
22 special ed system that is built upon the IDEA

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1 mandate.

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

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

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

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

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1 public education. Thank you very much.

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

4 Let me welcome to the panel the Honorable  
5 Henry Smith, who is the voting representative of  
6 Secretary of Education, Dick Riley. Henry, welcome.  
7 I am glad you are here.

8 Now, I call on Ms. Katherine Neas of the  
9 Consortium for Citizens with Disabilities Task Force.

10 STATEMENT OF **KATHERINE BEH NEAS**  
11 **CONSORTIUM FOR CITIZENS WITH DISABILITIES**  
12 **EDUCATION TASK FORCE**

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

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

20 And, our coalition is a working coalition  
21 comprised of consumer, advocacy, provider and  
22 professional organizations which advocate on behalf

1 of people of all ages with physical and mental  
2 disabilities and their families.

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

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

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

1 attend school.

2           In 1994, the number of children and youth  
3 with developmental disabilities living in state  
4 institutions was less than 6 percent of the children  
5 and youth living in state institutions in 1974, which  
6 was the year before IDEA or 94-142 was enacted. The  
7 average annual 1994 state institution expenditure of  
8 over \$82,000 per person, the over 66,000 fewer  
9 children and youth who resided in state institutions  
10 in 1994 as do in 1974, would have cost approximately  
11 \$5.48 billion per year had that many children and  
12 youth remained institutionalized. Because state  
13 institution expenditures are cost-shared with  
14 Medicaid, the total non-federal contributions would  
15 have been approximately \$2.48 billion per year.

16           Second, the preliminary report finds that  
17 the resolution of disputes under the Act has also  
18 become overly litigious and added to the  
19 implementation costs. Currently, local agency  
20 decisions may be challenged in either state or  
21 federal court. And, in some cases, parents bringing  
22 action on behalf of their children may be entitled to

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1 reimbursement for their costs, including attorney and  
2 court fees.

3 As with other civil rights laws,  
4 plaintiffs who prevail on the merits of any action or  
5 proceeding under IDEA may be awarded attorneys fees.  
6 Attorneys fees are only awarded when parents prove  
7 that the education agency failed to provide their  
8 child with a free, appropriate public education.

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

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

20 Finally, IDEA is possibly the only civil  
21 rights law that actually comes with money for states  
22 to implement it. When Congress enacted it in 1975,



1 it was because local school systems were excluding  
2 millions of children with disabilities from receiving  
3 an education.

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

7 CHAIRMAN WINTER: Thank you very much for  
8 that statement.

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

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

20 (Whereupon, a luncheon recess is taken at  
21 12:20 p.m., to reconvene at 1:10 p.m., this same  
22 date.)

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A F T E R N O O N   S E S S I O N

(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

1 be noted.

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

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

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

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

20 Some key issues associated with the Safe  
21 Drinking Water Act, which we are intimately familiar  
22 with, are in the standard-setting arena and the

1 proliferation of monitoring requirements that are  
2 affecting very small governments to a very adverse  
3 degree. Over a year ago, we met with the White House  
4 and were discussing with them whether or not the  
5 entire Drinking Water program should be turned over  
6 to the states. Our response to that was a resounding  
7 no.

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

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

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

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1 to do the most good.

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

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

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

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

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

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1                   As a minimum, it must be discouraged.

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

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

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

13                   The Safe Drinking Water Act amendments of  
14                   1986 were developed for large systems. In the  
15                   legislative history of that law, it dictates that  
16                   those systems to be considered in setting standards  
17                   and applying technology are for communities that  
18                   serve a million people or more.

19                   Do you know how many thousands of  
20                   governmental entities we have in the United States  
21                   that are far smaller than that? I mean, of the  
22                   roughly 40,000 governmental entities in the United

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1 States, I would wager that 99 percent of them are  
2 below that level.

3 And, the law has disregarded that body of  
4 governmental entities.

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

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

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

19 A recent development of the Bay Delta area  
20 in the Oakland/San Francisco area, it took some three  
21 and a half years for the federal agencies and the  
22 local agencies and the state agencies to get together

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1 to come up with a solution on just how to deal with  
2 that water allocation issue. It's an enormous issue.

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

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

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

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

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

22 The Safe Drinking Water Act. We feel we

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1 have some expertise in our organization, since we've  
2 been doing safe drinking water issues since 1881 as  
3 an educational and scientific association.

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

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

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

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

22 And, those are the basic things. I could

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1 go on and on and on about the Safe Drinking Water

2 Act. I won't bore you with that in the interest of  
3 time.

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

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

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

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

21 It's critical in Delaware. It's critical  
22 right here in Washington and the Potomac.

1                   And, those issues need to be considered.

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

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

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

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

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

18                  MR. SULLIVAN: Thank you, Governor.

19                  CHAIRMAN WINTER: Thank you, Mr. Sullivan.  
20                  Next, we would like to hear from Mr. Paul Schwartz of  
21                  the Clean Water Action initiative.

22                  Welcome, Mr. Schwartz. Thank you for

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1 coming.

2

STATEMENT OF PAUL D. SCHWARTZ

3

NATIONAL CAMPAIGNS DIRECTOR

4

CLEAN WATER ACTION

5

MR. SCHWARTZ: Thank you all for

6

forbearing in this hearing process and listening to a

7

lot of divergent points of view. I think Jack

8

Sullivan and I share at least a couple of things.

9

One is that I think both of us want what

10

is best for the nation's water supply. And, we speak

11

for different constituencies. A lot of the folks who

12

are members of Clean Water Action in the 15 states

13

where we are located, about 700,000 members are

14

ratepayers to the American Water Works Association

15

member, water utilities, and certainly are folks who

16

are affected by the quality of the water that is

17

served up.

18

Just a couple of things on the fine piece

19

of testimony that Jack just gave before I go into my

20

formal testimony. One is that under the current Safe

21

Drinking Water Act, cost is already taken into

22

consideration, as is feasible technology.

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1           As a matter of fact, if you look back at  
2 the legislative history and from the beginning of the  
3 Act in 1974 to the debates in 1985 and 1986 to the  
4 debates now, cost consideration has always been  
5 thought of by the environmental and public health  
6 community to be too much of a factor in containment  
7 and selection and in standard setting. This is not a  
8 new issue for us.

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

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

21           I would venture to say that you don't know  
22 that in the pitcher of water that you have in front

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1 of you, that coming out of the Washington aqueduct,  
2 if that isn't bottled water, that we are running at  
3 97 parts per billion or 98 parts per billion of  
4 trihalomethanes. Now, trihalomethanes are associated  
5 in 14 human immunological studies with around 10,700  
6 bladder and rectal cancers each year.

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

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

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

19 We shouldn't be setting standards and  
20 doing a contaminant selection process that is focused  
21 on what the capacity of a trailer park is to deliver  
22 safe drinking water. And, we think that the AWWA and

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1 other large utility associations are, in essence,  
2 hiding behind the skirts of the smaller systems.

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

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

12 And, after watching federal assistance for  
13 a vast array of social programs dry up over the last  
14 15 years, the Commission, ya'll, made up mostly of  
15 current and former governors and mayors from across  
16 the country, have found a scapegoat, at least in  
17 environmental protections, which require a good share  
18 of local and state funding. The rallying cry has  
19 become "no money/no mandates."

20 Not surprisingly, as evident in the thinly  
21 argued and supported set of conclusions in this set  
22 of recommendations, this "no money/no mandate"

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1 movement is being fueled, in part, by those who are  
2 not interested in a solution to the funding problem  
3 but whose primary interest is in denouncing and  
4 demanding repeal of strong federal laws no matter how  
5 urgently needed or popularly supported. If  
6 successful, this movement of which the ACIR is on the  
7 cutting edge, could weaken or eliminate laws which  
8 provide for safe waters for drinking, fishing and  
9 swimming at a time when threats to the nation's water  
10 resources are escalating.

11 Over three years ago, approximately  
12 400,000 residents of Milwaukee became ill and several  
13 died from drinking water contaminated from poisonous  
14 agricultural runoff. Two years ago, right here in  
15 the nation's capitol, one million Washington, D.C.  
16 residents were forced to boil their water for four  
17 days when high turbidity or cloudiness levels were  
18 discovered.

19 Now, the sources of these and other water  
20 pollution problems are not exotic. They are runoff  
21 from farms and factories, construction, mining and  
22 other sources poisoned with a dizzying (sic) array of

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1 toxic chemicals and other contaminants.

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

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

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

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1 we think that's hypocritical.

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

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

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

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1 some areas.

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

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

20 The current system rewards pollution as a  
21 rational economic decision by making it more  
22 expensive to control the discharges than to pay the

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1 nominal fees for permits, or no fees in some states,  
2 which allow dumping into rivers. As the old saying  
3 goes, "An ounce of prevention is worth a pound of  
4 cure."

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

9 The National Utility Contractors  
10 Association -- no environmental group the last time I  
11 checked -- estimates that \$1 billion in water and  
12 sewer investment generates from between 34,000 to  
13 57,000 jobs. Affordable water and sewer service is  
14 essential for economic development and is a major  
15 consideration for new investment.

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

19 We already lost \$1.3 billion in funds that  
20 were to go out, appropriated money that was to go  
21 out, to cities and states under the Safe Drinking  
22 Water Act, because some portions of the so-called

1 Coalition for Safe Drinking Water, made up of water  
2 utilities and local and state government  
3 associations, decided that they would go for the  
4 brass ring at the end of the last Congress.

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

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

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

19           I would urge you today, as Commissioners  
20 of the ACIR, to consider supporting adequate funding  
21 for environmental protection instead of scrapping the  
22 mandates. We believe that the "polluter pays" path

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1 is the only logical source to tap.

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

5 Thank you.

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

8 Thank you so much, Mr. Schwartz.

9 MR. SCHWARTZ: Thank you.

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

13 STATEMENT OF **ANGELA M. ANTONELLI**

14 DEPUTY DIRECTOR FOR ECONOMIC POLICY STUDIES

15 THE HERITAGE FOUNDATION

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

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

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1 views of The Heritage Foundation.

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

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

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

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

22 Unfunded federal mandates and highly

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

11 ACIR has heard this over and over again.  
12 And, it must make sure that any information it has  
13 collected on the cost of unfunded mandates is made  
14 available to Congress and the public.

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

17 Unfortunately, the Commission is somewhat  
18 misguided in its position that simply more money or  
19 more flexibility or exemptions for states and  
20 localities are the only answers to this problem.  
21 ACIR focused solely on "intergovernmental issues  
22 associated with the mandates and did not evaluate the

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1 specific mandate requirements."

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

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

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

20           The report also has other shortcomings.  
21 ACIR, fortunately, acknowledges 186 other  
22 environmental, health and education mandates, some

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1 arguable more burdensome than what you have chosen to  
2 include in your report that it does not address but  
3 that need to be addressed.

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

14 The Commission has been subjected to  
15 strong criticism for looking at the Americans with  
16 Disabilities Act. But, it has done the right thing.

