

# UNFUNDED MANDATE REFORM ACT

The Senate continued with the consideration of the bill.

AMENDMENT NO. 151

(Purpose: To exclude laws and regulations applying equally to governmental entities and the private sector)

Mr. LIEBERMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. I thank the Chair.

Mr. President, I would call up amendment No. 151.

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Connecticut [Mr. LIEBERMAN], for himself, Mr. KERRY, Mr. LEVIN, Mr. LAUTENBERG, Mr. BUMPERS, and Mr. DORGAN, proposes an amendment numbered 151.

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the amendment, and the following:

“(6) EXCLUSION.—For purposes of paragraph (1)(B), the term ‘Federal intergovernmental mandates’ shall not include a provision in any bill, joint resolution, amendment, motion, or conference report that would apply in the same manner to the activities, facilities, or services of State, local, or tribal governments and the private sector.

Mr. LIEBERMAN. Mr. President, I have called up this amendment on behalf of Senators KERRY, LEVIN, LAUTENBERG, BUMPERS, DORGAN, and myself. And I am pleased to say that this is a very germane amendment.

I share the very, very serious concerns that have been raised by officials of State and local government about the regulatory compliance and other burdens that have been placed on States and local governments by the Federal Government, by us. There is a problem here. It is a real problem, and we ought to deal with it.

Last year, there was bipartisan legislation, S. 993, reported by the Governmental Affairs Committee on which I am privileged to serve, which I thought adopted a balanced approach to addressing the justifiable concerns of State and local governments about unfunded mandates. We established the principle there that Congress must be forced to confront the costs that may be incurred by the State and local governments when we pass legislation, whether or not we have authorized funding for those costs. There must be an opportunity for the fullest discussion, if there are not funds provided in the legislation we adopt to cover the costs on State and local governments.

In other words, that kind of legislation should be subject to a point of order if there is not information about the costs. I think that was a very important principle that was established in S. 993, a very important response to

a very real problem, a very constructive response.

I was pleased to be a cosponsor of S. 993 because it was all about knowledge and congressional accountability. But I regret to say that in my opinion S. 1, though it does some very good things, in one particular way—others as well—but in one particular way it goes too far. It simply takes a good idea and takes it so far that it creates a new, and I think very threatening presumption.

Under S. 1, if the bill, joint resolution, amendment, motion, or conference report increases the Federal intergovernmental mandate by more than \$50 million in a given year, a point of order will lie unless there is a funding mechanism provided.

S. 1 also provides that if the funding mechanism is an authorization of appropriation for the full amount of the mandate, then the bill must designate a responsible Federal agency, and establish procedures for that agency to direct that the mandate will become ineffective or reduced in scope if the full amount of the appropriations is not provided in any fiscal year.

In short, the presumption in S. 1 is that the Federal Government will pay 100 percent of the cost of obligations imposed by the Federal Government on States and localities. If the legislation states that the Federal Government will pay the cost, the money must be appropriated or the agency must declare the mandate ineffective or reduced in scope.

So S. 1 is a much more extensive reach, a much different approach to the problem of unfunded mandates than that adopted in S. 993, which was reported out of the committee last year. That is why I say it takes a problem, unfunded mandates, and in its response reaches too far; and in doing so, creates an unintended—but I am convinced very real and inequitable—burden on private-sector entities, businesses that are affected by these mandates. And it also puts at risk a whole array of Federal law protecting the environment, people's health, people's safety, people's rights, that the public simply does not want to endanger, that the public wants us to continue to protect.

So under the mantle of dealing with unfunded mandates, this bill will have the consequence, I am convinced, of putting extra burdens on business, particularly small business, and in the process will create a hurdle that will impede the protection of people's environmental health, safety, and employee rights.

Let me say that in trying to separate out those mandates that uniquely place responsibilities on State and local governments, and for which we should feel a special obligation to pay the costs of those mandates, and those mandates which deal with a problem and in doing so place responsibilities—call them mandates—on public as well as private sources of that problem, we are creating a real inequity.

But let me say what this amendment leaves intact. It leaves intact in the underlying bill, S. 1, the requirement that Congress confront the cost of our actions. It may be when doing so, no matter how worthy the aims of the particular legislation, how protective it may be, how popular it may be, that Congress, Members of Congress, in our wisdom, will decide that it is not worth the cost. That is left in place in this bill.

Also left in place is the second point of order, with all the extra burdens, all the extra responsibilities on the Federal bureaucracy to pay for the cost of mandates, or cut back or terminate those mandates if they apply specifically to State and local governments.

The amendment is structured on a principle, and that principle is that if Congress requires other levels of government to perform governmental services, then Congress should pay the State and local governments to do that. The appropriate area for legislation is where States and localities are providing those governmental services, mandated by Congress, that Congress is unwilling to fund; responsibilities that are exclusively governmental, that do not apply to private industry or private citizens.

The purpose of the amendment is to assure a fairer partnership between those State and local governments and the Federal Government in carrying out governmental programs. In its report on S. 1, the Governmental Affairs Committee stated:

State and local officials emphasized in the committee's hearings . . . that over the last decade the Federal Government has not treated them as partners in the providing of effective governmental services to the American people, but rather as agents or extensions of the Federal Government.

But there is an enormously expensive governmental service obligation associated, still, with many of the programs covered by this legislation that our amendment would not affect. In fact, they are the big-ticket mandate items for States and local governments: Medicaid, AFDC, child nutrition, food stamps, social service block grants, vocational rehabilitation State grants, foster care, adoption assistance and independent living, family support welfare services, and child support functions. Those are all examples of programs where the Federal Government has put responsibilities on State and local governments, not on private entities. We essentially delegated a governmental responsibility from the Federal to the State and local governments. And those are mandates whose treatment would be left untouched by my amendment; whose treatment under S. 1 would be left untouched by my amendment.

For Congress to act to pass or reauthorize those mandates beyond the \$50 million annually exempted, there would have to be the finding that Congress had put the money forth to pay for the State and local costs of those

programs or the point of order would appropriately lie and Congress would be tested to express its will. Governor Voinovich of Ohio has stated:

Many States cannot spend a greater share of tax dollars on education because new Medicaid mandates consume more and more of our resources. They account for 70 percent of Ohio's mandate costs, nearly \$1 billion over 4 years. Medicaid was 19 percent of Ohio's budget in 1982. It represents one-third today.

So to me these are the most consequential, most costly mandates that we at the Federal level have put on the States. And those are the ones where we ought to have the process be forced to go through the extra hurdles in S. 1.

Senator BOND, our colleague from Missouri, at the hearing held on S. 1 this year said:

Unfortunately, the State [State of Missouri] projects that unfunded mandates will exceed \$250 million. These are costs that have been documented with respect to specific measures. The Clean Air Act cost, in 1997, two-thirds of a million dollars; total environmental mandates are estimated only at \$3.5 million.

I stop my quote from our colleague from Missouri here. Let me just emphasize that I think what many of us have been thinking about is the unfunded mandates, environmental particularly. As our colleague from Missouri said in his testimony before the committee, consumers put a relatively small burden—and as I will come back and argue, it is a fair burden because it is also one placed on private sources of pollution.

Then the Senator goes on to say the Carl D. Perkins Vocational Act cost the State \$16 million in unfunded mandates, \$16 million as compared to \$3.5 million for total environmental mandates on Missouri. The Department of Social Services, as one would expect, Senator BOND says, was the big winner having the privilege of almost \$130 million of a very limited budget to comply with Federal mandates. The Federal unfunded mandates survey for the National Association of Counties lists the most costly unfunded mandate as the Immigration Act. That is the type of mandate that applies specifically to State and local governments and the type of mandate for which we should be tested, forced to confront the costs, and go over the higher hurdle set in S. 1.

The city of Chicago survey of mandates listed airport restrictions, arbitrage rebates, and bond financing restrictions, as the most consequential to the city. I would distinguish these mandates from other so-called "mandates" which really are about the adoption of a law at the Federal level to respond to a problem—clean air, clean water, safe drinking water, fairness to employees, as in the Family and Medical Leave Act, where the source of the problem or potential problem is both public and private. This amendment would eliminate that inequity.

It exempts from the definition of a Federal intergovernmental mandate, as is in the bill, it is a very simple

amendment with big consequences. It simply changes the definition of Federal intergovernmental mandate in the bill and exempts from that definition, for purposes of the requirement that the legislation must provide a funding mechanism for 100 percent of the cost to avoid the point of order, provisions which apply in the same manner to the State, local, or tribal governments and the private sector.

For example, suppose legislation requires that all incinerators limit emissions of dioxin to 12 parts per billion by the year 2000. That would apply obviously to both public and private sector incinerator operators. Under the amendment, the authorizing committee in its report is still required to state the amount—this is under S. 1 if the amendment were adopted—the authorizing committee in its report is still required to state the amount of any decrease or increase in funding whether the committee intends the mandate to be funded or unfunded and any sources of Federal funding. Under the amendment, the director of CBO would still be required to provide an estimate of the cost to State and local governments of this requirement having to do with emissions of dioxin that I have set up as the hypothetical here, and to state if those costs are greater than the \$50 million threshold in the bill.

Under this amendment, if it is agreed to, the point of order would still lie if the committee report does not contain that estimate except as modified by the amendment of the Senator from Michigan which we adopted earlier today.

However, under this amendment, there would be no point of order if the bill did not provide a funding mechanism for 100 percent of the cost of compliance with this dioxin reduction proposal for the State and local governments.

Mr. President, this amendment covers only the situation where duties and obligations apply in the same manner to private sector and State and local governments. S. 1, in its current form, potentially, under its procedures, sets up a two-track process here between private and public entities and would exempt State and local governments from the environmental safety, employee rights, and environmental standards that competing private businesses must meet. So S. 1 would potentially result in a competitive disadvantage for private enterprises engaged in the same activities that the State or local governments are engaged in.

In the example I gave a moment ago, the burden would fall on the privately operated incinerator to spend whatever was necessary to reduce the emissions of dioxin whether or not Congress gave any help in meeting the cost of that upgrading but would not similarly apply to the publicly owned incinerator if Congress did not provide full funding.

Of course, the other consequence here, Mr. President, is that the applica-

tion of S. 1 as it exists now would probably result in disproportionate risks to our citizens. I can tell you that the people living around that incinerator would not care whether it was publicly or privately owned. They want to be protected from toxins coming from the incinerator.

Let me give some other examples. Under S. 1, the bill before us, and in future legislation, State and local governments could be exempt from paying their employees an increase in the minimum wage or providing family and medical leave, requirements that all private businesses would have to meet. Publicly owned or operated incinerators could be exempt from air pollution standards while privately operated incinerators would be required to meet those standards. Publicly run drinking water systems might not have to provide pure water in the same way that private water companies would have to provide. Public universities and hospitals could be exempt from the requirements for handling radioactive wastes while private hospitals, including nonprofit hospitals, religiously supported hospitals and labs, would be required to meet those standards.

Cars owned by the State or local government could be exempt from requirements to run on cleaner burning fuels which apply to all other citizens of the State, not just to private businesses, but to everybody else in the State. States or local governments that operate schoolbuses could be exempt from safety requirements that would apply to buses operated by private companies. State-owned liquor stores could be exempt from standards of conduct that would be applied to privately owned and operated stores. States and municipalities could be exempt from requirements to retrofit or replace air conditioning units to remove CFC's while private entities would have to do that.

Certainly, Mr. President, we do not mean to say that there should be a presumption, if Congress determines a law is necessary to regulate safety, for instance, on school buses, safety of our kids, that they must also provide 100 percent of the compliance costs of publicly owned buses or else they do not have to meet that standard. The point here is that in adopting legislation which we have given—I think unfairly in this case—the pejorative term "mandate" for expressing a value, for setting a national goal, we are trying to protect people. I do not think that the people who sent us here want us to protect them any more from dirty air or dirty drinking water than from accidents of their kids on school buses. They do not want any lower level of protection if the source of those threats to their safety and well-being are from public as opposed to private sources.

Let me talk for a moment about the consequences of public health. It has been my honor to serve on the Environment and Public Works Committee,

and this is an area in which I have spent some time. And I am particularly concerned about the unintended, and I think undesired by the American people, consequences of S. 1 on environmental laws. When we pass a law, we have determined that the national interest requires that law to achieve a goal, that there is a problem out there that requires a national solution to protect public health or the environment. For example, more than 25 years ago, Congress determined that the basic principle is that the Federal Government should be the ultimate guarantor of minimum standards for clean water and clean air. And there is a rationale for that. It is not just a power grab by the Federal Government for the sake of having power. Environmental problems do not end at State borders. Dirty air and dirty water move. Only the Federal Government can ensure that an up-river or upwind city or State does not dump its pollution on downwind or downstream States or localities.

Only the Federal Government can ensure that one area of the country does not so lower its standards for clean air or clean water for the purpose of attracting business, for instance, to the detriment of its neighboring States. Federal pollution standards apply to all sources of pollution. It is obvious that you cannot solve the problem if you just apply a national solution to one part of the problem, whether or not the source of pollution is run by a public or by a private entity.

