

Remarks By U.S. Senator Lamar Alexander To The National League Of Cities Congressional City Conference

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I think you must have looked around the country and decided to invite the two speakers who've had the largest number of government jobs. Dirk Kempthorne was a senator before he was a governor, and I was a governor before I was a senator. I was also education secretary for the first President Bush, and I found out not everybody thinks that's a big job. In my first Cabinet meeting, I went home and told my children that I discovered that I sat at the end of the Cabinet table, and I learned that I was the last to be evacuated in case of an emergency. I would tell my friends during the time I was education secretary that if they woke up some morning and there had been some big problem and they saw me on television assuring them everything was alright, they could be sure it wasn't.

It is a privilege to be here with Dirk Kempthorne and especially to hear his blow by blow account of the passage of the Federal Unfunded Mandates Reform Act. It is a tremendous accomplishment and one for which he, and this league, and other state and local organizations deserve lots of credit. It's the right symbol, it's the right policy, and I'm sure it has over the last 10 years discouraged some federal action that got in the way of what ought to be state and local decision making. But we have a long way to go, and I want to talk about that this morning.

Tomorrow, March 15, is the 10th birthday of The Federal Unfunded Mandates Reform Act, affectionately known in Washington, D.C. as UMRA.

UMRA was supposed to stop or slow down the one thing that made me maddest as governor - some congressman coming up with a big idea, passing a law, holding a press conference, bragging about it and then sending the bill back to Tennessee for me and the legislature to pay. And then the next weekend, that same congressman would usually be back in Tennessee making a speech about local control.

UMRA was supposed to discourage that - to discourage the imposition of new laws and new rules on state and local governments without paying for them. And as I said a moment ago, it was the right policy and a great accomplishment, and it undoubtedly discouraged some action. But it hasn't done nearly as much as we might have hoped.

Just look around you:

- Cities are raising taxes to pay for new EPA storm water run-off rules;
- School boards are still taking money out of one classroom and putting it in another to meet federal requirements for children with disabilities;

- The National Council of State Legislatures has identified \$29 billion in federal cost shifts to states in transportation, health care, education, environment, homeland security, election laws and in other areas.
- And just last year - a subject I talked about with you - in the name of lowering Internet access taxes, Congress tried to take away from state and local officials local control over how to pay for governmental services;

And that's not all.

- The U.S. House of Representatives recently passed legislation that would turn 190 million state drivers' licenses into national ID cards with the states paying most of the cost;
- Last week governors of both parties met with the president and they asked him how they could reduce the growth of Medicaid spending when federal laws dictate eligibility standards, when federal bureaucrats limit state flexibility and federal courts just say no.

And these are just the unfunded federal mandates.

Just as ominous a threat over the last several years to a balanced partnership among federal, state and local governments, I believe, is Congress's failure to act on other important areas of policy, which also runs up the cost of state and local government.

For example, Congress's failure to deal with 10 million illegal immigrants fills up hospital emergency rooms, schools and jails.

Congress's failure to reform Medicaid has allowed a 40 percent increase in caseloads over the last five years to soak up state and local revenues that might have been spent for schools, colleges, police, parks and roads.

And then the federal courts have piled on — using outdated federal court consent decrees to run Medicaid in Tennessee, to run foster care in Utah, to run transportation in Los Angeles and to decide how to teach English to children in New York City.

During these last 10 years, in my view, about the only part of the federal government that has recognized the importance of strong state and local governments in our federal system is the United States Supreme Court, which has rediscovered that the 10th Amendment to the United States Constitution reserves the states' powers that are not expressly granted to the central government.

So here is what I see is the picture of federalism in Washington, D.C. today — Democrats, still stuck in the New Deal, are reflexively searching for national solutions to local problems; Republicans, having found ourselves in charge, have decided it is more blessed to impose our views rather than to liberate Americans from Washington; and, across America, federal judges have discovered the joys of acting like governors and mayors without having to run for office.

Meanwhile in the states and cities, federal funds make up as much as half of state and local budgets, bringing with them more and more rules that direct and limit what mayors and governors are able to do with revenues raised from state and local taxes.

So as a result, the job of mayor and governor is becoming more and more like the job of university president, which I also used to be: it looks like you're in charge, but you're really not.

That is why to celebrate this 10th birthday of UMRA I propose three steps to give mayors and governors, legislators and local councils more authority to do what they were elected to do.

First, amend UMRA to increase to 60 the number of Senate votes it takes to enact legislation that imposes unfunded federal mandates. This very proposal was approved last Thursday by the Senate Budget Committee. For the last 10 years the number has been 50, and it hasn't been used once as a budget point of order. It's a penalty flag that hasn't been thrown.

Second, make it easier for governors and mayors to change or vacate outdated federal court consent decrees and harder for courts and plaintiffs' lawyers to run the government. I have introduced legislation with Senator Mark Pryor of Arkansas and Senator Ben Nelson of Nebraska. They're both Democrats. One was an attorney general of his state, and one was a governor of his state. This legislation would put term limits on consent decrees, shifts to plaintiffs the burden of proving that the decrees need to be continued and requires that courts draw decrees narrowly with the objective of moving responsibility back into the hands of elected officials as soon as possible.

