Uniform Law Commission Federalism and State Law Committee Meeting
Washington Court Hotel
Washington, D.C.
November 14, 2013
Minutes

Attendees

Uniform Law Commissioners:	Martha Walters (Chair), Rich Cassidy (Executive Committee Chair), Bart Davis, Tom Hemmendinger, Dale Higer, Lyle Hillyard (by phone for portions), Mike Houghton, John Kellam, Harriet Lansing (President), Ryan Leonard, David McBride, Ray Pepe, Connie Ring, Lane Shetterly (Division Chair), Fred Stamp, Paula Tackett, Bob Tennessen (by phone for portions)
ULC Staff:	John Sebert, Casey Gillece
Council of State Governments:	John Mountjoy
National Conference of State Legislatures:	Susan Frederick
National Center for State Courts and Conference of Chief Justices:	Kay Farley, Greg Mize
National Association of Secretaries of State:	Leslie Reynolds
Nelson Mullins Public Strategies:	Chris Cushing, Jennifer Pharaoh
State and Local Legal Center	Lisa Soronen

Introduction and Welcome

Chair Martha Walters welcomed the committee members and representatives of other organizations. She explained the committee's mission to move from "principles to projects" (from the Federalism Principles drafting phase to actionable projects). In formulating a path forward, the committee would hear from and work with other state government organizations with similar interests.

Presentations from Organizations

The meeting's morning session consisted mostly of presentations from other organizations regarding their activities relating to federalism.

CSG

John Mountjoy from the Council of State Governments (CSG) gave a presentation regarding CSG's two year "Focus on Federalism" that is currently in process. The Focus on Federalism Task Force is comprised of 17 bipartisan members. The Task Force had its first public hearing in September 2013 in Kansas City. This week, the Task Force held a Fly-In in D.C. In addition to discuss relating to federalism at the Fly-In, they met with David Agnew of the White House's Intergovernmental Affairs Office and a staff member for Representative McCarthy.

The ULC was invited to participate in the Fly-in. Terry Morrow made a presentation on the current efforts of the Federalism Committee, focusing on moving from principles to projects, and on preempting preemption.

Specific goals the CSG task force is considering include: reconstituting the Advisory Commission on Intergovernmental Relations (ACIR), which was disbanded in 1996; re-implementing the CFFR report, which examines federal dollars that go to state/local entities; work on strengthening the Unfunded Mandate Reform Act; and participating in educational programming.

Bart Davis also shared comments on federalism on behalf of CSG. He noted the need for states to represent their views to the federal government as more than "just another special interest group". Bart leads CSG's Legal Task Force, which participates in court cases affecting federalism or state issues on behalf of CSG via amicus curiae briefs.

In addition to the Legal Task Force, CSG has an Intergovernmental Affairs Committee and a Center for Interstate Compacts.

Next Steps—ULC/CSG Cooperation

CSG and the ULC can work closely on CSG's Suggested State Legislation (SSL) process. CSG may reexamine its criteria for SSL to potentially include ULC acts that have not yet been adopted in any states. As of now, its criteria require adoption in at least one state in order to be considered for inclusion on the SSL list. Likewise, as the ULC conducts its work, it can send ideas to CSG. Additionally, CSG has a new grant to work on overseas voting for deployed personnel. CSG will work with the ULC on this grant.

CSG and the ULC will also explore cooperative opportunities for interstate compacts. The ULC and CSG will discuss the possibility of ULC's drafting a template for interstate compacts. Ray Pepe urged the ULC to look at current drafting projects to determine whether there might be a need for a compact in connection with any ULC acts that are being drafted. Lyle Hillyard also indicated he would contact his governor about interstate compacts.

NCSC and CCJ

Greg Mize and Kay Farley next presented on behalf of the National Center for State Courts (NCSC), which serves as secretariat for the Conference of Chief Justices (CCJ) and the

Conference of State Court Administrators (CSCA). Judge Mize recounted several specific examples in which the chief justices engaged on federalism issues (e.g., Service Members Civil Relief Act and the Hague Convention on Choice of Court Agreements).