I can tell you that a family where the grandparents are suffering from emphysema do not care if the incinerator that is belching dirty air is publicly or privately owned or operated. They believe that the Government has an obligation to ensure that they have clean air. The parents whose child gets diarrhea from drinking dirty water does not care whether a public or private entity provided that water. They want the Government to ensure that the water is pure, regardless of who is providing that water.

During the last 25 years, the Federal Government, in fact, has chosen to provide billions of dollars to assist State and local governments in complying with some of these pollution control laws. I have fought myself for that funding and will continue to do so. But it seems to me that when we identify a serious national problem such as dirty air and dirty water, dirty drinking water, it is wrong to place a mandate on ourselves to say that if we are not able to pay for 100 percent of the compliance cost, that a State or local government can escape those pollution controls that apply to all other sources of pollution. If we took it to its extreme, it would take the concept that is generally accepted, which is that the polluter pays. We can turn it on its head and say we have to pay the polluter.

S. 1 could result in vastly different levels of protection for citizens

throughout this country, or even within one State. Citizens living near or downwind from a publicly owned facility could be exposed to toxins emitted from an incinerator which could be exempted from pollution control standards, while citizens living near a private facility would be protected from those emissions because that private facility would not be exempt.

Let me talk about the competitive consequences I have referred to. Obviously, results like those I have talked about would put private entities at a competitive disadvantage. In a letter to our colleague from Idaho dated December 16, 1994, Browning-Ferris Industries, a waste management company, discussed some of the potential consequences of unfunded mandate legislation:

The results would severely skew the marketplace in favor of Government rather than the private sector services, because the private sector would have to add in prices to its consumers for compliance with these various Federal rules that customers of the public sector would not have to pay.

The Environmental Industry Association, in a letter dated January 9, 1995, an association of a lot of companies that produce environmental cleanup equipment and are involved in the waste business, states this—and they support a lot of this bill:

Notwithstanding provisions in the bill for parity of treatment between the public and private sectors for the purposes of analysis, there seems to be an inconsistency in actual treatment between the two sectors because the legislation subject to the point of order vote applies only to the Federal intergovernmental mandates and not private sector mandates.

This is the Environmental Industry Association Business Group:

We respectfully restate our basic concern that to exclude State and local government—but not the private sector—from the costs of compliance with providing goods and services where both sectors compete would be both unfair and unfaithful to the core principles of the Job and Wage Enhancement Act—art of the contract for America—of which S. 1 is the first piece.

Those are strong statements from private sector entities who fear exactly the disproportionate burden that this amendment of ours would eliminate from the bill.

Mr. President, the unintended consequences of the legislation, in fact, and ironically, may be to encourage an expansion of Government, which is exactly the opposite of what the people supporting this in its current form want. Government could be motivated to contract out fewer services to private industry because the cost charged private industry probably would be higher.

This issue was highlighted for me by the National School Transportation Association, which represents the portion of the familiar yellow or orange school bus fleet operated by the private sector which is about a third of the Nation's school bus fleet. Presumably, those school districts which have contracted out this function have saved

money. But in a letter dated January 10, 1995, the private operators point out that one of the consequences of S. 1, the legislation before us, may be to remove the incentives for school districts to contract out for those services, because by keeping the services in-house, the costs of compliance with various Federal requirements can be avoided. The letter states:

Such an outcome would be sharply at odds with the burgeoning wave of privatization that is realizing, for financially strapped school districts, significant savings and could disrupt the level playing field for our industry that has worked so hard over the past decade to achieve these advances.

Mr. President, I ask that the full text of two letters from the National School Transportation Association be printed in the RECORD at this point.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

NATIONAL SCHOOL  
TRANSPORTATION ASSOCIATION,  
Springfield, VA, January 10, 1995.

Hon. JOSEPH I. LIEBERMAN,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR LIEBERMAN: The National School Transportation Association, representing the nation's owner-operated yellow school bus fleet, applauds your leadership efforts on the unfunded mandates legislation. We are heartened that this session's legislative vehicle contemplates analysis by the Congressional Budget Office (CBO) of regulatory and fiscal impacts on private industry as well as state and local governmental entities. This is a critical provision which must be included in any final legislation if the Congress and the American public are to be fully apprised of the consequences of new federal requirements.

As the debate moves to the Senate floor and the impacts on private industry competitiveness are assessed, we wanted to bring to your attention concerns of the school transportation industry which reflect those also presented you by Browning-Ferris Industries and others. NSTA members operate in all fifty states and in total operate some 110,000 buses constituting about one-third of the nation's yellow school bus fleet. School districts have come to realize significant operational cost savings by contracting out pupil transportation services. We are fearful that one unintended consequence of the legislation may be to remove incentives for school districts to consider contracting for these services if by keeping such services in-house the costs of compliance with various federal requirements can be avoided to some degree.

Such an outcome would be sharply at odds with the burgeoning wave of privatization that is realizing for financially-strapped school districts significant savings, and could disrupt the level playing field our industry has worked so hard over the past decade to achieve. We urge that attention be given to this concern as the debate proceeds. At the very least, any CBO analysis should also include some assessment of impacts on present and future competition for provision of services. If local governmental entities, such as school districts, are to be absolved of responsibility to comply with new federal requirements, then certainly equity and competition demand that like treatment be extended to the private sector.

We stand ready to work with you and your staff on possible remedies to this problem.

Please feel free to contact Peter Slone at NSTA's governmental relations firm, Gold & Liebengood, 202/639-8899 and he would be pleased to provide further assistance. NSTA remains hopeful that this legislation becomes the law of the land and that these unintended consequences can be avoided. Thank you for your careful attention to this issue.

Sincerely,

NOEL BIERY,  
NSTA President.

NATIONAL SCHOOL  
TRANSPORTATION ASSOCIATION,  
Springfield, VA, January 17, 1995.

Hon. JOSEPH I. LIEBERMAN,  
U.S. Senate, Dirksen Office Building, Wash-  
ington, DC.

DEAR SENATOR LIEBERMAN: The National School Transportation Association (NSTA) applauds your efforts to bring common sense and equity to the debate on unfunded federal intergovernmental mandates. In particular, NSTA enthusiastically supports an amendment you intend to offer which would ensure that nothing in the procedural and fiscal protections established by the bill have the effect of limiting the ability of private sector service providers to compete for the ability to meet the needs of many state and local governmental entities such as school districts.

NSTA is the national trade association for the owner-operated component of the nation's yellow school bus fleet. We have been a leader in advocating safety advances and make a significant contribution to the nation in helping transport some 24 million school children each day. The State of Connecticut has a long tradition of contractor-provided school transportation services with over 90 percent of that state's yellow school bus fleet owned and operated by a host of transportation providers, many of which are small businesses. By contracting out such services, school districts have come to realize more cost-effective and reliable service. Today, NSTA members operate some 110,000 school buses in fifty states.

We are fearful that if the effect of the legislation under consideration is to scale back to some degree the need for school districts to comply with important environmental, workplace, safety and other new federal requirements, then our nation's school children may well be imperiled. Further, by subjecting school districts which operate their school bus fleets to a lesser standard than their private sector counterparts, the Congress would in effect establish a dangerous double standard and remove incentive for privatization of those services. At a time when many school districts are financially-strapped and facing further budgets curtailments, we should promote rather than impede their ability to contract for services where savings could be realized and safe and reliable service ensured.

Thank you for your leadership role on this important competitiveness issue. We are hopeful that through your thoughtful persistence the nation can avoid unintended consequences from this legislation which raises serious safety and fair market competition issues.

Sincerely,

NOEL BIERY,  
NSTA President.

Mr. LIEBERMAN. Mr. President, at the same time, by exempting the smokestacks and discharge pipes operated by State and local governments from complying with future environmental standards, S. 1 would force a wide range of businesses to bear even

more of the burden to meet overall clean air and clean water goals. For example, if publicly owned incinerators or landfills do not reduce emissions contributing to smog, carbon monoxide, and particulates, private sources of pollution would have to do more in order to meet the cleaner environmental goals.

Let me illustrate, if I might, in a little greater detail how this legislation could hurt private businesses. States and businesses advocate water pollution laws that establish an overall pollution loading limit for individual bodies of water. That has been something that the sources of pollution, potential sources, have asked us to do. We have done it. This is based on the notion that each body of water is best managed for cleanup based on a scientific understanding of what that river or lake or bay can withstand in the way of pollution, identifying the sources, and then assigning the source's limits based on what they contribute. This is very fair, and it creates a cooperative effort to clean up a body of water. All sources of pollution, whether industry or sewage treatment plants operated by cities, get divided up for that pollution limit; so much for this sewage treatment plant, so much for that factory, et cetera, et cetera. But if publicly owned wastewater treatment plants are permitted to discharge, for instance, more nitrates into our rivers and bays, well, who are we going to have to turn to to make up the difference to reach the standard, the threshold, the goal that we have for cleaning up that water? Is it going to be the factory along the water, the rancher, or the farmer who is using fertilizer upstream? Not only would S. 1 hurt business under this scenario, it would usurp State and local efforts to clean up their rivers, bays, and lakes, based on sound science and local control.

Mr. President, those of us who represent States which, in some part at least, are victims of pollution from upwind or downstream are particularly vulnerable and feel so under this proposal. Let me be very specific. If municipal sewage plants in New York will be relieved of future requirements to comply with water pollution standards because the Federal Government has not paid 100 percent of the cost of that cleanup, Connecticut industries and residents will bear a much greater burden if we are ever going to clean up Long Island Sound.

In fact, it would be impossible to ever clean up the Sound if New York City sewage treatment plants were exempt from water pollution control requirements. New requirements for more flexible approaches to cleaning up our rivers, coast lines, lakes, and estuaries focus on watershed-based planning in which wastewater treatment plants, industrial discharges, and farmers all work together to meet the loading tolerance of a particular body of water. These are zero sum gains. If the re-

quirements on public sources of water pollution go down, the requirements on the private sources will go up and, believe me, they will be costly and burdensome.

Connecticut also has one of the most severe air pollution problems in the country, because we are the victims of dirty air transported from upwind States. Emissions of sulfur dioxide and oxides of nitrogen from powerplants in upwind States, including Midwestern States, contribute significantly to our smog problem and are responsible for the acid rain that falls on our State and many States throughout New England. If powerplants that may be operated by a public entity are exempt from future requirements under the Clean Air Act, Connecticut's industries will bear a greater cleanup burden, and the plain fact is—and it is a sad fact—that our citizens will breathe dirtier air and they will be sicker. I share the concerns raised about the potential negative impact of unfunded mandates legislation on Connecticut's severe air pollution problems, particularly dirty air transported into Connecticut from other States, by my colleague Congressman CHRIS SHAYS during the markup of House unfunded mandate legislation in the House Government Reform and Oversight Committee. The same points he raised apply to S. 1.

Mr. President, let me provide just some general statistics relating to the unfair burden that may be inadvertently created by S. 1. In its 1992 report to Congress, EPA examined the sources of pollution in estuary waters. Of the 8,000 square miles of impaired estuarine waters, municipal sewage treatment plants affect 53 percent of impaired miles, and urban runoff/storm sewers affect 43 percent of those impaired miles. Obviously, if we allowed some or all of these sources to be exempt from future water pollution requirements, the resulting burden on industries contributing to the pollution would rise dramatically if we are to succeed in cleaning up our estuaries.

Mr. President, I find it particularly ironic that we are considering this legislation right after we passed S. 2, the Congressional Accountability Act, because we finally have managed to impose the discipline of our laws on ourselves and now we are talking about a huge potential loophole in applying our laws to State and local governments.

In a way, I fear that this act, S. 1, might, if it is passed as it reads now, come to be known as the State and Local Government Unaccountability Act of 1995.

There are other consequences of the presumption in S. 1 that could result which are perverse and clearly unintended. A town that operates its own hospital and incinerator would, in effect, be receiving tax dollars from a town where there was a private incinerator and hospital. In other words, it is unfair to the taxpayers who pay for the disproportionate burden.

Mr. President, finally, I am also concerned about the potential legal issues raised about this point of order that is created in S. 1. In a letter to Senators ROTH and DOMENICI, dated January 8, 1995, seven professors of law contend that the procedure in this point of order may create problems under article 1, section 1 of the Constitution. Although it is settled that Congress may delegate to executive agencies the power to devise policy to meet congressional objectives, Congress must establish an intelligible principle to which the executive must conform. These professors state that the procedure in S. 1 might go far beyond such delegations because Congress could expressly authorize administrative agencies to amend or temporarily nullify statutes which could be held to be an unconstitutional attempt to delegate legislative powers to executive agencies.

I do not know if this analysis is correct, but I am concerned about it. I am concerned about whether we have assurances that agencies will be fair and evenhanded when they determine how to reduce the scope of the mandate and whether S. 1 contains adequate safeguards in that regard.

