

Testimony of Carl Stenberg
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Mr. Chairman and Members of the Subcommittee, I am Carl Stenberg, and I appreciate the opportunity to offer my views on the future of federalism in America. In particular, I will speak on behalf of proposals to reconstitute the former U.S. Advisory Commission on Intergovernmental Relations (ACIR) through the “Restore the Partnership Act.” As in my testimony last year before the Speaker’s Task Force on Intergovernmental Affairs, I would like to offer a “pracademic” perspective on these subjects. Prior to my university affiliations I served for 16 years as an ACIR staff member – as a research analyst and then assistant director for policy implementation and acting executive director – followed by six years as executive director of the Council of State Governments. So my “lens” on the creation of an ACIR-type organization is three-fold: (1) as a staff insider who worked on multiple research, convening, and implementation projects, and witnessed over 50 Commission meetings during this time period; (2) as the CEO of a national public interest group that, together with six other such organizations, placed federalism improvement high on its agenda and were key ACIR stakeholders; and (3) as an academic who has monitored the health of the federal system for most of my career.

I also have been a Fellow with the National Academy of Public Administration since 1984, the year Congress chartered the organization. As President Teresa Gerton has indicated, NAPA offers trusted advice to government leaders on critical management challenges. The Academy’s Intergovernmental Systems Standing Panel has worked to promote better understanding of intergovernmental issues and solutions. NAPA was honored to be among the organizations serving on the Advisory Committee of the Task Force.

My remarks today are my personal views and do not represent a position of the Academy or UNC’s School of Government on the need for the proposed legislation.

In my judgment the “Restore the Partnership Act” is a promising point of departure for rebuilding the federal government’s capacity to address current intergovernmental issues and emerging challenges, which has diminished significantly since the demise of ACIR in 1996. Establishing a 21st century successor to the former Advisory Commission on Intergovernmental Relations, which for most of its existence was regarded as the preeminent bipartisan, independent organization in the field, would be a significant step forward. The time has come to take action to “Restore the Partnership” through a Commission on Intergovernmental Relations of the United States (CIRUS). As I will point out in a moment, the former ACIR model is a good beginning point but it should be aligned with some of the changes in the political and policy environments that have affected intergovernmental relationships.

Intergovernmental Relations in Transition

The intergovernmental world has changed dramatically over the past two or more decades in at least five ways.

First, so-called “wicked problems” have emerged like climate change, the opioid epidemic, homelessness, infrastructure, and immigration. What is distinctive is that addressing them and other challenges requires not just intergovernmental, but intersectoral and interdisciplinary approaches. What has not changed is the programmatic “silo” approach that characterizes many federal grant-in-aid programs and regulations. The complexity of understanding and solving problems—horizontally and vertically—has increased substantially, with more non-governmental players involved.

Second, relationships between and among governments at all levels have become more contentious. While there has always been a degree of friction between the intergovernmental partners, the dynamics of their world have become more polarized, partisan, and personal. As my NAPA colleague John Kincaid observed at the Speaker’s Task Force on Intergovernmental Affairs hearing last May, we have been in a period of “coercive” federalism, featuring the steady growth of preemptions and un- or under-funded mandates. The potential intergovernmental friction points have become more pervasive.

Third, the number of “think tanks” and advocacy groups in Washington DC has exploded. Many of these organizations have a philosophical or political point of view on policy, and are less interested in neutral, balanced, evidence-based research and analysis than in finding

political and financial support for their positions on issues. The intergovernmental policy and advocacy fields have become more crowded.

Fourth, the influence and impact of the “Big 7” organizations representing states and localities in Washington, DC has been undermined by special interest politics and campaign financial influence. State and local representatives are often not invited to sit at the policy table, or even be in the same room, and sometimes are treated as just another special interest group instead of as representatives of our general-purpose governments at the state and local levels.

