

Fifty Interest Groups

The U.S. States in the Intergovernmental Lobby

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Prior studies have used the positions and behaviors of public official associations as a measure of the policy preferences and actions of the intergovernmental lobby. However, individual state governments participate in the federal policy process independently as well as in conjunction with multi-state associations. This independent lobbying activity has been missing from prior depictions of intergovernmental advocacy. This study uses a new database of individual state governments' testimony in congressional committee hearings and testimony by the public official associations to compare the advocacy activity of these groups. Results indicate that the behavior of the public official associations is not representative of the entire intergovernmental lobby as the state governments more frequently lobby Congress individually and are active in different policy areas than the associations.

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“But ambitious encroachments of the federal government on the authority of the state governments would not excite the opposition of a single State, or of a few States only. They would be signals of general alarm. Every government would espouse the common cause. A correspondence would be opened. Plans of resistance would be concerted. One spirit would animate and conduct the whole.” – James Madison, Federalist 45

James Madison envisioned a union of states in which opposition to federal action that encroached on state power would be uniformly adopted by all of the state governments. He believed that this would be a key safeguard balancing state powers against federal encroachment, along with constitutional safeguards such as the state legislatures’ roles in appointing presidential electors and choosing the state’s representatives in the U.S. Senate. These particular constitutional safeguards were eliminated, severing the direct tie between the state’s government and its representatives in Congress (Dinan 1997; Posner 1998; Sbragia 2006), though some scholars doubt that the Senate acted in the interests of the states’ governments (as opposed to the state’s electorate) even when its members were selected by the state legislatures (Riker 1955). Institutional safeguards of the state-federal relationship are an essential structure for preventing abuses of the American system of federalism (Bednar 2009). As these other institutional safeguards of state power have weakened, the ability of the states to advocate for their interests in the federal policy process has become more important. This became increasingly institutionalized during the latter half of the 20th century with the rise of organized public official associations representing the state governments.

Most research on the advocacy activities of the states has assumed, like Madison, that the states’ governments work together to influence federal action. Scholars have focused, nearly exclusively, on lobbying by public official associations when they study the influence of state

governments on federal policy. Public official associations (POAs), sometimes called the intergovernmental lobby, are made up of members who are themselves members of governments (see Arnold and Plant 1994 for an overview of their history). These include prominent associations like the National Governors Association (NGA), made up of the governors of the 50 states, and associations of state bureaucrats like the American Association of State Highway and Transportation Officials (AASHTO) made up of personnel from the states' departments of transportation. Public official's associations may be national in scope, with members from all 50 states (often including the District of Columbia and the U.S. territories), or they can be regional or policy-specific, such as the Coalition of Northeastern Governors and the Interstate Oil and Gas Compact Commission. While these organizations are clearly influential players in intergovernmental advocacy, this paper considers what might have been missed by studying state lobbying through the actions of associations rather than individual states.

Using a new dataset of witness testimony in congressional hearings, this paper demonstrates that advocacy by individual states, acting alone, is far more common than advocacy by public official associations. It also reveals that states and associations are commonly involved in advocating on policy within different issue niches. The text of hearing transcripts is used to further develop our understanding of when and why states lobby alone and when they lobby Congress through public official associations.

State Witnesses in Congressional Hearings

In recent years, a number of scholars have begun to expand our understanding of contemporary federalism by focusing on the state governments as intergovernmental lobbyists. State lobbying has been measured in many ways: as the policy positions of public official associations,

especially the National Governors Association and National Conference of State Legislatures (Cammisa 1995; Haider 1974; Herian 2011; Nugent 2009); the state's memorials to Congress articulating policy preferences (Leckrone and Gollob 2010); state governors' state-of-the-state addresses (Nugent 2009); and the presence of state offices in Washington D.C. (Jensen and Emery 2011; Jensen 2010; Nugent 2009; Pelissero and England 1987). This paper presents a new way to study the states' involvement in intergovernmental lobbying using a new database of all appearances of state government officials and public official associations as witnesses in congressional committee hearings between 1993 to 2004 (the 103rd to the 108th Congresses).

The use of congressional hearing testimony provides a valuable new perspective on intergovernmental lobbying. First, it expands the scope of intergovernmental advocates being studied. The research that has focused on lobbying and the policy positions of the NGA and NCSL is limited by the consensus nature of these organizations. NCSL policy positions need the support of at least three-fourths of the states and territories voting and the NGA requires the vote of at least two-thirds of Governors at the plenary sessions to adopt a policy position (Nugent 2009). Haider explains that while these two prominent public official association have a great deal of legitimacy and access to federal lawmakers, they also tend to avoid controversial issues when they cannot reach an agreement and they may have less influence than other interest groups on broad federal policies.

The NGA, which is the most closely studied of all public official associations, may also face more difficulty coming to consensus on policy positions than other intergovernmental lobbies because of the prominence of the membership and the tendency of the governors to behave like "fifty prima donnas" (Haider 1974, 24). Schneier and Gross assert that the conflicts within the governmental associations are severe and, "organizations like the Governors'

Conference are so torn by partisanship that they seldom take positions on controversial issues” (1993, 26). Individual states, however, should not be hampered by such divisions and, if a governor wishes to advocate on behalf of his or her state government’s interests and policy preferences, however controversial, then there should be little to prevent this. Dinan (2011) demonstrates that this was the case during creation of the Patient Protection and Affordable Care Act of 2010. Partisan polarization made it so that the NGA and NCSL were severely constrained by the divisions between their members. Dinan concludes that the non-partisan public officials associations were overshadowed by the lobbying activities of the individual state governments during debate over the content of this legislation. This is consistent with studies of the lobbying behavior of institutional interest groups that also have the choice to lobby individually or in coalitions through umbrella or trade associations. Lowery and Gray (1998) find that trade associations focus on less controversial, broader issues than do the individual institutions that make up their membership. This indicates that the picture of state government advocacy in the federal policy process is not likely to be complete when we focus only on the interests of the POAs.