17 The inclusion of the Act among the  
18 recommendations does nothing more than simply  
19 acknowledges the fact that the implementation of the  
20 Act may not have been as well thought out as it  
21 should have been. No one questions the importance of  
22 the Act or its goals.

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1 Over and over again, states and localities  
2 have reported to ACIR, and others, the difficulties  
3 and the huge expenses that must be incurred, often  
4 with little benefit. There are clearly more flexible  
5 and sensible ways to achieve the goals of expanded  
6 access.

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

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

18 For states and localities, balancing the  
19 federal budget with the spending reductions that it  
20 demands cannot be done without confronting the  
21 problems of unfunded mandates. If the federal  
22 government plans to slow the increases in money

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1 in our view, they embody a congressional effort to  
2 give local governments wide discretion in  
3 accommodating individuals, given limited resources.

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

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

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

17 At the heart of the ACIR report is  
18 skepticism about the role the federal government  
19 should play in local and state affairs. Although, on  
20 its face, such a concern may seem to be justified, to  
21 the extent that the report undercuts the civil rights  
22 of American citizens, it must be carefully

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1 flowing to states and local communities, those local  
2 communities need the flexibility to prioritize and  
3 implement mandates as they see fit while still  
4 achieving the desired social goals.

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

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

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

22 The problem of unfunded mandates needs a

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1 solution. And, if states and localities expect  
2 change from Washington, they must also realize that  
3 they will have to continue to pursue it through other  
4 legislative avenues, because the Unfunded Mandates  
5 Act does not provide a vehicle for it.

6 This report would serve as a foundation  
7 for a new round of legislative initiatives. This  
8 could range from full federal funding to repeal of  
9 some existing mandates.

10 As we already know, there will certainly  
11 be considerable debate. And, that's precisely why  
12 this report needs to move forward in its final form.

13 The Commission has been subject to harsh  
14 criticism by public interest groups and the Clinton  
15 Administration for this report. These attacks have  
16 deteriorated to the level of attacking the competence  
17 of the Commission rather than the substance of the  
18 report.

19 I urge the Commission not to give up any  
20 ground. State and localities were not making this  
21 stuff up.

22 And, the report plays a critical role in

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1 formally acknowledging and legitimizing their  
2 concerns. The President and the Congress would have  
3 a much harder time continuing to pass the buck.

4 Thank you very much.

5 CHAIRMAN WINTER: Thank you very much for  
6 that presentation.

7 We hear now from Ms. Cherie Takemoto of  
8 Arlington, Virginia. Ms. Takemoto, would you please  
9 come around?

10 STATEMENT OF CHERYL R. TAKEMOTO

11 ARLINGTON, VIRGINIA

12 MS. TAKEMOTO: Hi. My name is Cherie  
13 Takemoto. I am not representing anybody but myself  
14 and my family today.

15 Before -- as a transition to the last  
16 report and as an introduction to my testimony, my  
17 name is Cherie Takemoto. I am Margaret and Peter's  
18 mom.

19 Peter was born eight years ago with a host  
20 of disabilities and no firm diagnosis about how or  
21 why or what he's going to be. Like most families  
22 that include a parent, a child, a brother, a sister

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1 or a grandparent with a disability, we thought that  
2 disabilities were something that happened to other  
3 people.

4 Before Peter, my little baby girl, my dog  
5 and I would take our daily jaunts around the  
6 neighborhood and give thanks to the good work of the  
7 folks who use wheelchairs and the disability  
8 advocates for those wonderful curb-cuts that helped  
9 us get around the block. For us, it was a  
10 convenience. For people who use wheelchairs, it's a  
11 necessity.

12 When Peter was born, I found that I  
13 couldn't just take those curb-cuts and other things  
14 in life for granted. I found out that even though  
15 others may discriminate against people with  
16 disabilities, no group, either privileged or  
17 underprivileged, is immune from disability and its  
18 effects.

19 Thanks to IDEA, which is the Individuals  
20 with Disabilities Education Act, Peter has received  
21 early intervention and special education services.  
22 He is now in the second grade.

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1                   He is reading. And, one of his  
2 classmates, Megan, was saying that Pete is the  
3 smartest kid in his math group because he doesn't use  
4 those manipulatives that they are using in school  
5 now. He knows how to add with his head.

6                   Without IDEA and special education  
7 resources to support him in the regular class, which  
8 is something that this Commission did support, he  
9 would be now on the fast track for failure.

10                   Is it more expensive to educate kids like  
11 Peter? A little bit. Average increases over the  
12 typical student ranges from \$2,000 to \$6,000  
13 annually. Is this a wise investment? Without a  
14 doubt.

15                   By providing Peter with the education and  
16 tools he needs to learn, we are now looking at a  
17 child who has a future as a self-sufficient taxpayer  
18 and is going to paying your and my social security  
19 benefits. Without that educational support, Peter --  
20 and you can talk to his doctors about this -- would  
21 face a future of dependency and despair.

22                   One or two years in a residential facility

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1 would more than make up any special education costs  
2 he has incurred.

3 Has Peter's school provided him with a  
4 free and appropriate public education? Thankfully,  
5 yes.

6 But, ask the school why and they will  
7 honestly tell you that his inclusion in the regular  
8 classroom has to do with the provisions in the law  
9 that have to do with something called educating him  
10 in the least restrictive environment. The federal  
11 laws protect the student's interests through the due  
12 process rights for the student and parent. It gives  
13 the parents a voice in how their children will be  
14 educated.

15 The ACIR seems to have concerns about  
16 school districts having to pay legal fees when  
17 parents prevail in a due process case. Well, first  
18 of all, either the school or the parents can initiate  
19 due process. It's not just the parents that are  
20 taking the schools to due process.

21 The judge only considers legal fees when  
22 the parents prevail. If you investigated a bit, you

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1 would find that school systems prevail in the vast  
2 majority of the cases.

3 They know what they are doing. And, they  
4 have the lawyers to pay for that.

5 And, in too many cases, the schools will  
6 keep appealing until the parent runs out of funds to  
7 pay the lawyer who needs to argue their case, because  
8 it is, as you said, a highly legalistic process.  
9 When the schools complain about attorney fees, I  
10 begin to ask why they are spending their money on  
11 lawyers instead of doing the right things for our  
12 children.

13 Now, if I walked into the school and  
14 slipped on the wet floor, I could sue the school for  
15 legal fees along with pain and suffering and all that  
16 other neat stuff that everyone is complaining about  
17 with these frivolous lawsuits. And, if I won, I  
18 would get my legal fees paid, no questions asked.

19 But, if I needed to file a due process  
20 case on behalf of my child because the schools were  
21 not fulfilling their requirements or because they  
22 were discriminating against my child, I would have to

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1 win and then a judge would have to determine whether  
2 or not my attorney could collect legal fees. We are  
3 not talking about large amounts of money here.

4 No one gets any money for pain and  
5 suffering or any of that other neat stuff that they  
6 have in civil courts. And, currently the judge has  
7 the discretion to award what reasonable attorney fees  
8 are versus what the attorney might present as the  
9 bill.

10 Leave this decision in the hands of an  
11 unbiased party like a judge. Don't tip the scale  
12 against parents like me who can't afford attorneys  
13 and school districts who can, and will.

14 In the current law, the good of the  
15 children is decided upon by both the parents and the  
16 school system together. When the good of our  
17 children was last left to state and local  
18 jurisdictions, our children were excluded from school  
19 and languished at homes or in institutions.

20 The investment in special education is  
21 small compared to a lifetime of dependency.

22 I heartily support the suggestion that the

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1 federal government pay 40 percent of the costs of  
2 IDEA. However, don't kill Peter's future and the  
3 future of all the other children with special needs  
4 that depend upon IDEA if the Congress cannot or will  
5 not pay what I consider to be a ransom. It's not one  
6 of those things, you pay us or your kids don't get to  
7 come.

8 The ACIR must take responsibility for  
9 their recommendations and do the right thing for our  
10 most vulnerable children who have many abilities and  
11 much potential when schools and parents work in an  
12 equal, respectful partnership.

13 Thank you very much.

14 CHAIRMAN WINTER: Thank you very much for  
15 coming today and for sharing with us your own  
16 personal experience. Thank you.

17 We would like to hear from Mr. James  
18 Sheedy of the American Federation of Teachers. Thank  
19 you, sir. Thank you for coming.

20 STATEMENT OF JAMES SHEEDY

21 AMERICAN FEDERATION OF TEACHERS

22 MR. SHEEDY: Good afternoon. My name is

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1 James Sheedy.

2 I am the President of the 55,000 member,  
3 New York State Public Employees Federation and a Vice  
4 President of the American Federation of Teachers. My  
5 union represents New York State's professional,  
6 scientific and technical work force -- the doctors,  
7 nurses, the researchers and engineers who make New  
8 York work.

9 We take pride in our union slogan, "New  
10 York Works Because We Do."

11 Counted among PEF's members are almost  
12 2,000 professionals at the State Department of  
13 Environmental Conservation. They are the hard  
14 working air and water scientists and engineers who  
15 have helped form New York into a state with an  
16 admirable environmental record.

17 Our members at that agency pride  
18 themselves on being experts and advocates for their  
19 fellow citizens and for New York's resources. Part  
20 of their ability to positively shape New York's  
21 future comes from a close working relationship  
22 between their agency and the federal authorities.

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1 They have seen how that cooperation benefits all  
2 Americans.

3 When I received a copy of your report, I  
4 asked several PEF members who work in the air quality  
5 protection to review your recommendations about the  
6 Clean Air Act. Quite frankly, they were appalled at  
7 the direction recommended in this report.

8 Our members, who are the environmental  
9 engineers and scientists that run New York's air  
10 pollution control program, vehemently oppose the  
11 Advisory Commission on Intergovernmental Relations  
12 staff recommendations to permit states to develop  
13 their own ways of meeting federal air quality  
14 standards. This is exactly the course that has been  
15 the problem and why air pollution in the United  
16 States, generally acknowledged by the reputable  
17 scientific community as a growing threat, has not  
18 been solved.

19 Strong federal leadership is a must.  
20 History in this field shows the folly of taking a so-  
21 called states rights approach.

22 Let me briefly outline the story. As your

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1 staff's working paper points out, the federal  
2 government did not exert control over air pollution  
3 control policy until 29 states failed to submit plans  
4 to implement to achieve the national air quality  
5 standards promulgated in the Air Quality Act of 1967.

6 Why does ACIR staff feel it would be any  
7 different in 1996 when states are even more strapped  
8 for resources and are vigorously competing to attract  
9 private industry, often lauding their business  
10 friendly approach to protecting the environment?

11 In 1977, Congress mandated, in the Clean  
12 Air Act, that the federal EPA control all  
13 contaminants capable of injuring the public health or  
14 the environment within 90 days of understanding the  
15 threat. They have, in 29 years, promulgated less  
16 than a dozen standards despite the fact that tens of  
17 thousands of chemicals are routinely released into  
18 the environment.