Fifth, the role and reputation of governments at all levels have come under the spotlight as citizens point to the failure of these units to perform to expectations. Confidence in governments has steadily declined, and some believe that government is the problem, not the solution. There are no simple or technical answers to basic intergovernmental questions such as Who does what? Who pays the bill? Who is accountable? While federalism may be an abstract concept to many citizens, nevertheless they expect government to work – and for all. While most of the heavy lifting is done at the local level, municipal, county, state, and national officials need to work together to answer these basic questions in the context of national policies and programs. Doing so would likely boost the American public’s confidence in their governments.

In this environment, it is appropriate to ask whether an organization like the proposed Commission on Intergovernmental Relations could make a difference. Establishing a “New Partnership” is a bold undertaking. But it is also important to recognize that an ACIR successor is only one step—albeit an important one—toward establishing solid intergovernmental common ground and finding ways to convene and collaborate on that work.

Part of my frame of reference for addressing this question is a book I co-edited on *Intergovernmental Relations in Transition* that was published in 2018 (Routledge). Two of the contributors—Governor Parris Glendening and Professor John Kincaid—accompanied me in testifying before the Speaker’s Task Force. They joined several other contributors in recognizing the need for a congressional leadership if a “resurgence” of intergovernmental relations after more than two decades of “deinstitutionalization” is to take place. The authors were united in their call for better consultation, collaboration, and coordination among the governmental partners to enhance efficiency, effectiveness, and equity in program development and delivery.

Two of the “Big Questions” the contributors to the book addressed were: “How important is the absence of institutions that monitor intergovernmental trends and developments, convene

meetings, and conduct research to the health of the federal system?” Will the need to rebalance the federal government’s financial and programmatic roles call for more and sustained attention to intergovernmental management?” In response, several authors expressed concern about the “unraveling” of intergovernmental relations, in part due to this void, and recommended that it be filled. They expressed concern that proposed federal budget reforms, reorganizations, program cuts, caps, and consolidations, and domestic legislative initiatives have potentially significant impacts on states and localities, which are not well-appreciated or understood and often not even considered in the policy-making and legislative processes. An ACIR-type organization could further the understanding of intergovernmental consequences and impacts and improve program design. In the conclusion we summarized the contributor’s views as follows: “They recognize that there is a need for such capacity...although they are skeptical that an organization similar to the former ACIR could be established in the current political environment and whether it could fill the intergovernmental consultation void.” So, given this skepticism, what evidence is available to show that such an organization could have an impact?

ACIR’s Record

The ACIR was always a respected “honest information broker,” producing high-quality information, data, and analyses. The Commission issued some 130 policy reports with action recommendations, 194 information reports, 23 public opinion polls on intergovernmental issues, 22 staff reports, and about 80 issues of a widely read magazine *Intergovernmental Perspective*. The annual two-volume *Significant Features of Fiscal Federalism* was especially valued by public officials, scholars, and students. This is an impressive record, but what about the policy and program impacts?

There are several areas where ACIR’s work was influential or instrumental in developing congressional legislation and improving administration of federal grants-in-aid, including:

- **Metropolitan Planning Organizations** (1962): Promote regional cooperation in transportation planning.
- **The Economic Opportunity Act** (1964 & 1965): Included ACIR-recommended provisions for state and local government roles in the War on Poverty.
- **Property Tax Circuit Breakers** (circa 1965): Provide property tax relief for the elderly, poor, and disabled residents.