Furthermore, most studies of intergovernmental associations have focused on case studies of the organizations’ advocacy activities on a specific policy issue or during a very limited time period (Cammisa 1995; Dinan 1997, 2011; Haider 1974; Herian 2011). Very few have attempted to collect time-series data on intergovernmental advocacy across a range of policy topics (but see Leckrone and Gollob 2010 for a database of state memorials to Congress and Jensen 2010 for governors’ lobbying offices in D.C.). Some scholars have begun to use state and POA testimony in congressional committee hearings to understand how congress members learn about the states’ perspectives on federal policy and their experiences in policy implementation

and innovation within their own jurisdiction (Dinan 1997, 2011; Esterling 2009). But both of these studies focus only on health policy hearings.

The study of advocacy by state governments and state public official associations in congressional hearings provides a rich data source for analysis of intergovernmental advocacy across all policy areas over a substantial length of time. It provides a forum for studying the trends in the policy focus of advocacy as well as the relationships between the witnesses from state governments and the members of Congress representing those states. The collection of data from these hearings provides a source for empirical analysis while the text of these hearings provides a wealth of qualitative detail for understanding the relationships, strategies, and attitudes of intergovernmental advocates and the congressional members they are lobbying. While recent scholarship has discussed the methodological flaws inherent in measuring state policy preferences by using only the positions of the public official associations (Leckrone and Gollob 2010) there has not yet been a study that compares the positions of the states to those of the associations to establish whether there is, in fact, a difference in their preferences or policy focus.

Policy Learning Through Witness Testimony

Testimony from state government and public official association witnesses in congressional committee hearings is a particularly useful source of data from the perspective of vertical policy diffusion. This testimony represents the information that members of the federal legislature hope to learn from the state governments. In the House and the Senate, witnesses must be invited by the committee chair, usually after careful selection and sometimes vetting by committee staff as well as negotiation between the majority and minority staff of the committee (Sachs and Vincent 1999; Sachs 2004). Thus, the witnesses' testimony is intended to highlight

the perspectives and debates that the members of the committee should consider when pursuing the committee's policy agenda. The chair has significant power to drive the agenda of the committee, though Senate committee chairs have greater independence than those in the House, who are often constrained by the agenda of the House majority party leadership (Cox and McCubbins 2005).

While the chair and the committee staff from the majority party make most of the decisions regarding hearing topics and witness invitations, both House and Senate rules provide the ranking minority member and minority staff the opportunity to select witnesses representing minority viewpoints (Sachs and Vincent 1999; Sachs 2004). While intergovernmental witnesses are certainly engaging in lobbying activity by testifying in a hearing, they are constrained by the committee's agenda and cannot advocate for any issue on their own agenda. Thus, committee testimony should be seen as a measure of vertical policy learning as driven by the congressional policy agenda and the chair's preferences. The content of the testimony may be the prerogative of the witness and represent the priorities of their government, or member-governments, but the topic of the hearing is set by the committee chair and generally motivated by the goals of the majority party in the chamber.

Data Collection

The data set contains information for 4692 witnesses testifying on behalf of state governments or state public official associations in congressional committee hearings during the 103-108th Congresses (1993-2004). The transcripts of hearings are archived by the Congressional Information Service (CIS) and the proprietary program, ProQuest Congressional, makes these transcripts available for text-searching online. The witnesses were identified through a keyword

search of the hearing abstracts, which describe the subjects of the hearing and provide a list of witnesses and their titles and affiliations, for state names and the names of common titles and offices in state governments. Every witness who appeared in the search results was examined to determine if the person was a current state government official testifying on behalf of their state government. If the person was identified as a state government official but was testifying on behalf of a public official association then they were distinguished from those witnesses that only represent the state government.

Most public official associations are made up of volunteer members from the state governments who maintain the organization, conduct policy research, and adopt policy positions with the help of a very small professional support staff in the organization (Arnold and Plant 1994). When these organizations send a witness to testify in a congressional committee hearing the witness is almost exclusively one of their members who is also an official in a state government. Thus, these witnesses are easily identified by the search method described above without searching the hearing archives for each public official association by name. The notable exceptions are the National Governors Association and the National Conference of State Legislatures, both of which have large professional staff organizations as well as policy analysts producing reports and supporting the advocacy and education goals of these associations. These two associations are often represented in congressional testimony by an executive director or policy expert who is not also an official from a state government and would not be identified by the search procedure described above. Because of the prominence of these two organizations and the need for their advocacy activities to be fully represented in the database, a separate search was used to identify witnesses from the NGA and the NCSL who were not also officials from the state governments.

In order to expand the scope of the data and make additional analysis possible, the new database of state witnesses from the CIS archives was appended to the Congressional Hearings database from the Policy Agendas Project¹ using a process described by Rabinowitz and Laugesen (2010). The Policy Agendas Project database also utilizes the hearing documents in the CIS archives to collect standardized, long-term data on congressional hearings. Each hearing is assigned a subject-matter code consisting of 19 major policy topics to identify the primary issue discussed in every hearing. The hearings are also assigned standard committee codes to identify the committee(s) and subcommittee(s) hosting the hearing. This allows researchers to compare committees over time, even as these bodies change their names (Hunt et al. 2010).

The unit of analysis in the Policy Agendas Project database is the congressional hearing while in the new database created by the author the unit of analysis is the witness testifying in the hearing. If more than one witness from a state government or state association testified in a single hearing then the information for that hearing is repeated for each individual witness. The Policy Agendas Project database of all hearings provides a source for determining general trends in congressional hearings where any type of witness participated. This is a valuable point of comparison for the new database consisting of only state witnesses. Not only is comparison possible between trends in the testimony of state and association witnesses, but it is also possible to compare these trends to the overall focus of the congressional agenda from the 103rd – 108th Congresses.

These data provide the means for answering several questions. Is it appropriate to infer the issue preferences of individual state governments from the advocacy activities of public

¹ The data used here were originally collected by Frank R. Baumgartner and Bryan D. Jones, with the support of National Science Foundation grant numbers SBR 9320922 and 0111611, and were distributed through the Department of Government at the University of Texas at Austin. Neither NSF nor the original collectors of the data bear any responsibility for the analysis reported here.

official associations? In what ways does the advocacy agenda of witnesses from individual states differ from the agenda of public official associations? How closely do the states and the associations mirror the overall policy focus of Congress? And finally, can the text of the hearing testimony provide insight into when and why states might testify individually instead of having their positions represented by witnesses from the public official associations?