Kay Farley explained that NCSC only monitors federal activity on issues affecting courts, which led to a discussion about monitoring of federal legislation, generally. Kay also noted that NCSC monitoring occurs on an ad hoc basis.

Next Steps—ULC/NCSC Cooperation

The committee discussed whether the organizations could improve communication to let one another know about federal developments that may be of mutual interest. A concerted monitoring effort that spans all topics, however, may be too big of an undertaking.

Martha Walters noted that the ULC promulgates some acts as rules *or* acts, so that they can be adopted by the state supreme court rather than the legislature if the state preferred.

Ray Pepe asked whether the ULC should be working with the probate court organization, specifically because some of the ULC's acts deal with issues relevant for those courts (guardianship and conservatorship). Kay Farley indicated that NCSC, as opposed to organizations for subcategories of courts, should continue to be the facilitator for ULC projects.

NCSL

Susan Frederick then presented concerning the National Conference of State Legislature's (NCSL) activities in the federalism realm. It has eight standing committees in different subject areas, and each has its own federalism policy. In terms of state organizations being involved at the pre-legislative phase, Susan shared her view that states are able to be involved at that stage only if the federal players will allow them to be involved. If the federal entity/actor knows that states will not support a policy they are about to propose, states will not get a pre-legislative seat at the table. However, if the states have already been active in an area, that may earn them a seat at the table.

She also explained that the Big 7 (National Governors Association, National Conference of State Legislatures, Council of State Governments, National Association of Counties, National League of Cities, U.S. Conference of Mayors, International City/County Management Association) meet once a month to discuss issues of common interest.

Susan Frederick noted that NCSL does not take positions on what legislation states should be adopting, so it would not advocate on behalf of a particular ULC act or project.

Next Steps—ULC/NCSL Cooperation

Martha Walters encouraged the group to continue to be active in the states to either gain a seat at the table with the federal government or to show the federal government that states can handle the particular issue at hand.

NASS

Leslie Reynolds then presented on behalf of the National Association of Secretaries of State (NASS). She explained that NASS's primary efforts focus on the registration of business entities and in the election realm.

Next Steps—ULC/NASS Cooperation

Leslie noted that they have been increasingly involved with the ULC, particularly concerning the 2010 amendments to UCC Article 9, the drafting of the new Uniform Certificate of Title Act for Vessels, and the drafting of uniform state legislation (the Uniform Law Enforcement Access to Entity Information Act) that provides an effective state legislative alternative to federal legislation proposed by Senator Levin that would require states to collect and make available to law enforcement information on the beneficial owners of business entities. NASS is currently working with the ULC and the PEB to craft possible alternative provisions for UCC Article 9 that would address the problem of bogus filings of false security interests in the UCC 9 records.

Nelson Mullins

Chris Cushing and Jennifer Pharaoh of Nelson Mullins presented next. They explained that, together with Harriet Lansing, John Sebert and Terry Morrow, they had recently met with staffs of a number of entities in DC with which ULC was seeking to develop or enhance its relationships. The groups included: PEW, the Chamber of Commerce, Google, the Brookings Institution, and the National Governors Association. Chris Cushing noted that, given Congress's severely low approval rating, it seems that more entities are viewing federalism, and state legislative or regulatory action, favorably.

Next Steps

Continuing the discussion earlier on ACIR, Chris Cushing explained that there has been a bill in Congress in recent years to reconstitute the agency. Currently, HR 534, sponsored by Representative Connolly, would reconstitute an intergovernmental advisory agency. In addition, there are two members of the Senate who were members of a Reagan task force on federalism – Lamar Alexander and Ben Cardin. They may be avenues for reopening a dialogue on federalism with the federal government. Also, there is a group of former governors in the Senate who may be good to work with on the federalism agenda, as they may be better attuned to state issues. Finally, there may be an opportunity to meet with the Senate Chiefs of Staff during a monthly meeting held by PEW. Jennifer Pharaoh emphasized that we need a concrete "ask" if we are going to ask for meetings and time with the federal government.

