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cities as centers  
of opportunity,  
leadership, and  
governance.



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Testimony of  
Clarence E. Anthony  
Mayor, South Bay, Florida  
President  
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*On behalf of*  
The National League of Cities

*Before the*  
Senate Governmental Affairs Committee

*On the*  
Issues & Federal State Relations

May 4, 1999

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Recycled Paper

Good morning, Mr. Chairman, my name is Clarence Anthony. I am the mayor of South Bay, Florida, and I serve as the President of the National League of Cities, the largest and oldest organization representing the nation's cities and towns and their elected officials. I am here this morning, with my colleagues, to discuss the relationship between the federal government and state and local governments—whether we can achieve a more effective partnership to benefit our mutual constituents.

We want to begin by thanking you and the committee for holding this hearing. We believe we are in the midst of fundamental changes affecting the relationship of the federal government to state and local governments. We are grateful to you for your recognition of the importance of this issue—not just to us, but to all Americans. The changes—both those ongoing and pending in the Executive branch, on the Hill, and by regulatory agencies—could have long term impacts on state and local governments. We support fundamental changes in policy direction, many of which you have either authored or supported, to ensure the most efficient and effective possible service to our citizens and taxpayers. We appreciate your interest, and we hope to provide continuing support for changes to rebuild our federal system.

Mr. Chairman, there are some 36,000 thousand cities and towns in the United States. Most have small populations, few professional staff, and small budgets. 91 percent have populations of less than 10,000. This is a time of great change for all of them. The fiscal trends are significant with consequences for the future. For the most part, the current changes involve the assumption of significantly greater responsibilities - offloaded from the federal government - and significant federal preemption threats to historic and traditional local fiscal, land use and zoning authority.

We are in the middle of enormous and rapid changes in the federal-state-local relationships with long-term consequences for the nation's cities. The changes, if anything, were re-emphasized just one year ago by the President's Executive Order on Federalism and concurrent proposal to revoke two earlier Executive Orders that we were involved in putting together. They are highlighted by the legislation signed into law last October to interfere with the rights of states and local governments to regulate and tax sales and services provided over the Internet in the same way as all other sales and services are taxed—even though no such limitations would apply to the federal government. This legislation, adopted with minimal consideration of the consequences for state and local governments, and especially for public education, demonstrates the importance of this committee's efforts to ensure we have adequate information to inform all policy-makers prior to taking actions. In no instance have we been invited to the table even though the most significant impacts will be felt at home.

The nation is witnessing totally new emerging technologies transforming the country and its cities - perhaps in ways totally different than in previous cycles. These changes have implications for state and local revenues as they radically redefine old concepts of nexus, and as the economy moves to the future against a backdrop of state and local tax systems adopted for another era. Because today's new technologies are not as capital-intensive, or labor-intensive, or heavily industrial as the ones which used to drive the American economy, NLC adopted a proposal to create a joint endeavor with the National Governors' Association (NGA) and the National Conference of State Legislatures (NCSL) to produce a report intended to provide information to

elected state and local leaders about the changing nature of the national economy, with an analysis of the potential impacts on state and local revenues and the flexibility of current structural capacities to respond to these changes. We are following up this year with a new report looking at the impact of the global economy, deregulation, and information technology on the structure of state and local governments.

Economic, technological, telecommunication, demographic, and legislative changes are altering the federal system, perhaps beyond recognition. Our purpose last year was to examine the equity and responsiveness to changes in the economy of State and local revenue systems in today's global economy. What are the factors eroding state and local authority: federal pressure, changing demographics, globalization of the economy? Designed during the smokestack age, are state and local tax systems obsolete, inequitable, and unresponsive to changes in the economy? Have changes in the American economy, the population, and federal policies undercut the ability of states and local governments to assume greater demands and ensure equity in their revenue systems?

The most significant fiscal trend over the past twenty years has been the declining share of federal support to state and local governments, which has placed a much greater burden on current state and local taxes. Federal grants-in-aid to state and local governments averaged 21.5 percent of their total spending over the 1990-95 period. This is well below the 26.5 percent peak that occurred in 1978. Consequently, state and local governments have had to rely much more on their own tax revenue sources to generate sufficient revenue to provide services required by the public. Further, the recent trend of Congress pushing more responsibilities to state and local governments will place additional burdens on the current state-local tax structure.

