

June 16, 1999

INTRODUCTION OF THE
FEDERALISM ACT OF 1999

HON. DAVID M. MCINTOSH

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 16, 1999

Mr. MCINTOSH. Mr. Speaker, today, I rise to introduce the "Federalism Act of 1999," a bipartisan bill to promote and preserve the integrity and effectiveness of our federalist system of government, and to recognize the partnership between the Federal Government and State and local governments in the implementation of certain Federal programs. As James Madison wrote in Federalist No. 45, "The powers delegated . . . to the Federal government are defined and limited. Those which are to remain in the State governments are numerous and indefinite."

In May 1998, President Clinton issued Executive Order (E.O.) 13083, which revoked President Reagan's 1987 Federalism E.O. 12612 and President Clinton's own 1993 Federalism E.O. 12875. The Reagan Order provided many protections for State and local governments and reflected great deference to State and local governments. It also set in place operating principles and a required discipline for the Executive Branch agencies to follow for all decisionmaking affecting State and local governments. The Reagan Order was premised on a recognition of the competence of State and local governments and their readiness to assume more responsibility. In August 1998, after a hearing before the Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs, which I chair, and the outcry of the seven major national organizations that represent State and local elected officials, President Clinton indefinitely suspended his E.O. 13083 and agreed to work with these national organizations on any substitute Order.

The "Federalism Act of 1999" is being introduced in response to a request for permanent legislation by the leadership of these seven major national organizations. It is a product of several months' work by a bipartisan group of Members together with those national organizations and their leadership to ensure that the legislation includes provisions most needed and desired by them to promote and preserve Federalism. The absence of clear congressional intent regarding preemption of State and local authority has resulted in too much discretion for Federal agencies and uncertainty for State and local governments, leaving the presence of scope of preemption to be determined by litigation in the Federal judiciary.

The "Federalism Act of 1999" has a companion bipartisan bill on the Senate side, S. 1214, the "Federalism Accountability Act of 1999," which was introduced last week. Both bills share nearly identical purposes: (1) to promote and preserve the integrity and effectiveness of our federalist system of government, (2) to set forth principles governing the interpretation of congressional intent regarding preemption of State and local government authority by Federal laws and rules, (3) to recognize the partnership between the Federal Government and State and local governments in the implementation of certain Federal pro-

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grams, and (4) to establish a reporting requirement to monitor the incidence of Federal statutory, regulatory, and judicial preemption.

The "Federalism Act of 1999" establishes new discipline on both the Legislative Branch and the Executive Branch before either imposes requirements that preempt State and local authority or have other impacts on State and local governments. The "Federalism Act of 1999" requires that the report accompanying any bill identify each section of the bill that constitutes an express preemption of State or local government authority and the reasons for each such preemption, and include a Federalism Impact Assessment (FIA) including the costs on State and local governments. Likewise, the bill requires Executive Branch agencies to include a FIA in each proposed, interim final, and final rule publication. The FIA must identify any provision that is a preemption of State or local government authority and the express statutory provision authorizing such preemption, the regulatory alternatives considered, and other impacts and the costs on State and local governments.

The bill establishes new rules of construction relating to preemption. These include that no new Federal statute or new Federal rule shall preempt any State or local government law or regulation unless the statute expressly states that such preemption is intended. Any ambiguity shall be construed in favor of preserving the authority of State and local governments.

Besides instituting this new discipline for the Legislative and Executive Branches and providing new rules of construction for the Judiciary, the bill includes other provisions to recognize the special competence of and partnership with State and local governments. The bill provides deference to State management practices for financial management, property, and procurement involving certain Federal grant funds. The bill also requires Executive Branch agencies, for State-administered Federal grant programs, to cooperatively determine program performance measures under the Government Performance and Results Act with State and local elected officials and the seven major national organizations that represent them.

The McIntosh-Moran-Portman-McCarthy-Castle-Conditt-Davis bill is a product of work with the seven major State and local interest groups: the National Governors' Association, National Conference of State Legislatures, Council of State Governments, U.S. Conference of Mayors, National League of Cities, National Association of Counties, and the International City/County Management Association.

INTRODUCTION OF THE
FEDERALISM ACT OF 1999

HON. JAMES P. MORAN

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 16, 1999

Mr. MORAN of Virginia. Mr. Speaker, I am pleased to join my colleagues DAVID MCINTOSH, TOM DAVIS, KAREN MCCARTHY, MICHAEL CASTLE and GARY CONDIT, in cosponsoring the Federalism Act of 1999.

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This legislation is a logical and necessary extension of the Unfunded Mandate Reform Act that Congress passed in 1995. The Unfunded Mandate Reform Act and the Federalism Act we are introducing today, seek to protect and enhance our federalism system of government. The process and discipline we set forth in the Federalism Act will make federal decision makers more sensitive to state and local concerns and prerogatives. Passage of this legislation will mark a milestone in improvements in our federalism system of government.

Having served in local government, I know first-hand how even the most well-intentioned federal laws and regulations can disrupt state and local programs and initiatives. Like the landmark National Environmental Policy Act, this legislation establishes a process that includes a federalism impact assessment on both the Congress and the executive branch to ensure that we make more informed and rational decisions on new federal laws and regulations that may affect state and local governments.

I will be the first to admit that much of the legislation Congress considers includes some type of federal preemption. I support strong national standards for clean air and water, fair labor standards and public health. Others in Congress may seek to federalize our criminal justice system. All are legitimate prerogatives of the U.S. Congress and under the Supremacy Clause.

I do not suggest we return to the days of the Articles of Confederation or endorse State Rights' advocates for a limited federal government. What I do suggest is that we establish a procedure to ensure that Congress is both well-informed and accountable for major actions that preempt state and local governments. We also need to set forth a process that provides the courts with greater clarity on congressional intent when legal disputes arise between federal and state law.

I know this legislation is not perfect. I look forward to working with my colleagues to ensure that this legislation defines the scope of judicial review and limits the potential for nuisance lawsuits as well as safeguards the rights of Congress to respond promptly to important national initiatives.

PERSONAL EXPLANATION

HON. EVA M. CLAYTON

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 16, 1999

Mrs. CLAYTON. Mr. Speaker, on rollcall No. 191, H.R. 1401—final passage, "to authorize appropriations for fiscal years 2000 and 2001 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal years 2000 to 2001, and for other purposes," I was absent for the above-referenced vote because I was in North Carolina attending the funeral services for the father of my district office director. Had I been present, I would have voted "yea."