State Government and State Association Advocacy

Comparing State and Association Witness Testimony

Figure 1 illustrates the general trends of state government testimony in congressional committee hearings. The overall drop in the number of witnesses is expected given the drop in the number of congressional hearings over time. In the 103rd session, at the beginning of the time period in this study, the House conducted 4,304 committee hearings and the Senate conducted 2,043 hearings. By the 108th session those numbers had dropped to 2,135 hearings in the House and 1,506 in the Senate (Ornstein, Mann, and Malbin 2008). Over the twelve-year period, 78 percent of witnesses in the database testified on behalf of an individual state government. Twenty-two percent of these witnesses testified on behalf of a public official association. Looking at the two most well-known and active associations as a subset of all public official associations, the National Conference of State Legislatures and the National Governors Association, two percent of the witnesses represented the NCSL and three percent represented the NGA during this time period. Witnesses for the NGA and the NCSL include witnesses from the state governments testifying on behalf of these associations and also witnesses from the staff of the associations who are not affiliated with an individual state.

In addition to differences in the frequency of witness testimony across these groups, the state government witnesses and the association witnesses focused on different substantive policy topics in their testimony. Figure 2 illustrates the distribution of the individual state witnesses and witnesses from the state associations across the 19 policy areas identified by the Policy Agendas Project. Witnesses who were representing individual state governments testified most frequently on the topic of public lands and water management (14 percent of state witness testimony). In comparison, this was a policy topic that state association witnesses testified on relatively infrequently. Environmental policy was popular for both individual state witnesses and public official associations. This issue area was the focus of 14 percent of the witnesses from both the associations and the individual states, making it the most frequently lobbied issue for the associations and the second most frequent for the states.

Other noticeable policy differences were the associations' frequent advocacy in hearings focusing on banking, finance, and domestic commerce (13 percent of association witness testimony) while individual states were far less active in this area. Public official associations were also very involved in hearings on government operations, defined by the Policy Agendas Project as policies involving such issues as budget and appropriations, intergovernmental relations, oversight, management of government agencies and employees, as well as nominations and appointments. This policy made up 12 percent of the witness testimony of public official associations, but only five percent of individual state governments. The individual state governments were more frequent witnesses on policies involving law, crime and family issues than were the witnesses for public official associations. The states were also more frequently active in their advocacy on education policy than were POA witnesses. Witnesses from the

states and the public official associations dedicated a similar proportion of their activity to testifying in hearings concerning health policy.

Government Operations

The associations spent a greater proportion of their committee participation on issues categorized as government operations, but this is a broad issue area and should be studied further to understand the policies on which the states and associations were advocates. Most of the POA witness testimony occurred in hearings falling into the subcategory of general budget requests and appropriations for multiple departments and agencies. Associations also frequently sent witnesses to testify on issues of intergovernmental relations, including policies concerning federal grants to the states and state government finances.

Though the individual state government officials spent a smaller proportion of their overall congressional activity testifying in government operations hearings, they were also frequent witnesses on the above mentioned issues. They were also often active on other subcategories of government operations such as government efficiency and oversight hearings, and issues in campaigns and elections. These are areas where congress members would have reason to seek testimony from individual states. Oversight hearings often involve testimony from individual state governments discussing their implementation of federal policy. Election policy is an area in which the individual states have significant power. This was especially evident during the time period of this study when the presidential election of 2000 prompted hearings about state election law and federal adoption of the Help America Vote Act in 2002, which involved a great deal of individual state input (Palazzolo and Ceaser 2005).

Public Lands and Water Management

A greater proportion of state government witnesses testified on the issue of public lands and water management than did witnesses from the POAs. In raw numbers, the differences were even starker. Over the twelve-year period of the study, 498 witnesses from individual states testified on this issue compared to only 67 witnesses from the public official associations. In looking at the subcategories of this issue area, very few witnesses from either the states or the associations testified on issues related to U.S. dependencies and territorial issues. The issue of national parks, memorials, historic sites, and recreation also saw little testimony from the states or the associations. Most of the witnesses from the individual state governments testified on three subcategories of this major issue area: Native American affairs; natural resources, public lands, and forest management; and water resources development and research.

It seems likely that the predominance of individual state witnesses on issues of public lands and water management can be explained by Nugent's (2009) framework for intergovernmental lobbying. He creates a typology to explain the interests of the intergovernmental lobby that can be broken into "universal" interests, "categorical" interests, and "particularistic" interests based on whether the issue is able to unite all states, a small group of states, or only one or a few states. He expects that the associations will see consensus among their membership and have the most policy influence on universal interests, while categorical and particularistic interests will divide the members and result in individual states or small coalitions lobbying on their own. The issues of public lands and water, which are tied to geography and often pit one state's interests against another, would be labeled as particularistic. The issue area of government operations, discussed above, involves more general issues of intergovernmental relations – which frequently include resistance to federal unfunded mandates

or federal encroachment on state power – and these issues have a universal appeal and become important aspects of the public official associations’ agendas.

Niche Interests? Comparing State and POA Advocacy to the Larger Policy Agenda

While it is useful to understand the differences between trends in the testimony of state governments and public official associations, it is also necessary to compare the testimony of both of these groups to the larger policy agenda in Congress. The public agenda is limited and one of the primary challenges for lobbyists from any institution or organization is simply to grab the attention of lawmakers and get others to care about their issue (F. Baumgartner et al. 2009). There is reason to expect that witnesses from the intergovernmental lobby may be privileged among the interest group community. Baumgartner and Leech (2001) used federal lobbying disclosure reports to study the crowding of interest groups around particular policies. They found that the intergovernmental lobby, like the business lobby, more frequently advocates on issues with few competing organizations. Thus, they often occupy their own policy niches where they may have greater influence on policy because the issue isn’t crowded with the voices of other interests.

To evaluate interest niches, Baumgartner and Leech looked at the total number of interest groups involved in each policy area. This paper will consider the number of hearings in each policy area and the proportion of those hearings involving witnesses from the intergovernmental lobby. To do this, I aggregate the data from the unit of the witness to the unit of the hearing so I can compare the policy focus of hearings containing at least one witness from the

intergovernmental lobby² to the policy focus of the entire population of hearings from the 103rd-108th Congress. Comparing the policy focus of all congressional hearings during this time period to the policy activism of witnesses for the states and associations provides insight into the relevance of these groups. Are they primarily involved on niche issues that were not widely considered in Congress or are they players on the major issues of the day?