- **The Demonstration Cities and Metropolitan Development Act** [Model Cities] (1966): Funded and encouraged innovative, coordinated, and comprehensive solutions to urban problems.
- **Block Grant Design and Implementation** (circa 1966): The first federal block grant consolidated overlapping public health programs into the 1966 Partnership for Health program. It was followed by a Safe Streets and Crime Control block grant in 1968, the Comprehensive Employment and Training block grant in 1973, and the Community Development Block Grant in 1974.
- **The Intergovernmental Cooperation Act** (1968): Improves the transparency of federal assistance programs and promotes coordination among different grant programs.
- **OMB Circular A-95** (1969): Established procedures for coordinating federal programs and projects with state, local, and regional plans and programs.
- **The Intergovernmental Personnel Act** (1970): Provides for the temporary assignment of personnel between the federal government and state and local governments, colleges and universities, Indian tribal governments, federally funded research and development centers, and other eligible organizations.
- **The Uniform Relocation and Real Property Acquisition Act** (1970): Aims to assure fair treatment of those displaced by federally funded programs.
- **General Revenue Sharing** (1972-1987): Provided largely unrestricted aid to state and local governments. In its early years, ACIR was also tasked with monitoring the program's performance.
- **Fiscal Notes** (circa 1980): Analyze the fiscal effects of proposed legislation on federal, state, and local governments.
- **Enterprise Zones** (1987): Anti-poverty mechanism in which certain low-income areas are designated for special tax breaks or other incentives for business investment.
- **OMB Circular A-102** (1988): Establishes consistency among federal agencies in managing grants and cooperative agreements with state, local, and federally recognized Indian tribal governments and for which ACIR also provided implementation guidance.
- **The Unfunded Mandates Reform Act** (1995): Requires CBO to estimate the fiscal effects of many proposed mandates in Congress and includes a point-of-order process to encourage legislative consideration of unfunded mandates
- **The State Flexibility Clarification Act** (1999): Promotes congressional consideration of adding flexibility to federal mandates when federal funding is reduced for such programs.
- **The Federal Financial Assistance Management Improvement Act** (1999): Simplifies and promotes the effectiveness of federal grants-in-aid.
- **The Truth in Regulating Act** (2000): Established a pilot program for independent evaluations of agency rules that impose significant new costs on state and local governments and the private sector.
- **The Regulatory Right-to-Know Act** (2000): Requires OMB to give Congress an annual report on the costs and benefits of federal regulations for the previous year, including impacts on state and local governments.

The ACIR was also a valued advisor to Presidents, governors and state legislators, and local officials. For example, the Commission assisted Presidents Lyndon B. Johnson and Richard M. Nixon in developing and improving their intergovernmental initiatives, such as the War on Poverty and General Revenue Sharing respectively, Jimmy Carter in developing his urban policy and federal-aid streamlining reforms, Ronald Reagan and George Bush on their block-grant proposals and federalism reform initiatives, and Bill Clinton's National Performance Review, which drew heavily on ACIR's grant-reform ideas.

So, the former ACIR was both an intergovernmental thought-leader and policy-influencer. What are the prospects for a Commission on Intergovernmental Relations to be even more impactful?

Restore the Partnership Act

With respect to the proposed legislation, much of the bill reflects the mission, organization, and functions of the former ACIR. But there are a number of important provisions that would help make the successor body be more representative, more credible, more connected, and more action-oriented. These were among the expectations that members of the Speaker's Task Force expressed to us last May.

Section 3: The Declaration of Purpose builds on ACIR's statutory charge in three important ways. First, offering advice on ways to improve the intergovernmental operations of the White House and federal agencies. Second, identifying the intergovernmental impacts of United States Supreme Court rulings on federal, state, local, and tribal governments. Third, sharing lessons and best practices with federal, state, and local governments.

Section 4: The expanded membership, to include two tribal officers as well as a fourth state legislator and county official, and one town or township elected governing board member, gives majority representation on the Commission to non-federal members. Tribal and town/township representation on ACIR was unsuccessfully advocated for several years, and addition of these representatives is appropriate. Also important are the provisions that help ensure balanced political and geographical representation. These changes in membership composition would help ensure strong grassroots representation.

Section 5: The rationale for the Commission's members designating a Chairman and Vice-Chairman is another departure from the ACIR model and could work well over time. As a practical matter, as the Commission gets underway the time involved for members becoming

acquainted, building trust, and demonstrating meeting management skills could delay the leadership selection process. So, it makes sense for the President to make the initial selections, with the Commission determining the process for choosing subsequent Chairs and Vice-Chairs.