· *Deregulation of the telecommunications and electric industries.* Allowing competitive entry in these regulated industries will force state and local governments to experience substantial tax shifting. Substantial hardship is expected for taxing jurisdictions that rely heavily upon existing electric generating facilities to pay local property taxes.

· *Federal tax reform.* Congressional proposals for a flat tax and a national retail sales tax would force states to undertake major revisions of their sales and personal income tax systems. Both proposals would eliminate state and municipal authority to issue tax-exempt municipal bonds—affecting more than \$1 trillion in outstanding bonds used to finance virtually every school, jail, road, airport, and bridge in the nation. It would be difficult to overstate the havoc caused to the state-local tax structure if federal tax law eliminated deductions for mortgage interest, state personal income taxes, and local property taxes.

At the time our framers put together and fashioned our unique system of federalism, it was a long journey through the mud and swamps to get back and forth from Capitol Hill to the White House. Today, it is a matter of microseconds. The Internet heralds a new age that renders borders increasingly irrelevant. The most powerful trends affecting our future are international trade,

deregulation, and information technology. We believe it critical for the economy destiny of America to enter that era with a dynamic federalism that makes us partners, makes us mutually accountable to each other, and ensures synergy, rather than competition between our levels of government. We believe the bills you have authored or supported in this committee—almost all with a determined effort to work with us and develop in a bipartisan effort—are critical to success.

For that reason, this morning we join the nation's governors and leaders of other national organizations representing state and local elected leaders in making clear our commitment for creating a more enduring governmental partnership. We urge this action to provide adequate time for meaningful consultations with our levels of government with regard to proposed changes to ensure they are made with prior consultation, notice, and warning. We believe such changes and the manner in which they are made are critical with regard to the Administration's and Congress' perceptions of the balances of power between the three levels of government.

We support the Mandate Information Act, the Federal Financial Assistance Improvement Act, the Regulatory Improvement Act, and the Regulatory Right to Know Act. These are crucial steps in this new information age to making better information available to decision-makers. Thank you, Mr. Chairman. These might seem like small steps, but they are all critical.

We hold as our highest priority, not only in our association, but amongst our Big 7 organizations, a broader effort to redefine our intergovernmental partnership. For that reason, we are most pleased about your leadership on the Government Partnership Act of 1999. This bill marks, we believe, one of the most important efforts to fundamentally rethink the nature and relationship of our federal system.

Congress does have the authority to recommend and pass laws that have the effect of preempting historic and traditional rights and authority of the nation's state and local governments. Therefore, we would hope that today could be the start of a genuine commitment to mutual respect between our three levels of government.

Our members have overwhelmingly adopted halting the new trend of major federal preemption of historic and traditional state and local roles and responsibilities as our highest priority. We have witnessed a renewed effort in some parts of the Administration and in the Congress to emphasize the preeminence of the federal government with a focus on mandating uniformity. This effort proposes to reverse more than two decades of federal policy and deference to state and local authority. This morning ought to be a good opportunity to begin—all of us—to commence a serious effort to restoring authority to the levels of government closest to the people.

It has become increasingly clear that despite White House and Congressional claims of an intent to turn back greater power and authority to the level of government closest to the people, those words bear less and less relationship to actions. The preemption or taking away of historic and

essential authority of local governments over activities such as franchising, zoning, taxing, and regulating—fundamental responsibilities of state and local governments for the protection of public health, safety and property is less important to larger corporate and federal interests than uniformity and the elimination of state and local rules, laws, fees, and taxes.

Pending proposed federal preemptions, if adopted as a regulation or enacted as a new federal law, will have far-reaching consequences and impose greater liabilities on cities and towns. They would curtail the rights of citizens in cities and towns to make the key decisions about the future of their own communities.