Mr. President, this amendment would simply narrow the scope of the second point of order in S. 1. It leaves intact most of S. 1. In fact, it leaves intact the 2 points of order that would lie against the largest costs on State and local governments of Federal mandates. They are all still left intact. It would still ensure, that is to say, that a point of order would lie if we do not have full information about the costs of mandates to State and local governments. It would still ensure that the committee report state whether there is funding for those mandates. It would still contain the second point of order for mandates that relate specifically to State and local governments, and are not part of trying to solve a broader national problem.

But for those mandates that apply to State, local, or tribal governments and the private sector, it would close a loophole that is unfair to the private sector and which would potentially exempt State and local governments from a whole host of environmental health and safety laws. And it would have, therefore, severe consequences, in my opinion, for the health and safety of the American people.

So let us pass a good bill here, Mr. President. I want to vote for S. 1, but I just feel that, in its current state, it goes too far. Let us pass a bill, not a Pandora's box filled with unintended consequences.

Again, I say, if the American people knew about the impact of this legislation, it would have not only unintended consequences but undesired consequences, consequences which the American people clearly do not desire.

Mr. President, I urge adoption of the amendment and I yield the floor.

Mr. KEMPTHORNE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. KEMPTHORNE. Mr. President, I would like to inquire of the sponsor of the amendment if it would be possible at this time to enter into a time agreement so that we could have some predictability on when the next vote may occur. Would an hour and a half, equally divided from this point, be in agreement with the Senator?

Mr. LIEBERMAN. Mr. President, I suggest the absence of a quorum so Senators on our side can consult.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KERRY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KERRY. Mr. President, I will just ask my colleagues if it might make sense if one of us kept going while they confer. This Senator has no problem with a time agreement. If they want to discuss the time agreement, that will be fine, but I think we might use the time advisedly.

Mr. President, I first want to all start by congratulating the Senator from Connecticut and also the Senator from Michigan, Senator LEVIN, for their efforts on this bill. I think the Senator from Connecticut has done an outstanding job of laying out in great detail the problem here, and I am not going to repeat all that he has said.

I might say, though, I saw that the distinguished majority leader was on the floor a moment ago. I heard him prior to that say to the Senate, chastising us for not proceeding faster on this bill, that the amendments that have been brought have not been relevant to this bill.

I might say to the distinguished majority leader and to the other side that the pending amendment before the Senate right now, I believe, is the Gorton amendment; is that correct?

The PRESIDING OFFICER. The pending amendment is the Lieberman amendment to the Gorton amendment.

Mr. KERRY. I believe, if I am correct, the Gorton amendment is on national historical standards; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. KERRY. I simply point out to my colleagues that this is an amendment to a Republican amendment, and the Republican amendment which consumed most of yesterday afternoon has nothing to do with this legislation. I happen to support the Republican amendment.

So the Republicans have exercised their right of coming to the floor in order to attach to this legislation something they thought was important and, in fairness, that right ought to also lie, as it always has through the centuries of the Senate, with the other side. So I think it is inappropriate at

this point, only several days into this, to be complaining about the fact that there are some amendments that some deem to be relevant but not germane, or germane but not relevant, whichever the case may be.

The Senator also asked somebody to look them in the eye and say they want to pass this legislation and they are not delaying it. I will look them in the eye if they are here and I will tell them I want to pass this legislation and I am not delaying. I will say it again: I want to pass this legislation and I am not delaying.

It seems to me that we ought to be able to work out among Members an agreement on a number of amendments that are relevant to this and, hopefully, proceed forward in a way that is intelligent. Let me emphasize "intelligent."

I remember the majority leader coming to the floor many times last year saying to America "We are not delaying. We are just trying to save America from bad legislation." Or, "We are trying to save the country from something that goes too far." Or, "We are trying to save the country from legislation that we think can be improved." That is what we are doing, not saving it from a bad idea but making a good idea better.

We support the notion that we need to reevaluate unfunded mandates. Mr. President, we should not in the process of passing a bill on unfunded mandates do so in an irresponsible way that does not allow for fixing what we all know in the legislative process is the capacity of one word misconstrued or one word misplaced, to have an unintended consequence.

Moreover, I can remember in 1986 when we passed the Tax Act here. I went to Senator Russell Long because we were concerned about a particular component of that bill with respect to real estate. He said, "Don't worry about that. We will pass that now and come back and fix it." Being new to the Senate, I believed him. I would not believe that statement today. The fact is that we did not come back and fix it. Over the years, the results produced, I think, terrible unintended consequences of devaluing certain amounts of property in America with unintended consequences to banks, to the savings and loans, and to a host of economic interests in this country.

Now, we ought to do a better job, Mr. President, of evaluating the cost of programs. It is irresponsible for the Senate to pass a program mandating actions by States or local communities of which we do not understand the implications.

I think the days have long passed by which Americans have come to conclude that they want to have a better sense of weighing the value of a particular environmental concern or a particular health concern against the totality of cost or the rate at which that cost might be imposed on them.

I also ask my colleagues to remember back to the 1960's and 1970's when a river in Ohio used to catch fire regularly: the Cuyahoga River. In response to rivers that caught fire and toxic and hazardous waste dumps which we knew were causing cancer and killing people in this country, we passed a set of standards.

A mandate is not just a mandate. It is not just a mandate to spend some money. It is our collective view as a Nation of something to which we want to aspire. It is our view of a goal or a standard by which we want to live. So when President Bush came to the Congress and joined the fight to protect the environment and said we ought to have clean air, he was expressing the hope and desire of millions of Americans to be able to breathe air that is clean. The result was Congress passed a notion of how we wanted to live, of a standard.

Subsequently, in the 1980's, particularly under President Reagan, there was an enormous shift in the revenue versus expenditure relationship. We all remember the promises made back in the early 1980's—if we cut taxes and raise defense spending we were going to churn up the engine of this economy and we were going to ultimately have increased revenues.

Well, we took the debt of the Nation from \$1 trillion to over \$4 trillion in the span of a decade. It was that diminution of the Federal partnership throughout the 1980's that has begun to create this new rush to reevaluate Federal mandates.

What happened during the Reagan era was the Federal Government left the mandate in place because it expressed the will of the people, but it took the money away. That is what has brought Members here. A perpetual process of the reduction of funding to States and local communities, leaving in place a series of mandates and, indeed, I might add, adding some mandates.

Most of the mandates that we are currently operating under were put in place in the 1960's and 1970's—not the 1980's—with the primary exception being the Clean Air Act. But I do not think most Americans have decided they do not want to breathe clean air. I do not think most Americans have decided that they want their kids living next to toxic waste dumps, and they are ready to have them get cancer and die. I do not think most Americans have decided that they are prepared to have a whole erasing of the standards of safety on our roads, on the standard of safety that we know have saved lives. I do not think that is what they are saying.

Now, if this bill, unintentionally—and I insist, unintentionally—if this bill not as a matter of purpose but as a matter of unintended consequence, is going to have the impact of diminishing the capacity of people in this country to have those higher standards of health or safety, then I think people

would think twice. If this bill unintentionally creates a disadvantage to the private sector, I think people would say "Wait a minute, is that really what we are meaning to do here?"

Now, I am 100 percent in support of our requirement that we evaluate the cost of Federal requirements to both the public and private sector. We ought to evaluate how we spend our money. In that evaluation, Mr. President, we also ought to consider the full measure of the relationship between the Federal Government and the States and localities. For instance, we allow the States and localities to benefit by virtue of a \$66 billion a year deduction on State and local government income taxes and other tax deduction.

In effect, part of the Federal-State partnership and relationship is our payment of 40 percent of higher income people's State and local taxes. Is that taken into account in this mandate bill? Is that taken into account in the requirement of the commission to evaluate Federal mandates? The answer is "no." That is an unfunded mandate, in essence, on a whole lot of low-income people that do not deduct, because that is a benefit that only goes to people who deduct. If you itemize your taxes and you deduct you get the benefit.

So, in effect, the Federal Government is paying for 40 percent of the local and State taxes of upper-income people as a consequence of our allowing that deduction. There are a whole set of tax expenditures, similarly, in the Federal-State relationship for which we are assuming the burden.

Now, I say this as background to this particular amendment that the Senator from Connecticut and the Senator from Michigan are joining together and bringing to the floor, because it underscores the complexity of this relationship. It underscores the fact that if we take one piece of this broad mosaic of our economy and we suddenly rip it off, we may have a whole set of consequences that impact other people. And we are just respectfully suggesting, in an amendment that is really very narrow in scope, in a very limited amendment, we are suggesting that there is a way for the Senate to legislate intelligently and avoid an unintended consequence.

Now, what is that unintended consequence? Just very quickly to go back to my colleague from Connecticut and his excellent description.

Mr. President, we have a very broad definition in here of a Federal mandate. The definition we have in this legislation covers all State and local activities including activities where there is a governmental role, such as in administering any appropriate program but also where there are activities that are not of a governmental nature. So we are saying in this bill, any Federal program mandated that covers an activity where the activity or entity acts in a governmental way or in non-gov-

ernmental functions we are going to apply this bill.

If you do that, Mr. President, you are covering activities where the Government entities are acting as employers and where they compete in the marketplace with the private sector.

An example of that would be a landfill or an incinerator. You could have a local government-owned landfill or incinerator operated in competition with a private landfill or incinerator operator. As it is currently written, this bill will set up a different relationship between the public entity and the private sector. It will exempt the public entity from having to live up to a Federal mandate, but it will not exempt the private entity from that same mandate.

So we will continue to say, as I think the American people want to, that with respect to the environment or health or public transportation safety or workplace safety, we will continue to say, "You, the public entity, are exempt unless we have decided to pay 100 percent, and, you, the private entity can continue to operate under the burden of the Federal mandate," which means that the public entity has a lower cost of doing business, which means we have advantaged them in the private sector.

I received a letter from BFI, which is Browning-Ferris Industries. We all know them. I know they have written a letter to my colleagues subsequently retracting some of what they said in this letter, but not retracting the substance, which is what I want to emphasize here. What they said to me was:

DEAR SENATOR KERRY: \* \* \* Without legislative language along the lines of the enclosed, unfunded mandates legislation—even if it is prospective only—

And I underline.

could have the effect of subjecting the private sector to a regulatory (and cost) burden that the public sector would not face absent Federal funding. The enclosed language would merely have the effect of assuring a level playing field between the public and private sectors in those instances where there is some form of competition between the two (hospitals, transit, higher education, waste management, et cetera).

This letter was dated December 22. On January 11, they wrote to Senator KEMPTHORNE—I think it is probably in response to concern about the other—and they said:

We expressed our views at a time when one of our concerns was that unfunded mandates legislation could have a retroactive effect. It is evident that S. 1 has a prospective effect only, which we understand was your intent all along.

After reviewing the legislation that will be considered on the floor and after discussions with your office, we recognize that among your objectives for S. 1 is creation of a favorable climate for the private sector. In fact, S. 1 seeks creatively to address the concern in some quarters that unfunded mandates legislation could disadvantage the private sector where public-private competition takes place. Moreover, after many years of experience in working with you—most of them prior to your tenure in the Senate—

BFI is convinced that your dedication to free enterprise is unsurpassed.

They go on to say:

\* \* \* we are pleased to strongly support S. 1.

I am not holding them out as not supporting it, but they nowhere in their second letter—nowhere—address the concern they express in their first letter. They simply say that “we understand that it is not going to be retroactive.” In their first letter, they said, “even if it is prospective only.”

The fact is that by taking it out of retroactive, you are not diminishing the capacity for future unfunded mandate requirements to create this unlevel playing field, Mr. President.

What would happen is, you would have these public entities that engage in the hiring of employees and compete with the private sector, they would be exempt from obeying worker protection laws, like the Parental and Medical Leave Act; they would be exempt from the environmental health and safety requirements which the rest of the private sector has to comply with; publicly owned incinerators would be exempt from air pollution standards; school buses, as my colleague from Connecticut has pointed out, would be exempt from safety standards; cars owned by local government could be exempt from emission standards; State-owned liquor stores could be exempt from standards of product that apply to privately owned stores; publicly owned hospitals could be exempt from requirements for the proper disposal of medical waste.

I do not think anybody in the Senate wants to do that. I really do not believe that my colleagues think that is good policy or that that is what this bill is supposed to do.

I know my colleague is going to stand up and he is going to point to language added to S. 1 calling for committee report language. And in his language in the report he says that the evaluation has to include a description of the activities taken by the competition to avoid any adverse impact on the private sector of the competitive balance between public and private sector.

However, that is the report. That is not substantive. It is not a requirement nor is it an exemption. What that language does is, in effect, acknowledge that this is a problem. It says that you have to go out and make this evaluation, which means you are going to have this imbalance in the marketplace, you are going to have to go make the evaluation, you are going to have a point of order lie with respect to it, as my colleague has said, then you have to come back and jump through hoops of points of order and try to pass something to redress what any free enterprise capitalist should not want to have happen in the first place.