The most frequent topic of congressional hearings during this time period was government operations (at 14 percent of all hearings), followed by international affairs (11 percent) and foreign aid, public lands and water management, banking and finance, and health (all at eight percent). Table 1 shows the concentration of hearings in each issue area and the percent of hearings in each issue with at least one witness from a public official association or a state government. This table makes it obvious that, while government operations was a dominate issue for the intergovernmental lobby – especially association witnesses, these witnesses only participated in a small number of the total congressional hearings on this topic. Three percent of hearings on government operations heard from a witness from the POAs and 5 percent had a witness from a state government. This is clearly a policy area where many interests are represented and the interests of the state governments make up only a small portion.

The intergovernmental lobby was better represented on two of the other major issues from the congressional hearing agenda. In health policy hearings, 16 percent heard from a state government witness and five percent had a witness from a POA. In the area of banking and finance, 12 percent of the hearings heard from a state witness and seven percent had a POA witness. Of the top-five issues that dominated the congressional agenda, public lands and water

² In this study the definition of the intergovernmental lobby differs from that used by Baumgartner and Leech (2001) because I only include state officials or public official associations representing state officials without including local government officials or the associations that represent them.

management heard the most testimony from the individual state governments. In 20 percent of hearings on this topic there was at least one witness from a state government. Though this is an issue with many hearings and many interests being represented, the state governments very frequently had the opportunity to voice their perspectives in hearings.

Among some of the issues that were not key aspects of the congressional agenda during this period, the states and the public official associations have established policy niches. The environment was the topic of only 5 percent of all congressional hearings but nearly a third of these hearings had a witness from a state government and 10 percent heard testimony from a POA witness. Similarly, the issue of education made up only three percent of congressional hearings but 27 percent of these invited testimony from a state government witness. These are not the most common issues on the congressional agenda, but when they are addressed, the committee frequently hears the perspectives of the intergovernmental lobby.

These comparisons illustrate that the state governments and the public official associations have issue niches where they focus their advocacy. Overall, these trends are consistent with prior research that considered the policy focus of state legislative memorials to Congress, as another means of communicating the states' policy preferences (Leckrone and Gollob 2010). They identified health, environment, transportation, and public lands/water management as the policy areas on which the states most frequently send memorials to Congress. The major difference between trends in legislative memorials and trends in state witness testimony is that the most frequent topic of legislative memorials was the issue of defense, while state government witnesses were rarely called to testify on defense policy in congressional hearings.

Concentration of Witnesses from the Intergovernmental Lobby

In order to evaluate the potential policy impact of congressional testimony from the intergovernmental lobby it is helpful to know whether that testimony is usually coming from one source or whether committee members are hearing from multiple witnesses representing intergovernmental interests. Knowing the average number of witnesses testifying in a hearing can help us to understand when members of Congress were more likely to hear from multiple witnesses, and possibly conflicting testimony, from the intergovernmental lobby.

The majority of hearings in which a member of the intergovernmental lobby testified involved only one witness from a state government or public official association (68 percent). In most cases, when a state government official or representative from a POA testified before Congress, they were the only witness representing the interests of state governments in the hearing. Only eight percent of the hearings had more than two witnesses from the intergovernmental lobby testifying in the same hearing. Of these, a very small number of large, multi-day hearings involved 10 or more witnesses with a state or POA affiliation (11 such hearings were held between 1993 and 2004). On average there were 1.74 witnesses from the intergovernmental lobby in each hearing in the dataset. The average for public official association witnesses was .38 witnesses in each hearing and the average for individual state governments was 1.36 witnesses in each hearing.

Table 2 provides an overview of the concentration of witnesses representing state government interests within each policy area. On average, more than two witnesses from the intergovernmental lobby testified on issues of energy and on transportation. The policy areas of macroeconomics, the environment and government operations came close to an average of two

witnesses from states or associations in each hearing. In these policy areas, the committees were more likely to hear from multiple witnesses representing state interests. As expected, the policy areas related to defense and foreign affairs had a small concentration of intergovernmental witnesses in their hearings. Of the domestic issue areas, civil rights, minority issues, and civil liberties had a very small average number of intergovernmental witnesses, as did banking, finance and domestic commerce. Banking and commerce is especially notable because it is a policy area in which there was frequent participation by state and POA witnesses but their lack of concentration indicates that these witnesses were spread across many hearings. This may indicate that there was more consensus among the state governments on this issue and thus, members of the committee could hear from one witness representing the policy goals of all the states. As illustrated in figure 2, this was a policy areas in which a large percentage of the public official association witnesses testified. If there was agreement among the state governments in this issue area then the associations would have the authority to speak on behalf of unified state government interests.

Observations from Hearing Testimony

The data from witness testimony in congressional hearings provide a wealth of new information about the state governments as actors in the federal policy process, but the text of these hearings are also a rich source from which to make observations about the behavior of the intergovernmental lobby. Beyond the policy trends in the testimony from state witnesses and the differences in the patterns of state government testimony and the testimony from public official associations, the question remains: why would a state government witness testify in a hearing

instead of having their views represented by a public official association? Conversely, when will the associations be most likely to represent the state governments without any opposition from their members?

Prior studies have observed that partisan and ideological divisions between the state governments and, consequently, the members of public official associations, can lead to a lack of consensus on issues and failure for the association to become active on a particular policy (Cammisa 1995; see also Derthick 2001 for a theoretical explanation of this behavior). However, observations from the testimony and interactions in congressional committee hearings indicate that partisan divisions are far from the only reason that the public official associations would not represent the state governments' interests. And partisan *agreement* is not the only reason that associations would speak unopposed on behalf of the states.

Lowery and Gray (1998) explore Salisbury's (1984) assertion of the dominance of institutions in the interest group community and their theories provide a framework for understanding state and public official association advocacy. They conceive of institutional interests groups as businesses or organizations that can lobby individually or together in the form of trade associations. They test multiple theories for why the institutions choose to lobby on their own and why they form larger umbrella associations to represent the group's interests. These theories are equally useful to explain when states choose to lobby individually and when they lobby through public official associations.