Section 6: The Commission's duties are important and wide-ranging and the amount of attention to be devoted to each is flexible. One important duty involves making recommendations to improve the management and performance of federal aid and regulatory programs, which was one of the main focus areas of ACIR for several years. Another is provision of technical assistance to the federal legislative and executive branches in the review of proposed legislation to determine intergovernmental impacts.

Sections 6 and 7: These sections give the Commission some "teeth" to help ensure that its work receives attention. Especially important are the requirements that federal departments and agencies must supply the Commission with requested information and respond to Commission recommendations, and for Congress to call a hearing within 90 days of receiving the Commission's annual report.

Lessons Learned from ACIR

In closing, I would like to share some thoughts on three lessons learned from ACIR's 37-year record which might be helpful in moving forward should the "Restore the Partnership Act" be enacted.

First, the federal members of the Commission should be committed to and value intergovernmental consultation and engagement. The Commission could risk being labeled as a "state and local lobby group" if there was lackluster participation by the federal representatives. In addition to the federal executive representatives, how could serving on a body such as the CIRUS be valued by Representatives and Senators who likely will receive no political credit for their service? Consideration should be given to identifying advocates, perhaps former state or local elected officials now serving in Congress, and to developing a message about the value-added by their active participation. A key factor responsible for the success of ACIR's start-up was the engagement of congressional "champions" like North Carolina Representative L.H. Fountain and Maine Senator Edmund Muskie.

Second, strong support from the "Big 7" is crucial as five of these organizations nominate representatives for appointment. The fact that each of these organizations has endorsed the

Restore the Partnership legislation is welcome news. It is essential that their nominees appreciate bipartisanship and collaboration, can think and act outside of their respective jurisdictional and programmatic silos, and be willing to take time away from their day jobs to tend to intergovernmental business on the Commission's agenda. Relying on the "Big 7" to nominate most of the local and state representatives sends an important message that they are not just another special interest group.

Third, a key factor for the success and perhaps survival of the new Commission will be the research agenda that it undertakes. The challenge is to identify research subjects that are timely and relevant, but not too close to the political fray and not too distant from the real world. For the most part, ACIR was able to do this well and to avoid the "think tank" label. NAPA's Intergovernmental Systems Panel has identified for the Subcommittee several examples where ACIR's research and policy recommendations had an impact, some of which are referenced earlier in my statement, as well as some innovative analytical frameworks and data needs that could be helpful for its successor.

In closing, I want to share a quote on the state of intergovernmental affairs by Donald Borut, former executive director of the National League of Cities, in the book I mentioned: "The challenge for those representing state and local governments is the apparent disinterest, lack of understanding, and diminished priorities members of Congress have for intergovernmental relations and the direct and indirect consequences of their decisions on states and localities. Federalism does not appear to be a lens through which legislation is considered." Clearly, the federal government's ability to recognize, address, and take advantage of the strengths of the intergovernmental roots of our federal democracy has atrophied severely since 1996 when the ACIR ceased operations. It is timely that with this bill the Congress is moving forward to rebuild our intergovernmental institutional capacity, restore the partnership, and enhance the mutual accountability of the federal, state, local, and Indian tribal governments.

Creating an organization that builds on the experience and lessons learned from the former ACIR with a 21st century mission, structure, authority, and approach is a bold step in this journey. Chairman Connolly's Restore the Partnership legislation is an important but not sole action for increasing intergovernmental cooperation, consultation, and coordination. Putting the 'R' back in IGR would send a welcome symbolic and substantive message that there is an important connection between the federal government, states, local, and tribal governments that

needs to be nurtured and strengthened in the interest of the federal system and the American people.

Thank you, and I would be pleased to respond to your questions.