No issue in 1999 is likely to more affect the bottom line for local budgets and services, and for the rights of citizens in cities and towns across the nation than federal efforts to preempt historic and traditional municipal authority. This is an issue city leaders will confront in the federal courts, the Congress, the Administration, and at independent federal regulatory agencies. Preemption of local authority is not just a measure that Congress and the Administration seem interested in pursuing. Federal agencies, such as the Federal Communications Commission (FCC), are also, at the request of industry, proposing rules—often under intense pressure from Congress and industry—which seek to limit local authority over franchise authority, land use and zoning, and the siting of cellular and broadcast towers.

The key aspects of the current status of federalism are:

- the trends away from federal grants to local governments and shifting to direct payments to individuals - either through entitlement benefits or tax expenditures. The federal government is making the decisions about what is in the best interest of the citizens of a community.
- there is an ongoing significant decline in federal capital investment at the local level. The disinvestment as a percent of the federal budget is aggravated by Congressional legislative threats to the ability of states and local governments to finance public capital investment through tax-exempt municipal bonds.
- the portion of the federal budget going to entitlement spending is consuming ever greater proportions, leaving less and less of the budget to invest in the nation's future. As the U.S. competes in the fields of technology and information in the global economy, disinvestment in the next generation will be reflected in local economies.
- the proportion of the federal budget going towards the elderly is leaving less and less to invest in the next generation. With juvenile crime in cities at high levels, and the nation's local economies facing major demographic shifts, disinvestment in kids could have severe consequences for the nation's cities' economies.
- while local governments have traditionally been responsible for bricks and mortar, as well as

public safety; federal actions to reduce federal responsibility and liability for welfare recipients, immigrants, and public housing tenants leave an ever-increasing liability on local governments. Increasingly, the burden transfer will aggravate disparities between local governments.

- while the trend in imposing direct federal, unfunded mandates is clearly on the decline, there has been an unprecedented increase in federal efforts to preempt state and local tax and revenue authority, threatening to undercut state and local revenue systems as we know them. Last year's and pending action by the Congress on preempting state and local authority to levy or collect existing taxes and revenues on goods and services provided over the Internet, preempting local authority with regard to the siting of group homes, and proposals on telecommunications, federal tax reform, railroad safety, and electric utility deregulation all would have harsh consequences on municipal authority and revenues.

## **Federalism**

We believe the recent trend of Supreme Court decisions, the Safe Drinking Water Act, the Unfunded Mandates Reform Act, and the Ed-Flex legislation demonstrate the possibilities of a more effective and efficient partnership. We note they are in profoundly a different direction than the Executive Order on Federalism, #13083, issued by President Clinton last year, or to the pending legislation in the Congress to preempt historic and traditional municipal authority. We note too that at a time when it has become more difficult for the Congress to act on environmental legislation, and issues themselves have become growingly complex; Congress unintentionally creates a greater role and authority for federal agencies to set and direct federal policy.

As we look forward to the issues that will shape the next election and the next millenium, we think, then, this is an important time to secure a system where we have greater reason to work together. Whether the issue is tax reform or electronic commerce or electric utility deregulation, any federal action can have enormous consequences for state and local governments, for our citizens and businesses, and for our taxpayers. The more those decisions are made without any clear assessment of their impact on our federal system, the more likely they are to do damage. Our federal, state, and local tax systems, for example, are so intertwined, that any of the pending major federal tax reform proposals would have harsh consequences for the roads, bridges, airports, and water and sewer lines that service every business and every home in America. Yet, until we enact the Government Partnership Act, there is no incentive to even consider a prior assessment, much less fairly analyze the consequences.

Part of the greatness of federalism has been the flexibility of our great system to allow any city, county, or state to develop new ideas and approaches to confront problems affecting Americans—the laboratory of democracy and the will of the people at each level of government in America. Through that model we have well served all our citizens. The tradition and spirit of federalism ought to—especially on this of all issues—lead us to work together to shape and

reshape the future of our country and our traditional relationships. We stand ready and look forward to an opportunity to do just that--together.

Earlier in this Administration, President Clinton's Executive Order called for more cost analysis and risk assessments for all government regulations, recognizing that federal actions can and do impose significant costs and liabilities on states and local governments. Those cost analyses and risk assessments remain to be fully implemented. But, in this age of information, they matter. Ensuring there is a mechanism to enforce the provision of this information is critical.

