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STATEMENT OF

COUNCILMEMBER NICK LICATA

CITY OF SEATTLE, WASHINGTON

on behalf of

THE NATIONAL LEAGUE OF CITIES

before the

**Senate Subcommittee on Oversight of Government Management, the Federal
Workforce, and the District of Columbia**

on

***“PASSING THE BUCK:
A REVIEW OF THE UNFUNDED MANDATES REFORM ACT”***

APRIL 14, 2005

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Thank you, Chairman Voinovich, Ranking Member Akaka, and members of the Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia for the opportunity to speak with you today. I am Nick Licata, Councilmember from Seattle, Washington. I am pleased to testify on behalf of the National League of Cities on “Passing the Buck: A review of the Unfunded Mandates Reform Act.” Before I begin my remarks, I would like to thank the Senator from Ohio for his tireless efforts in examining unfunded mandates and in particular for requesting the Government Accounting Office’s (GAO) study of the Unfunded Mandates Reform Act.

The National League of Cities (NLC) is the nation’s oldest and largest association representing municipal interests in Washington, D.C. NLC represents more than 16,000 cities of all sizes – from our largest member New York City with a population of 8 million to our smallest member Vernon, California with a population of 91. As the representative of the nation’s local leaders, NLC has a vital interest in clarifying the roles and responsibilities of local government and how federal mandates impact the stability of municipalities and the delivery of key services to the residents of America’s cities.

I am prepared to testify before you as a member of NLC’ Finance, Administration, and Intergovernmental Relations Policy and Advocacy Steering Committee. I am also relying on my sixteen years as an experienced insurance broker, local government consultant, and my work related to public safety and key services to the residents of Seattle since I was elected to the city council in 1998.

NLC Support of the Unfunded Mandates Reform Act

The National League of Cities recognizes two basic types of federal mandates: those that impose costs directly on municipal governments, and those that, while not imposing costs directly on cities, intrude upon the autonomy of local governments. NLC opposes both types of unfunded mandates. As early as December 16, 1991, NLC adopted, as a preamble to its National Municipal Policy¹, the position that ***federal mandates that impose direct costs must be accompanied by adequate federal funding***. NLC also adopted policy which states:

The federal government should avoid policies that impose disproportionate responsibilities on local governments or increased financial liability without recognizing the fiscal impact of those policies. In particular, federal policies should not mandate new costs for local governments without providing adequate funds to reimburse local governments for these new mandates.
(*National Municipal Policy* §1.00 (A))

On October 27, 1993, NLC, along with other state and local government associations, launched National Unfunded Mandates Day with a press conference followed by a meeting at the White House with President Bill Clinton. Local elected officials in cities and towns across the country participated in this public awareness campaign by holding more than 100 local press conferences

¹ The National Municipal Policy (NMP) contains the formally adopted positions taken by the organization on national issues. As a national membership organization, NLC focuses its policy positions on federal actions, programs, and proposals which directly impact municipalities.

highlighting the soaring costs of federal mandates and the disregard for the local priorities these mandates impacted. The event was the result of years of committed advocacy from many organizations, governments, and individuals that culminated with the passage of the Unfunded Mandates Reform Act (UMRA). Local governments nationwide recognized the passage of the UMRA in 1995 as a key partnership tool with the federal government.

America's cities and towns were particularly hopeful that Title I of UMRA, which requires the Congressional Budget Office (CBO) to prepare an intergovernmental mandate statement approved by the authorizing committee, would deter the federal government from passing the costs of its programs to municipalities. After all, UMRA was passed to ensure that Congress was informed about the costs of mandates before it imposed them. This legislation rightfully encourages the federal government to justify said costs and possibly provide funding to cover impositions made on state and local governments.

The Current State of Unfunded Mandates and America's Cities

Ten years later, America's cities and towns are still feeling effects of legislation that imposes unfunded mandates on localities. A recent report released by the CBO reviews cost reporting activities under UMRA. It stated that of the legislation CBO reviewed between 1996 and 2004, 617 proposals (12%) contained intergovernmental mandates and only 1% of the bills imposed costs higher than the thresholds set in UMRA². The report went on to say that since 1996, five intergovernmental mandates with costs above the designated amount have become law despite the CBO review and report.