In effect, if you pass this bill as is, it is a kind of socialism because what you are doing is advantaging the Government against the private sector. You

are, in effect, voting to say we are willing to take an unfunded mandate away from the public entity and we are going to leave it on the private entity. That does not make sense to this Senator. And for the life of me, I cannot understand why so many folks on the other side of the fence are so sanguine about this reality of the imbalance.

I asked them to look at the language. I asked them to measure it. This is not an exaggeration. I do not think the Senator from Connecticut has anything remotely resembling a reputation that is any less than diligent. He is one of the strongest advocates in the U.S. Senate for the interests of competition and business and the private sector. I think if you take a hard look at this, one has to be concerned about this relationship.

So we are here, respectfully suggesting to our colleagues that the goal of making the judgment about expense is absolutely worthy, but to undo the partnership completely in a way that imbalances this relationship between public and private is not worthy of this legislation and it is not what we ought to be seeking to do in the U.S. Senate.

I assure my colleagues, if this happens, we are going to be back here revisiting the quagmire of competition or of imbalanced competition that we will have created as a consequence of that.

Again, I say, I applaud the work the Senator KEMPTHORNE and Senator GLENN and others have done in trying to create a responsible climate of evaluation of costs before we impose them. But there is a responsibility in the Federal partnership to try to be fair. I think that, regrettably, we will not have met that standard unless we try to adopt some change within this legislation.

Mr. KEMPTHORNE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

#### UNANIMOUS-CONSENT AGREEMENT

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent that time prior to a motion to table the pending Lieberman amendment be as follows: 45 minutes under the control of Senator LIEBERMAN; 20 minutes under the control of Senator KEMPTHORNE; and 30 minutes under the control of Senator LEVIN; that following the conclusion or yielding back of time, Senator KEMPTHORNE, or his designee, be recognized to make a motion to table the Lieberman amendment.

The PRESIDING OFFICER. Is there objection?

Mr. LEVIN. Reserving the right to object—and I do not expect to object—Mr. President, I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KEMPTHORNE. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Ms. SNOWE). Without objection, it is so ordered.

Mr. KEMPTHORNE. Madam President, while this unanimous-consent request is being considered on this side of the aisle, I suggest it would be very appropriate for the chairman of the Governmental Affairs Committee to go ahead with his remarks concerning this amendment.

The PRESIDING OFFICER. The Chair now recognizes the Senator from Delaware.

Mr. ROTH. Madam President, I strongly oppose this amendment. Its effect would be to exempt from the requirements of this act those Federal mandates involving State and local government activities, when the private sector is also engaged in the same activities. Now, this exclusion would seem to appeal to notions of fairness but in fact would effectively gut the bill.

In truth, there is very little that State and local governments do that no one in the private sector is also engaged in doing. This is especially true since proponents of the amendment include those instances where one city franchises a private contractor to render a service for which another city might directly use its own employees.

Trash collection and disposal is one example sometimes cited. Waste disposal companies are said to compete with the public sector in that they try to convince governments to contract out such service and therefore have to show that they can do it cheaper than government.

It has been argued that Federal subsidies to State and local governments would in that type of instance upset some competitive balance.

But other than enacting laws, everything a city or a State does could be covered by such competitiveness principles, particularly as more and more governments are moving to contract out a broader range of functions and services.

Let me give a few examples. Police departments. Police departments compete with private security guards and private residential patrols.

Mr. KEMPTHORNE. Will the Senator yield?

Mr. ROTH. I will be very happy to yield.

Mr. KEMPTHORNE. I thank the Senator for that courtesy.

Madam President, I again renew my unanimous-consent request. If necessary, I will restate it.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. KEMPTHORNE. I thank the Chair. I thank the Senator from Delaware.

Mr. ROTH. Madam President, as I was saying—

Mr. LEVIN. Madam President, if the Senator will yield again, is the Senator from Delaware—



Mr. ROTH. I will be happy to yield without losing my right to the floor.

Mr. LEVIN. Is the Senator speaking under controlled time?

The PRESIDING OFFICER. The time is now under control. The question is yielding.

Mr. KEMPTHORNE. Madam President, the Senator from Delaware is on my time. I will yield 10 minutes to the Senator from Delaware.

Mr. KERRY. Madam President, I ask if the Senator will just yield for a question.

The PRESIDING OFFICER. Will the Senator yield?

Mr. ROTH. I would like to complete my statement.

As I was saying, fire departments compete with private, for-profit fire departments such as used by Scottsdale, AZ; public building inspectors compete with privately contracted building inspection services such as used by Sunnyvale, CA, during building booms; public road construction crews compete with private construction contractors, and even with private toll roads such as is being built in northern Virginia; public schools and community colleges compete with proprietary trade schools; public hospitals compete with private hospitals; city attorneys compete with private, fee-for-service attorneys such as are used by many towns too small to have a full-time lawyer on staff; public libraries compete with bookstores and video rental stores. Many libraries now lend movie videos. Public swimming pools and golf courses compete with private facilities and country clubs; municipal revenue collection departments compete with private collection agencies such as those that will collect on overdue parking tickets for a percentage of the revenue; city computer operators and IRM departments compete with private-sector computer service companies, such as EDS, which will contract to do a city's payroll; and municipal buildings and ground maintenance crews compete with private-sector maintenance companies.

In other words, Madam President, it is not just a few selected areas where government and the private sector render the same or similar services. Much more than just pollution control and waste disposal is involved. This amendment would cover virtually every activity of State and local government.

This is why the distinction between public-sector and private-sector activities ought to be decided on a case-by-case basis. In fact, the legislation does acknowledge that there may be occasions when such issues of competitiveness are of legitimate concern. The bill states that committee reports shall explain how the matter has been addressed by the committee. Then Congress can judge how best to deal with that individual instance where a real problem might exist. Through the use of the waiver provision of S. 1, we can

decide that funding a particular mandate for the public sector is unfair to the private sector.

Madam President, I think this is a far, far better way to deal with this issue, and that is why I strongly urge my colleagues to reject this amendment. As I stated, its adoption would effectively gut the bill. The exception would swallow the whole.

Madam President, I yield back the remainder of my time. I yield the floor.

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Ohio.

Mr. GLENN. Will the Senator from Connecticut yield me 2 minutes off his time?

The PRESIDING OFFICER. Will the Senator from Connecticut yield to the Senator from Ohio?

Mr. LIEBERMAN. Madam President, I yield as much time to the Senator from Ohio as he needs.

Mr. GLENN. I just need a couple of minutes. I want to be added as a cosponsor on this legislation.

I do not see how the Government can possibly come down on the side of a government entity that is in competition, in effect, with a private industry, whether it is waste management, whether it is water provision, whether it is sewer provision, whether it is—whatever—and come down and say we will partially federally fund or totally federally fund whatever the mandate is with regard to the public entity and give that competitive advantage to the public entity in competition with a private industry, whether it is electricity or sewer or whatever the provision might be.

So I think the amendment obviously makes sense to me. I ask to be made a cosponsor of the amendment and yield the remainder of my time.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Chair recognizes the Senator from Connecticut.

Mr. LIEBERMAN. Madam President, I yield myself as much time as I need.

I have just a brief statement to thank my friend and colleague and leader from the Governmental Affairs Committee, the Senator from Ohio, for his cosponsorship of this amendment. He has been a leader in the whole crusade to force the Federal Government to confront the costs of its enactments on State and local governments and on the private sector.

He is a cosponsor of the underlying bill, S. 1, and so I am particularly heartened and appreciative that he has agreed to cosponsor this amendment, which, in my opinion, does not go to the heart of this measure. It goes to the margins, which is its application and applicability.

It is a simple amendment which slightly narrows the definition of the term "Federal intergovernmental mandate" so it does not include a provision "in any bill, joint resolution, amend-

ment, motion, or conference report that would apply in the same manner to the activities, facilities or services of State, local or tribal governments and the private sector."

The Senator from Ohio has stated his concern about the unintended consequence here, that this will put disproportionate burdens on the private sector in excusing the public sector. Again, I thank him for his leadership on this issue and for his support.

I hope in the end I can join him in supporting S. 1 by itself. I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Idaho.

Mr. KEMPTHORNE. How much time do we have remaining on our side, Madam President?

The PRESIDING OFFICER. The Senator has 15 minutes remaining.

Mr. KEMPTHORNE. Madam President, I yield 5 minutes to the Senator from Georgia.

The PRESIDING OFFICER. The Chair recognizes the Senator from Georgia.

Mr. COVERDELL. Madam President, I thank the distinguished Senator from Idaho for the opportunity to respond to this amendment by the good Senator from Connecticut. When the Senator described this as a simple amendment it took me back to my days in the State legislature. That was the first signal that you had trouble. In effect, this amendment renders this legislation that we have been discussing for days upon days, and was in preparation for almost 2 years, moot. That is the effect of the simple amendment.

It is simple in the context that it makes this entire effort a moot effort, because by saying, as this amendment does, it is not an unfunded mandate if it in any way affects the private sector, it has the effect, it literally would say, there are no unfunded mandates.

The curiosity about this for me is that this amendment is being offered in the nature of being a defense for the private sector. I have always found it curious, when our membership talks about its support of the private sector, only to find that the private sector itself expresses itself quite differently.

I have before me a letter dated January 3, 1994, from the National Federation of Independent Business, who support this legislation without this amendment.

I ask unanimous consent it be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

NATIONAL FEDERATION OF  
INDEPENDENT BUSINESS,  
January 3, 1994,

Hon. PAUL COVERDELL,  
U.S. Senate, Washington, DC

DEAR PAUL: On behalf of the over 600,000 members of the National Federation of Independent Business, I urge you to vote in favor



of S. 1, the unfunded mandates legislation, when it is considered by the Senate in January.

Unfunded federal mandates on the states and local governments end up requiring these entities to raise taxes, establish user fees, or cut back services to balance their budgets. Small business owners are affected by all of these actions.

Between 1981 and 1990, Congress enacted 27 major statutes that imposed new regulations on states and localities or significantly expanded existing programs. This compares to 22 such statutes enacted in the 1970s, 12 in the 1960s, 0 in the 1950s and 1940s, and only two in the 1930s. The Congressional Budget Office estimates that the cumulative cost of new regulations imposed on state and local governments between 1983 and 1990 was between \$8.9 billion and \$12.7 billion. These include environmental requirements, voters registration requirements, Medicaid, and others.

It was not the states and cities who paid roughly \$10 billion in unfunded mandates during the 1980s; it was taxpayers—small business owners as well as everyone else. In June 1994, a poll of all NFIB members resulted in a resounding 90% vote against unfunded mandates.

I urge you to strongly support S. 1.

Sincerely,

JOHN J. MOTLEY III,  
*Vice President,  
Federal Governmental Relations.*

Mr. COVERDELL. I also have a letter before me from the National American Wholesale Grocers Association, a group with a very large membership across the country, who support the legislation without the amendment.

I am not going to enter all of these into the RECORD.

We have a letter in our hands from the U.S. Chamber of Commerce which represents hundreds of thousands of businesses across the country in support of the legislation without the amendment. And the list goes on and on and on of people who actually are out there meeting a payroll, running a business, who have supported the legislation managing unfunded mandates as offered by the Senator from Idaho.

Why the incongruity? Why would we have people here on the Senate floor who are suggesting that we have to have an amendment such as this to protect the private sector and yet we have this outcry from the private sector saying pass the bill as it is?

The answer is very simple. The private sector is already paying the effects of unfunded mandates. If you own a piece of property in any city, county, or other jurisdiction across this land of ours, about a third—depending on the type of jurisdiction—about a third of that property tax bill that you are paying every year is directly related to Federal orders—mandates—with no check to pay for them.

I spoke about the motor-voter bill the other morning, which cost my State \$6.6 million in the first year and then \$2 to \$3 million thereafter. That is Federal folly. It is totally unnecessary in my State. Registration was being handled very adequately.

So we have a policy wonk in Washington trying to establish what the policy on a very local question ought

to be and ordering that it be the way we think it ought to be in Washington and then sending the bill to the local government. That local government bill goes right down, ultimately, to an impact on property taxes. And that is why we have these letters from the U.S. Chamber of Commerce. That is why we have the letters from the National Federation of Independent Business, and Grocers, et cetera, et cetera. Because they are bearing the burden.

Governments do not pay taxes. People and businesses and families and corporations, they pay taxes. They are the direct recipients of the burden of the last 10 to 15 years of unfettered orders from the Federal Government without any payment to cover it.

Madam President, I will just say one more thing and I will yield my time back to the Senator from Idaho. In the final analysis, the other aspect of the legislation that is very important to note is that, if the impact is greater than \$200 million on the private sector, CBO is required to publish that knowledge and we in the Senate would have the opportunity to understand the impact and by a majority vote, if the consequences create a massive destabilization of fair competition across our country, we have the prerogative—and for the first time, I might add, the knowledge—to understand what we are doing and can act accordingly.