Three explanations for patterns in intergovernmental lobbying are described here. The first is what Lowery and Gray call "signaling theory", which suggests that individual institutions will use umbrella associations as cooperative partners that can provide another source for

communicating their message to policymakers (Lowery and Gray 1998, 236). I find evidence that the state witnesses may use this method in instances where they are in agreement with the consensus of the public official association but witnesses from the individual states have easier access to congressional hearings. This may be the case because the state governments can move faster than the associations, meaning that the individual state governments can present their ideas and positions without taking the preparation time that the procedural requirements of the associations demand. Thus, the state witnesses voice their agreement with the association in their testimony, signaling that there is broad consensus on the issue and that the state has allies that support their policy goals.

The next theory is that of “competitive exclusion”, which expects that individual institutions will be motivated to advocate for their interests in part because they are unhappy with the advocacy being done by the associations to which they belong (Lowery and Gray 1998, 236). In short, the states may advocate individually when they disagree with the policy positions adopted by the association. This can occur because the associations require a super-majority, but not a unanimous vote, to come to a policy position, and there are members with views that are left unrepresented by the majority-vote.

Finally, the states may allow their positions to be represented by the associations when the state governments can agree on *policy process* regardless of their preferences for *policy outcomes*. This final observation is most closely in keeping with Madison’s expectation, quoted at the start of this paper, that the states will work together to oppose federal policy that preempts their authority, even when they disagree on the policy outcomes they hope to achieve. It is likely that this can occur only on relatively narrow policies in the right type of political environment.

State Witnesses Signaling Agreement with the Association

In March of 2003, three governors appeared before a hearing in the Subcommittee on Health within the House Committee on Energy and Commerce. The intention of the hearing was to present the perspectives of the States on potential reforms to Medicaid. The members of the subcommittee hoped to learn about each governor's innovations in implementing Medicaid and the challenges they faced under the current structure of the program. The governors who testified were Jeb Bush, a Florida Republican, Bill Richardson, a Democrat from New Mexico, and Bill Rowland, the Republican governor of Connecticut. All three of these governors were active members of the National Governors Association, but as witnesses they were identified as only testifying on behalf of their state governments.

Though the hearing was not held to consider Medicaid reform proposals by the Bush Administration, and this point was reiterated several times by the subcommittee chair, the witnesses and members of Congress who spoke in the hearing all addressed the administration proposals and expressed their support or opposition to them. While there were clear partisan divisions in the statements by members of Congress, the testimony of the governors was less divisive. The governors from Connecticut and New Mexico were both former members of Congress, and Governor Richardson had been a member of the Subcommittee on Health during his tenure, so even members from the opposing party expressed an interest in hearing the ideas and concerns of their former colleagues.

The Republican witnesses, Governor Bush and Governor Rowland, were both most concerned with increasing the flexibility that the states would have to implement the federal policy. Rowland said he felt hamstrung by members of Congress who thought they could run his

state better than he could. Governor Bush took a less antagonistic stance toward the federal government but explained that the bureaucratic process for requesting the waivers that allow the states to innovate in their Medicaid policies are burdensome and inefficient. Both Republican Governors expressed their preference for more policy flexibility but not necessarily more federal money for their states. Their fear was that the federal government would cut money and would fail to increase the state's flexibility, forcing the states to spend more of their own budgets to implement policy preferences forged inside the Beltway. Governor Richardson did not disagree on the need for policy flexibility, but he did express his opinion that the federal government would hurt the foundations of Medicaid if it gave the states more flexibility but less money for policy implementation. He argued that this would result in a net loss for society as states responded by cutting eligibility for entitlements among populations in need.

Despite these disagreements on their policy preferences, the three governors did all agree on the need for Medicaid reform, the need for the federal government to learn from the innovations and struggles in the states, and the important role that the National Governors Association could play in helping to develop these reforms. All three governors mentioned their involvement as members of the NGA and the fact that the NGA was convening a committee to study the issue and establish bipartisan agreement on preferred policy reforms. At the time of the hearing the NGA had not yet reached an agreement that they could present to Congress. A small group of Republican governors, including Governor Bush, had authored a joint letter to the George W. Bush Administration making policy recommendations and Governor Richardson referenced policy proposals endorsed by the Democratic Governors Association, but the bipartisan NGA had not reached a consensus on their policy proposals yet.

This example illustrates one of the weaknesses of public official associations that reaches beyond partisan divisions. These associations are political institutions and, like Congress, the NGA does its work through a committee process. While the process results in proposals that are well-researched and draw legitimacy from their bipartisanship, they take time to work their way through the deliberative process (Herian 2011; Nugent 2009). Thus, the state governments may be acting consistently with the “signaling theory” of institutional interests groups, where they are in agreement with their umbrella association and want to signal to lawmakers that there are multiple interests with the same policy goals. However, the states may testify more frequently than the associations even when there is some consensus across the states on the issue because the public official associations are not yet ready to take a stand on the issue. This could mean that individual state governments are better equipped to influence policy early in the process, when the committees are still defining the problems, considering alternatives, and deciding on the scope of the agenda. The associations would then be limited in their role if they enter the process after the agenda is set and the alternatives agreed upon. Scholars largely agree that the early points in the policy process are where power is concentrated because this is where many of the important decisions about policy priorities are made (Kingdon 2003; Schattschneider 1960).

Competitive Exclusion: When the State Disagrees with the Association

When Richard Russman, State Senator from New Hampshire and chair of the Senate Environment Committee, testified before a joint subcommittee hearing within the House Commerce Committee, he was not just speaking on behalf of the state of New Hampshire, he was opposing the National Conference of State Legislatures. Russman was a former member of the NCSL’s Committee on the Environment but at this hearing he was opposed to the policy recommendations made by this prominent public official’s association. The NCSL was

represented in the hearing by Craig Peterson, the Majority Leader of the Utah Senate, who testified on behalf of his state and also described the policy positions of the NCSL.

The hearing took place in the spring of 1997 and involved congressional oversight of new national ambient air quality standards (NAAQS) being developed by the Environmental Protection Agency under the Clean Air Act. The controversial standards stirred up regional divisions in the country and state government witnesses testified in this hearing on behalf of Utah, Michigan, New Hampshire, New York, Pennsylvania, and Ohio. The NCSL expressed their concern that the EPA had not conducted appropriately extensive research before beginning to generate these new standards. The association asked that the agency consider the geographic, meteorological, and climactic differences across states and not adopt standard rules that treat all states the same. Peterson recommended, on behalf of NCSL, that the subcommittees treat the NCSL as an expert on problems that arise in the bureaucratic rulemaking process over time. NCSL believed that if the new rules went into effect after an expedited review process that later review would result in overturning the original rules which would be costly and confusing for states to implement. The states would need to purchase new equipment in order to comply with the new standards, so NCSL recommended a full review prior to adoption so states could be reasonably certain that the rules would last and their investment would be worthwhile. Furthermore, if Congress would not fully fund the new requirements under these rule changes then this would be considered an unfunded mandate on the states.