State and Local Legal Center

Lisa Soronen presented on behalf of the State and Local Legal Center (SLLC), which files amicus briefs in cases that affect state interests. Lisa spoke about their work. She also explained that she routinely meets with the Big 7, and that as of late they have wanted to open their meetings to some outside presenters.

Next Steps—ULC/SLLC Cooperation

Lisa Soronen will explore with NCSL leadership the possibility of the ULC meeting with the Big 7. Lisa also agreed to forward future amicus briefs to the ULC.

Themes, Action Items, and Other Next Steps

The committee had a robust discussion regarding possible next steps and action items, during which several themes for forward action also emerged. Many of these were based on suggestions from the other organizations' presentations summarized above.

- *"Preempting Preemption"*

Throughout the meeting, committee members and representatives of other organizations spoke about being proactive in the pre-legislative realm, or "preempting preemption." The Uniform Law Enforcement Access to Entity Information Act (see the NASS report) is one example where the ULC has successfully "preempted preemption."

There was a lot of discussion regarding the need to act at the state level—to encourage widespread adoption of uniform acts and to act in the states where there are gaps—in order to keep the federal government at bay.

- *Act-Specific: Human Trafficking and Deployed Parents*

The group focused on two of the ULC's acts that either may be good conversation starters with the federal government or have federal/state implications: The Uniform Act on Prevention of and Remedies for Human Trafficking and the Uniform Deployed Parents Custody and Visitation Act.

Mike Houghton suggested that the human trafficking act may be a good entrée with the federal government, as it is politically noncontroversial. It could stand as a good example of cooperative federalism in action and provide an opportunity to educate the federal government on who the ULC is and what it does.

Harriet Lansing said that Terry Morrow had recently met with Senator Amy Klobuchar's staff, and that the senator intends to introduce a federal safe harbor bill to cover minors who are human trafficking victims. Harriet reported that Terry and the senator's staff discussed the interplay of the federal legislation with the uniform law and that the staff would insert a provision that provides that states that enact the relevant provision in the uniform act would be deemed in compliance with the federal legislation. The federal bill will offer states grant money as incentive to enact immunity provisions. The interplay of the federal law with the state uniform law, as well as Terry's meeting with the senator's staff, serve as an example of cooperative federalism in action, as well as proactive work in the pre-legislative realm.

The ULC also may be involved in the White House summit on human trafficking in January, in part because of continued efforts with Senator Klobuchar.

In terms of the deployed parents act, the group concluded that it would be helpful to be able to show the relevant Congressional committees that a substantial number of states have adopted the act and that there are plans to introduce the act in a number of additional states. Chris Cushing emphasized the importance of this. He said that the military custody legislation that has been proposed in recent years at the federal level will always pass the House; the question is what the Senate will do. With enough states adopting the uniform act, the Senate may stay at bay.

- *Federal Level Engagement*

The group discussed working with CSG, NCSL, NCSC, NASS and others to consider various means of engagement at the federal level, either by making an effort to reconstitute ACIR or convene a similar task force or summit focused on federal/state relations. It would likely be most useful to do this in conjunction with other organizations, particularly because the legislation that formed ACIR provided certain appointment rights to those organizations, but not the ULC. Truly reconstituting ACIR may be impractical due to high costs, but there may be an alternative, like a summit, which Mike Houghton may be able to get Vice President Biden to support or sponsor.

Relatedly, Lamar Alexander and Ben Cardin, as members of Reagan's task force on federalism, might be good senatorial contacts about federalism issues in general and the ACIR in particular. Mark Norris of CSG will reach out to Lamar Alexander.

Ray Pepe and Paula Tackett will review Representative Gerry Connolly's bill (HR 534) on ACIR reconstitution, as well as the original ACIR legislation. Terry Morrow will work with Mark Norris of CSG concerning the possible re-institution of the ACIR.

- *PEW Presentation*

The ULC has discussed with PEW staff the possibility of the ULC making a presentation to Senate Chiefs of Staff via PEW's periodic briefings. The ULC would do this in partnership with other organizations, including CSG. This would likely be coordinated at the staff level.

