

express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.

(b) Where a Federal statute does not preempt State law (as addressed in subsection (a) of this section), agencies shall construe any authorization in the statute for the issuance of regulations as authorizing preemption of State law by rulemaking only when the exercise of State authority directly conflicts with the exercise of Federal authority under the Federal statute or there is clear evidence to conclude that the Congress intended the agency to have the authority to preempt State law.

(c) Any regulatory preemption of State law shall be restricted to the minimum level necessary to achieve the objectives of the statute pursuant to which the regulations are promulgated.

(d) When an agency foresees the possibility of a conflict between State law and Federally protected interests within its area of regulatory responsibility, the agency shall consult, to the extent practicable, with appropriate State and local officials in an effort to avoid such a conflict.

(e) When an agency proposes to act through adjudication or rulemaking to preempt State law, the agency shall provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings.

Sec. 5. Special Requirements for Legislative Proposals. Agencies shall not submit to the Congress legislation that would:

(a) directly regulate the States in ways that would either interfere with functions essential to the States' separate and independent existence or be inconsistent with the fundamental federalism principles in section 2;

(b) attach to Federal grants conditions that are not reasonably related to the purpose of the grant; or

(c) preempt State law, unless preemption is consistent with the fundamental federalism principles set forth in section 2, and unless a clearly legitimate national purpose, consistent with the federalism policymaking criteria

set forth in section 3, cannot otherwise be met.

Sec. 6. Consultation.

(a) Each agency shall have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. Within 90 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency's implementation of this order and that designated official shall submit to the Office of Management and Budget a description of the agency's consultation process.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has federalism implications, that imposes substantial direct compliance costs on State and local governments, and that is not required by statute, unless:

- (1) funds necessary to pay the direct costs incurred by the State and local governments in complying with the regulation are provided by the Federal Government; or
- (2) the agency, prior to the formal promulgation of the regulation,

(A) consulted with State and local officials early in the process of developing the proposed regulation;

(B) in a separately identified portion of the preamble to the regulation as it is to be issued in the *Federal Register*, provides to the Director of the Office of Management and Budget a federalism summary impact statement, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met; and

(C) makes available to the Director of the Office of Management and Budget any written communications submitted to the agency by State and local officials.

(c) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has federalism implications and that preempts State law, unless the agency, prior to the formal promulgation of the regulation.

(1) consulted with State and local officials early in the process of developing the proposal regulation;

(2) in a separately identified portion of the preamble to the regulation as it is to be issued in the *Federal Register*, provides to the Director of the Office of Management and Budget a federalism summary impact statement, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met; and

(3) makes available to the Director of the Office of Management and Budget any written communications submitted to the agency by State and local officials.

Sec. 7. Increasing Flexibility for State and Local Waivers.

(a) Agencies shall review the processes under which State and local governments apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by a State for a waiver of statutory or regulatory requirements in connection with any program administered by that agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the State or local level in cases in which the proposed waiver is consistent with applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency. If the application for a waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefor.

(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

Sec. 8. Accountability.

(a) In transmitting any draft final regulation that has federalism implications to the Office of Management and Budget pursuant to Executive Order 12866 of September 30, 1993, each agency shall include a certification from the official designated to ensure compliance with this order stating that the requirements of this order have been met in a meaningful and timely manner.

(b) In transmitting proposed legislation that has federalism implications to the Office of Management and Budget, each agency shall include a certification from the official designated to ensure compliance with this order that all relevant requirements of this order have been met.

(c) Within 180 days after the effective date of this order, the Director of the Office of Management and Budget and the Assistant to the President for Intergovernmental Affairs shall confer with State and local officials to ensure that this order is being properly and effectively implemented.

Sec. 9. Independent Agencies. Independent regulatory agencies are encouraged to comply with the provisions of this order.

Sec. 10. General Provisions.

(a) This order shall supplement but not supersede the requirements contained in Executive Order 12372 ("Intergovernmental Review of Federal Programs"), Executive Order 12866 ("Regulatory Planning and Review"), Executive Order 12988 ("Civil Justice Reform"), and OMB Circular A-19.

(b) Executive Order 12612 ("Federalism"), Executive Order 12875 ("Enhancing the Intergovernmental Partnership"), Executive Order 13083 ("Federalism"), and Executive Order 13095 ("Suspension of Executive Order 13083") are revoked.

(c) This order shall be effective 90 days after the date of this order.

Sec. 11. Judicial Review. This order is intended only to improve the internal management of the executive branch, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by

a party against the United States, its agencies, its officers, or any person.

William J. Clinton

The White House,
August 4, 1999.

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NOTE: This Executive order was released by the Office of the Press Secretary on August 5, and it was published in the *Federal Register* on August 10.

Statement on the Executive Order on Federalism

August 5, 1999

As a former Governor, I know how important it is for the American people that the Federal Government and State and local governments work together as partners. The Executive order on federalism I signed will strengthen our partnership with State and local governments and ensure that executive branch agencies are able to do their work on behalf of the American people. I want to thank the representatives of State and local governments who worked with my administration in developing an Executive order that enables us to better serve all of the American people.