Now, we are engaged in attempting to negotiate a new Executive Order on Federalism. While an Executive Order is different than a federal law and carries no endorsement from the Congress, it provides direction from the President of the United States to all Cabinet agencies and departments. In this instance, once the new order were to go into effect, it would provide new guidelines for all federal officials to consider in determining when a rule, regulation, or law had "federalism implications." That is, the order would create direction for federal bureaucrats about how to address issues of municipal sovereignty, and when and under what circumstances it would be okay to preempt traditional municipal authority and responsibilities. It is about setting guidelines for when and how it is appropriate for the federal government to intrude upon or interfere with state or local authority.

We are pleased that the model set by this committee of: consultation first, joint efforts to achieve bipartisan consensus, and action which provides for pre-assessment, accountability, and enforceability.

### **Recommendations**

We would hope that as an outcome of this set of hearings, the committee would consider the following recommendations:

- the adoption of legislation to require a fiscal impact analysis on all federal legislation and federal regulations, including regulations from independent agencies such as the Securities and Exchange Commission, the Federal Energy Regulatory Commission, and the Internal Revenue Service, on states and local governments.
- the introduction of the Government Partnership Act of 1999, to act as a follow-up to the Unfunded Mandates Reform Act of 1995.
- the issuance of a joint report on generation fiscal concerns and disparities and their implications for the federal system.

We are grateful for the opportunity to be here with you today to share our views that stem from discussions and commitments made more than 200 years ago in my city. Perhaps we ought to

reconvene. We certainly believe a concerted, bipartisan effort is critical if we are to be credible in our efforts to make the government of the next century effective, efficient, and responsive to our joint constituents.

Thank you. I would be pleased to respond to any questions.



# State & Local Preemption

ISSUES	LOCAL PREEMPTION	STATE & LOCAL IMPACT
<b><i>FINANCE &amp; ADMINISTRATION</i></b>		
<b>Takings</b>	<ul style="list-style-type: none"> <li>Legislation would allow developers to pursue takings claims in federal court without first exhausting state judicial procedures.</li> </ul>	<ul style="list-style-type: none"> <li>Would result in far greater federal court involvement in local land use disputes. Would interfere with the resolution of essentially state and local issues within the state court system. Would encourage developers to bring suits in federal court, rather than work out their disputes with local governments.</li> </ul>
<b>Bank Powers</b>	<ul style="list-style-type: none"> <li>Legislation would render state legislative authority to determine state bank powers null and void.</li> </ul>	<ul style="list-style-type: none"> <li>Could create unlevel playing field for bank branches depending upon their state of chartering - rather than the state law where they are conducting business. Could create some competitive disadvantages for home-based state-chartered banks.</li> </ul>
<b>State Securities Regulation</b>	<ul style="list-style-type: none"> <li>Preempt ability of state and local governments to challenge securities fraud in state court and preempt requirement for securities dealers to make only suitable investment recommendations to pension funds and state and local governments.</li> </ul>	<ul style="list-style-type: none"> <li>Would remove current legal rights to suitable investment advice and right to recover damages for fraud from securities dealers.</li> </ul>
<b><i>COMMUNITY &amp; ECONOMIC DEVELOPMENT</i></b>		
<b>Municipal Annexation</b>	<ul style="list-style-type: none"> <li>The consolidated Farm and Rural Development Act of 1961 preempts state and local governments from providing a full range of infrastructure and services in an annexed area if a rural utility service has a protected federal loan or loan guarantee on a facility in the area.</li> </ul>	<ul style="list-style-type: none"> <li>This makes it difficult for localities to carry out growth and economic development plans under state law.</li> </ul>
<b>Homeownership Campaign</b>	<ul style="list-style-type: none"> <li>The National Conference of States on Building Codes and Standards (NCSBCS) claims that the cost and effectiveness of laws that regulate the construction of residential, commercial, public and factory buildings make building too costly. As part of HUD's Homeownership Partnership, NCSBCS is leading a working partnership to set preemptive, national building and regulatory process.</li> </ul>	<ul style="list-style-type: none"> <li>The goal is to achieve up to a 60 percent reduction in the state and local land use, zoning and permit regulatory authority. This would preempt historic and traditional state and local responsibilities in the areas of land use, zoning and building codes. However, there has been little progress with this initiative.</li> </ul>
<b>Fair Housing Zoning Authority</b>	<ul style="list-style-type: none"> <li>Current law preempts municipal authority over the siting of group homes.</li> </ul>	<ul style="list-style-type: none"> <li>Leads to federal investigations and actions when city refuses permit for group home siting.</li> </ul>