- *Meeting with Former Governors*

The ULC, in conjunction with other organizations, could meet with members of Congress who are former governors (as they might be better congressional allies than those without state government experience).

- *Administrative Conference of the United States*

The ULC might want to meet with staff of the Administrative Conference of the United States. A discussion with Catherine Sharkey in advance would be helpful to determine whether such a meeting would be useful and, if so, to develop an agenda.

- *Communication with Other Organizations*

Throughout the day, the committee discussed the need for the ULC to effectively communicate with the other organizations. Ideas for communication between the entities included:

- Exchanging federalism principles between the organizations.

- Holding quarterly scheduled calls among the ULC (possibly staff, committee liaisons, and/or one member of the Federalism Committee), CSG, NCSL, NCSC, NAAG, NAAS, and Chris Cushing and Jennifer Pharaoh.

- *Monitoring Federal Activity/Research Director*

The committee discussed ways in which the ULC can effectively monitor federal activity and be cognizant of potential preemptive effects of federal legislation.

In that context, the committee discussed the concept of a "reporter" or "research director" for the Federalism Committee. Some thought it would be helpful to have someone who could advise on constitutional issues concerning preemption and advise on the effects of federal legislation on ULC acts. Others thought it would be helpful to have someone who regularly monitored federal developments that may affect ULC acts or other areas that are predominantly governed by state law. John Sebert noted that the role of a research director for the committee may be similar to that of a research director for a JEB. There also was discussion about the level of coordination that would be required between any research director and ULC staff.

- *Educational Programming*

The committee discussed the possibility of preparing a workshop or CLE presentation for congressional staff on federalism and preemption. The committee discussed producing a CLE presentation on federalism potentially using portions of the previous symposia, and the possibility of incorporating a ULC federalism presentation into the Khan Academy program online.

Jennifer Pharaoh will explore the congressional workshop option with the Congressional Management Foundation.

Ryan Leonard and Rich Cassidy are going to continue to explore the idea of a video CLE.

The group also discussed briefing new state legislators on the work of the ULC, as well as potential education efforts about the ULC at law schools. The matter of briefing new state legislators will be discussed at the upcoming meeting of the Committee on Strengthening State Delegations.

- *National Op-Ed*

Ryan Leonard proposed drafting a national op-ed regarding federalism issues and the ULC's work. He thought it could be an effective way of educating states who are wary of the ULC about the state-level (as opposed to federal-level) work that the ULC does.

Ryan Leonard will draft the op-ed.

- *C-SPAN*

Bart Davis suggested holding a symposium-like forum on federalism to be televised on C-SPAN. Panel participants might include former governors and cabinet level persons from both parties.

- *Work with Committee on Liaisons with Other Organizations*

The committee discussed the cooperative potential between the Federalism Committee and the ULC Liaisons with Other Organizations. The ULC has appointed liaisons to other organizations, including: CSG, NAAG, NABE, NASS, CCJ/NCSC, NCSL, and NGA. The ULC has also invited CSG, NCSL, CCJ/NCSC, NAAG and NASS to name an Advisory Member to the ULC. The committee discussed how each liaison should understand their specific organization and its roles and priorities. The ULC may also hold a meeting for the other organizations' Advisory Members during the Annual Meeting in Seattle.

Dale Higher and John Sebert will work to draft a document that provides guidance concerning the role of ULC commissioner and staff liaisons to other organizations.

- *Federalism Debate in Williamsburg*

Connie Ring suggested holding a federalism debate with actors (e.g., Jefferson, Madison, and Hamilton) during the Williamsburg annual meeting in July 2015.

- *Interstate Compacts*

As indicated in the summary of the CSG presentation, above, CSG and the ULC will explore cooperative opportunities for interstate compacts.

- *Brookings Institute*

The ULC and Brookings are at a very preliminary stage of exploring a potential collaboration concerning public/private partnerships. One possibility being discussed is the ULC undertaking a project to draft model state legislation to authorize and establish a structure for public/private partnerships in a state.