

## 7. **Unfunded Mandates**

The Tenth Amendment to the U.S. Constitution states, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Had the courts and the politicians adhered to that restriction, there would be no unfunded mandates, that is, federal laws and regulations the costs of which are borne entirely by state and local governments. Hence, the most direct solution to the problem of unfunded mandates is a return to the Founders' intent of a **strictly limited central government with only those powers explicitly enumerated in the Constitution**. To that end, Congress should eliminate all departments, agencies, and bureaus that provide **nonenumerated services** (i.e., virtually everything except the Departments of the Treasury, State, Justice, and Defense).

As a beginning, Congress should take the following actions.

- **Pass a constitutional amendment prohibiting the federal government from imposing any mandates (funded or unfunded) on state and local governments.** This would do nothing to reduce the existing burden of unfunded mandates. It would only prevent Congress from imposing more unfunded mandates in the future.
- **Repeal specific mandates.** Some of the more costly unfunded mandates include the Americans with Disabilities Act, the Clean Water Act, the Clean Air Act, the Safe Drinking Water Act, and the Fair Labor Standards Act. Like most federal mandates, those measures tend to impose the same inflexible, **one-size-fits-all** requirements on jurisdictions as diverse as New York City and the state of North Dakota.

### ***The \$100 Billion Problem***

In recent years the number of unfunded mandates and their costs have been rising precipitously. Over 100 have been enacted since the mid-1970s; at least 70 of those have been passed since 1988.

All told, it is estimated that unfunded mandates will soon cost the states and localities \$100 billion per year. The annual bill is expected to rise to \$500 billion by the year 2000 unless the federal government takes action. In some cases, implementing and complying with mandates consumes as much as two-thirds of the annual budgets of local governments. As a result, Congress is, in effect, forcing state and local governments to shift scarce funds from their own spending priorities or to raise taxes.

Several dozen proposals addressing the problem of unfunded mandates circulated through Congress last year. The most restrictive were of the "no money, no mandate" variety, which say that if Congress does not provide the funds to implement its requirements, the states and localities do not have to implement them. (Other bills would simply require Congress to estimate the cost of mandates before adopting them.) Sen. Dirk Kempthorne (R-Idaho) and Rep. Gary Condit (D-Calif.), both former mayors, introduced "no money, no mandate" bills. Although the Kempthorne and Condit bills were the most publicized of the mandate relief bills, neither made it to a floor vote. However, even the most restrictive proposals would have done little to solve the problem because they would have done absolutely nothing to address the huge cost of the mandates already in existence. All that those proposals would do is prevent Congress from piling on any additional unfunded mandates.

Furthermore, one possible result of a "no money, no mandate" restriction is that the federal government would continue to impose its inflexible, one-size-fits-all mandates and fund them. While the mayors and governors might view that as a positive development, the American taxpayer would be made worse off. The fact that federal mandates are unfunded is troublesome, but the real problem is that they exist at all. The tales of taxpayers' dollars being squandered by state and local governments forced to spend millions of dollars just to comply with the letter of the law—whether or not that improves their ability to provide their citizens with clean water, for instance—are too numerous to count. For example, the Environmental Protection Agency requires that all local water sources be tested for a pesticide that for more than 15 years has been used only in Hawaii to protect pineapples.

Further, an EPA pollution regulation requires sewage plants to remove 30 percent of the organic waste from incoming sewage. In Alaska, since the snow runoff keeps wastewater unusually clean, sewage inflow often meets the EPA's cleanliness requirement for sewage plant outflow. Removing 30 percent of the relatively small amount of organic waste present in

that sewage inflow would be an astronomically expensive task. Taxpayers in Anchorage would have to pay for a new \$135 million treatment plant. When local officials in Anchorage appealed to the EPA for leniency in meeting the 30 percent requirement, EPA officials would accept nothing short of strict compliance. As a result, Anchorage officials asked local fishermen to dump fish guts into the wastewater, thus enabling them to more cost-effectively meet the one-size-fits-all 30 percent requirement. Apparently the EPA had no quarrel with that "solution."