Russman criticized the NCSL's statement on the basis of the association's standard process for evaluating new agency standards, saying that they were jumping to critique a proposed rule in the way that they would usually reserve for critiquing final rules. He walked through the list of NCSL suggestions and criticisms arguing that they were misguided, except

where they asked Congress to fully fund new rules to avoid unfunded mandates. Russman submitted a list of state and local government and industry members who worked with the EPA to craft the new rules. He argued that the state governments had already had an opportunity to participate in the rulemaking process through the efforts of these individuals. Though he was not identified as speaking on behalf of any association other than his state of New Hampshire he often referenced the opinions of the other New England states and presented findings compiled by a group called the Northeast States for Coordinated Air Use Management. He argued that the EPA would need to establish uniform standards for all states since the Midwestern states were known to shirk their clean air responsibilities, resulting in air pollution drifting into other regions.

Obvious regional divides were illustrated throughout the state witnesses' testimony on this policy. While the NSCL achieved the super-majority vote of its members to adopt a policy stance on this issue, they were not able to appease all of the states with their testimony. The opposition was noticeably unrelated to partisan politics. There was a clear partisan divide among the members of the congressional subcommittees, with the Republican members skeptical of the new EPA standards and the Democrats supportive of uniform air quality rules for all the states, but the state witnesses were mixed. Democrats from the state legislatures of Michigan and Pennsylvania agreed, at least in part, with Peterson, the Republican from Utah who spoke for the NCSL. Their testimony more closely resembled the "signaling theory" discussed above, where they explained their own state's issues but also voices agreement with their umbrella association's policy position. Russman, a Republican from New Hampshire, was joined by a Democrat in the New York State legislature in his support of the EPA and opposition to the NCSL's position. Russman emphasized the partisan divides in his own state yet said that there

was bipartisan agreement across the governor's office, agencies, legislature, and state industries to support the new EPA standards.

Russman's testimony was motivated by his disagreement with the umbrella association in which his institution was a member and he presents the policy position of the states that were unhappy with the advocacy being done by the association representing them. Dinan (2011) finds evidence of similar disagreements during the debates over health insurance reform in 2009. Members of the NCSL endorsed a provision that would allow the federal government to create a "public option" health insurance plan to compete against private insurers but later, some state officials advocated individually for the ability to opt out of the public insurance option. In each of these cases, partisanship didn't prevent the NCSL from adopting a position on behalf of the state governments, but other divisions prompted disaffected states to testify against the policy positions of the NCSL.

When the States agree on Process, Regardless of Policy

The previous examples focused on the circumstances in which the state governments might be compelled to testify individually rather than letting the public official associations represent their views. But there are also situations where the associations are well-suited to represent the states interests and the states will offer no opposition or individual positions eroding the legitimacy of the public official association's testimony. In one such case, the National Governors Association testified before the Senate Committee on Indian Affairs regarding proposed legislation amending the Indian Gaming Regulatory Act. In this hearing the Executive Director of the NGA spoke on behalf of all the state governors. He said he felt comfortable doing this, even though the proposed legislation was still under review by the

governors, because of the NGA's long history of negotiation on tribal gaming policies on behalf of the states.

While the state governments took a range of positions on the type of gaming they want in their states, and some states were far more comfortable with a broader scope of acceptable Indian gaming than others, the states could all agree on the role they should be playing in negotiating gaming compacts and regulating the tribal gaming industry, and this should be an important role. The NGA opposed language in the bill that might chip away at the states' abilities to establish the scope of gaming allowed in their states. Furthermore, the governors opposed any changes to federal law that would allow tribes to negotiate gaming rules with the Secretary of the Interior rather than the state governments. The NGA also criticized the current policy of requiring tribal representatives to sit on the Indian Gaming Commission, but not giving state governments that same ability to serve on the oversight body. Despite their disparate opinions on gambling, the governors had established a long history of cooperation through the NGA to lobby for increasing the role of the states in negotiating and regulating tribal gaming compacts.

A hearing on a very different policy is also illustrative of the associations' ability to represent the states when they are unified behind a policy process, even if they take very different positions on preferred policy outcomes. This hearing before the House Judiciary Committee heard the testimony of William Ware, the federal affairs counsel for the National Conference of State Legislatures over the issue of enacting a federal product liability law. This policy was a key component of the Republican's Contract with America during the 1994 congressional elections. The party that opposed the growth of the federal government in many ways wanted to establish uniform standards for tort reform at the federal level. The NCSL witness pointed out this irony and testified that many of the state governments were strong

believers in tort reform but they did not believe that the federal government should preempt the states in this area. Weren explained that, despite the states' disagreement over their preferences for reforms of product liability laws, they were able to agree that these laws should be crafted by the states alone. They could not agree on policy outcomes, but they could agree on the process by which those policies should be crafted.

These examples of state agreement on process are clearly limited. In the previous example where EPA standards were under review, the NCSL and some of the state governments were arguing for more flexibility while other states argued for uniform standards to be applied to all states. There are clearly times where the states are willing to stand together to protect their right to a process where they can craft their own policies, as Madison expected in Federalist 45, while other times the policy outcomes are so important to the state that it will not stand with other states to demand more flexibility or oppose preemption.

Conclusions

This paper has demonstrated that it is important to consider the advocacy activities of the individual states in addition to the public official associations. This is the first study to directly compare the advocacy of states and associations and doing so makes it clear that, at least in the congressional hearing testimony by these two groups, there are differences policy areas in which they are most frequently involved, the amount of influence they might wield in policy niches, and the potential for conflicting arguments to be made by their witnesses. Close reading of the hearing transcripts also provides a means to understand how the advocacy of the states and associations fits with the theories of institutional interest group behavior. This helps to explain

when and why states advocate individually and when the associations have the authority to speak unopposed on behalf of the state governments.