This amendment makes the measure moot. The private sector does not concur with the suggestions that they need this type of protection. They are for the measure without the amendment. And the reason is because they pay for the unfunded mandates in the end.

I think it is time we moved on and got to this final measure and gave America and all America's mayors and county commissioners and school superintendents what they have been asking for for nearly 2 years.

I yield the remainder of my time back to the Senator from Idaho.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Idaho.

Mr. KEMPTHORNE. I thank very much the distinguished Senator from Georgia, and I reserve the remainder of my time.

The PRESIDING OFFICER. The Chair recognizes the Senator from Connecticut.

Mr. LIEBERMAN. Madam President, I will yield in a moment to my colleague from North Dakota, but I want to say in response, on my own time, to one of the statements made by the Senator from Georgia, that the reference to the Motor-Voter Act is in point. I want to reassure him that under this amendment, the motor-voter law would still have to pass the two hurdles, be subject to the two points of order, and could be suspended in its impact if the Federal Government did not pay the costs of the State's implementing it

because it is a unique governmental function.

The State and local governments, in implementing the Motor-Voter Act are not competing with any private sector businesses. This is a delegation of responsibility that we put on the States uniquely unless, under the terms of the bill which are generally part of S. 1, there was an estimate that it would not cost \$50 million in any given year of its implementation.

So the example is a good one to indicate exactly how S. 1, if our amendment were adopted, would impact mandates, mandates uniquely on State and local governments such as motor voter or the large most costly mandates that I indicated earlier, and referenced specifically earlier, would still be faced with the two hurdles. That is quite different from mandates, such as the Safe Drinking Water Act, which are aimed at solving a national problem, guaranteeing people pure drinking water regardless of whether they get it from public or private sources.

Madam President, I yield now 5 minutes to my friend and colleague from North Dakota [Mr. DORGAN].

The PRESIDING OFFICER. The Chair recognizes the Senator from North Dakota.

Mr. DORGAN. Madam President, thank you very much. I thank my friend from Connecticut.

The issue of the private sector is one I am well familiar with. Senator DOMENICI and I offered the legislation last year that became the basis for the language in last year's bill and also became the basis for the language in this year's bill on the private sector. We are the ones that indicated that we wanted the private sector included. If there is an aggregate cost exceeding \$200 million that is going to be imposed on the private sector as a result of a mandate, my own view was God bless the mayors and the Governors. They certainly have legitimate complaints about mandates. But what about the mom and pop business on Main Street? What about the private sector folks trying to make a living? What about the mandates we impose on them? Why should not there be a comparable requirement with respect to the private sector?

I am pleased to say with the cooperation of the Senator from Idaho and active work on behalf of a lot of folks here that that was included. And that makes this bill a better bill. We are not just concerned about State and local governments. We are concerned about them and addressing their interests. But we are also concerned about the businessman and the businesswoman all across this country on Main Street who also have to respond to mandates.

There is only a point of order here, not funding with respect to the private sector, but a point of order that exists. We are debating a law today or proposed law. One of the interesting laws in Congress is a law of unintended consequences. It springs up between every desk and in every crevice and every

day in every way, the law of unintended consequences.

I will tell you what you will hear about this law if you do not pass this amendment. You will hear about that law immediately if this amendment does not pass. The first time that you have a State or local government engaged in an enterprise in which the private sector is engaged in the same enterprise and a mandate is moving through the Congress, what you have is a circumstance where the Congress will pay for the cost of complying for the mandate for the local level of government and the private sector competitor out there has said you have the same mandate but which we are sorry, partner, you are on your own. You have created a competitive unfairness by definition, end of argument. You have created unfair competition.

I heard the last speaker talk about the surprise about the private sector. There is nothing about the intent of this amendment that in any way erodes or undermines the provisions in this bill that address the private sector. I know because I helped write it. Nothing that is proposed by my friends with this amendment would undermine those provisions of the law.

The only thing they have tried to do is say where you set up conditions in which you will have competitors as between levels of government and the private sector, we shall not have circumstances in which a point of order will lie if you do not fund it for the government but ignore the private sector. That is all the Senator from Connecticut is trying to do, and it is why I am pleased to cosponsor it and pleased to support it.

It makes eminent good sense. I hope after it is thought through and discussed some that the other side of the aisle would decide to accept it. Those who say the private sector does not want this, I will guarantee you this. Anybody in the private sector who is going to be set up for an unfair situation is going to want this as soon as they understand that they cannot compete in that circumstance.

So let me just again end where I started. This bill includes the private sector in a significant and important way. I support that, and I helped write it. I helped make sure it was here.

This amendment does nothing to undermine or erode what we are trying to do for the private sector. In fact, this amendment comes to that part of the private sector that will otherwise have in my judgment a circumstance of terrible unfairness imposed upon it and says we do not want that law of unintended consequences to come from this piece of legislation.

If we do not include this, I guarantee you we will discuss this again on the floor of the Senate. I guarantee you that those who discuss it will not be able to stand up and defend the circumstance that brings it to our attention the next time.

Madam President, I yield the floor.

Mr. LIEBERMAN. Madam President, I thank my friend and colleague from North Dakota. His advocacy for small business, for small farmers, and for common sense is well known and respected in this Chamber. He did in fact help write the bill, in fact strongly supports the underlying purpose of the bill, but also supports the amendment which gives me great confidence to go forward. I thank him for his very eloquent words.

Madam President, I ask unanimous consent that the Senator from Nebraska [Mr. KERREY] be added as cosponsor of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LIEBERMAN. Madam President, I would at this point yield up to 10 minutes of my time to the Senator from New Jersey [Mr. LAUTENBERG].

The PRESIDING OFFICER. The Chair recognizes the Senator from New Jersey.

Mr. LAUTENBERG. I thank the President and the distinguished Senator from Connecticut.

I want to take this opportunity to talk on behalf of the support for this amendment offered by the distinguished Senator from Connecticut, Senator LIEBERMAN, which will exempt from S. 1 all legislation that affects the private and public sectors.

Equally knowing that this amendment is recommended and authored by the Senator from Connecticut comes as no surprise. He is thoughtful. He recognizes from his own experience on the Environment and Public Works Committee, and the things that we have attempted to do for some time now, the need to go to the private sector wherever possible to get the job done, whatever that may be, most efficiently.

So I think this is an appropriate amendment. I am not sure where the controversy lies between the two parties because this amendment by any count really makes sense and it is consistent with the review over the last couple of years, the last several years, to turn, as I said before, to the private sector whenever we can do so.

Just last week, we passed the congressional coverage bill because we said that Congress should be subject to the same laws as everyone else. It would be absurd if only a week later we passed legislation which exempted State and local governments from the laws which applied to the private sector. But that is exactly what S. 1 as currently written does.

Under this legislation, the presumption is that States and local governments will be exempt from requirements that apply to the private sector unless the Federal Government foots the bill for compliance.

At the same time firms operating in the private sector—and there is example after example—I mean private water treatment facilities versus public water treatment facilities, sewage facilities, privately and publicly, but firms operating in the private sector

would have to comply with these requirements, with these standards that are set by perhaps the Federal or the State government even though no one would be helping them to pay the costs of compliance, setting a competitive condition that is contrary to the mission that all of us have these days—that is, to get the job done in the best way possible for the least cost, in the most efficient manner. This is not just a theoretical inequity, it can have real and serious consequences. For example, in many jurisdictions, waste treatment facilities, as I said, are operated by government entities as well as private firms, each with the same obligation.

Under S. 1, the State-owned facility would not have to comply with any new laws designed to reduce pollution, unless the Federal Government pays the cost.

The private-sector competitor, however, would not have any choice. They would have to comply, and they would have to pay.

Consider the case of a research facility in a State university and a private-sector firm conducting similar research. S. 1, as currently drafted, institutionalizes a competitive advantage for the State-run facility and punishes the private-sector enterprise. That is not, I am sure, what the authors intended. But it is the result.

Madam President, many of those who support this legislation recognize the problem and want to fix it. Indeed, earlier in our consideration of this bill, an amendment was adopted which will require committees to consider the disparate impact of mandates and mandate relief on public and private concerns. But while recognizing the problem, that language does nothing to correct it. It does not provide the kind of assurance or consistency which is needed to deal with the problem.

The amendment of Senator LIEBERMAN, however, addresses the problem we all seem to recognize in a meaningful way. Under the amendment of the Senator from Connecticut, State and local officials would have to follow the same Federal laws as everyone else. Our workers and our environment would be protected similarly, and private businesses would have a level playing field.

So I believe this amendment is essential to a fair and equitable unfunded mandates bill, and I strongly urge my colleagues to support it.

I yield the floor.

Mr. KEMPTHORNE. Madam President, I yield 4 minutes to the Senator from Missouri.

The PRESIDING OFFICER. The Senator from Missouri [Mr. BOND] is recognized.

Mr. BOND. Madam President, I thank the manager of the bill. I rise as a very strong supporter of S. 1, the unfunded mandates bill.

I came to this body having served 8 years as Governor of Missouri, and I found that State government budgets were devastated by the costs of Federal

mandates. I also know that they have been devastating in their impact on local governments. Kansas City, MO, finds the one-time cost to the city of implementing all the federally mandated environmental regulations in 1993 was some \$56.2 million. Local governments are seeing their budgets robbed by Federal mandates. State governments find that they cannot utilize the tax dollars they want to, as they believe their voters and constituents want to, because they are preempted by the Federal Government.

I believe this is a good measure. I took a look at this amendment that has been crafted by my good friend from Connecticut. I read it, and it is absolutely stunning in its simplicity. It says that Federal or governmental mandates does not include any provision in any bill that would apply in the same manner to activities, facilities, or services of State and local or tribal governments and the private sector.

Madam President, that wipes out a tremendous sector of where the Federal mandates hit the State and local governments. That is not just a loophole big enough to drive a truck through, that is a loophole big enough to push this whole Capitol through.

Motor-voter, as mentioned by my colleague from Connecticut, may be one of the few areas that would not be exempted. But all of the other laws that impose the burdens on State and local governments would be wiped out. Is this an automatic requirement that we fund State governments and local governments in competition with the private sector? No. It simply says that you have to consider that; you can waive that. There is no requirement that we cannot change by a majority vote—and that will be brought to the attention of this body—if there is an impact on governmental and private-sector entities.

I have been made almost breathless by the statements of concern for the private sector from some sectors where I have not traditionally heard that support. I hope that those same people will support us in privatization efforts.

Frankly, what we are talking about here is an exemption that is so broad that it will make the basic provisions of S. 1 not applicable in most of the expensive areas where State and local governments are significantly oppressed by Federal Government mandates.

I urge my colleagues to reject this amendment. This bill is vitally needed. Governors, mayors, legislators, Republican and Democrat, across this country, particularly in my State, know that we need S. 1. They cannot afford to have S. 1 with this kind of loophole put in it.

I urge my colleagues to reject the amendment.

I reserve the remainder of my time.

Mr. KEMPTHORNE. Madam President, I thank the Senator from Missouri so much for his perspective as a

former Governor and for expressing the importance of this legislation.

I reserve the remainder of my time.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan [Mr. LEVIN] is recognized.

Mr. LEVIN. Madam President, before I get to the amendment pending before us, I would like to use part of the time that has been allocated to me under this unanimous-consent agreement to pick up kind of where I left off the other day, about the bill itself.

I think, like most of us, that we must address the problem of unfunded mandates. I was a cosponsor of last year's bill. I am a former local official. I understand the impact of a mandate when Washington imposes it on us at a local level. By the way, private business persons understand those impacts, too. So we have to understand that it is not just local and State governments that are concerned with mandates imposed by us. The private sector is concerned with mandates imposed by us, as well. This bill treats them differently.

Sometimes the private sector and public sector are in direct competition; yet, they are treated differently in this bill. I am going to get to that in a minute when we talk about the amendment of the Senator from Connecticut.

I want to talk about, first, some of the problems that I see in the bill itself. First of all, it has been suggested that because amendments are being offered—there are many amendments that are going to be offered, and there are many that are needed, and some of them have already passed—that, therefore, people are filibustering this bill.

I have seen some pretty strange things in this Senate, but I have not seen many people filibuster their own bills. The Senator from Ohio, who is the ranking member of the Governmental Affairs Committee, is the prime cosponsor of S. 1. He was the principal sponsor last year of the bill that came to the floor. He believes vehemently in what is in this bill. He also, very strongly, opposed cloture—Senator GLENN did—because it would have immediately wiped out a whole host of relevant amendments—I emphasize “relevant amendments,” relevant to this bill. They were not technically germane for postcloture purposes, but they were very relevant to the bill, including a substitute which he is considering offering which is closer to last year's bill.

Are we serious that we want to prevent the ranking member of the Governmental Affairs Committee from offering a substitute bill similar to the one he sponsored last year? Is that a fair treatment of minority rights, to tell the former chairman, whose bill this was last year, that now as ranking member he will be preempted because of a technical postcloture rule from offering a substitute to this bill, should he so choose? I think the answer is no.