19 Chemicals of varying toxicity, to be sure,  
20 but chemicals which the academic and scientific world  
21 knows should not be released to the ecosystem  
22 unfettered and uncontrolled. Why has this happened?

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1                   PEF members who work in this field  
2 strongly speculate that the situation is another  
3 demonstration of the power of corporate political  
4 action committees, campaign contributions and intense  
5 lobbying over the past 30 years to maximize the talk  
6 about saving the environment while minimizing the  
7 actions actually taken to stop it.

8                   In the face of federal inaction noted  
9 above, over the past 20 years numerous states have  
10 attempted to develop their own comprehensive program  
11 for the responsible control of chemical contaminants  
12 known to be toxic by science but left unaddressed by  
13 the federal EPA. These contaminants have become to  
14 be known as air toxics by the air pollution control  
15 community.

16                   The programs developed by the states to  
17 control them are called air toxic control programs.  
18 New York has been a leader.

19                   California and several other states have  
20 had reasonable success in inventing their own state-  
21 specific programs. However, the entire story of  
22 leaving the development of these control programs to

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1 the states has been a case history of 20 responsible  
2 states trying to invent the wheel while some other  
3 states took economic advantage of their responsible  
4 actions by luring corporate polluters to their do-  
5 nothing-against-the-polluter states.

6 From a purely scientific, logistical point  
7 of view, all arguments support the development of a  
8 strong, centralized program to control air toxics.  
9 For example, the basic scientific data for developing  
10 standards for individuals are scientific facts, not  
11 opinions.

12 Currently, the federal national toxicology  
13 program is the primary developer and founder of  
14 credible use toxicology data. It would be foolish to  
15 expect each of the states to duplicate this time  
16 consuming and expensive work.

17 As for the oft-heard cry to privatize  
18 government activities increasingly, this very area  
19 provides a lesson to be learned. The chemical  
20 manufacturers some time ago banded together to  
21 support so-called Impartial Research Institute to  
22 provide toxicology data, called the CIIT. Just like

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1 the current press concerning the integrity of the  
2 tobacco industry, more scientific hanky-panky has  
3 clouded the work of the CIIT than any other source of  
4 toxicology data.

5 Another extremely important factor blowing  
6 the ACIR staff's recommendations apart is the fact  
7 that air moves. Air pollution travels from place to  
8 place with the winds.

9 Sure, some pollutants are washed out of  
10 the air over time by rain and other natural forces.  
11 But, even then we must ask when. How long after  
12 being released? Over the same state that released  
13 it? Over a neighboring state?

14 Many New Yorkers in Staten Island and New  
15 York City feel they have been breathing New Jersey's  
16 gaseous wastes for years. Air pollution is a global  
17 problem, not a local problem.

18 Air pollution from Ohio in the midwest is  
19 known to cause the acid rain that has killed the New  
20 York and New England lakes and waterways. Your  
21 staff's argument would deny these truths and pretend  
22 that states should be empowered to take care of their

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1 own little problems. History shows this will just  
2 not happen.

3 Another disastrous aspect of taking the  
4 local approach to fighting air pollution like this  
5 paper proposes is that without uniform, nationwide  
6 rules, it sets a scene for bidding for jobs and their  
7 pollution by the locality or municipality or state  
8 most controlled by corporate interests. Let me give  
9 you an example.

10 In the current Clean Air Act, most major  
11 sources of air pollution are subject to something  
12 called MACT standards. MACT means maximum achievable  
13 control technology.

14 Although, in reality, it's not really a  
15 maximum as you and I use the word. It's just a  
16 legal, bureaucratic kind of maximum.

17 The federal law, the 1990 Clean Air Act  
18 amendment, says that, at a minimum, if your  
19 industrial operation is of a certain size or  
20 capacity, it must have at least MACT level pollution  
21 control equipment installed and operational. For  
22 most states, except what I have referred to as the

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1 responsible or progressive states, this recently-  
2 invoked level of MACT pollution control might very  
3 well be the first pollution control requirements  
4 these operations have ever had to install.

5 Remember, many states like Louisiana,  
6 Mississippi and, unfortunately, too many others have  
7 not had any real state programs. Why should they?

8 Up to 1990, the federal program just  
9 covered a handful of the worst pollutants. It was  
10 easy for corporate forces in some of these states to  
11 avoid effective state enforcement of even these few  
12 rules.

13 Please remember that the EPA, just like  
14 many other federal programs, generally does not  
15 administer its own program but instead delegates them  
16 to the states, the counties or the localities.  
17 Almost all of the states now have federal EPA-  
18 delegated authority to run the pollution programs in  
19 their states.

20 The problem is not that EPA is too strict  
21 with the states. The problem is they are not strict  
22 enough when it comes to quality, equally enforcing

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1 environmental rules to curb air pollution.

2 And, don't think it's just the smaller  
3 states who have poor pollution histories. Sometimes,  
4 other economic factors favor poor environmental  
5 records.

6 In the late 1980s and the early 1990s, the  
7 entire Ohio River Valley area fought tooth and nail  
8 to kill any federal electric power plant emission  
9 standards designed to limit sulfur emissions which  
10 feed the chemical reaction process which causes acid  
11 rain. Why?

12 The Ohio Valley is full of mines which  
13 produces high sulfur coal. The Ohio Valley is full  
14 of fossil fuel burning electric plants, which burn  
15 this cheap local fuel and provide cheap power to the  
16 industrial complexes which dot the Ohio Valley rust  
17 belt.

18 The Ohio Valley's rust belt industrial  
19 complexes are already under severe economic stresses  
20 due to the aging infrastructure, failure to invest in  
21 new technology, competing with labor costs which are  
22 higher than Mexico or the Pacific Rim.

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1           The last thing these states think they  
2 need from a local state point of view is the economic  
3 cost of installing pollution equipment to control  
4 their sulfur emissions. Why?

5           Everyone knows the acid rain doesn't fall  
6 in the Ohio Valley. Natural chemical reactions  
7 converting sulfur dioxide into sulfuric acid and acid  
8 rain take a few days to occur.

9           By this time, Ohio's position is that --  
10 pollution, excuse me, is at least over Pennsylvania  
11 or New York or New England. Why would an Ohio State  
12 pollution program want to saddle Ohio's businesses  
13 and residents with such anti-pollution cost burdens?

14           They won't, which is why we need a  
15 national approach to the problem.

16           Local control, block grants, they all  
17 sound seductively appealing. History and science  
18 show local control to work best only on issues having  
19 only local effect and then only some of the time.

20           Air pollution, indeed, any environmental  
21 assault, cannot honestly be viewed solely as a local  
22 problem. To do so would be to ignore reality.

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1                   To adopt this paper's recommendations  
2 would be to turn back the clock on the environment  
3 and the federal government's responsibility to  
4 protect our citizens and their children and  
5 grandchildren.

6                   We also have many concerns with several  
7 other areas of this report, namely the Fair Labor  
8 Standards Act, the Family and Medical Leave Act,  
9 Metric Conversion for Plans and Specifications, the  
10 Clean Water Act and, last but certainly not least,  
11 the Occupational Safety and Health Act. But, we will  
12 submit written testimony on these issues.

13                   Thank you for the opportunity to speak  
14 today on this important issue.

15                   CHAIRMAN WINTER: Thank you, Mr. Sheedy.

16                   Let me recognize now Ms. Laura Rouner, the  
17 National Association of the Deaf. Thank you for  
18 coming.

19                   STATEMENT OF LAURA ROUNER

20                   NATIONAL ASSOCIATION OF THE DEAF

21                   MS. ROUNER: Thank you for inviting me.

22 Good afternoon.

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1                   My name is Laura Rouner. I am a staff  
2 attorney with the National Association of the Deaf on  
3 a fellowship provided from the National Association  
4 for Public Interest Law and the Mobil Corporation.

5                   The National Association of the Deaf is  
6 the nation's oldest and largest organization  
7 safeguarding the accessibility and civil rights of 28  
8 million deaf and hard of hearing individuals, in  
9 education, employment, health care and  
10 telecommunications. The National Association of the  
11 Deaf is a private nonprofit federation of 51 state  
12 association affiliates, including the District of  
13 Columbia, organizational affiliates and direct  
14 members.

15                   Our comments do not merely contain the  
16 thoughts of a few advocates within the Beltway of  
17 Washington, D.C. but reach far and wide across the  
18 nation.

19                   On February 22nd to the 26th, the  
20 presidents of our state association affiliates  
21 gathered in Washington, D.C. to discuss critical  
22 issues that face our membership. State association

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1 affiliates represent over 22,000 dues-paying members  
2 across the nation.

3           During this meeting, state association  
4 leaders were presented with the details on the ACIR  
5 preliminary report as it pertains to the Americans  
6 with Disabilities Act and the Individuals with  
7 Disabilities Education Act. The recommendation of  
8 your Commission, as well as the analysis of the ADA  
9 and IDEA done by the ACIR staff, was presented to the  
10 group.

11           This meeting provided us with a keen  
12 opportunity to educate and poll our national leaders  
13 as to the impact and overall reaction of the ACIR  
14 preliminary report. It is fair to say that that  
15 reaction was unanimous and very much in dismay.

16           The NAD represents deaf and hard of  
17 hearing individuals in America, the majority of whom  
18 are taxpayers impacted by the federal deficit. Many  
19 are employed by state and local government entities.

20           All of our members are impacted as  
21 citizens in need of access to state and local  
22 government services and all of whom have interest in

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1 being served as first-class citizens. But, most  
2 important, basic disability rights laws such as the  
3 ADA are sacred to our membership, as we seek to  
4 exercise our rights as American citizens.

5 It is pertinent that we ask why does the  
6 preliminary ACIR report clearly ignore the exemption  
7 within the Unfunded Mandates Reform Act of 1995 that  
8 governs the ADA and IDEA? It seems to us that the  
9 intent of Congress has clearly been ignored.

10 Congressional members acknowledge the fact  
11 that the ADA is clearly a civil rights law which  
12 guarantees to individuals with disabilities the equal  
13 protection of the law guaranteed by the Constitution.  
14 The ADA as well as IDEA were rightfully exempt from  
15 the recent unfunded mandate legislation and should  
16 not be addressed by the ACIR report in this regard.

17 Further, ADA and IDEA and other basic  
18 disability rights laws are sacred to people with  
19 disabilities. It is not truthful to imply the  
20 implementation periods for ADA requirements are  
21 unreasonably abrupt.

22 It is also troubling that the report

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1 states that more time is needed with temporarily or  
2 permanently suspended deadlines or, worse yet,  
3 voluntary compliance. If voluntary compliance was  
4 the answer, civil rights laws such as the ADA and the  
5 Rehabilitation Act of 1973 would never have been  
6 needed in the first place.

7 We all know clearly that leveling the  
8 playing field and providing communication and program  
9 access is a requirement that needs national  
10 attention. In the deaf community, we have just in  
11 recent years gained access to the most basic  
12 telecommunications service, a working dial tone which  
13 Americans who can hear have for so long taken for  
14 granted.