To comply with the provisions of the Americans with Disabilities Act, the U.S. Department of Transportation told the Washington (D.C.) Area Transit Authority that it would have to spend \$10 million to remove the white granite safety strips in subway stations that warn pedestrians of the edges of the platform and of approaching trains (when the lights are flashing). The strips would have to be replaced with ridges of raised rubber (about 0.2 inch high) so that the visually impaired could feel them with their canes. However, those ridges could be dangerous because they could potentially cause some people to trip and fall into the path of an oncoming train. Furthermore, since 1976 there have been only two fatalities of visually unpaired people in WMATA subway stations. WMATA refused to change its already safe system, and the Transportation Department backed down.

If such pollution and safety regulations were local responsibilities, residents of Anchorage would have clean water, and residents of the D.C. area would have a safe subway system for considerably less money. The bottom line is that state and local officials know far more about how to provide their citizens with clean water, clean air, criminal justice, and access for the disabled than do federal bureaucrats and politicians holed up in expensive office buildings in the nation's capital. The federal government simply has no business telling state and local governments how to meet the needs of their residents.

The existence of billions of dollars' worth of unfunded mandates is yet another symptom of the near-terminal state of American federalism. However, the answer is not to require Congress to provide cost estimates before enacting unfunded mandates, nor to prohibit Congress from enacting unfunded mandates in the future or even to fund existing mandates. The answer is to return to the Founders' intent of a strictly limited central government with only those powers explicitly enumerated in the Constitution, leaving the rest of what our federal government currently does to state and local governments and private organizations.

## ***The Case for a Return to Decentralized Government***

Having experienced firsthand the ravages of an all-powerful central government, the Founding Fathers attempted to design a Constitution that would contain sufficient safeguards to prevent such a government from developing. In article 1, section 8, they provided a specifically defined set of enumerated powers that were granted to the central government. In the Tenth Amendment, they emphasized that everything else was to be left to the states and the people. Unfortunately, as is discussed in more detail in the chapter on constitutional reform, the Founders' safeguards against an all-powerful central government have been eroded over the years, resulting in the current crisis in federalism, of which unfunded mandates is only one symptom. Thus, shifting to a more decentralized system of government with a strictly limited central government would allow us to return to the form of government the Founding Fathers had in mind when they wrote the Constitution.

A return to decentralized government would have the further effect of addressing Americans' concerns that they are not getting their money's worth from government. Those concerns are focused most intensely on the federal government. As a poll by the U.S. Advisory Commission on Intergovernmental Relations showed, when asked which government spends their tax dollars most wisely, 49 percent of respondents answered either local or state government (35 percent local, 14 percent state), and only 7 percent said the federal government. One of the reasons for that disparity is the difference in geographical proximity of each level of government to those whom it governs. Governments that are closer to the people are far easier for the citizens they govern to influence and significantly more accountable to those citizens than is a distant federal government in the District of Columbia. As a result, a shift to a more decentralized, federalist form of government would make Americans better able to get the kind and amount of government they want.

Finally, because of the inherent flaws of our current system of multitiered bureaucratic structures, a return to decentralized government could save American taxpayers a bundle. Currently, for many programs, the federal government takes American taxpayers' money, runs it through the bureaucracy in Washington, and then feeds what's left of it to state and local bureaucracies. As a result, it is estimated that only about 35 cents of every dollar spent on some programs actually get through to the intended beneficiaries. Such waste of taxpayers' dollars is inexcusable. By eliminating one or two layers of bureaucracy, a return to decentralized government

would put an end to that waste. It would also allow for a substantial reduction in the federal tax burden. (Tax cut recommendations are discussed in chapter 10.) Furthermore, since the total cost of providing the newly decentralized services would be reduced, any increase in the state and local tax burden necessary to pay the cost of providing those services (that were not either eliminated or privatized) would be considerably smaller than the corresponding reduction in the federal tax burden.

## Conclusion

Although mayors and governors justifiably complain about the cost of unfunded mandates, American taxpayers are the real losers when Washington runs the show. The solution is not, as many have proposed, to simply prohibit the federal government from mandating without funding. The answer is a reinvigoration of federalism, by a return to the Constitution our Founding Fathers so carefully crafted—that is, a return to respect for the Tenth Amendment and the doctrine of enumerated powers.

### Suggested Readings

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