Therefore, when the Senator from Ohio and the Senator from Nebraska,

who is also a cosponsor of S. 1, who is the ranking member of the Budget Committee, vote against cloture so that Members can continue to offer relevant amendments, the suggestion that they are, therefore, participating in a filibuster means they are filibustering their own bill—a bill that their name is on. When you look at the sponsors of S. 1, the third name on that sponsorship list is the Senator from Ohio. The sixth name is the Senator from Nebraska, Senator EXON, and so forth. This bill is different from last year's bill in some very significant ways.

Again, I cosponsored last year's bill. I would like to vote for this bill. I hope to be able to do it. But I am determined, and others are, too, that we are going to take the time to analyze some very, very significant provisions that will change the way we function on the floor here when amendments are offered, when bills are brought up. There is a new point of order in this year's bill, a very significant point of order, which was not in last year's bill which can be raised on any bill that does not fund that mandate for State and local governments under certain circumstances.

Now what has been the delay? Well, a couple of the days that have been used here were simply used to extract committee reports. On both committees, both Budget and Governmental Affairs, we made an effort to obtain committee reports. The effort was rejected on a party-line vote.

Now why—when you have a bill that is introduced on a Wednesday night, that goes to a hearing the next morning, that is supposed to be marked up the next day, that is very different from last year's bill—we are not given a committee report without being put through the process that we had to go through here this week to get committee reports, I do not know. But we were put through that process in both committees.

There was an amendment offered. Senator PRYOR, in Governmental Affairs, asked for a committee report so that Members of this body could study these provisions. They are very, very significant provisions. Senator PRYOR's motion in Governmental Affairs was tabled on a party-line vote. A similar thing happened in the Budget Committee. And so the effort was made then on the floor, finally successfully, to get committee reports. That took 2 days.

Now, in committee, I offered an amendment which said that if the Congressional Budget Office cannot make an estimate of the cost of an intergovernmental mandate, that it should be able to say so, just the way the bill allowed a mandate in the private sector to be so regarded by CBO. If the Congressional Budget Office is unable to say what the costs of a mandate on the private sector are, under this bill, it was allowed to say so. But purposefully, explicitly, the bill did not allow the Congressional Budget Office to say

that it could not estimate the cost of an intergovernmental mandate.

And let us be real clear: It is that estimate that is so critical. It triggers all kinds of activities. It requires appropriations to be in the amount of the estimate. So that estimate is the critical triggering device in this bill.

In last year's bill, if there were not an estimate, it would be subject to a point of order. And that was fine. This year's bill goes way beyond that, because it creates a point of order if we do not either appropriate directly the money to equal the estimate or unless we do some other things to make sure that downstream there is an appropriation for that estimate. So that estimate becomes absolutely critical.

But what happens if the CBO cannot make the estimate? I offered an amendment in the committee saying they ought to be able to say so. If it is absolutely impossible to make an estimate—for instance, if the amount of the mandate is going to depend upon the action of an agency which has not been taken, if it depends upon the content of a regulation that has not been written, then it may be impossible to say so. Let them be honest. That amendment was rejected in committee on a party-line vote.

Now, why have we used so much time in the last few days? For many reasons. One of them is I spent 3 hours here the other day debating that issue as to whether or not the CBO ought to be able to state that. And finally, today, we adopted the amendment which was rejected in committee. Was that useful? You "betcha." It is going to make a big difference when this bill becomes law—and I have no doubt that this bill will become law—it is going to make a major difference as to how the Congress operates. Because there will be times, we have been told by the CBO, when they will not be able to estimate how much an intergovernmental mandate costs.

There have been other reasons we have used up some time. We had an amendment by the Senator from Washington on the Republican side, totally nongermane, totally nonrelevant to this bill. It took us hours yesterday, hour after hour after hour, on a totally nonrelevant, nongermane amendment having to do with education standards.

There are a lot of problems with this bill and they need to be addressed. This bill says that certain civil rights laws that protect people against discrimination based on race, religion, gender, ethnic origin, or disability are not the subject of this bill; that States and local governments are going to have to comply with those without any mandate protection in this bill.

Well, they left out a few things, including age. Do we want to protect people from age discrimination the way we do from race discrimination? I think so. Do we want to correct that? I hope so. And I will offer an amendment later on to correct it.

Is that dilatory? Is it dilatory to suggest that, since every amendment that any Member of this body might offer is subject to a point of order unless it contains a certain estimate as to how much it might cost State and local governments, every one of us is going to be subject to this point of order when we offer an amendment? And I think most of us probably say, that is right. Many think it should apply to amendments. But that is not my argument here.

The bill says that the point of order applies to amendments. An amendment which we offer must have that estimate of the cost to State and local governments or it is subject to a point of order. Can we get the estimate as individual Senators? Do I have a right to it? My amendment is going to be subject to a point of order if I do not have it.

Well, the bill says only the committee chair and the ranking member can ask for the estimate. That is what the bill says. Is my legislative life then going to be put in the hands of the committee chair and ranking member? Maybe they disagree with my amendment.

I am going to be offering an amendment which says any individual Member has a right to ask for the estimate, which is so crucial if that person's amendment is not going to be subject to a point of order. That just seems to me to be fundamentally fair and required and protects all of us.

This has nothing to do with private and public and whether we should have an estimate and all of that. This just goes to a basic right of a Member to obtain the estimate, which is absolutely essential under this bill to avoid a point of order on his or her amendment.

Now, is that germane after cloture?

We have been told it is probably not germane. Is that dilatory? Is it, in any fair sense of the word, dilatory for Members to clarify that issue by an amendment? It is surely relevant. I am confident that the Parliamentarian would rule it is relevant. But it is not germane, technically not germane, because postcloture is a very, very tight definition of germaneness.

Do we want to clarify it? Is it worth taking a few days? This bill will not be effective by its own terms until next January. Now, maybe some people will suggest that does not mean we should not use all the time between now and next January debating that bill. I could not agree more.

I can see my friend from Mississippi, the wheels in his head moving around. I beat him to it. I hate to take away a good response. So be it. Is it worth taking a few days, a few weeks, if necessary, to answer these amendments? These are relevant amendments. They affect each one of us. I think it is.

Now, getting to the amendment of the Senator from Connecticut.

Mr. LOTT. Will the Senator yield?

Mr. LEVIN. I am happy to yield.

Mr. LOTT. The Senator was kind enough to mention my name and is fixing to get to the important discussion of the amendment. The Senator is absolutely right, even though we take a little time, it will not go into effect until January.

I want to make this point. I am pleased that we are now getting to some substantive amendments. This one clearly needs to be thought about and debated as it is being debated. I presume there are a few more. I think that the work that has been done by the distinguished floor managers on this bill last year and this year, a lot of good work has already been done. Surely there are a few good amendments. We should get to them.

Nobody here believes that there are 78 on your side or 30 on our side. Let Members get this list dwindled down to the amendments that really are relevant. Let Members talk about those. I suspect that some of them will be accepted, and we will get the job done and move on.

Certainly there is not a railroad involved here. We are taking lots of time on this legislation. I do think that the leader is right to expect that after 5 days we get down at least to the relevant or germane amendments. We are about to get there.

Here is my question to the Senator, if he would yield for the question. The Senator was talking about when would this be used. It seems to me that there would not be a whole lot of amendments that this might apply to. We are talking about a relatively small number, the dollar amount that is involved here. Is it not true that you probably would not have this applying that often? I am asking from genuine curiosity. How much are we talking about that would really kick in, \$50 million?

Mr. LEVIN. There are 800-some bills, which estimates were able to be made on the bills as I understand it in the last 12 years. That is where estimates could be made. And a whole bunch that could not be made. I do not think that the current law which requires that an estimate be made, some act as though there has not been a law on the books that requires these estimates of intergovernmental mandates to be made. There has been a law on the books.

I am not sure many of us have read those estimates they have made, but nonetheless to answer the Senator's question directly, I do not believe it is applied to amendments. So, we are skating out on a new pond. The language applies this now to amendments, the point of order to amendments relative to intergovernmental mandates. When I say "the law" I am talking about estimating the amount of the intergovernmental mandate, the mandate on State and local government.

To try to directly address my friend's question, we do not know whether or not that threshold of \$50 million per year some year down the road—could be 10 years down the road—is reached until we ask for the estimate. So how

many amendments will, in fact, be calculated or estimated to include an intergovernmental mandate of more than \$50 million in any one of 5 fiscal years after it becomes effective? There are an awful lot of squishy words in there, by the way, but how many of them? What percentage of our amendments? I do not know. I just cannot answer.

Mr. LOTT. Mr. President, let me conclude, because I know the Senator wants to make some other points. Perhaps the Senator would want to respond to this.

I have found the people out across the country, certainly my State, are astounded when they find out that in fact we do not know the cost estimates of amendments that we are offering on the floor. They are shocked. We wander in here and say, hey, here is my amendment. It might cost \$10 million, or \$50 million, or \$200 million, and they say, "you mean, you don't know?" Do you not think the people would want Members to know the consequences of our amendments on the floor? I think that is what this bill does. Which I believe the Senator supports.

Mr. LEVIN. I do. I agree with that. The problem is not the requirement that there be an estimate. That is not the problem.

Mr. LOTT. Without an estimate, how do we know?

Mr. LEVIN. The Senator asked me what percentage, and I am saying how do we know without an estimate. So I could not answer your question as to what the percentage is without these estimates being made. They have not been made yet on amendments. So, we will find out.

I agree, we should know the consequences of our acts. We should know the impacts on local and State governments. I used to be that local official 8 years. I came to this town because I did not like what the Federal Government was doing to me and my town—not me personally but my town—including mandates, including the way they operated programs. Believe it or not, that was a big part of my first campaign. As a local official I understood that. And I still believe it. And we should know the consequences of our acts.

Now, this amendment that is pending before the Senate is saying there are some areas where we sure should equally know the consequences on the private sector, and equally treat the private sector. There are areas where the private sector and the public sector are in direct competition. You have a hospital, one is a publicly owned hospital, say, university hospital, the other one is a private hospital. They are in competition. You can take two incinerators or two anything. Now, assume that in our wisdom or lack of wisdom—there will be a debate over that—there is an increase in the minimum wage. I do not want to debate the wisdom of the increase in the minimum wage, but assume there is an increase in the minimum wage. Do we really want to cre-

ate a presumption that the private hospital is not going to have to pay that minimum wage increase but—excuse me, let me reverse it. Do we want to create the presumption that the private hospital is going to have to pay the increase in the minimum wage but that the public hospital is going to be off the hook unless we pay their increase in the minimum wage? Do we want to create that presumption?

Now, I had an amendment in committee which said, no, we will not do that when it comes to those employment laws like minimum wage and family and medical leave. We should not create that presumption. The amendment before that is a broader amendment, addressing the same point.

Take the two incinerators.

Mr. KEMPTHORNE. Would the Senator yield?

Mr. LEVIN. I am happy to.

Mr. KEMPTHORNE. Mr. President, just in response to that, this concept of having a public hospital, the private hospital, are we going to presume that we would then proceed and only pay for a minimum wage increase on the private hospital?

Mr. LEVIN. Mr. President, the bill does not presume that we will pay for the increase on the private hospital. It does create a presumption that we will for the public hospital. Of course it can be waived by 50 votes. There is a presumption in the bill.

Mr. KEMPTHORNE. That is the point, Senator, that is the point. If that scenario were to unfold, No. 1, would it not be very healthy for the Senate to have the information as to what is the cost of that mandate?

Mr. LEVIN. So far we are together.

Mr. KEMPTHORNE. In minimum wage.

Mr. LEVIN. Together so far.

Mr. KEMPTHORNE. Ask to have a CBO analysis on the cost and on the private sector.

Mr. LEVIN. We are together.

Mr. KEMPTHORNE. What sort of cost is it to the private sector?

Mr. LEVIN. We are together.

Mr. KEMPTHORNE. What sort of adverse impact might that have on competition between the public and private sector?

Mr. LEVIN. So far so good. Keep going.

Mr. KEMPTHORNE. Then we are together.

Mr. LEVIN. Mr. President, no, no. Excuse me, I will reclaim my right to the floor and then I will be happy to yield.

This bill goes one step beyond that and creates the presumption that we are going to either pay for that increase for the public hospital or waive it. It does not do that for the private hospital.

So, we go right down the road together, arm in arm as last year's bill did, which the Senator from Ohio is the prime sponsor of.

This year we go one step further. This year we create the presumption,

and it is pretty embedded in there, that we will pay. We are implying to people, we are sending out the message, we are creating an assumption that we will either pay that increase for the public hospital or waive it.

That is where we have problems.

(Mr. COVERDELL assumed the chair.)

Mr. KEMPTHORNE. Will the Senator yield?

Mr. LEVIN. I will be happy to yield.