The patterns of witness testimony indicate that in some policy areas the state governments and the public official associations spend similar proportions of their own agendas advocating on the same issues and that their activities on many issues reflect the overall proportion of the congressional agenda dedicated to these same topics. However, the individual state governments have a stronger presence on certain niche issues, especially the environment and education, where they may have more of an opportunity to influence federal policy. The individual state governments also have a frequent presence on public lands and water management issues, a policy area that cannot be considered a niche because of its large presence on the congressional agenda, but in which the individual state are frequent advocates.

Congressional committee testimony is admittedly only one of many advocacy activities in which interest groups, including the state governments, can engage. However, Nugent (2009) identifies hearing testimony as a key component of the states' participation in safeguarding their power in the U.S. system of federalism and Schlozman and Tierney (1986) find that congressional committee testimony is the most common tactic used by policy advocates to lobby for interest groups' priorities. Recent scholarship has found causal evidence that information presented in congressional hearings can affect the likelihood that a policy proposal will be enacted (Burstein and Hirsh 2007). Thus, the use of congressional hearings to study the trends in state government lobbying of federal policy is well-founded. Furthermore, the fact that the policy focus of state testimony is largely reflective of the policy focus of another form of state lobbying, legislative memorials to Congress, provides validity that these activities are useful indicators of the state governments' federal policy priorities.

Future work should be done to explore the nature of cooperation and competition between witnesses from the intergovernmental lobby in congressional hearings. There is some evidence that states have incentives to work in closer cooperation with one another and also in cooperation with the federal government on some issues more than others (Gormley 2006). Furthermore, the nature of policy conflict within and between groups influences their lobbying strategies (Walker 1991) but little is known about how this affects the activities of the intergovernmental lobby. This database of congressional testimony provides a new source that can be used to study issues of intergovernmental cooperation and competition in federal policymaking.

The findings described in this chapter indicate that it is not appropriate to infer the policy goals of the state governments by studying the consensus positions of the public official associations. The data indicate that the associations and states have different policy priorities and the stories told in the hearing transcripts show that state governments may be able to react more quickly to federal policy and thus, be involved earlier in the policy formulation process than the public official associations. They also reveal that even when the associations come to a majority-opinion on a policy, they still may face opposition to the states that were not in the majority. In prior studies, the associations have been pictured as powerful faces of the united state governments, which at times they are, but often there is dissention that is not revealed in the position papers published by the associations. The states are individual lobbyists, as well as members of multi-state associations. They have multiple ways of advocating for their interests in the federal policy process. In order to better understand the nuanced process of state advocacy in a system of federalism, attention needs to be paid to the individual states and the way they represent their own interests in the national government.

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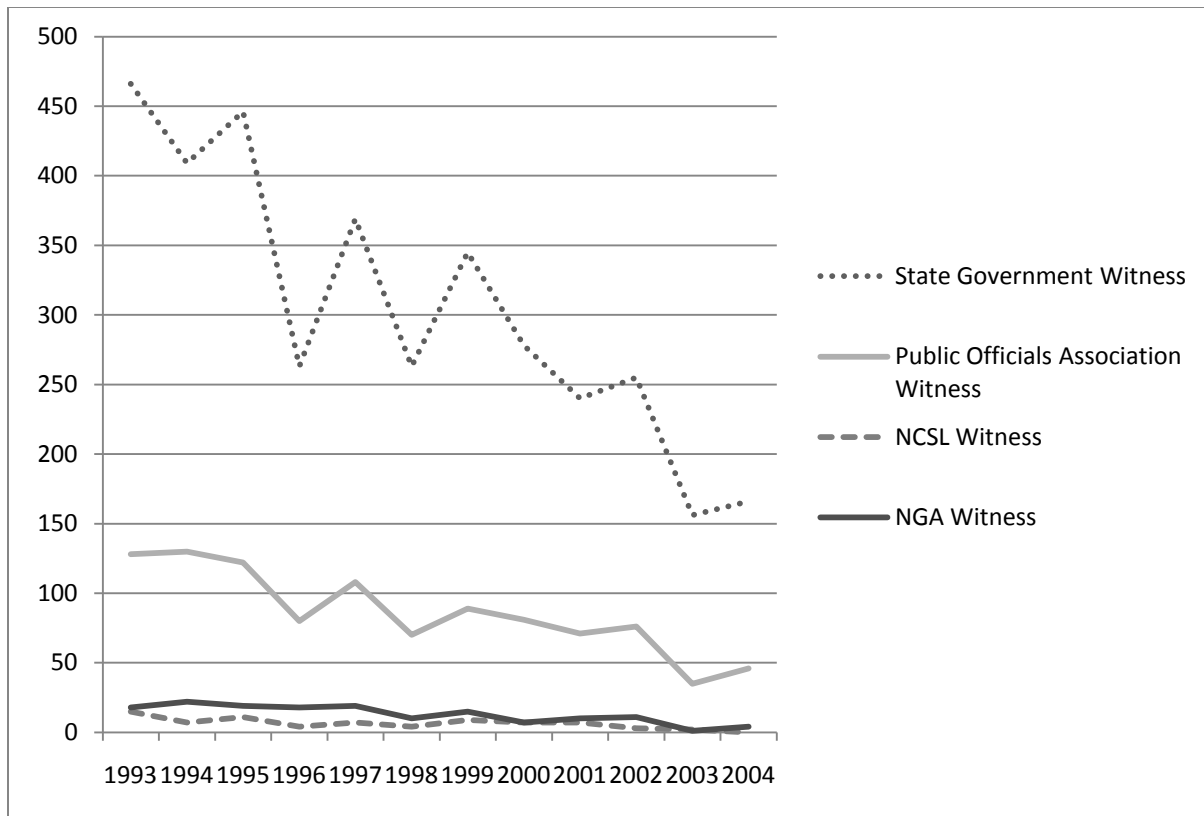


