Local Bar Associations

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STATEMENT OF SENATOR MAX BAUCUS
BEFORE THE
LOCAL BAR ASSOCIATIONS
GREAT FALLS, MONTANA
OCTOBER 17, 1980

I AM DELIGHTED TO BE HERE TONIGHT.

I AM PARTICULARLY PLEASED TO SEE LOCAL BAR ASSOCIATIONS MEETING TOGETHER. I'VE OFTEN THOUGHT LAWYERS DIDN'T TALK ENOUGH TO EACH OTHER.

I WOULD LIKE TO SPEND JUST A FEW MINUTES DISCUSSING SOME OF MY EXPERIENCES SERVING ON THE SENATE JUDICIARY COMMITTEE. THE JUDICIARY COMMITTEE IS PERHAPS ONE OF THE MOST FASCINATING UNTOLD STORIES TO COME OUT OF THIS CONGRESS.

AS MOST OF YOU PROBABLY KNOW, TED KENNEDY TOOK OVER AS CHAIRMAN OF THE COMMITTEE IN 1979 -- AND IT HAS MADE A WORLD OF DIFFERENCE. WE'VE PROCESSED OVER 200 NOMINATIONS FOR THE FEDERAL BENCH, AND NOT JUST IN A PRO FORMA WAY.

SEVEN OF US SPENT A VERY CONCENTRATED COUPLE OF MONTHS CONDUCTING THE INVESTIGATION OF BILLY CARTER.
AND, FOR THE FIRST TIME, THE COMMITTEE HAS TAKEN A LOOK AT HOW WELL THE JUSTICE DEPARTMENT ACTUALLY DOES ITS JOB. I CHAIR A SUBCOMMITTEE THAT HAS CONDUCTED SEVERAL OVERSIGHT INVESTIGATIONS, MOST RECENTLY ON ABUSES IN THE WAY THE FEDERAL GOVERNMENT CONTRACTS FOR PRODUCTS AND SERVICES FROM THE PRIVATE SECTOR.

BUT TONIGHT I WOULD LIKE TO FOCUS FOR A FEW MINUTES ON A NEW PROJECT WE ARE LAUNCHING THIS WEEK. IN MY VIEW, THIS EFFORT PROBABLY WILL HAVE THE GREATEST LONG-TERM IMPACT ON MONTANA.

IT WAS WILL ROGERS WHO SAID, "THE COUNTRY HAS COME TO FEEL THE SAME WHEN CONGRESS IS IN SESSION AS WHEN THE BABY GETS A HOLD OF A HAMMER."

THOSE OF US WHO ARE CONCERNED ABOUT THE RIGHTS OF STATES TO CONTROL THEIR OWN DESTINY, HAVE VIEWED THIS CONGRESS MUCH THAT WAY.

THIS CONGRESS HAS SHOWN A GREAT INTEREST IN ENACTING LEGISLATION THAT WOULD TAKE AWAY MUCH OF THE TRADITIONAL POWER OF THE STATES AND PLACE IT IN WASHINGTON. BILLS ARE BEING ADVOCATED IN THE NAME OF ENERGY INDEPENDENCE THAT HAVE THE EFFECT OF UNDERMINING THE WAY THE STATES AND THE FEDERAL GOVERNMENT HAVE RELATED TO EACH OTHER FOR ALMOST 200 YEARS.

AS A MEMBER OF THE SENATE JUDICIARY COMMITTEE, I HAVE UNDERTAKEN A SERIES OF HEARINGS TO EXPLORE THE EFFECT OF THESE ENERGY PROPOSALS ON THE CONSTITUTIONAL BALANCE BETWEEN THE STATES AND THE FEDERAL GOVERNMENT.
I have undertaken these hearings as one who is deeply concerned that the traditional role of the States is being undermined. I also approach these issues as a Montanan who is very proud of the legislative record of our own State Legislature. We as Montanans have tried to take charge of our future and we have a record we should take pride in.

- Our State adopted a strong new constitution to replace the one written in the 1880s by the Copper Barons;
- We enacted a major facility siting act to ensure that coal-burning facilities are built in such a way that they minimize environmental and socio-economic damage;
- We enacted a State strip mining law that served as a model for the Federal strip mining act;
- We enacted a coal severance tax to help raise revenues to help pay the costs of coal development;
- We enacted the Montana water use act to establish a uniform system to acquire, administer and determine water rights.

This is a State legislative record that is unprecedented. We as Montanans can be extremely proud of the forward looking, innovative legislative steps our State has taken in the past ten years.

But, today I wish to warn you that these rights are in danger of being eroded. Montana's ability to protect these initiatives and to enact additional safeguards in the future is being threatened.
A SERIES OF INITIATIVES PENDING IN WASHINGTON THREATEN TO UNDERMINE MONTANA'S ABILITY TO GOVERN ITSELF. LET ME DESCRIBE TWO SPECIFIC EXAMPLES.

ENERGY MOBILIZATION BOARD

STILL PENDING BEFORE THE CONGRESS IS A BILL TO CREATE AN ENERGY MOBILIZATION BOARD. THE PURPOSE OF THIS BOARD IS NOBLE: TO ENHANCE ENERGY DEVELOPMENT BY HAVING A BOARD THAT CAN CUT RED TAPE FOR CERTAIN PRIORITY ENERGY PROJECTS.