Mr. KEMPTHORNE. I certainly will respect your time. But, Mr. President, that is the point. There is all of this emphasis, all of this discussion on a point of order. At any point—at any point—you may seek a waiver of that point of order. In all likelihood, if you are going to have an increase in the minimum wage, we all know that will require a majority vote in the Senate. It may be the same majority that would also vote to waive that. The point of order also is not self-executing. Somebody has to raise that point of order.

Mr. LEVIN. One Senator.

Mr. KEMPTHORNE. One Senator has to raise that point of order.

Mr. LEVIN. Correct. Is there any doubt in your mind one Senator will raise any point of order? There is not 1 out of 100 Senators who opposes—by the way, the Senator from Idaho is a cosponsor of last year's bill.

Mr. KEMPTHORNE. Yes.

Mr. LEVIN. Which does not go as far as this year's bill does and create this presumption that we are going to treat the public sector different when it comes to funding this mandate than we will the private sector. It is not as though last year's bill was a weak bill. I do not think my friend from Idaho would have cosponsored a weak bill. Last year's bill was a strong bill, which went right down the road, step by step—and you outlined those steps. I agree with each of those steps.

This year's bill adds that additional point of order, and it is there that it creates a competitive disadvantage, in many cases, to firms that are competing with each other. And that is where the amendment of the Senator from Connecticut will allow us to say that if it applies to both, to both incinerators, public and private, that we should then deal with them in the same way.

I wonder if I could ask of the Chair how much time I have left.

The PRESIDING OFFICER. The Senator has 5 minutes remaining of his time.

Mr. LEVIN. I thank the Chair.

I just want to read from some letters from the private sector, from some parts of the private sector.

This is a letter from the Environmental Industry Associations. There are three associations that are part of a larger umbrella group. I understand this has about 2,000 total members. This includes the National Solid Waste Management Association, the Hazardous Waste Management Association, and the Waste Equipment Technology

Association. We all understand that the private sector is divided on this bill, that there are parts of the private sector—for instance, I understand the Chamber supports the bill—but there are parts of the private sector that are the most likely ones to be directly impacted that have a lot of problems with this bill.

I want to read from just one portion of the private sector. Again, this is three different subassociations that are represented here, about 2,000 members:

Notwithstanding provisions in the bill for parity of treatment between the public and private sectors for purpose of analysis—

And this is what my friend from Idaho was talking about, for purpose of analysis.

there seems to be an inconsistency in actual treatment between the two sectors because the legislation subject to the point of order vote applies only to Federal intergovernmental mandates and not private sector mandates. We respectfully restate our basic concern that to exclude State and local government—but not the private sector—from the costs of compliance with unfunded mandates in conjunction with providing goods and services where both sectors compete would be both unfair and unfaithful to the core principles of the Job Creation and Wage Enhancement Act, of which S. 1 is the first piece.

So there is a significant portion of the private sector that very much is troubled by this.

I ask unanimous consent that the letter from those three associations that make up the Environmental Industry Associations be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

ENVIRONMENTAL INDUSTRY  
ASSOCIATIONS,

Re: S. 1, Unfunded Mandate Reform Act of 1995.

January 9, 1995.

Hon. DIRK KEMPTHORNE,  
U.S. Senate, Washington, DC.

DEAR SENATOR KEMPTHORNE: I recently wrote you, December 22, 1994, on behalf of the Environmental Industry Associations (EIA) to provide you our viewpoint on the important matter of unfunded federal mandates. Now that we and other stakeholders in this debate have had the benefit of a Joint Committee hearing on this initiative, I want to provide you with additional comments as your bill goes to markup and an early floor vote.

We are pleased that the bill requires that the Congressional Budget Office (CBO) provide legislative authorizing committees and agencies anticipating rule promulgation detailed economic and competitive impact analysis on both intergovernmental and private sector mandates. Clearly, this is a major improvement to promote more informed and deliberate decisions by Congress on the appropriateness of federal mandates in a given instance. We are especially pleased that the accompanying CBO Report on federal mandates must include a statement of the degree to which the mandate affects both the public and private sectors and the extent to which federal payment of public sector costs would affect the competitive balance between State, local, or private government and privately-owned businesses." (Committee Print, page 14, line 3-9). Again,

we voice our strong support for this centrist approach.

Notwithstanding provisions in the bill for parity of treatment between the public and private sectors for purpose of analysis, there seems to be an inconsistency in actual treatment between the two sectors because the legislation subject to the point of order vote applies only to federal intergovernmental mandates and not private sector mandates. We respectfully restate our basic concern that to exclude state and local government—but not the private sector—from the costs of compliance with unfunded mandates in conjunction with providing goods and services where both sectors compete would be both unfair and unfaithful to the core principles of the Job Creation and Wage Enhancement Act, of which S. 1 is the first piece.

To ensure that there is a level playing field between the public and private sectors, we suggest that the term 'Federal intergovernmental mandate' beginning on Committee Print, page 4, line 22, be amended by including a new paragraph "(C)" following line 14, pages 6, that would read as follows:

(C) *The term 'Federal intergovernmental mandate' shall not include any mandate to the extent it affects the commercial activities (including the provision of electric energy, gas, water or solid waste management and disposal services) of any state, local or tribal government.*

We look forward to working with you in the months ahead by providing the views of our members on legislative initiatives in which they have an interest.

Sincerely,

ALLEN R. FRISCHKORN, Jr.,  
President and CEO.

Mr. LEVIN. Mr. President, let me read a letter from Consumers Power Co. This is a major energy supplier in my home State of Michigan. This is dated January 11:

The Unfunded Mandate Reform Act of 1995 is intended to relieve State and local governments of unfunded Federal mandates. While we support the intent of the bill, Consumers Power Company has some concerns over the impact the bill would have on investor owned electric utilities and its customers. We believe it will have the effect of placing certain private companies at a competitive disadvantage with local governments when they provide identical services.

Consider, for example, that the private sector would be required to comply with Federal environmental mandates at costs creating intolerable competitive disadvantages, while the public sector would be excused from compliance because funding is not provided by the Federal Government. Compliance with Clean Air Act Amendments of 2001, should they pass, would be such a case. Should municipal utilities be exempt from NOx reduction requirements because the Federal Government does not pay for implementation?

I ask unanimous consent that the entire letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

CONSUMERS POWER,  
Washington, DC, January 11, 1995.

Hon. CARL LEVIN,  
Russell Senate Office Building, U.S. Senate,  
Washington, DC.

DEAR SENATOR LEVIN: The Unfunded Mandate Reform Act of 1995 (S. 1) is intended to relieve state and local governments of unfunded federal mandates. While we support the intent of the bill, Consumers Power Company has some concerns over the impact the bill would have on investor owned electric utilities and its customers. We believe it will

have the effect of placing certain private companies at a competitive disadvantage with local governments when they provide identical services.

Consider, for example, that the private sector would be required to comply with federal environmental mandates at costs creating intolerable competitive disadvantages, while the public sector would be excused from compliance because funding is not provided by the federal government. Compliance with Clean Air Act Amendments of 2001, should they pass would be such a case. Should municipal utilities be exempt from NOx reduction requirements because the federal government does not pay for implementation?

Senator Thad Cochran intends to introduce an amendment, as early as today, which would correct this unintended competitive disadvantage. We urge your support for the Cochran amendment which explicitly assures that where state and local governments engage in commercial activities, they must meet the same requirements as private firms offering the same product or service.

Attached for your review and consideration is the draft amendment language. Please call me or Mary Jo Kripowicz of my Washington staff should you wish to discuss this issue further.

Sincerely,

H.B.W. SCHROEDER.

Mr. LEVIN. So, Mr. President, a number of these amendments raise very important points. I, too, am glad that we finally have gotten to these kinds of amendments, and there will be a number of other amendments that are offered. But this is one of the most significant amendments for us to consider and worry about. However we vote on this amendment, I think each of us ought to be concerned about the possible competitive disadvantage that this bill is likely to place the private sector companies in that compete with the public sector.

I want to commend my friend from Connecticut for his tremendous work in this area and his concern for the private sector. I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Idaho.

Mr. KEMPTHORNE. Mr. President, I am proud to yield 1 minute to the senior Senator from Idaho.

The PRESIDING OFFICER. The Chair recognizes the Senator from Idaho.

Mr. CRAIG. Mr. President, I thank my colleague, Senator KEMPTHORNE, for yielding. First of all, let me recognize the effort that he has put in now for, I guess, over 3 days on the floor to push an issue that the American people have spoken so clearly to, and I congratulate him for this effort and the work that goes on here to fashion this most important piece of legislation toward final resolution.

But I now speak specifically to the Lieberman-Kerry-Levin amendment of which, if you want to gut a good bill, here is where you start. This is the first substantive effort we have seen on the part of the other side to substantially change the course and the direction of this bill. Basically, the private sector has an opportunity to compete

with any segment of the public sector, and vice versa. And if you start making all of these broad exceptions, you create gaping holes in this legislation that you can drive billions of dollars through.

This amendment says that wherever there may be competition between the private and public sectors, S. 1 would not apply.

If this amendment actually did anything to stop the Federal Government from imposing mandates on the private sector, I'd be the first in line to cosponsor it.

This amendment would not stop unfunded mandates on the private sector. In fact, it would help Government go on imposing them.

As I understand it, since the private sector might conceivably compete for virtually any public sector activity, this amendment would make S. 1 meaningless. It would gut the bill.

As my colleague from Idaho has pointed out from his experience as a city mayor, the private sector competes with the public sector in a host of activities such as police services and fire services, planning services, prisons, education, recreation, civil engineering—to name only a few.

Under this amendment, unfunded mandates relating to activities or services like these would not have to comply with S. 1.

We are told that S. 1 would put the private sector at a disadvantage in competing with the public sector, because the private sector would have to pay for mandates it operates under, while the Federal Government would absorb the cost of any mandates on the public sector.

This amendment is based on wrong assumptions about S. 1.

S. 1 is a process reform that makes it harder to enact unfunded mandates on either the public or private sector and opens up the process to public scrutiny.

This amendment does not try to stop the Government from imposing costly mandates on the private sector. Instead, the amendment just exempts a huge class of mandates.

As a result, this amendment would remove the procedural speed bump that S. 1 puts in the path of those unfunded mandates.

In other words, this amendment will hurt the private sector by keeping it easy for the Government to impose unfunded mandates on either the public or private sector.

Exempting a long list of mandates from this bill just means making it easier for Congress and the Federal Government to continue putting the cost of mandates on somebody else's bill—and making it harder for Congress to find out ahead of time how much the mandate will cost the American people.

The process today is broken. It is biased toward irresponsibility. It frustrates information gathering. It prevents the American people from having a clear view of what decisions are being

made by Congress and the Federal regulators.

S. 1 would end all that.

S. 1 gives us a tool to determine the actual cost of Government mandates before we are asked to vote on them.

For the first time in history, it will be standard operating procedure for CBO to analyze the cost of mandates on the private sector, and for Federal agencies to review the costs of mandates on the private sector.

Without a CBO estimate, a bill imposing unfunded mandates on the private sector would be subject to a point of order.

Most important, S. 1 changes the bias of the current system to make Congress and the Federal regulators accountable for the real outcome of their decisions, by giving the American people a clear view of the decisions being made.

American business understands all this. We have heard the letters from business leaders who are in the best position to evaluate the bill's impact on competition. Those letters support S. 1.

Exempting actions from S. 1 will not help any business in America. It will only keep a broken process in place.

If you think unfunded mandates on American business are unfair, you should support S. 1 and oppose this amendment.

The PRESIDING OFFICER. The Senator's time has expired. The Senator from Idaho.

Mr. KEMPTHORNE. Mr. President, I just want to thank my colleague from Idaho. I am proud to be a partner with him.

Mr. LOTT. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. The Chair recognizes the Senator from Mississippi.

Mr. LOTT. How much time is remaining on both sides?

The PRESIDING OFFICER. Five minutes for the Senator from Idaho and 27 minutes for the Senator from Connecticut.

Mr. LOTT. So at approximately sometime shortly after 5:30 or 5:35, we can anticipate a vote on this issue?

The PRESIDING OFFICER. 5:40 to be specific.

Mr. LOTT. Thank you, Mr. President.

Mr. LIEBERMAN addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I will speak on my own time. I say also to my friend from Mississippi that we may not consume all the time available on our side. There is one other Senator who has asked to speak in support of the amendment, and if he arrives on the floor, obviously, I will yield to him. Otherwise, I will speak for a brief time. I presume that my friend and colleague from Idaho will want to speak for a little bit. And if it is OK with him, I would like to wrap it up.

Mr. President, I do want to make clear here a few points in response to some of the opposition to the amendment. This is not some special exemption that we are creating. We are in fact trying to create an equality of enforcement of S. 1 to make it clear that it applies equally to the public and the private sectors, and that it does not, by setting a higher hurdle for so-called mandates on State and local governments, exempt them and put them at a competitive advantage in regard to, or in respect to private entities that are doing the same thing that they are doing.