<b><i>PUBLIC SAFETY</i></b>		
<b>Juvenile Justice</b>	<ul style="list-style-type: none"> <li>Federalization of certain juvenile crimes.</li> </ul>	<ul style="list-style-type: none"> <li>Threatens state and local authority regarding punishment for crimes. Would allow federal and state prosecutors unprecedented opportunities to circumvent state law.</li> </ul>
<b>Natural Disaster Insurance</b>	<ul style="list-style-type: none"> <li>In the name of disaster mitigation, the Federal Emergency Management Agency and the insurance industry are considering requiring in federal legislation the creation and enforcement of building codes which will reduce loss of life and physical damage resulting from catastrophic natural disasters.</li> </ul>	<ul style="list-style-type: none"> <li>Would mandate that localities pass and enforce certain building standards, notwithstanding state law.</li> </ul>
<b><i>TRANSPORTATION &amp; COMMUNICATIONS</i></b>		
<b>Railroads</b>	<ul style="list-style-type: none"> <li>Under the ICC Termination Act, cities and towns have been preempted from zoning authority and implementation of environment, health and safety statutes.</li> </ul>	<ul style="list-style-type: none"> <li>Does not allow local governments to carry out local laws in relation to railroad company decisions.</li> </ul>
<b>Tow Truck Regulation</b>	<ul style="list-style-type: none"> <li>Under the ICC Termination Act, municipalities were told what they could regulate in relation to tow trucks.</li> </ul>	<ul style="list-style-type: none"> <li>Courts in CA and TX have ruled that municipalities can only regulate those activities specified under the ICC Act.</li> </ul>
<b><i>Telecommunications</i></b>	<ul style="list-style-type: none"> <li>Preempts local taxes on broadcast satellite services.</li> </ul>	<ul style="list-style-type: none"> <li>Would force higher taxes and fees on all other businesses and residents.</li> </ul>
<b>Taxing Authority (A)</b>	<ul style="list-style-type: none"> <li>Congressional proposals to preempt state and local taxes and fees on internet transactions.</li> </ul>	<ul style="list-style-type: none"> <li>Would force higher taxes and fees on all other businesses and residents.</li> </ul>
<b>Taxing Authority (B)</b>	<ul style="list-style-type: none"> <li>Congressional proposals to preempt state and local taxes and fees on internet transactions.</li> </ul>	<ul style="list-style-type: none"> <li>Would force higher taxes and fees on all other businesses and residents.</li> </ul>
<b>Zoning Authority: Cellular Towers</b>	<ul style="list-style-type: none"> <li>Industry petition before the FCC that would preempt state and local authority over the siting of cellular towers and broadcast transmission facilities. Bipartisan House and Senate leaders set to introduce NLC-supported bill to give cities greater siting authority.</li> </ul>	<ul style="list-style-type: none"> <li>Would lose ability to make land use and zoning decisions, to preserve the integrity of local neighborhoods, protect property values protect public health and safety.</li> </ul>
<b>Zoning Authority: Satellite Dishes</b>	<ul style="list-style-type: none"> <li>FCC rule preempting local ordinances that restrict the use of broadcast satellite antennas.</li> </ul>	<ul style="list-style-type: none"> <li>Interferes with local ability under state law to ensure that the siting of antennas is safe, consistent with traditional zoning, height and land use practices.</li> </ul>
<b><i>ENERGY, ENVIRONMENT, AND NATURAL RESOURCES</i></b>		
<b>Electric Utility Deregulation</b>	<ul style="list-style-type: none"> <li>Legislation potentially jeopardizes state and local authority in many areas, including control over the public rights-of-way</li> </ul>	<ul style="list-style-type: none"> <li>State and local governments could lose policymaking and revenue-raising capacity. Would lose ability to make decisions regarding the use of public streets, lose compensation the way of franchise fees.</li> </ul>

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Preemption chart 6.98