Figure 1. Frequency of witness testimony in number of appearance per year

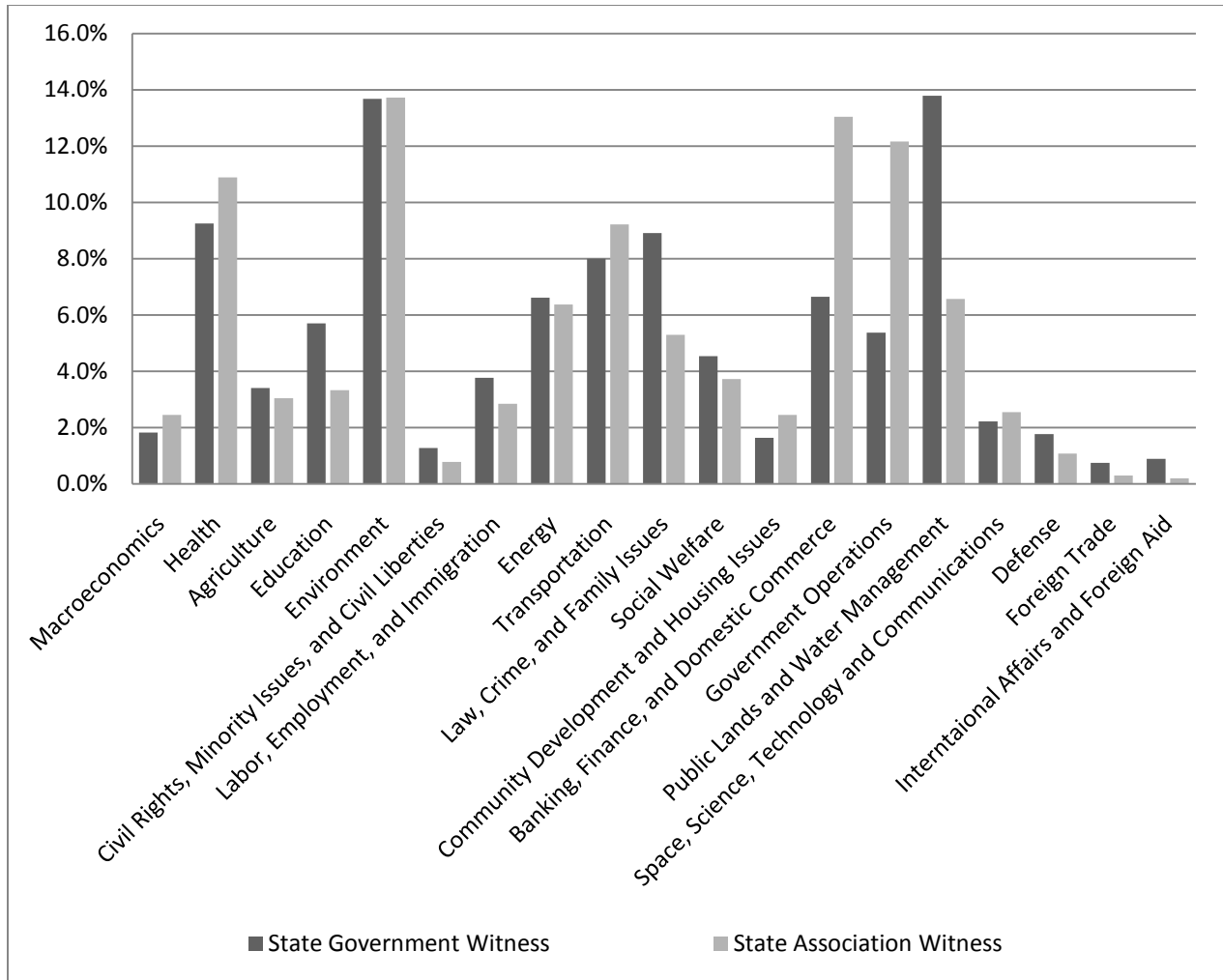


Figure 2. Policy Focus of the Individual States and State Associations 103rd-108th

The Intergovernmental Lobby in the Congressional Agenda

Issue Area	Number of Hearings	Hearings with POA Witness	Percent with POA Witness	Hearings with State Witness	Percent with State Witness
Macroeconomics	549	17	3%	37	7%
Health	1462	77	5%	231	16%
Agriculture	519	27	5%	70	13%
Education	506	29	6%	137	27%
Environment	897	92	10%	275	31%
Civil Rights, Minority Issues, and Civil Liberties	315	7	2%	34	11%
Labor, Employment, and Immigration	683	22	3%	80	12%
Energy	585	57	10%	113	19%
Transportation	762	60	8%	138	18%
Law, Crime, and Family Issues	1055	44	4%	196	19%
Social Welfare	380	25	7%	96	25%
Community Development and Housing Issues	304	20	7%	40	13%
Banking, Finance, and Domestic Commerce	1504	110	7%	178	12%
Government Operations	2403	76	3%	118	5%
Public Lands and Water Management	1443	62	4%	287	20%
Space, Science, Technology and Communications	876	23	3%	55	6%
Defense	1205	11	1%	43	4%
Foreign Trade	437	3	1%	21	5%
International Affairs and Foreign Aid	1895	2	0%	23	1%
All Issues	17780	764	5%	2172	14%

Table 1. Hearings by Policy Topic and Proportion of all Hearings with State and Association Witnesses

Issue Area	# Hearings	# Inter-governmental Witnesses	Average Number of Witnesses in Hearing		
			State Government	Public Official Association	Both
Macroeconomics	47	91	1.40	0.53	1.94
Health	284	445	1.18	0.39	1.57
Agriculture	91	154	1.35	0.34	1.69
Education	152	240	1.36	0.22	1.58
Environment	321	634	1.54	0.44	1.98
Civil Rights, Minority Issues, and Civil Liberties	40	54	1.15	0.20	1.35
Labor, Employment, and Immigration	93	165	1.46	0.31	1.77
Energy	150	304	1.59	0.43	2.03
Transportation	166	383	1.74	0.57	2.31
Law, Crime, and Family Issues	223	376	1.44	0.24	1.69
Social Welfare	108	202	1.52	0.35	1.87
Community Development and Housing Issues	57	84	1.04	0.44	1.47
Banking, Finance, and Domestic Commerce	259	373	0.93	0.51	1.44
Government Operations	162	318	1.21	0.77	1.98
Public Lands and Water Management	328	565	1.52	0.20	1.72
Space, Science, Technology and Communications	72	106	1.11	0.36	1.47
Defense	51	75	1.25	0.22	1.47
Foreign Trade	23	30	1.17	0.13	1.30
International Affairs and Foreign Aid	24	34	1.33	0.08	1.42
All Issues	2692	4633	1.36	0.38	1.74

Table 2. Hearings with at Least One Witness from the Intergovernmental Lobby