15 One important ACIR recommendation was the  
16 recognition that educational and technical assistance  
17 resources need to be increased. Education and  
18 technical assistance will go a long way in helping to  
19 reduce the misunderstandings and bring about broad-  
20 based implementation of the ADA that exists across  
21 our country.

22 Education is the key to clearing up these

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1 misconceptions about the ADA held by the public at  
2 large, state and local governments, business entities  
3 and the media.

4           The ADA presently contains language that  
5 protects entities from having to incur changes that  
6 would impose an undue economic hardship on those that  
7 are not readily achievable. It is dishonest to imply  
8 that the opposite is true.

9           Communities are calling for flexible  
10 implementation. That flexibility is already written  
11 into the law.

12           The recommendation that all legal action  
13 against state and local governments be brought only  
14 by the U.S. Attorney General infringes on individual  
15 rights and is deeply disturbing. A right with no  
16 citizen remedy is too much of a controlled right to  
17 be a right at all.

18           The Department of Justice and other  
19 agencies that enforce the ADA simply have many more  
20 complaints than they can handle. Consequently, many  
21 instances of discrimination are unaddressed and un-  
22 remedied.

1                   One clear example of this is the right of  
2 deaf and hard of hearing individuals to appear in  
3 front of state courts as plaintiffs, defendants,  
4 witnesses, et cetera. Although Title II of the ADA  
5 requires all courts to be accessible, over 30 of our  
6 nation's states have statutes that do not guarantee  
7 sign language interpreters or other accommodations  
8 without charge to a deaf person.

9                   The result of this is that our nation's  
10 deaf and hard of hearing individuals are literally  
11 forced to pay for their day in court. This is  
12 discrimination.

13                   And, it is prohibited by the ADA.  
14 But, many individuals continue to suffer from it  
15 everyday.

16                   We implore you to continue to help us work  
17 to safeguard the rights of individuals with  
18 disabilities by not eviscerating the ADA.

19                   Additionally, we believe that an important  
20 and appropriate avenue for empowerment on equal  
21 opportunity and rights is through the provision of  
22 technical assistance and through enforcement of the

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1 ADA. Such actions will bring about an accessible  
2 environment rather than a litigious environment.

3 Our country continues to prosper through  
4 improved medical technology, thus increasing the time  
5 that each of us spends on Earth. Disability will  
6 occur at some time in the lives of most individuals,  
7 if not in their families.

8 The ADA protects the rights of individuals  
9 with disabilities, including those who become  
10 temporarily disabled. As President Clinton stated on  
11 the Fifth Anniversary of the ADA, "We haven't a  
12 person to waste."

13 Congress clearly wants to move Americans  
14 from welfare to employment and from isolation to  
15 active participation so that every American has an  
16 equal opportunity to live the American dream. This  
17 can only become possible with strong civil rights  
18 laws such as the ADA and IDEA that protect  
19 individuals with disabilities.

20 The only answer to correct the woes of  
21 discrimination due to lack of program access,  
22 structural access and communications access is the

1 elimination of barriers as new programs and  
2 structures are created. It is simply too costly and  
3 too precious a waste of human lives to ignore this  
4 need and delay implementation further.

5 Our experience has shown that local option  
6 for program implementation has been uneven and often  
7 not forthcoming in most areas of the country without  
8 federal mandates. In your report, you state that you  
9 want to meet ADA goals in a manner that recognizes  
10 state and local government budget constraints without  
11 abridging the national commitment to the rights of  
12 individuals with disabilities.

13 Temporarily or permanently suspending ADA  
14 requirements is not the way to do this. We cannot  
15 and must not set back disability rights for 200  
16 years. We do not have a person to waste.

17 A couple of comments on the Individuals  
18 with Disabilities Education Act. The provision of a  
19 free appropriate public education for students with  
20 disabilities is a state responsibility.

21 Parents and their children are entitled to  
22 due process under the IDEA. This basic right must be

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1 supplanted -- must not be supplanted, eliminated or  
2 reduced in any way.

3 A recommendation that Congress provide  
4 increased funding that will enable federal, state and  
5 local government entities to fulfill their  
6 obligations effectively and efficiently is both  
7 warranted and necessary. We call upon Congress to  
8 provide increased funding that will enable federal,  
9 state and local agencies to fulfill their ADA and  
10 IDEA monitoring responsibilities efficiently.

11 Resources spent on education about the law  
12 and proactive enforcement will also serve to greatly  
13 reduce litigation and other expensive subsidy  
14 programs. ADA and IDEA are laws for all Americans.

15 We call upon ACIR, Congress and all  
16 Americans to join us in ensuring quality,  
17 independence and justice for all. We demand that the  
18 final ACIR report be corrected and that it  
19 incorporate our concerns.

20 The public should not be misled. The  
21 recent ACIR preliminary report included misleading  
22 information and otherwise irresponsible references to

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1 the ADA and IDEA.

2 Related press coverage contains statements  
3 that were extremely damaging to the rights of 28  
4 million deaf and hard of hearing Americans. Favoring  
5 funding that helps education and implementation of  
6 the ADA is desirable.

7 Termination of rights must not be a part  
8 of our future. Life can only progress and improve if  
9 we move forward.

10 Take the foundation and build on it, but  
11 don't tear it down and then expect it to serve its  
12 intended purpose.

13 These comments reflect the unified concern  
14 of our state association affiliates. We are all  
15 counting on ACIR to issue a final report that is  
16 fair, within the domain of its task and with contents  
17 that do not water down, block or slow the  
18 implementation of the ADA and IDEA.

19 Likewise, the media should receive the  
20 truth about the benefits of the ADA and IDEA for all  
21 Americans, not just individuals with disabilities.

22 Thank you.

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1                   CHAIRMAN WINTER: Thank you so much for  
2 that excellent statement, Ms. Rouner.

3                   Let me call on Ms. Gail Hunt of the  
4 National Alliance for Care Givers. Thank you for  
5 coming today.

6                   STATEMENT OF GAIL HUNT

7                   NATIONAL ALLIANCE FOR CARE GIVING

8                   MS. HUNT: Thank you. It's the National  
9 Alliance for Care Giving. They may have misspelled  
10 it.

11                   We are a new national aging organization  
12 that focuses on not developing national programs to  
13 support family care givers of the elderly. And, I'm  
14 here today to talk a little bit about some of the  
15 productivity issues that might be -- are concerned  
16 with the Family and Medical Leave Act, which the ACIR  
17 report is interested in repealing for state and local  
18 government employees.

19                   I have done work in researching on  
20 corporate elder care services for both governmental  
21 agencies and also for the corporate sector for the  
22 National Institute on Aging and the Social Security

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1 Administration, Fairfax County, Montgomery County,  
2 some other organizations. And, just so that you all  
3 are a little bit aware of this -- I'm sure that  
4 you've heard of some of these statistics, but about  
5 75 percent of the family care givers are women and  
6 about 55 percent of family care givers work full or  
7 part-time.

8 And, the estimated prevalence of care  
9 givers of the elderly among employees in the work  
10 force is somewhere between like 8 and 12 percent.  
11 So, we are not talking about an inconsequential  
12 employee population.

13 About 1 percent of family care givers will  
14 quit due to the stresses of care giving in any one  
15 year. It's estimated that the percentage of  
16 employees who are care givers who are absent three or  
17 more days in the past six months due to their care  
18 giving burden was about 10 and one-half percent.

19 And, this represents aggregate hours that  
20 they commonly report they spend taking older  
21 relatives to the doctors and other health care  
22 professions, visiting facilities, arranging for

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1 services. And, just looking at the average age up  
2 here, I would say that the chances are that some of  
3 you have had experiences with being care givers for  
4 family members or perhaps your spouses have.

5 About 60 percent of working care givers  
6 that provide personal care -- that is, hands-on care  
7 to an older relative -- have experienced an elder  
8 care crisis in the past six months. For example, the  
9 parent goes into the hospital or has a severe health  
10 care crisis or they have to move their residence from  
11 Miami here to Washington.

12 And, the employees also lose an additional  
13 three days per year due to loss of concentration,  
14 extra incoming and outgoing phone calls during the  
15 day and partial absenteeism.

16 And, in most of the elder care studies  
17 that have been done of employees, it's estimated that  
18 somewhere between 5 and 17 percent reduce their time  
19 on the work force from part-time -- from full time to  
20 part-time work or they change jobs because of care  
21 giving and work conflicts. And, this doesn't even  
22 count what you would call lost opportunities --

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1 promotions passed up, travel that they don't go on  
2 that is work related.

3 Typically, health issues are also involved  
4 for care givers. The percentage of non-care giving  
5 employees who are under a physician's care is about  
6 16 percent typically versus 20 percent for family  
7 care givers.

8 And, many family care givers report  
9 negative health impacts, including greater  
10 depression, colds, flu and more physician visits.  
11 Also, care givers report using two to three times as  
12 many over-the-counter prescription drugs.

13 The reason the Family and Medical Leave  
14 Act is important in this, it's one -- certainly not a  
15 panacea, but it is one possible solution that family  
16 care givers can use, because they are allowed -- if  
17 their parent is seriously ill, they are allowed to  
18 take off the 12 weeks of unpaid leave. And, I'm sure  
19 you all have had a report from the Department of  
20 Labor which did an analysis that shows that a very  
21 few number -- somewhere between 2 and 4 percent of  
22 the eligible employees -- actually use the Family and

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1 Medical Leave Act at all.

2 And, a very tiny percentage of that used  
3 it for elder care. And, the study that the Women's  
4 Bureau did indicated that the reason was that the  
5 eligible employees just didn't know that they could  
6 use this for other than their own sickness, which is  
7 what the vast majority of them used it for.

8 So, we would like to say that we would  
9 support the idea that this is not an incredible cost  
10 certainly to state and local governments. It's a  
11 relatively small cost.

12 It may grow in the future if more and more  
13 employees know about it. But, it's one option. The  
14 Family and Medical Leave Act is one option that  
15 family care givers have that they would find -- that  
16 they do find very valuable.

17 Thank you.

18 CHAIRMAN WINTER: Thank you so much, Ms.  
19 Hunt, representing the National Alliance for Care  
20 Givers. Thank you.

21 MS. HUNT: Care giving.

22 CHAIRMAN WINTER: For Care Giving?

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1 MS. HUNT: Yes.

2 CHAIRMAN WINTER: I will make that change  
3 in my notes here. Thank you so much for that  
4 excellent statement.

5 We would like to hear now from Ms. Dolores  
6 Phillips of the New Jersey Environmental Federation.  
7 Ms. Phillips, welcome to the hearing.