In Tennessee, for example, we have a governor of the other party who ran to fix what we call our TennCare system, it's our Medicaid system. He's come up with a plan to do it. He's concerned, as I am in looking at it from a distance, that because of the unbridled growth of healthcare spending that we don't have the money for education spending and we need to make some adjustment of that. But he finds himself restricted by four federal court consent decrees entered into by his predecessors over the past 25 years, so he's not able to do what he was elected to do. The people of our state believe that if we have an important policy decision - not a rights decision, but a policy decision - that elected officials ought to be able to make that decision.

Finally, the third thing we should do is to **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.**

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Now after all this pessimistic talk about ominous trends, let me conclude with an optimistic word about our federal system.

I am optimistic because I believe that excessive centralization of government runs against the grain of what it means to be an American. To ignore that I believe is political dynamite.

Americans do expect Washington, D.C. to take care of war, welfare, social security, health care and debt.

Americans do not want Washington, D.C. running schools, colleges, law enforcement, city parks and most roads.

Lest anyone think I'm wrong, I invite them to step with me out on the campaign trail.

I clearly remember the period of time Governor Kempthorne described in his remarks, the last time we had a national referendum on federalism in the 1990s.

I recall in October of 1994, Representative Newt Gingrich stood with 300 Republican candidates for Congress on the Capitol steps offering a "Contract with America" promising no more unfunded federal mandates. "If we break our promise," said my fellow Republicans, "throw us out."

Mindful of that promise, new United States Senate Majority Leader Bob Dole in 1995 designated the Federal Unfunded Mandate Reform Act as S.1 — the birthday that we celebrate tomorrow, the day of its passage - he made it the first order of business of the new Republican Senate. Senator Dole then campaigned for president across the country pulling a copy of the constitution from his pocket and reading the 10th Amendment to his audiences.

I know that because I was with him, doing my part running for president, walking across Iowa and New Hampshire in a red and black flannel shirt proposing to abolish the U.S. Department of Education as we know it, to move the Agriculture Department from Washington, D.C. to Des Moines and to cut the pay of Congress in half and send them home for six months each year to spend more time with their neighbors instead of Washington lobbyists.

As you can imagine, these comments didn't go down so well here in the nation's capital. My bumper stickers saying "cut their pay and send them home" still make some of my current colleagues mad.

I can remember at a Washington Post editorial board meeting in 1995, the late publisher, Kay Graham, gently asked me, "Governor Alexander, if you dislike Washington so much, then why would you want to come here?"

That's a good question. And there's a good answer.

One of the most important reasons to come to Washington to serve is to remind those already here that a plane ticket to Washington doesn't make you any smarter.

That parents and teachers of 50 million students in 15,000 school districts can usually do more to improve a child's education than some national school board can.

That if Washington makes you spend more for Medicaid then you'll probably have less to spend for preschool education — and at least someone elected, who is closer to the problem, needs to decide that issue.

In some countries, which are smaller and in which people are more ethnically alike than we are, it might be possible to have a national school board, a state church and a central government that calls most of the shots.

But we know that doesn't stand a prayer of working in the United States of America. Alexis de Tocqueville in his early writings about America observed that our country works community by community by community. We are so big, we have so many different views, and we come from so many different backgrounds that we need many places to work things out in many different ways. Put too many one-size-fits-all jackets on Americans and this country will explode.

And in America, such an explosion occurs at election time.

That is why most candidates for president run against Washington, D.C.

That is why senators from Washington, D.C. are almost never elected president, and governors from outside Washington, D.C. often are.

That is one reason why Americans elected a Republican Congress in 1994.

And it is a reason that I am optimistic about federalism because Democrats are now looking for a way to get into office. And Republicans are looking for a way to stay in office. Whoever wins will have to get on the right side of the federalism issue.

So as a good Republican, I am using this birthday celebration of the Unfunded Federal Mandate Act to remind my Republican colleagues that we promised to the American people in 1994: no more unfunded mandates. "If we break our promise, throw us out." I am certain that if we don't remember our promise, our Democratic friends will.

Most of our policy debates in Congress involve conflicting principles of which most of us agree. The principle of federalism should not always be the trump card. There are other important principles to weigh: liberty, equal opportunity, laissez faire, individualism and the rule of law, for example.

But the federalism that the Republican Congress was elected to protect in 1994 has gotten lost in the weeds. It is time to find it and to put it back up front where it belongs. And the first three steps should be to take the Unfunded Mandate Reform Act and increase to 60 the number of votes it takes to enact an unfunded mandate, to put term

limits on federal court consent decrees, and to require Congress to specify, announce and admit whenever it decides to preempt a state or local law.

If Congress were to do those three things, then maybe on UMRA's 20th birthday, 10 years from now, we can celebrate an American federal system that has the kind of respect for mayors, governors, legislators and city council members that the founders of this great republic envisioned.