Additionally, more than half of the intergovernmental mandates identified by CBO explicitly preempted state or local authority in some form. Some of these preemptions were captured in CBO reviews. This was the case with the *Internet Tax Nondiscrimination Act*, passed in 2004, which temporarily prohibits states from imposing taxes on various forms of Internet access. Last month, Congress heard testimony from CBO Director Douglas Holtz-Eakin, who reported that this legislation will likely result in a loss of state and local revenue that could total more than \$325 million through 2007³. In many cases, legislation that preempts nonfederal governments is not captured by CBO's reviews because this legislation often does not have direct costs that exceed UMRA's threshold. This is one area that remains of great concern to states and localities as it seems to highlight an erosion of the principle of federalism and UMRA does not allow us to document these types of mandates.

State and local governments have been given very few options to opportunities to repair the loss of revenue caused by mandates and the despairing economy. A May 2004 report from the Center on Budget and Policy Priorities found that despite a \$20 billion federal fiscal relief package to the states in 2003 following the economic downturn of 2001 (and I emphasize states,

² Congressional Budget Office. A Review of CBO's Activities in 2004 Under the Unfunded Mandates Reform Act. March 2005.

³ Douglas Holtz-Eakin, Director Congressional Budget Office. Testimony before the U.S. House of Representatives, Committee on Government Reform Statement. March 8, 2005.

not cities and other localities) “it pale[d] in comparison to the more than \$175 billion in state costs and forgone revenues over the 2002-2005 period that are attributable to federal policies.”⁴

In March 2004, Senator Voinovich asked the Government Accounting Office (GAO) to analyze UMRA’s effectiveness. The report was released and found that 43 statutes and 65 rules, proposed by Congress in 2001 and 2002 would have resulted in some new cost on “nonfederal parties, and of those only 24 statutes and 26 rules required a CBO review.

The report concluded that UMRA may not adequately capture all federal mandates that are imposed on states and localities. The study raised questions about the need to modify UMRA’s definitions and exclusions, in order to more accurately assess the burden federal mandates have on the intergovernmental system, as well as the private sector. Specifically, the minimum cost threshold of \$50 million in legislation and \$100 million for rules/regulations was highlighted as being possibly problematic. At the request of Senator Voinovich, GAO will release an additional update to their report on UMRA to be published in the spring of 2005.

Some of the more famous examples of mandates on local governments can be found in the Individuals with Disabilities Act, No Child Left Behind Act, the Internet Tax Nondiscrimination Act, environmental regulations, federal tax changes, and many others. I will highlight those areas of unfunded mandates and focus in particular on Seattle’s struggle with the unfunded mandates tied to homeland security.

Current Unfunded Mandates:

- *Individuals with Disabilities in Education Act (IDEA)*
Since its passage, NLC has pressed Congress to fully fund the Individuals with Disabilities in Education Act (IDEA). While Congress has recently increased funding for IDEA, the federal government is still contributing less than one-half of the 40 percent match it promised when it passed the legislation in 1975. As a result, local governments and school districts have been forced to bear the cost of this unfunded federal mandate by taking money from their general education budget to provide IDEA-related services. NLC continues to lobby Congress to meet its federal obligation to fully fund IDEA and relieve cash-strapped localities from the burden of making up for the federal funding shortfall.
- *No Child Left Behind Act*
NCLB is a law that imposes significant demands and requirements upon state and local government educational entities without providing the promised federal dollars to meet the requirements. The President’s fiscal year 2006 budget proposes a modest increase in funding disadvantaged schools. To date, NCLB has been under-funded by \$9.4 billion from its authorized dollar amount.
- *Federal Tax Changes*

⁴ Iris J. Lav and Andrew Brecher, *Passing Down the Deficit: Federal Policies Contribute to the Severity of the State Fiscal Crisis*, Center on Budget and Policy Priorities, May 12, 2004.