8 STATEMENT OF DOLORES PHILLIPS

9 NEW JERSEY ENVIRONMENTAL FEDERATION

10 MS. PHILLIPS: Thank you, Mr. Chairman.  
11 Thank you for the opportunity to comment.

12 I am from the State of New Jersey and down  
13 here to talk to several members of our delegation.  
14 And, certainly you are quite aware that our  
15 delegation has been all over the "New York Times"  
16 recently, because they specifically have put the  
17 environment as a major concern for their  
18 constituents.

19 And, I am the legislative and policy  
20 director for the New Jersey Environmental Federation,  
21 which is a statewide, nonprofit, advocacy  
22 organization. We represent 94,000 members in the

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1 State of New Jersey. And, we have an adjunct  
2 coalition of 71 member groups.

3 Obviously, as an environmental  
4 organization, you know that my comments are going to  
5 be geared towards the environment. And, certainly  
6 you are probably quite aware that we do not want any  
7 weakening changes to the Clean Air Act, the Clean  
8 Water Act or the Endangered Species Act.

9 One of my reasons for taking the time to  
10 come here to talk to you today is because in New  
11 Jersey the whole issue of unfunded mandates is, in  
12 fact, one that is being debated on a daily basis.  
13 And, what we have found is that -- we have a unique  
14 situation.

15 New Jersey has actually promulgated some  
16 of the toughest environmental regulations in the  
17 nation. One of the reasons that that has occurred is  
18 because we have the most -- we are the most densely  
19 populated state in the nation and we have some of the  
20 most severe problems.

21 You are probably aware that we have the  
22 highest number of superfund sites in the state, not

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1 to mention another 13,000 contaminated sites that  
2 have still not been cleaned up. In addition to that,  
3 we have the second worst quality of air in the  
4 nation.

5 My experience as an environmental lobbyist  
6 down in the State House has been quite interesting  
7 mostly because as we've watched this debate on  
8 unfunded mandates occur in New Jersey, we  
9 additionally have, on a daily basis, worked in the  
10 same room with the Chemical Industry Council -- known  
11 down here as the CMA; the Chemical Industry Council  
12 is the New Jersey version of that organization -- the  
13 New Jersey Business and Industry Association, the  
14 League of Municipalities, which down here you might  
15 know also as the League of Cities. What we often  
16 hear is a call for the state to roll back its tough  
17 environmental standards recently.

18 And, interestingly enough, those who have  
19 come forward to ask for that are asking for federal  
20 standards only and not tougher state standards. That  
21 request has been denied by the people of New Jersey,  
22 because there are -- last year, in fact, in New

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1 Jersey we had two polls, one that we commissioned  
2 ourselves, which was a statewide poll, that resulted  
3 in over 70 percent of voters in New Jersey asking for  
4 tougher, not weaker, environmental standards and also  
5 asking for more funding for environmental protection  
6 even if it meant they had to pay more.

7 We specifically put that question on  
8 there. And, certainly all of you have probably done  
9 polls and have done some polling yourself.

10 You know that you can certainly manipulate  
11 the statistics depending on the questions that you  
12 ask. But, we tried to be very objective about this.

13 We were quite surprised by the results.

14 Last fall, a research institute in New  
15 Jersey, the Center for Analysis in the Public  
16 Interest -- not related to us at all and, in fact, is  
17 just a nonprofit that does research -- did another  
18 poll and actually corroborated our results. And,  
19 because of this, what we found is that the call to  
20 roll back state standards has been denied.

21 My point here today to come to you is to  
22 have you understand that if we don't have these

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1 federal minimum standards that we have now -- and I  
2 would probably make an argument that they are not  
3 fully enforced, as it is; we are often asking the EPA  
4 to be much tougher than it is -- that we would be in  
5 a real serious situation; that if we were to roll  
6 back the state standards and we don't have federal  
7 minimum standards, we would have exacerbated problems  
8 with our air and water quality.

9 As a result of this debate, we realized  
10 that the key issue here really is one of funding.  
11 Local municipalities certainly don't want to be  
12 raising their property taxes if there's a mandate.

13 They claim that this has, in fact,  
14 happened with some of the New Jersey's mandates.  
15 And, I don't know how many of you are aware that we  
16 have a 60 percent recycling law in the State of New  
17 Jersey which has, in fact, brought in money for the  
18 municipalities.

19 And, I think here's a good example of a  
20 mandate that has not only lowered cost in many  
21 instances but also has been making money for the  
22 municipalities. If, indeed, that mandate were not

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1 there for a 60 percent recycling law in the State of  
2 New Jersey, what we would probably see happening is  
3 one municipality would do 20 percent, another would  
4 do 30 percent.

5 And, what ends up happening is we do not  
6 create the markets, because there is no collective  
7 agenda and goal. And, that's the purpose of having  
8 the standards that we specifically have.

9 And, when we looked further at this  
10 funding issue, we decided to be somewhat more  
11 proactive on this. And, we are in the process now of  
12 asking the Legislature within the State of New Jersey  
13 -- and it has now passed the Assembly and we are  
14 working on the State Senate; our House there is  
15 actually called the Assembly -- to dedicate 6 percent  
16 of the corporate business tax revenue to cleaning up  
17 contaminated sites and also dedicating it to cleaning  
18 up waterways and improving our water quality in New  
19 Jersey, which has been hampered for some time by  
20 inadequate funding.

21 We are moving forward on this. And, we  
22 intend to have this as a constitutional amendment in

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1 the State of New Jersey.

2 It will be on the ballot. It does not  
3 have to go to the Governor for approval in the State  
4 of New Jersey. So, we've decided to look at this  
5 from a different perspective.

6 And, we do have tax revenue shortfalls  
7 this year. We knew that we would not be able to find  
8 another source of new fees, which we actually  
9 believed very strongly that, in fact, we wanted to  
10 increase our spill fund tax and we wanted to increase  
11 our direct discharge tax. And, we felt that was the  
12 fairest way is to have those who were discharging  
13 directly into waterways pay for the funds that were  
14 necessary.

15 But, because of partisan politics we were  
16 not able to do that this year, because while the  
17 Republicans are in control in the State of New  
18 Jersey, the Democrats wouldn't give us a vote for it  
19 either. So, as a result, we now have a  
20 constitutional amendment that we are going to be  
21 working on.

22 And, we are finding this to move forward

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1 and to be quite favorable as a way of providing  
2 additional funding to make these standards that we  
3 have in New Jersey work and happen and provide the  
4 money to our Department of Environmental Protection.

5 So, I wanted to point out to you that, in  
6 fact, there are other ways to find monies that are  
7 necessary for environmental protection. We would  
8 urge you to, in fact, in your final report withdraw,  
9 please, the recommendations that you have made on the  
10 Clean Water Act, the Clean Air Act, the Endangered  
11 Species Act.

12 On behalf of our members, we thank you for  
13 listening and hope that you do consider our appeal  
14 from New Jersey to not weaken the federal minimum  
15 standards.

16 Thank you.

17 CHAIRMAN WINTER: Thank you, Ms. Phillips.  
18 Thank you very much for a good statement.

19 We would like to hear now from Brette  
20 Browning of the Coalition for Texans with  
21 Disabilities. Ms. Browning, welcome. Thank you for  
22 coming.

1 STATEMENT OF BRETTE BROWNING

2 COALITION FOR TEXANS WITH DISABILITIES

3 MS. BROWNING: Thank you.

4 CHAIRMAN WINTER: Where are you from?

5 MS. BROWNING: I'm from Austin, Texas.

6 CHAIRMAN WINTER: Austin? We are glad to  
7 have you.

8 MS. BROWNING: Forgive me for being rather  
9 informal. I hadn't planned on coming. I was just in  
10 the neighborhood, so to speak.

11 We are here for multiple sclerosis. The  
12 National Foundation of MS is meeting on issues and  
13 empowerment. And, it just so happened it was  
14 happening at the same time.

15 Mainly -- I mean, I don't want to take any  
16 time away from anybody else, but one thing that we  
17 are definitely -- we've got about 3.5 million people  
18 with disabilities in Texas. And, that's what the  
19 Coalition of Texans with Disabilities represents.

20 I just want to get in my two cents that  
21 the Americans with Disabilities Act and the  
22 Individuals with Disabilities Education Act are civil

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1 rights. And, they are very important.

2 You know, it struck me last night watching  
3 the Academy Awards, which I wasn't going to do  
4 because I was going to get a good night's sleep, but  
5 you know how that goes. When Christopher Reeve came  
6 on -- and it upset me a bit that -- you could tell by  
7 the panning of the faces that so many people felt  
8 sorry for him -- oh, what a terrible thing.

9 And, I mean, I can't speak to that issue.  
10 But, he was up there because of the Americans with  
11 Disabilities Act.

12 And, when you think about it, the  
13 wheelchair that he was in, that cost a lot of money.  
14 And, unfortunately, this is a civil rights law that  
15 has costs attached to it.

16 We all wish we could be well. We wish  
17 that we didn't have problems. But, we do.

18 And, not all of us have the kind of money  
19 that Christopher Reeve does, not being Superman.  
20 But, it just struck me that he made a call to the  
21 media to pay attention to this issue and that normal  
22 people -- anybody, it's not a partisan, political,

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1 not religious, nothing. It's just the way it is.

2 And, I would ask you to respect the ADA  
3 and the IDEA that are civil rights laws and to please  
4 rescind your statements regarding your  
5 recommendations to weaken them.

6 Thank you.

7 CHAIRMAN WINTER: Thank you very much for  
8 coming. We welcome your presence here and your  
9 testimony.

10 Let me inquire if there are others here  
11 who desire to make a statement at this time? We  
12 would be delighted to hear from you.

13 (No response.)

14 CHAIRMAN WINTER: I have no other names on  
15 the list other than a number who had indicated a  
16 desire to testify but apparently, for whatever  
17 reason, are not able to be here.

18 Yes, sir.

19 ATTENDEE: Are you prepared to describe  
20 what you are going to do next for the final report?

21 CHAIRMAN WINTER: We will take under  
22 advisement what we have heard here today, assemble

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1 this array of testimony that we have received and  
2 will proceed to take that into account in formulating  
3 the basis for a final report. And, we -- let me say  
4 this to all of you and to those who have preceded you  
5 in testifying: I assure you this has not been an  
6 idle exercise on our part.

7 This has been very helpful. You have  
8 provided us with some very excellent information.

9 I can say candidly that, speaking as the  
10 Chair of this Commission, I wish we had had this kind  
11 of hearing earlier. But, it is certainly not too  
12 late to take into account the positions that have  
13 been stated here on all sides.

14 We have not heard just one side. It is  
15 obviously a very, very complex problem that we are  
16 dealing with.

17 I speak as one who has been involved in  
18 state government for many years. I think we must  
19 take into account a wide range of opinions, get all  
20 of the information that we possibly can, as we are  
21 seeking earnestly to do here today, take that  
22 information and using it come out with a final report

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1 that hopefully will be constructive.

2 I have no illusions that that will be easy  
3 to do. I have no illusions that we will come out  
4 with a final report that will be unanimously adopted  
5 by this Commission or unanimously accepted by  
6 everyone in this country.