HOWEVER, THE BOARD WOULD BE NOTHING LESS THAN A BLUEPRINT FOR DISASTER. RATHER THAN FOSTERING COOPERATION AMONG LOCAL, STATE AND FEDERAL AGENCIES, THE EMB WOULD BE A SUPER-BUREAUCRACY. MONTANA'S STATES RIGHTS COULD BE TRAMPLED UNDER LIKE THE GRASS IN A BUFFALO STAMPEDE.

MONTANANS HAVE SPENT YEARS DEVELOPING AND ENACTING ENVIRONMENTAL AND ZONING ORDINANCES THAT ENSURE PUBLIC INVOLVEMENT IN RESOURCE MANAGEMENT.

THE EMB WOULD HAVE THE POWER TO OVERRIDE THESE STATE LAWS AND LOCAL ORDINANCES.

THE EMB WOULD HAVE THE POWER TO IMPOSE DEADLINES UPON STATE AND LOCAL GOVERNMENTS.

THE EMB WOULD HAVE THE POWER TO MAKE DECISIONS INSTEAD OF THE LOCAL OR STATE AGENCY IF THOSE DEADLINES ARE MISSED.
THE EMB COULD WAIVE STATE LAW.

THE EMB COULD OVERRIDE THE PROVISIONS OF MONTANA'S MAJOR FACILITIES SITING ACT.

THE EMB COULD OVERRIDE THE PROVISIONS OF MONTANA'S STRIP MINE LEGISLATION.

AND, TO MAKE MATTERS WORSE, NEITHER MONTANA'S STATE COURTS NOR THE FEDERAL COURTS LOCATED IN MONTANA WOULD BE AVAILABLE TO REVIEW GRIEVANCES.

THIS LEGISLATION IS A BASIC DENIAL OF DUE PROCESS BOTH TO INDIVIDUALS AND TO THE STATES. NO DEMAND FOR ENERGY INDEPENDENCE SHOULD BE PERMITTED TO OVERRIDE THE TRADITIONAL RIGHT OF OUR STATES TO DETERMINE THEIR OWN DESTINY.

**COAL SEVERANCE TAX**

MONTANA'S COAL SEVERANCE TAX IS ANOTHER EXAMPLE OF OUR STATE'S FORESIGHT AND WISDOM. THE TAX REPRESENTS THE COLLECTIVE DECISION OF MONTANANS THAT LONG TERM COAL DEVELOPMENT WILL REQUIRE ADDITIONAL REVENUE TO MEET THE FUTURE NEEDS OF OUR PEOPLE.

BUT WE CAN BE SURE THAT COAL DEVELOPMENT WILL REQUIRE A MASSIVE BUILD-UP OF PUBLIC SERVICES. WE WILL NEED ADDITIONAL ROADS, SEWER SYSTEMS, SCHOOLS, AND HOSPITALS.

MONTANA'S COAL SEVERANCE TAX WILL HELP PAY THESE COSTS.
YET OUR TAX TODAY FACES ITS TOUGHEST TEST. LEGISLATION NOW PENDING IN CONGRESS WOULD LIMIT THE LEVEL OF SEVERANCE TAX THAT ANY STATE COULD IMPOSE ON ENERGY RESOURCES.

AT STAKE IS MONTANA'S MAJOR REVENUE SOURCE... REVENUE WE CANNOT AFFORD TO LOSE IF WE ARE TO MAINTAIN A SUFFICIENT STANDARD OF LIVING FOR FUTURE MONTANANS.

THE LEGISLATION I REFER TO REPRESENTS AN UNPRECEDENTED INTERFERENCE WITH STATES' RIGHTS. ANY LIMIT ON MONTANA'S RIGHT TO TAX COAL WILL REDUCE SUBSTANTIALLY OUR ABILITY TO PROVIDE THE NECESSARY SERVICES REQUIRED BY FUTURE COAL DEVELOPMENT.

AND YET THERE ARE LEGISLATORS IN WASHINGTON WHO BELIEVE THAT THEY HAVE THE RIGHT TO IMPOSE THIS KIND OF BASIC TAX LIMITATION ON THE STATE OF MONTANA.

THOSE OF US WHO CARE ABOUT STATES’ RIGHTS SHOULD BE APPALLED AT THIS PROPOSAL. THOSE LEGISLATORS WHO PROPOSE THIS LIMITATION WOULD NOT SUPPORT SIMILAR LIMITATIONS ON THEIR OWN STATES ABILITY TO PROVIDE FOR BASIC STATE SERVICES.

THIS IS YET ANOTHER EXAMPLE OF THE INSENSITIVITY OF MANY MEMBERS OF CONGRESS TO THE RIGHTS OF THE STATES GUARANTEED BY THE TENTH AMENDMENT.
A NEW STATES RIGHTS

These two areas are not isolated examples. They are just part of a consistent pattern of erosion of state and local government authority. The question raised is what can we as Montanans do about it?

What is needed is a new bold resurgence of the role of states.

In the past, the cloak of states' rights was used to protect states from going forward with new and progressive ideas. Citizens hid behind the slogan of states rights to prevent equal justice for all.

We as Montanans along with our friends throughout the country can forge a new progressive states' rights... a progressive states' rights that encourages innovative and farsighted state policy.

Strong states will strengthen the federal government as a whole. Thomas Jefferson wrote: the only way the states can avoid the abuse of national power is "to strengthen the state government,... and this must be done by the states themselves..."

We in Montana have heeded Jefferson's admonition. We have responded to the challenge of developing state policies that are responsible and aggressive.