Remarks at a Democratic Unity Event

August 5, 1999

Thank you so much. First, let me thank Senator Daschle and Leader Gephardt for their outstanding, passionate eloquence today and their consistent leadership for the best interests of all the American people. And I think that all of us on this stage feel that way. And I just wish every American could know them as we do, could see how hard they've worked, how consistently they've worked, and how steadfast they have been. Nothing that I have been able to achieve as President would have been possible without their leadership and without the men and women on this platform today. And I thank them so much.

They have already spoken about what we need to do. What I want to say to you is that I want to echo something Mr. Gephardt said. We are here united as a party, but we want to work with the members of the Republican caucus to do things that are good for America.

Let's remember that in the past years, when we have done that, we have been successful. Last year, in the teeth of the election process, they eventually did join us to put a downpayment on hiring 100,000 teachers, to do more to clean up toxic waste, to increase our investments in science and technology, to set aside a part of the surplus for Social Security, which they have continued to agree to do. And we made real progress with our agenda, even though we weren't the majority party.

Now, what was the result? Because we made real progress and because, in 1998, we said, "Here's our future agenda: Save Social Security; keep the economy going; pass a Patients' Bill of Rights; continue to invest in our children's education," the public responded. And we moved closer to being a majority in that historic election in 1998. And now, thanks to Mr. Forbes, we're quite a bit closer still, and I want to thank him.

I would like to use him to illustrate the point I really wish to make today about our position. We are held together by unity of conviction, and we don't agree on everything. You ought to hear some of the arguments these folks have among each other. You don't have to agree on everything to be a member of our party, but we have certain core commitments.

I have letters in my files that Mike Forbes wrote me when he was a member of the Republican caucus about the importance of our education agenda to the children that he represented. And I have numerous accounts of his passionate commitment to a Patients' Bill of Rights and how frustrated he was with over 200 organizations, all the doctors, all the nurses' groups, all the consumer groups pleading for the protections of people in HMO's to be able to see a specialist and go to the nearest emergency room and keep their doctor during treatment and enforce those rights—how frustrated he was that the leaders of his party would not permit that

sort of bill to become law. So we are united by what we believe is best for the vast mass of the American people.

And I think it is important to remember that that is the source of our strength. In 1776 Thomas Paine said, "It is not in numbers but in unity that our greatest strength lies." But our unity must be rooted in conviction. We think we ought to keep the commitments we made in 1998 to modernize 6,000 schools and put teachers out there, 100,000 of them, so the class sizes will be small in the early grades. We think we ought to have that strong, enforceable Patients' Bill of Rights. We think we ought to reform campaign finance, and we think we ought to raise the minimum wage for the people who are out there working who should not be in poverty because they're willing to go to work.

We believe that we ought to make commonsense efforts to keep guns out of the hands of criminals and children, and we have lots of evidence that we have work to do. So I urge the conferees in both parties to stay here during the recess and do whatever is necessary to get us a good juvenile justice bill to protect our children.

And we believe it's right to stay with the economic strategy of fiscal discipline and investment in our people that we started in 1993. You know, we Democrats have a lot of fun reading those quotes that Dick and Tom read about what the Republicans said about our economic plan in '93. But, to be fair to them, at the time they could argue that it wouldn't work. It violated all of their sort of ideological inclinations, and they could argue.

But now there is no argument. And that's why this discussion we're having is so important. We don't have to debate this anymore. Now we have 6½ years of evidence. We have the longest peacetime expansion in history. We turned the biggest deficit into the biggest surplus. We've got 19 million new jobs, the highest homeownership in history, the lowest minority unemployment in history, a 30-year low in the welfare rolls. There is nothing more to argue about. This economic strategy works, and we should not abandon it in this moment. [*Applause*] Thank you.

You know, this is a moment of testing for the generation of leaders represented on this

platform, and those in the other party as well. I think generations, as well as individuals, have certain moments in their life where they can make a decision that will have profound consequences that go far beyond the moment. And this is such a moment.

A lot of you who are here were in the World War II generation. I had the great honor to go to Normandy, to represent the United States at the 50th anniversary of D-day, and say, when they were young this generation saved the world. Well, there have been a lot of disparaging remarks made about the baby boom generation over the last 30 years, how we were self-indulgent, and all the things you've heard. Well, we are about to be tested, because we have the opportunity of a lifetime.

If I'd come to you 7 years ago and I said, "Vote for me, and vote for them; 7 years later we'll come back, and we'll talk about how to spend the surplus"—[*laughter*—after the debt of this country had been quadrupled in 12 years—just think about it—I'd be home doing deeds and things in a law office in Arkansas. If I had run on that platform, "Vote for me; 7 years from now, we'll come back and talk about how to spend the surplus," you'd say, "You know, he seems like a nice young fellow, but he's totally out of touch." [*Laughter*]

But here we are. Why? Because these people said, "We are not going to let America go down the drain. We're going to stop this deficit spending. We're going to get interest rates down. We're going to get the economy going again. And we're going to do it in a way that does not require us to walk away from our obligations to our seniors, to our children, to the environment, to the defense. We can do it." And we have done it.

Now we have, perhaps, an even bigger test. You know, when times are tough, sometimes people don't have many options, so they just take a deep breath and go on and do the hard thing. When times are easy, we are vulnerable to making our biggest mistakes. And that is what this decision before us is about. Now we have this projected surplus, about two-thirds of it coming from Social Security taxes, about a third of it coming from the other revenues paid by the American people. What are we going to do with