7 It's not that kind of a problem. If it  
8 were a simple problem, Congress would not have given  
9 ACIR the responsibility for dealing with it.

10 We admit it's a difficult problem. There  
11 are differences among the members of the Commission  
12 as to how to approach it.

13 But, we are going to do so as honestly as  
14 we can, as forthrightly as we can. And, what you  
15 have presented to us today will represent a very,  
16 very helpful addition to the store of information  
17 that we think is important to devising a final report  
18 that we can give to the Congress and to the  
19 President.

20 We thank all of you for the testimony that  
21 you have given today. And, we shall look forward to  
22 hearing from you further.

1                   We hope that if you have other information  
2 that you want to leave with the Commission, we will  
3 be glad to get it.

4                   Are there others who would like to make a  
5 statement?

6                   (No response.)

7                   CHAIRMAN WINTER: Do you know of others  
8 who would like to make a statement who have not  
9 arrived yet? We said we would be here a little while  
10 longer.

11                   ATTENDEE: Yes. The National League of  
12 Cities, she was thinking that it was going to go  
13 until about 5 today with the number of people that  
14 were scheduled to testify.

15                   Unfortunately, she is not here. But, we  
16 have submitted comments at this point already. And,  
17 we will submit her testimony in written form to you.

18                   CHAIRMAN WINTER: Do you expect her to  
19 arrive?

20                   ATTENDEE: I left a message.

21                   CHAIRMAN WINTER: Okay. Well, we will  
22 stick around a little while longer. Some of us have

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1 to catch a plane soon.

2 You tell her that we would like to hear  
3 her. We will stay as long as we can.

4 ATTENDEE: Yes, sir.

5 CHAIRMAN WINTER: Let me suggest that we  
6 take a brief recess. And, we will be available to  
7 hear anyone else who may come in.

8 (Whereupon, a recess is taken at 2:33  
9 p.m., to reconvene at 2:47 p.m., this same date.)

10 CHAIRMAN WINTER: Mr. Mitchell, welcome,  
11 sir.

12 MR. MITCHELL: Thank you.

13 CHAIRMAN WINTER: Let me present Mr. Bob  
14 Mitchell of the National Association of Home  
15 Builders. Thank you for coming, sir.

16 And, we welcome your testimony.

17 STATEMENT OF BOB MITCHELL

18 NATIONAL ASSOCIATION OF HOME BUILDERS

19 MR. MITCHELL: Thank you, Mr. Chairman.  
20 And, thank you, members that are here.

21 I am Bob Mitchell. And, I am a home  
22 builder from Rockville, Maryland.

1 I represent today the National Association  
2 of Home Builders, 185,000 corporate members strong or  
3 member firms, I should say, who are involved in the  
4 development and construction industry. We build  
5 single family homes, townhouses, apartments and light  
6 construction. Our members employ approximately 7.5  
7 million people.

8 There are three areas which I will briefly  
9 address today. First, the effect that we believe  
10 that unfunded mandates have on private parties and  
11 then provide the Commission with information on two  
12 of the specific federal mandates, namely the  
13 Endangered Species Act and the Clean Water Act, which  
14 we believe directly affect our members.

15 It is clear that the private sector and  
16 ultimately the housing consumer is unfairly burdened  
17 by unfunded mandates. When the federal government  
18 imposes requirements on state and local governments  
19 without providing the funding necessary for  
20 compliance, local governments respond often by  
21 imposing greater fees for building permits, water and  
22 sewer hookups and subdivision approvals.

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1                   Localities have also imposed development  
2 impact fees for roads and schools and libraries and  
3 many other off-site general public facilities that  
4 total thousands of dollars and eventually affect the  
5 new home buyer. These fees have increased in recent  
6 years because of more and more requirements from  
7 federal mandates coupled with decreased federal  
8 assistance, decreased state assistance, localities  
9 and the reluctance of voters to accept further  
10 property tax increases.

11                   I often say that obviously it is  
12 politically more acceptable for a local politician or  
13 local officeholder to sell this cost to a very  
14 specific non-present constituency, being the new home  
15 builder, than it is to spread it over all taxpayers.  
16 As an example, in the State of California, if you are  
17 building a new subdivision, school impact fees are  
18 assessed, as well as traffic impact fees, fees for  
19 fire protection facilities, fees for drainage and  
20 flood control, fees for parks, sewer and water  
21 systems and so on.

22                   A large portion of these fees take the

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1 form of development impact taxes which localities use  
2 to pay for public works which they choose not to fund  
3 from increased local income and property taxes. The  
4 costs associated with fees, permits and regulatory  
5 costs drive up the cost of a new home.

6 In California, this amount can mean an  
7 astounding \$20,000 a house. In Maryland, where I  
8 build, it's an average of more than \$3,000 a house.  
9 And, many of the houses which I build, fees total as  
10 much as \$8,000 and more per house.

11 The unfunded federal mandates prohibit  
12 builders from being able to provide affordable  
13 housing at all levels. For every \$1,000 increase in  
14 the price of a home, 20,000 people are priced out of  
15 the market.

16 Now, in the very limited time that I have,  
17 I would like to offer some specific comments on two  
18 of the federal mandates cited in your report, namely  
19 the Endangered Species Act and the Clean Water Act,  
20 which are two of many of the mandates listed, plus  
21 those that were not listed in your report, that  
22 directly affect the members of our industry.

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1 The Endangered Species. With respect to  
2 the Endangered Species Act, we agree that the  
3 Commission -- we agree with the Commission's finding  
4 that the Act impacts significantly on state and local  
5 governments without allowing their input into the  
6 decision-making process.

7 NAHB strongly supports the Commission's  
8 recommendation that state and local governments  
9 should be given an official role in the management  
10 and planning decisions affecting the listing process  
11 beyond the sparse requirements that are currently in  
12 effect.

13 The biggest problem represented by the  
14 Endangered Species Act is the listing process. As  
15 identified in the report, the federal government  
16 standard of relying on the best available scientific  
17 and commercial data has resulted in poor listing  
18 decisions based on insufficient data.

19 The fact is that best available data we  
20 don't believe always represents the most  
21 scientifically reliable data.

22 When the federal government lists a

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1 species as endangered, state and local governments  
2 are affected because private development is stopped.  
3 Loss of development or delayed development means the  
4 loss of thousands of dollars in property tax  
5 revenues.

6 As an example, in Travis County, Texas,  
7 the county appraisal district estimated that land  
8 values in that area fell from \$335 million to less  
9 than \$57 million merely upon the listing of the  
10 golden cheek warbler. There are also lost revenues  
11 for abandoned business ventures and foregone taxes to  
12 the city, school districts and county government.

13 In addition to costs created by the  
14 listing process, there are the more expensive costs  
15 that are needed to protect habitat and hopefully  
16 recover the species.

17 The costs associated with developing and  
18 implementing habitat conservatory plans and recovery  
19 plans also pose significant problems to state and  
20 local governments. The federal government has  
21 dictated highly stringent guidelines to follow in  
22 developing these plans, yet it plays a minor role in

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1 either developing or in their funding.

2 In addition, these plans take years to  
3 prepare during which time development is often  
4 stopped, further straining state and local government  
5 budgets.

6 As respects the Clean Water Act, the  
7 Commission has accurately portrayed the excessive  
8 cost to state and local governments, costs which are  
9 often passed on to the consumer, usually the new home  
10 buyer. In 1993, in direct response to the  
11 unavailability of federal funding for the  
12 administration of the NPDES permit storm water  
13 program, the Maryland Department of the Environment  
14 proposed permit fees ranging from \$700 to \$2,500 per  
15 lot. This would have directly affected the cost for  
16 us to do business in the State of Maryland.

17 Funding, however, is not the only problem.  
18 The other problem is the lack of flexibility given to  
19 the states to identify and address their priorities  
20 instead of the federal government's priorities.

21 In its 305(b) report to EPA, the State of  
22 Maryland has identified excess nutrients as being its

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1 most serious water quality problem. Due to this  
2 inflexibility, however, the State may have to put off  
3 addressing the excess nutrients until it complies  
4 with all the requirements of the Clean Water Act.

5 In order for these difficulties to be  
6 overcome, NAHB urges the Commission to expand your  
7 recommendation to both restore federal funding and  
8 give state and local governments greater flexibility  
9 for implementing the federal mandates for clean  
10 water. The members of NAHB truly care about their  
11 communities. They care about the environment.

12 And, they care about affordable housing.  
13 And, that's why we have been pleased to make these  
14 short comments on this very pressing issue.

15 Thank you for allowing me to speak. Thank  
16 you, sir.

17 CHAIRMAN WINTER: Thank you, Mr. Mitchell,  
18 for that very incisive statement. And, we appreciate  
19 you taking the time to share it with us.

20 MR. MITCHELL: Thank you.

21 CHAIRMAN WINTER: Thank you, sir. Are  
22 there others who would like to be heard?

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1 Have you been able to --

2 ATTENDEE: I have contacted her. And, she  
3 is on her way as fast as the cab can get her here.

4 CHAIRMAN WINTER: Okay. Well, we will  
5 wait a few minutes.

6 ATTENDEE: At 3 o'clock, you can go on  
7 your merry way if she isn't here.

8 CHAIRMAN WINTER: Let's say we will stay  
9 until 3 o'clock. Mr. Franke and I have to catch an  
10 airplane.

11 He has to go all the way back to Salem,  
12 Oregon. And, I have to go to Jackson, Mississippi.

13 Well, we will stand in recess for five  
14 minutes and hope that we have a final witness up  
15 here.

16 (Whereupon, a recess is taken at 2:55  
17 p.m., to reconvene at 2:58 p.m., this same date.)

18 CHAIRMAN WINTER: I am advised that we  
19 have Christy Willis of the Association on Higher  
20 Education and Disability here. We would be pleased  
21 to hear from you.

22 Let me say there has been more members of

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1 the Commission here earlier today. And, we are sorry  
2 that we are so limited in number right now.

3 But, we welcome you.

4 STATEMENT OF CHRISTY WILLIS

5 THE ASSOCIATION ON HIGHER EDUCATION AND DISABILITY

6 MS. WILLIS: Terrific. Thank you. Good  
7 afternoon.

8 My name is Christy Willis. And, I am a  
9 member of the Association on Higher Education and  
10 Disability. I have been asked by the Board of  
11 Directors to deliver these remarks.

12 The Association on Higher Education and  
13 Disability, AHEAD, is made up of professionals  
14 working in the area of support services for students  
15 with disabilities. Our perspective is also informed  
16 by the educational experiences of our students who  
17 have been educated since the passage of the  
18 Individual with Disabilities Act, IDEA, and by the  
19 experiences of many of our members who have  
20 previously been educators at the K through 12 level.

21 Therefore, our remarks will focus on the  
22 recommendations advanced by the U.S. Advisory

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1 Commission on Intergovernmental Relations, ACIR, or  
2 Commission, in its preliminary report, the report, as  
3 it relates to the Americans with Disabilities Act,  
4 ADA, and IDEA. AHEAD wishes to express its concern  
5 with the report which, in our opinion, demonstrates a  
6 lack of familiarity with the purposes and realities  
7 of the ADA and the IDEA.

