

# THE STICK – REGULATORY FEDERALISM

By definition, mandates are commands – requirements that the entities they are imposed upon cannot ignore. *Unfunded* mandates, the subject of this report, are those passed by Congress without accompanying appropriation to cover the expense the states must incur to carry them out. In the language used by governments, they exist in four basic forms: direct orders, crossover sanctions, cross cutting requirements, and preemptions.

1. **DIRECT ORDERS** are those mandates whereby states are required to adhere to federal policy irrespective of whether there are federal funds available. The Americans with Disabilities Act (ADA) of 1990, for example, forces local governments to provide access to public transportation for the handicapped, even if less costly modes of transportation are available.

In a 1980 paper, Ed Koch, then mayor of New York City, chastised the "mandate mandarins" in government for forcing local leaders to provide complete access to public transportation for the handicapped, rather than finding the cheapest way to move them around New York. Mayor Koch estimated that the cost of fixing the city's transportation system to comply with Section 504 of the Rehabilitation Act of 1973 would cost \$38 per trip, per handicapped individual. It would have been cheaper to place each person that this bill was designed to assist in a taxicab.

Today, cities face a similar dilemma with the ADA. Aside from the initial costs of retro-fitting vehicles with wheelchair lifts, lock-down platforms, and special safety restraints, the able-bodied users of the public transportation system are inconvenienced as well. When a handicapped individual uses a student busing service, for example, the driver has to get out to operate the wheelchair lift, assist the individual into the lock-down platform, and still get all the passengers through the bus route on schedule.

2. **CROSSOVER SANCTIONS** force the implementation of federal requirements in one area or the states risk losing money in another, similar area. For instance, states may lose highway grants if they failed to follow certain health or safety requirements imposed by the federal government.
3. **CROSSCUTTING REQUIREMENTS** are used to further social and economic goals and to ensure uniformity throughout the states. Examples are Title VI of the Civil Rights Act of 1964, which bars discrimination in federally assisted programs, and the Davis-Bacon Act, which states that construction projects receiving federal monies must pay union-scale or "prevailing" wages, even if less expensive labor is available.
4. **PREEMPTIONS** can be used by the federal government to overrule current state regulations. States may have the responsibility for programs delegated to them by the federal government; however, if they fail to meet specific requirements they risk having the federal government assume responsibility for the program. A preemption, though regarded as a kind of "mandate" in the public sector lexicon, is somewhat different from the other three far more frequently used mandate forms in that it tells states what they *cannot* do, as opposed to what they *must* do."