

Testimony Of

Don Stapley

On Behalf Of

The National Association of Counties
The Government Finance Officers Association
The United States Conference of Mayors
The National League of Cities

Before the
U.S. House of Representatives
Committee on the Judiciary
Subcommittee on Commercial and Administrative Law

On
"Cell Tax Fairness Act of 2009"
(H.R. 1521)

June 9, 2009

2141 Rayburn House Office Building
Washington, D.C.

**Statement of Don Stapley
Board of Supervisors
Maricopa County, Arizona**

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Chairman Cohen and distinguished members of the House Subcommittee on Commercial and Administrative Law:

My name is Don Stapley. I am on the Board of Supervisors of Maricopa County, Arizona and President of the National Association of Counties (NACo).¹ I chair NACo's Strategic Plan Advisory Committee and I am a former chair of NACo's Large Urban County Caucus. I am also the Executive Committee Liaison to NACo's Information Technology Committee.

I appreciate the opportunity to appear before you today on behalf of NACo, the Government Finance Officers Association (GFOA), the United States Conference of Mayors (USCM), and National League of Cities (NLC).

If there is one thing all of our organizations have in common, it is our long-standing opposition to efforts by Congress to preempt state and local taxing authority. This is especially true when it comes to telecommunications taxes. How to levy taxes fairly, how to ensure there is no discrimination among companies that provide different forms of the same service, and how to protect local government revenues, are all appropriate debates. But these debates belong at the state and local levels. And this is why our associations are united in our opposition to this bill.

¹ The National Association of Counties (NACo) is the only national organization that represents county governments in the United States. Founded in 1935, NACo provides essential services to the nation's 3,066 counties. NACo advances issues with a unified voice before the federal government, improves the public's understanding of county government, assists counties in finding and sharing innovative solutions through education and research, and provides value-added services to save counties and taxpayers money. For more information about NACo, visit www.naco.org.

Local governments exercise their taxing authority to the extent provided by state law. As a result, local taxing authority and practices differ from state to state. And often times, taxing policy differs from county to county and city to city within the state. But this is good. Because this means that every local government taxing authority tailors its tax policy by taking into account the sources of revenue available and the needs and wants of its residents.

I was first elected to the Board of Supervisors of Maricopa County, Arizona in 1993. More than half the population of Arizona lives in Maricopa County, which is home to the state capital, Phoenix. Three weeks ago, the Board adopted a tentative fiscal year 2009-10 budget of \$2.1 billion. This represents a 5.4% decrease from this year's budget. The Board adopted a strategic plan to exercise sound financial management and build the County's fiscal strength. To this end, we cut jobs, programs, and services and delayed capital projects, which resulted in a savings of \$122 million. Much of the County's revenue comes from property taxes, sales tax, vehicle license taxes, and jail taxes. We choose to continue minimizing the property tax burden that we impose upon our citizens. Because of the rapid growth that has taken place within the county, the Board has lowered or maintained the overall property tax rate for the past 15 years.

Maricopa County has achieved and maintained financial stability by developing and implementing a series of budget, tax and other financial policies to guide our fiscal management and budgetary decisions. These policies address a number of issues, including budget development, tax reduction, budgetary control, reserves, and managing for results. These policies incorporate "best practices" in the field of state and local government budgeting and financial management, and are aligned with Maricopa County's Managing for Results System.

In today's difficult economic times, where state aid to local governments has decreased dramatically, local taxing autonomy is crucial in helping to ensure that the needs of local citizens, our mutual constituents, are met. The ability to make taxing and other fiscal policy decisions at the local level, and without federal interference, has enabled Maricopa County to provide the quality services that our constituents have come to expect.

Some argue that the proposed 5-year ban set forth in this bill doesn't hurt state and local governments because they can still continue to collect the taxes they currently impose. But this misses the point. What this legislation does is preempt state and local taxing authority and represents a federal intrusion into historically-protected state and local tax classifications. Enactment of this bill would lead other industries to seek similar special federal protection from state and local taxes. This slippery slope necessarily leads to an erosion of our system of federalism and a direct threat to the fiscal health of state and local governments.

It is important to remember that state and local governments, unlike the federal government, must balance their budgets. In this tough financial climate, this isn't an easy task. Hard choices – like those made by my County - must be made. Essential services

may be cut. Public employees may be laid off. Infrastructure repairs and construction may be put on hold. And yes, taxes may occasionally have to be raised. But what is important to emphasize is that when balancing the budget, all options must be on the table. What this bill does is takes away one of these options –to tax the wireless industry- at the expense of other taxpayers and businesses.

This bill fails to recognize the plain fact that not all jurisdictions depend on identical revenue sources. Some have an income tax – others don't. Some tax food – others don't. As a result, some jurisdictions may necessarily have to tax wireless services at a higher level than others. Enactment of this bill would force those jurisdictions to rely even more heavily on other types of taxes, thereby shifting the tax burden to those in the community less able to tolerate it.

The wireless industry argues misleadingly that this bill is necessary because taxes on wireless providers are higher than those imposed on other industries. Our organizations have published a report disputing these claims and I have attached a copy of the report to this statement.

However, whether a particular state or local government has imposed too high a tax burden on the wireless industry is an issue that should be addressed by the appropriate state or local government. The federal government should not step in and impose a uniform, nationwide taxing scheme that provides preferential tax treatment to a single industry – the wireless industry - while preempting state and local taxing authority.

Preemption of state and local authority presents a serious matter, as any such preemption undermines the 10th Amendment to the United States Constitution. Those who support such legislation must ask themselves whether the preemption of state and local authority is ever warranted. I would urge that in this case, where the legislation seeks to protect an industry that continues to experience explosive growth² and profits at the expense of other taxpayers – it is most definitely not.

I urge you to speak out against this measure.

Thank you for allowing me the opportunity to appear before you today.

² In 1995, there were 33.8 million cell phone subscribers in the United States. In 2008, the number of cell phone subscribers had jumped to 270.3 million, representing 87% of the United States' population.