8 First and foremost, the ADA is a civil  
9 rights statute, passed pursuant to Congress' powers  
10 under both the Fourteenth Amendment and the Commerce  
11 clause. The IDEA also has its basis in the  
12 Constitution.

13 In passing the Unfunded Mandates Reform  
14 Act of 1995, the Act, Congress specifically excluded  
15 from the Act's review civil rights laws and other  
16 laws enforcing the constitutional rights of  
17 individuals. Therefore, to the extent that the  
18 Commission has addressed the ADA or the IDEA, it has  
19 done so beyond the scope of its authority. And, its  
20 recommendations cannot be permitted to remain in any  
21 final report issued by the Commission.

22 Furthermore, both the ADA and the IDEA

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1 were passed after years of extensive public hearings  
2 before both houses of Congress. As a funding  
3 statute, the IDEA is reauthorized every three years.  
4 Indeed, Congress has considered few statutes more  
5 fully than the ADA and the IDEA.

6 In addition, integral aspects of the  
7 Commission's analysis of both the ADA and the IDEA  
8 are based on faulty premises and misconceptions.  
9 And, a certain irony pervades the report.

10 In a political climate, which is hostile  
11 to government intrusion in citizens' lives, the  
12 ACIR's recommendations for federal government  
13 oversight and the assumption by the governmental  
14 agencies of legal representation of private,  
15 individual civil rights actions must be viewed with  
16 skepticism. Many of the ACIR remarks are  
17 contradictory.

18 That having been said, AHEAD wholly  
19 supports some of the suggestions contained in the  
20 ACIR report with respect to implementation of the  
21 ADA. In particular, we agree that the state and  
22 local governments, as well as private institutions,

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1 would benefit greatly from increased technical  
2 assistance and education.

3           Research conducted thus far suggests that  
4 much of the fear about the ADA is based on lack of  
5 knowledge. In fact, a careful review of case law,  
6 which AHEAD has analyzed, indicates that the courts  
7 have been extremely conservative in their  
8 interpretation of the ADA and that the judiciary, in  
9 general, has not extended ADA protection to persons  
10 not intended to be covered by the ADA.

11           The reality, then, is that state and local  
12 governments have not been held to unreasonable  
13 standards of compliance with the ADA but,  
14 nevertheless, need a great deal more technical  
15 assistance to remove the handicap of ignorance as a  
16 barrier to compliance.

17           AHEAD also fully supports the extension of  
18 federal financial support to public institutions in  
19 order to retrofit buildings to come into compliance  
20 with the applicable regulations. However, the  
21 Commission has mistakenly looked to all titles of the  
22 ADA when, in fact, only Title II applies to state

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1 governments.

2           Therefore, to the extent the report  
3 addresses the EEOC and other agencies, it has acted  
4 beyond the scope of the task it was assigned. Few of  
5 the agencies the report lists have enforcement --  
6 lists as having enforcement powers do, in fact, have  
7 such powers.

8           Therefore, AHEAD wishes to express its  
9 concern with the ACIR recommendation that there be  
10 one single enforcement agency. First of all, it  
11 falsely assumes that the Department of Justice, DOJ,  
12 is capable of enforcing the individual civil rights  
13 of 49 million Americans.

14           As it is, the U.S. Department of  
15 Education's Office for Civil Rights, OCR, has been a  
16 leader in ensuring equal opportunity for students  
17 with disabilities in all educational arenas and has a  
18 proven track record of knowledge regarding  
19 disabilities, in particular, in post-secondary  
20 educational settings. The Department of Justice,  
21 DOJ, does not, which is why we surmise DOJ delegated  
22 its enforcement responsibilities under Title II of

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1 the ADA to OCR with respect to claims lodged against  
2 school districts and public colleges and  
3 universities.

4 We have found this workable. Indeed, we  
5 would support DOJ delegating Title III enforcement to  
6 OCR, since OCR retains Section 504 jurisdiction over  
7 these same private institutions.

8 In this way, the federal government would  
9 avoid duplication of effort and utilize the resources  
10 it has more effectively.

11 AHEAD strongly objects to ACIR's  
12 recommendation curtailing the private right of action  
13 remedy to redress violations of the ADA. It is  
14 axiomatic that the doctrine of separation of powers  
15 provides a system of checks and balances.

16 In a tri-partite system of government, the  
17 concepts of judicial review and a private right of  
18 action are fundamental and were enunciated early in  
19 our history by the first Chief of Justice of the U.S.  
20 Supreme Court. Without these protections, an  
21 administrative officer or board would, in essence, be  
22 given a blank check to enforce the law as he or she

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1 personally saw fit.

2 A private right of action is necessary to  
3 avoid that eventuality. Furthermore, the doctrine of  
4 separation of powers demands that current enforcement  
5 mechanisms of the ADA, which are the same as all  
6 other civil rights statutes, remains intact.

7 It violates basic principles of the  
8 separation of powers for the federal government to  
9 act as the sole investigator, finder of fact and  
10 legal representative of individual citizens in  
11 private civil rights actions.

12 Furthermore, the practical realities are  
13 that while DOJ is currently entitled to bring  
14 litigation on behalf of the citizenry, a careful  
15 review of the cases brought by DOJ demonstrate the  
16 limited role this body can necessarily play due to a  
17 lack of resources. This is not to suggest the vital  
18 role that DOJ does play in its educational and  
19 enforcement roles.

20 Indeed, DOJ has been instrumental in  
21 attacking wide-scale abuse and challenging practices  
22 where a positive ruling is likely to have a ripple

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1 effect throughout society.

2           As the law is being enforced now, many  
3 consumers are frustrated at the inability of the EEOC  
4 and the DOJ to process their complaints. Due to  
5 limited resources, DOJ does not file claims on behalf  
6 of single consumers unless the ruling is expected to  
7 have broad impact.

8           For the vast majority of individuals with  
9 disabilities, their claim is important, if not vital  
10 to their lives, even if a positive ruling does not  
11 establish any precedent beyond their case.

12           There can be no dispute that much of the  
13 discrimination that goes on in society continues,  
14 even under existing ADA law, due to a lack of  
15 enforcement.

16 Thus, any effort to curtail what limited enforcement  
17 exists will strike a terrible blow to equal  
18 opportunity for individuals with disabilities.

19           The Commission has mistakenly assumed that  
20 terms contained in the ADA such as reasonable  
21 accommodation, undue burden and readily achievable  
22 are "vague and overly broad." These terms, imported

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1 directly from Section 504 of the Rehabilitation Act  
2 of 1973, have applied to the states for over 20  
3 years.

4 An extensive body of law gives specific  
5 guidance regarding the application of these terms.  
6 And, they form the basis of defenses available to the  
7 states.

8 Definitions must be broad enough to allow  
9 for compliance by entities with varying needs and  
10 abilities. Therefore, AHEAD objects to any weakening  
11 of definitions such as reasonable accommodation.

12 The nature of disabilities requires a  
13 flexible approach. One size fits all will never do  
14 justice to the treatment of persons with  
15 disabilities.

16 Moreover, there is no evidence that court  
17 decisions have interpreted this language in anything  
18 but a reasonable manner. Similarly, the phrase  
19 "undue burden" allows state and local governments and  
20 the judiciary to examine each situation on a case by  
21 case basis.

22 The ACIR's objections are ironic because,

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1 scrutinized.

2 Left to their own devices, we have no  
3 doubt that many states and local communities would  
4 not act to ensure equal protection under the laws.  
5 Even read in its broadest sense, the ADA  
6 significantly compromises the rights of individuals  
7 with disabilities.

8 Congress recognized that a true equality  
9 would require that all buildings be made accessible  
10 but understood that such a mandate was not feasible.  
11 This is why Congress chose to place stricter  
12 requirements upon "new construction" while permitting  
13 mere program access for existing facilities.

14 An example may be illustrative. Jane, who  
15 uses a wheelchair, is thrilled at the opportunity to  
16 go on to college at the University of State. For the  
17 first time, she, like her other peers, will be living  
18 away from home.

19 However, because all of the residential  
20 housing on campus falls within the existing  
21 facilities language of the ADA, Jane is merely  
22 entitled to program access. In other words, Jane

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1 will not be given the full range of options enjoyed  
2 by all other students on campus.

3 Thus, if there are three residence halls  
4 which serve women, it is very likely that Jane will  
5 be relegated to a choice of one and will likely end  
6 up living on the first floor.

7 What else is Jane denied? The opportunity  
8 to go upstairs next door and visit her best friend,  
9 who lives on the third floor of that building; or,  
10 even to meet her in the hall's cafeteria, which is  
11 inaccessible.

12 Jane is also denied the opportunity to  
13 attend a party on one of the floors in a co-ed  
14 residence because she either cannot get in the door  
15 or up the stairs. Thus, even at its best, the ADA,  
16 as it is currently written, denies true equal  
17 protection for individuals with disabilities.

18 Therefore, AHEAD cannot support any  
19 efforts to weaken what must be viewed, at best, as a  
20 first step in equal protection for persons with  
21 disabilities.

22 In addressing the IDEA, the Commission has

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1 again exceeded the scope of its charge. As mentioned  
2 earlier, the IDEA has its roots in constitutional  
3 rights and has, without a doubt, been fully  
4 considered by Congress.

5 In addition, the IDEA is not an unfunded  
6 mandate. It is a funding statute which has not been  
7 furred to its fullest extent.

8 We wholly support the Commission's  
9 recommendations for increasing this funding. We do  
10 not support the Commission's recommendations which  
11 would neutralize the statute's purposes.

12 The ACIR's recommendations evidence a lack  
13 of familiarity with the IDEA. The fact that  
14 litigation occurs and that school districts have been  
15 compelled to live up to their responsibilities is not  
16 evidence that the due process rights of children and  
17 their parents or legal guardians should be abridged  
18 in some way.

19 The Commission would do well to recognize  
20 that the IDEA is procedural. The remedies are in the  
21 nature of due process pursuant to parents' basic  
22 fundamental rights to educate their children and the

1 children's rights to free and appropriate public  
2 education.

3           The Commission would also do well to  
4 recognize that what the local school districts cannot  
5 fund, the state must; that not educating disabled  
6 children in the least restrictive environment costs  
7 more than segregated special education or  
8 institutionalization; and, that educating disabled  
9 children to become productive, taxpaying citizens is  
10 cheaper than ignoring their education and consigning  
11 them to permanent status in the welfare state.

12           The ACIR is apparently unfamiliar with the  
13 practical realities of IDEA compliance. In reality,  
14 school districts tend to avoid classifying children  
15 as needing special educational services.

16           The potential for increased funding is not  
17 sufficiently lucrative to make it worthwhile to  
18 classify children as disabled. And, the Commission's  
19 report gives a false impression of what is really  
20 happening in the schools.