Federal funds comprise up to half of state and local budgets. Congress and the Administration have identified federal tax reform as a legislative priority this session. However, Congress failed to appreciate that the federal tax cuts enacted since 2001 have had the effect of reducing state and local revenues because of the linkages between the federal and state tax codes. As a result, states that have not “decoupled” their tax structure from the federal system have lost an estimated \$9 to \$10 billion.⁵ In addition, localities and states will also incur administrative costs to redraft their tax codes for conformity.

- *Internet Tax*

In 2004, CBO found that the Internet Tax Nondiscrimination Act, which prohibited states from imposing taxes on sales from Internet access cost state and localities roughly \$325 million in revenues through 2007. The CBO analysis found that substantial revenue losses could result from the inability of state and local governments to collect transactions taxes (including sales and use taxes and gross receipts taxes) on certain types of telecommunications services. Revenue losses would also stem from the free inclusion of content (movies, music, and written works) with Internet access in response to the tax exemption provided by the bill.

- *Environmental Regulations:*

A study prepared by the National Academy of Public Administration found an annual funding gap of at least \$1 billion for states to implement EPA regulated federal programs. In addition, a 2003 report to Congress by the Office of Management and Budget found, “Over the past seven years, seven rules have imposed costs of more than \$100 million per year (adjusted for implementation) on State, local and tribal governments.”⁶ For fiscal year 2006, the Administration’s budget proposes a further reduction for the Clean Water State Revolving Fund.

Recently Proposed Unfunded Mandates by Congress

- *MTBE-Liability Waiver in the Energy Bill*

This week, the House of Representatives is again attempting to pass an energy bill that contains an onerous provision that would impose a \$29 billion unfunded mandate on local governments to clean up water contaminated by the gas additive Methyl Tertiary Butyl Ether (MTBE). In addition to imposing a multi-billion dollar unfunded mandate on local governments, MTBE-liability waiver would invalidate any MTBE-related lawsuit that has been filed by since September 5, 2003, thereby precluding municipalities and other local governments from recouping the costs of cleaning MTBE-contaminated drinking water supplies. This provision, in the energy bill, would force cash-strapped local governments to bear the cost of cleaning MTBE contaminated drinking water supplies.

The Senate has excluded this liability waiver from its version of the energy bill and I ask, on behalf of NLC, that members of this panel oppose passing this unfunded mandate on to local governments.

⁵ Center on Budget and Policy Priorities, p. 3.

⁶ National Conference of State Legislators, “Mandate Monitor”, March 2004.

- *Immigration Enforcement*

Last Congress, the Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act and the Homeland Security Enhancement Act were introduced in the House and Senate, respectively. Both bills would have mandated that local governments enforce (civil) immigration laws – and essential federal function - or risk the denial of reimbursement from the federal government. The proposed bills would have imposed huge unfunded mandates, preempted state and local laws, increased liability due to racial profiling, and degraded effective community policing programs.

On behalf of NLC, I ask that you oppose legislative efforts to pass similar bills in this Congress. NLC opposes shifting the costs and responsibilities of immigration law enforcement to local governments, since local and state governments received no more than 35 percent of the costs related to the detainment of non-documented persons, according to the Bureau of Justice Assistance.

Seattle, Homeland Security, and Unfunded Mandates

Since September 11, 2001, local governments across the nation have worked hard – and invested scarce resources – to improve security for their citizens. A March 7, 2005 report prepared by the Seattle’s Office of City Auditor with assistance from the Department of Finance found the City spent \$85.5 million has been spent on homeland security between September 2001 and December 2005. Just under half (46 percent) of the total funding for homeland security activities are from federal grant sources. The vast majority of the balance, \$45.5 million or 53 percent of the total, has been funded directly by City taxpayers and ratepayers. Ours is the perfect example of a city trying to not only secure its citizenry but also to comply with federal requirements. However, it is also a true example of a municipality having to rely on its local General and Operating funds in order to meet the terms of federal guidelines because federal grants and funding does not meet our public safety needs.

Seattle’s resident population is nearly 570,000, but it accommodates approximately 1.5 million people each workday within its 91 square miles, which includes, including 193 miles of waterfront.