21           Parents and school districts are not equal  
22 bargaining parties. School districts are represented

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1 by counsel. Most parents cannot afford such luxury.

2 School districts spend money litigating  
3 cases that never would have been filed if the  
4 district had provided these children with a free  
5 appropriate public education when they were first  
6 identified.

7 Furthermore, AHEAD does not support the  
8 elimination of parents' rights to judicial review.  
9 Again, the Commission's lack of familiarity with the  
10 realities of IDEA compliance is clear.

11 Most impartial hearing officers are former  
12 school officials who are anything but impartial. In  
13 many areas, it is a foregone conclusion that the  
14 parents will lose at the impartial hearing level.

15 And, in many states, the only level of  
16 administrative process is the impartial hearing.  
17 Most parents cannot afford representation and are  
18 unable to assert their children's rights on their  
19 own.

20 Without the ability to appeal to the  
21 courts and the possibility of attorneys' fees as a  
22 remedy, parents and disabled children will be at the

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1 mercy of a biased system.

2 In sum, AHEAD appreciates that certain  
3 aspects of the ADA place financial burdens upon  
4 public institutions. And, to the extent that the  
5 federal government has the resources to offer  
6 financial and technical assistance to state and local  
7 governments, we wholeheartedly support such measures.

8 We cannot, however, support legislation  
9 that would condition the exercise of one's civil  
10 rights based upon financial considerations alone. To  
11 do otherwise is fundamentally at odds with this  
12 country's civil rights laws.

13 CHAIRMAN WINTER: Thank you very much, Ms.  
14 Willis.

15 We would like to hear now from Barrie  
16 Tabin of the Public Sector Fair Labor Standards  
17 Coalition.

18 STATEMENT OF JEANINE MARKOE

19 PUBLIC SECTOR FAIR LABOR STANDARDS ACT COALITION

20 MS. MARKOE: Actually, there are two of us  
21 on this that would like to present before the  
22 Commission. My name is Jeanine Markoe. I am with

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1 the Government Finance Officers Association.

2 And, I am here with Barrie Tabin of the  
3 National League of Cities. And, we are here on  
4 behalf of the Public Sector Fair Labor Standards Act  
5 Coalition.

6 And, we would like to thank you very much  
7 for giving us a chance to testify before the  
8 Commission.

9 CHAIRMAN WINTER: Thank you for coming.  
10 We welcome your testimony.

11 MS. MARKOE: The Public Sector Fair Labor  
12 Standards Act Coalition was formed in response to the  
13 many difficulties encountered by public sector  
14 employers in implementing the Fair Labor Standards  
15 Act. The coalition includes state and local  
16 government associations, along with individual  
17 states, counties and cities, and represents local  
18 elected officials and state and local government  
19 managers in virtually every state.

20 The application of the Fair Labor  
21 Standards Act to the public sector has created a  
22 number of concerns for state and local governments,

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1 particularly surrounding the professional, executive  
2 and administrative exemptions. The resulting  
3 exposure to litigation has produced enormous  
4 liabilities for state and local governments and  
5 taxpayers and continues to threaten jurisdictions'  
6 fiscal solvency.

7                   Conflicts between the Fair Labor Standards  
8 Act regulations and state and local government  
9 policies and accountability laws have disallowed  
10 numerous management level employees, often earning  
11 between \$40,000 and \$100,000 annually, from  
12 qualifying under the white collar exemption tests.

13                   Ambiguity of the regulations have made it  
14 nearly impossible for public employers to discern who  
15 should and should not be receiving overtime  
16 compensation.

17                   And, the unsuccessful attempts by the  
18 Department of Labor to revise the Fair Labor  
19 Standards Act after its extension in 1985 and 1986 to  
20 non-federal public employees have left the outdated  
21 regulations subject to various and often inconsistent  
22 judicial interpretations throughout the country.

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1                   The coalition's efforts to seek  
2 comprehensive legislative or regulatory reform have  
3 been met with resistance. As a result, federal  
4 courts continue to find many highly paid managerial  
5 employees entitled to back overtime pay.

6                   The existing liability for many states and  
7 localities is in the millions, while the potential  
8 liability threatens to cause fiscal disaster.

9                   The coalition, therefore, greatly  
10 appreciates the insightfulness behind ACIR's  
11 recommendations on this difficult and costly unfunded  
12 mandate. Our coalition continues to work for  
13 comprehensive reform of the Act amenable to the  
14 public employers and employees.

15                   However, the grave impact of this mandate  
16 on states and localities and the hesitation of the  
17 Administration or Congress to alleviate this  
18 liability underscores the importance of ACIR's  
19 recommendation for repeal. It is a recommendation  
20 that should be carefully considered by Congress.

21                   Thank you.

22                   CHAIRMAN WINTER: Thank you very much.

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1 STATEMENT OF BARRIE TABIN

2 PUBLIC SECTOR FAIR LABOR STANDARDS ACT COALITION

3 NATIONAL LEAGUE OF CITIES

4 MS. TABIN: Again, thank you very much for  
5 allowing us the opportunity to come before you. I  
6 just wanted to take a moment to reiterate a little  
7 bit about what Jeanine said and then maybe to comment  
8 briefly on some of the criticism we have seen of the  
9 Commission's report, criticisms that, of course, we  
10 disagree with.

11 Again, we very much appreciate the  
12 insightfulness behind the Commission's report  
13 concerning the FLSA. We think it's important for  
14 people to understand that there have been groups,  
15 like the Public Sector FLSA Coalition, that have been  
16 urging comprehensive reform of this Act for many  
17 years and, in fact, since 1985 when it became  
18 applicable to the public sector.

19 And, since 1985, both Congress and the  
20 Department of Labor have actually acknowledged that  
21 the Act, the way it's written, the regulations the  
22 way they are written, were never really intended to

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1 apply to the public sector. Yet, despite the fact  
2 that they come forward with these acknowledgements,  
3 they failed to make any attempt to redo the Act or  
4 the regulations to suit the needs and address the  
5 needs of the public sector.

6 That is why we were so pleased when we saw  
7 the issue of repeal being raised. In fact, it may be  
8 one of the few ways to resolve the great burden that  
9 has been placed on the public sector by the FLSA.

10 Another example that I would like to raise  
11 is that we have been -- despite the fact that the  
12 Department of Labor has said that there is a problem  
13 with the Fair Labor Standards Act and has  
14 acknowledged that the Act needs to be revisited and  
15 revamped to meet the needs of the public sector, our  
16 Public Sector Coalition has filed many briefs and  
17 lawsuits on behalf of municipalities and states,  
18 lawsuits that are brought by other plaintiffs,  
19 individuals and union suing municipalities for  
20 violations of the FLSA. And, in each case we file a  
21 brief on the side of the municipality, the Department  
22 of Labor, despite the fact that they have

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1 acknowledged problems with the Act, has been filing a  
2 brief on behalf of the union.

3 So, it's important, I think, for people to  
4 realize that the solutions come, in part, because  
5 although there is recognition of a problem there is  
6 not much resolution being done -- much being done in  
7 the way of resolution to address the problem.

8 We have also reviewed some of the White  
9 House criticism of the report. And, we just wanted  
10 to comment briefly on that.

11 The White House had reached a conclusion  
12 that the draft report had focused on the requirements  
13 of specific statutes without establishing the  
14 sufficient framework for their consideration. And,  
15 we believe in the case of ACIR, that's the Public  
16 Sector Coalition, that a sufficient framework was  
17 clearly established to urge repeal.

18 And, this is just something that was  
19 quoted in the report. The report notes that the  
20 Act's "overtime pay provisions, in particular, have  
21 resulted in substantial litigation with many state or  
22 local employees winning retroactive pay for work

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1 deemed by a court to qualify as overtime. The  
2 liability for many states and local governments is in  
3 the millions and could go much higher."

4 The report also mentions that the  
5 Department of Labor fails to assist state and local  
6 governments in dealing with burdens imposed by the  
7 FLSA. The report goes on to mention that questions  
8 of applicability of the FLSA by state and local  
9 governments generally are not raised out of dispute  
10 with the basic goal of the Act, rather questions have  
11 been raised over the intrusiveness of the federal law  
12 into matters that fall exclusively within the  
13 jurisdiction of state or local government.

14 We think that this clearly lays the  
15 groundwork for why repeal was suggested, that it  
16 wasn't something simply pulled out of thin air. And,  
17 might I mention that although we are with the Public  
18 Sector Coalition, the National League of Cities was  
19 involved in a lawsuit many years ago, the National  
20 League of Cities versus Usry, where we actually were  
21 litigating the issue of the Tenth Amendment's  
22 applicability to the Fair Labor Standards Act, the

1 fact that it shouldn't apply to state and local  
2 governments because it's a violation of the Tenth  
3 Amendment.

4 We believe that general intrusiveness into  
5 authority of state and local governments, in  
6 combination with the Act's extremely high financial  
7 cost to state and local governments, and DOL's  
8 failure to address the problem through regulations --  
9 where addressing the problem through new regulations  
10 would certainly be possible -- is what led ACIR to  
11 conclude that repeal is the best resolution.

12 And, our coalition, while perhaps some  
13 members feel slightly differently about the nature of  
14 repeal -- and let me just go on record as saying that  
15 the National League of Cities supports repeal, we all  
16 believe that this is an option that should be  
17 examined by Congress.

18 So, thank you very much. And, if you have  
19 any questions, we would be happy to answer them at  
20 any time.

21 CHAIRMAN WINTER: We thank you both for  
22 that testimony. Thank you for your interest.

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1                   Are there others who desire to testify at  
2 this time?

3                   (No response.)

4                   CHAIRMAN WINTER: Hearing that there is no  
5 other person who desires to testify, let me thank all  
6 of you who have testified, and those who have  
7 preceded you, for expressing your interest in these  
8 proceedings. And, we thank you for the contribution  
9 that you have made.

10                   I can assure you that they have been  
11 listened to, have been duly recorded and will be  
12 taken into account as we attempt to formulate a final  
13 report.

14                   Let me say to my colleagues on the  
15 Commission that I appreciate very much their  
16 attendance here today. We had had others earlier.

17                   Mr. Franke has come farther than anybody  
18 else, from Salem, Oregon. Henry Smith has been a  
19 very, very faithful member of this Commission,  
20 representing the Secretary of Education, Dick Riley.  
21 And, Henry, we thank you for your participation  
22 today.

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1 I want to thank the members of the staff,  
2 Bill Davis and Phil Dearborn, Bruce McDowell, and all  
3 the others who have worked on this report. It has  
4 been a difficult process, one that I can assure you  
5 that we have labored conscientiously at and will  
6 continue to do so.

7 But, if there is no other testimony to be  
8 heard, I will declare this hearing adjourned, with  
9 appreciation to everyone who has been involved in it.

10 Thank you very much.

11 (Whereupon, the hearing is adjourned at  
12 3:25 p.m., Tuesday, March 26, 1996.)

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