The Department of Homeland Security has identified Seattle as a potential terrorist target. In response, Seattle has taken important steps to improve its preparedness and response capacities. Seattle has invested in these steps, despite the economic recession in the Puget Sound region that began in 2001 that forced the city to make approximately \$122 million to its General Fund.

The audit, which is included as Appendix A to this testimony, noted three factors that contribute to the homeland security costs:

- 1) The City’s efforts to achieve compliance with post-9/11 guidelines from the federal government, regulatory agencies, and professional organizations for which there are no grant sources currently available.
- 2) The costs of additional ongoing staffing for homeland security, for which there is no federal grant support has totaled over \$17.5 million since 9/11.

- 3) Grants from federal agencies, including the Department of Homeland Security and the Environmental Protection Agency, provided funds for the City to conduct vulnerability assessments of City operations and critical infrastructure. However, due to the prohibition of using Urban Area Security Initiative (UASI) funding for capital projects, eight City departments indicated that they have infrastructure needs for which grant funds are not available.

In addition, Seattle departments responsible for homeland security have identified sustainability issues such as maintaining security staffing, labor and training costs associated with operating and maintaining grant-funded equipment and vehicles, and other costs as a concern.

Seattle has reorganized some of its public safety resources to improve its preparedness and response to homeland security emergencies. Changes include transferring police officers from other functions within the department to create a Homeland Security Section within its Bureau of Emergency Preparedness and reorganizing internally to expand the city's incident response capabilities. City taxpayers have assumed \$14.9 million in new homeland security costs for the General Fund since 2001. To put that in funding level context, during the last four budgets, the City's General Fund has faced a gap of approximately \$122 million.

Despite the budget challenges associated with homeland security, the City of Seattle greatly appreciates the resources provided by Congress and the Administration. In particular, the UASI funds provide critical homeland security funding to the Seattle region and is an essential tool. I urge this Subcommittee to support this valuable program. I also urge this Subcommittee to work to distribute a greater percentage of homeland security funding to our high-density urban areas where the Department of Homeland Security has determined there is greater threat. The funding should allow greater flexibility for local governments to implement homeland security plans.

Ways to Improve UMRA

One of NLC's primary concerns regarding UMRA is how the financial threshold and exemptions under UMRA obfuscates an accurate assessment of unfunded mandates. The March 2004 GAO study concluded that, "[t]he findings raise the question of whether UMRA's procedures, definitions, and exclusions adequately capture and subject to scrutiny federal statutory and regulatory actions that might impose significant financial burdens on affected non-federal parties."⁷ These findings highlight the deficiency of UMRA, which was designed to discourage the imposition of new laws and regulations that pass the costs on to state and local governments.

NLC has worked with GAO to identify the flaws in the statute and to put forward recommendations for improvement. NLC is looking forward to the release of the next report that examines whether and how UMRA's procedures, definitions, and exclusions fail to capture the true federal fiscal burden placed on state and local governments. We hope the report would endorse our recommendations, and more importantly that Congress will adopt them.

First, Congress should amend UMRA to increase to 60 the number of Senate votes it takes to enact legislation that imposes unfunded federal mandates. This proposal was approved last

⁷ *Unfunded Mandates: Analysis of Reform Act Coverage*, Government Accounting Office, May 2004, page 36.

month by the Senate Budget Committee. In the last ten years, the Senate never used UMRA once as a budget point of order.

Second, Congress should not allow any new federal statute to preempt a local law unless the new federal law specifically states that there is a direct conflict between state and local law.

Third, Congress should reconsider the threshold amount established in UMRA. While the \$50 million threshold (which has been adjusted for inflation annually) may seem low by Congress' estimation, the cumulative effects of unfunded mandates that fail to meet the UMRA's financial threshold do great damage to the fiscal posture of localities.

Finally, NLC would like Congress to enact clear and unequivocal language that mandates federal agency consultation with state and local government associations and officials in the development of the proposed rule pursuant.

On behalf of the National League of Cities, I thank you for the opportunity to submit this testimony on this most critical issue.