I feel very strongly, Mr. President, that this amendment does not go to the heart of this bill. This bill, which I fully support, one, wants Congress to be forced to face an estimate of the costs of what we are about to do. It sounds as if we should have done it a long time ago, and we should have. What is rational or fair about passing a bill which requires other levels of Government or the private sector to take action when we do not know how much it will cost them? As much as we support some of the goals that are the subjects of legislation we adopt, we might decide that it is not worth it, that on a cost-benefit basis, it is not worth it.

My amendment leaves that intact. We will be forced to face the cost of potential legislation. CBO must give an estimate of the cost impact on both public and private entities of anything we are about to do.

The amendment, if passed, leaves the second point of order in place created by S. 1 so far as it relates to mandates specifically on State and local government for governmental functions where there is no private-sector competition. In my opinion, that affects the most significant and certainly the most costly mandates that we put on State and local governments. They still would be covered by S. 1, if amended by the amendment that we have put in. And it is just there in the dollars and cents. It was there in the testimony that I read from Governor Voinovich of Ohio and, indeed, from Senator BOND. When you look at the impact, the big-ticket items, the big-ticket mandates, the most costly mandates on the State and local governments are the ones that are uniquely on them—education and social services particularly.

The current occupant of the chair made the point there are other mandates we put on the States uniquely, and the motor-voter legislation, which the current occupant of the chair cited, is a good example. There is no private sector impact of that. In a sense that is the classic Federal mandate. We had a "good idea," and we asked the States and localities to do it. We forced them to do it. But we did not give them the money to pay for it. And that would still, if my amendment passed, be required to pass the second hurdle, be subject to the point of order, and be



put on the track which would eventually lead to no money, no mandate. And that ought to be.

But when we are dealing with something that affects both the public and private sector, I just do not think it is right to lower the bar, the hurdle, for the public sector and keep it up here for the private sector. That is inevitably going to mean that the private sector will be put at a competitive disadvantage where they are playing a zero sum game as they are in so many clean air, clean water situations where you have a set level of pollution reduction that the public and private sector share. If we ask less of the public sector, the private sector is going to have to bear more of a burden and pay more of a cost. And ironically, and unintended, I know, is one of the consequences that I foresee, which is that, if this amendment were passed, it would inhibit the move toward privatization which so many of us support here, privatization of public functions, because a private entity performing a public function will be held to higher responsibilities, have higher costs, and therefore governments will be less likely to privatize because they will get this bargain.

So I think this is an amendment that is equitable. The underlying bill is very necessary, and the amendment does not diminish the impact of the underlying bill. In fact, it supports it and it supports it in a way that is more fair because it does not increase the burdens on the private sector.

Now, people who feel there are too many regulations generally, Federal regulations and Federal mandates, may think that if this passes in this form, because of the inequity that is being created between the public and private sector, the next step will be to remove mandates from the private sector.

I would respectfully suggest that is a big step which is not likely to follow, and therefore the private sector will be left holding the bag, paying the extra cost of this proposal. The reason I think that big step would not be taken is that then—and I speak as someone who has worked on market incentives for environmental protection and is concerned about deregulation—but if you started to talk about pulling off some of the regulations, then you are going to put in play a lot of laws that the public wants us to keep out there.

Mr. LOTT. Mr. President, will the distinguished Senator yield?

Mr. LIEBERMAN. I will be glad to yield to my colleague.

Mr. LOTT. Just for a little discussion and maybe a question.

I certainly respect what the distinguished Senator from Connecticut is trying to do. He always gives great thought to any amendment he pursues or any bill he supports, and he really has an impact when he does that.

I presume that the Senator is—I think I know the Senator well enough that he is for the concept of this legislation.

Mr. LIEBERMAN. The Senator is correct.

Mr. LOTT. The Senator thinks we ought to take a look at the costs of mandates we have been putting on State governments. Having been a State attorney general, he knows what is involved here, and I know he would like for us to review that and relieve the States and the local governments of some of these mandates that cost millions of dollars.

So I know the Senator does not want to undermine the basic purpose of this legislation, and the Senator does not want to in any way render it moot, as I believe I heard somebody say earlier here.

The thing that bothers me about the amendment, more and more, you are going to find that there are areas where both private and public are already involved. I believe the distinguished chairman of the Governmental Affairs Committee has indicated earlier that already you have private activities in the police departments, in fire departments, in public building inspectors, public road construction, public hospitals, and city attorneys compete with the private, fee-for-service attorneys.

So I was just rolling over in my mind as the Senator was speaking that there are so many public-sector services now, at both the State and the county and the city level, where you would have this private-sector competition and that so much of the bill might be in fact wiped out if we pass this.

How does the Senator respond to that? Because I am concerned about what the impact would be. We do not want to wipe out major portions of the bill because we know it is good. But with the potential impact that might have on the private sector, we do not want to kill the whole thing when you are trying in good faith to address a problem. When you analyze it, it looks to me as if almost everything could be covered here now.

Mr. LIEBERMAN. Mr. President, I appreciate the question from my friend, and it is a good one. Let me first state that not only is there not the intention to wipe out most of bill, I am convinced the impact of the amendment is not to do that. And let me assure my friend from Mississippi that I wish to support this bill. I was a cosponsor of S. 993 last year.

I was the attorney general of Connecticut before I came here. I believe in federalism. I know that the States have not been treated fairly in a whole host of mandates that we have put on them. But it is just the point that the Senator is making that is part of my argument. We are in a time now, I do not have to tell my friend, where we are quite appropriately reviewing the whole structure and focus and purpose of government, and taking a look at whether government is best suited to perform certain functions or whether the private sector can pick up those functions.

I am afraid that if we pass this bill unamended, without the amendment that I have put in, all the incentives go toward keeping governmental functions in the Government and not giving them over to the private sector, because the private sector is held to the higher standard. The public sector can be held to a lower standard if we do not fully pay the cost of any mandate. So, if I understand the Senator's question correctly, it is in fact because: First, I do not want to put the private sector at a competitive disadvantage and, second, I agree the Government has grown too big and we ought to figure out ways in which we can have private entities perform some public functions.

But this bill as it sits now will discourage that, as the school bus operators—I read a letter, before my friend was on the floor, from the school bus operators association, National School Transport Association where they urge support of this amendment because of their fear that the result of it, unintended, will be for fewer municipalities to contract with them to provide school bus service because the municipalities will not have to carry out Federal mandates regarding safety equipment on the bus so they will have a lower cost whereas the private school bus operators will have to carry that out.

So I repeat, I feel very strongly that this amendment does not gut the bill. The bill remains strong, very strong. And frankly it is revolutionary in its impact, forcing us to face the cost, setting hurdles, and including setting that high hurdle when we mandate that a State and local government perform a function uniquely. And that is where most of the dollars are that we mandate the State and local governments to pay.

So I urge my colleagues to consider supporting this bill across party lines. I think it is fair. It is good for the private sector. And it is good for the public, too, insofar as they are concerned about us protecting their health and safety.

Mr. President, I yield the floor at this time.

Mr. LOTT. Mr. President, I believe the distinguished sponsor of the legislation is perhaps ready to speak. How much time is remaining now?

The PRESIDING OFFICER. There is 5 minutes remaining to the Senator from Idaho, 10 minutes for the Senator from Connecticut.

Mr. LOTT. Does a quorum count against the time?

The PRESIDING OFFICER. Equally divided.

Mr. LOTT. Time would count. So at this point we could yield back time on either side and perhaps have the closing statements?

Are we ready? Could I ask the distinguished Senator from Ohio, are we ready to conclude the debate at this point?

Mr. GLENN. In just a moment. I think the distinguished minority leader, I believe, had indicated he might want to have a few words on this. We have sent word in to him that we are down to about the last 5 minutes so we might delay just a couple of minutes here.

Mr. LOTT. If that is the case, I do not believe the sponsor of the legislation would want to use his time.

Do you want to just put in a quorum and let it count? Or do you want to speak now?

I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Idaho.

Mr. KEMPTHORNE. Mr. President, I will yield such time to myself as I may need.

Mr. President, a few points. No. 1, Senate bill 993, which I was a cosponsor of, principal sponsor last year—it was a very good bill. S. 1, much of the base of that is 993, but it is a new and improved version. I strongly support S. 1.

When we talk about this issue of competition between the public sector and the private sector—I will put my voting record up. For example, my ranking from the U.S. Chamber of Commerce is a 92 percent voting record in support of business issues; National Federation of Independent Business, 94 percent. I am not going to be part of any legislation that in any way is going to have an adverse impact on our business community. And I have not done that in S. 1.

One of the members of the business community I spoke with last week made this very, very good point—Bob Bannister, National Association of Homebuilders. He said, “There is no such thing as an unfunded mandate. Everyone of them are funded but they are funded by tax dollars. We in the business community that are paying the taxes—we pay them.” That is why the business community strongly supports S. 1 as written.

But now we have the amendment. I respect my colleague from Connecticut, but this amendment says that in those areas where there may be competition, then we are not going to allow this process to work. But that is what S. 1 is, it is a process.

Why would we not want to know the cost of some potential mandate before we vote? I think the people of America want us to know how much it is going to cost. What is the impact? And included in there is if in any way this creates some sort of adverse impact to the private sector—which are the ones paying the taxes anyway—we will know it.

The Senator from Massachusetts made the point, he said, and I am paraphrasing: If it creates a disadvantage to the private sector, he says, I think the people would say wait a minute.

Guess what? Now we will know, because of this process. And do you know who will say wait a minute on behalf of the people? Congress will. Because then

we can come to the floor, and now it is not based on all of these scenarios that we have heard. It is based upon empirical data. Every one of these scenarios, as it has been pointed out, if they develop then this is where we resolve it: Majority rules. But it is the process that we know this ahead of time.

The Lieberman amendment will have the effect of eliminating from S. 1 any cost estimate for any conference reports, amendments or motions which contain mandates. The estimates on these only come from subsection C(1)(b) which the amendment makes inapplicable. So we are going to say, you know what, there just may be a lot of these problems out here. So rather than knowing that, rather than knowing how much it is going to cost, we would rather not know. So let us just wipe it out. That does not set well with me. That does not set well with mayors and Governors and county commissioners and schoolteachers throughout the United States nor our private sector partners throughout the United States.

Mr. President, I will ask unanimous consent to have printed in the RECORD the following letters. From the U.S. Chamber of Commerce—I will only read a line from each of these.

The U.S. Chamber of Commerce has loudly and wholeheartedly endorsed this legislation.

That is dated January 18, 1995.

A letter from W.M.X. Technologies, which is a large, large company dealing with the waste management issue.

I am writing to express our appreciation and support for your efforts in crafting the text of S. 1, the Unfunded Mandate Reform Act of 1995.

NFIB, National Federation of Independent Business:

On behalf of the over 600,000 members of the National Federation of Independent Business, I urge you to vote in favor of S. 1.

The National Retail Federation:

On behalf of the Nation's retail community and its 20 million employees—1 in 5 U.S. workers—we are writing to commend you for your sponsorship of S. 1. . . . S. 1, which would restore accountability and responsibility at the federal level, is the strongest legislative initiative in which to counter this growing problem.

I do not think the American public realizes for how many years we have cast votes in this well on mandates to the citizens of this country and we never knew how much they cost. To this day we do not know because nowhere do we require it.

We will now, with S. 1. And at any point that you want to have a waiver of the point of order, just come to the floor and a majority rules and we waive the point of order. But we are going to start making informed decisions. We are not abdication decisionmaking. We are enhancing decisionmaking through S. 1—a process.

Mr. President, I reserve the remainder of my time and ask unanimous consent the letters be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

NATIONAL RETAIL FEDERATION,  
January 4, 1995.

Hon. DIRK KEMPTHORNE,  
U.S. Senate, Dirksen Office Building, Washington, DC.

DEAR SENATOR KEMPTHORNE: On behalf of the nation's retail community and its 20 million employees—1 in 5 U.S. workers—we are writing to commend you for your sponsorship of S. 1, The Unfunded Mandates Reform Act of 1995. This legislation is the most effective way to confront the problem of unfunded federal mandates while simultaneously resuscitating the concept of federalism and giving the states back control of their budget obligations.

The problem is well documented and the solution is clear—unfunded federal mandates must end. Over the past decade, an unprecedented increase in unfunded federal mandates in environment, labor and education, to name just a few, has forced state and local governments to undertake actions that drain their resources and are often in conflict with the best interests of their citizens as well as our industry.

As representatives of the retail industry in each of the fifty state capitals, we have experienced first hand the profound adverse impact of unfunded federal mandates on our industry and our state's economic well-being.

Unfunded federal mandates are simply another Washington practice of circumventing a fundamental responsibility in governing, the obligation to bring desires into line with revenues. Such mandates are Washington's way to dictate to the states, even though it has exhausted its resources. S. 1, which would restore accountability and responsibility at the federal level, is the strongest legislative initiative in which to counter this growing problem.

Again, we sincerely appreciate your leadership on this important matter.

Sincerely,

Tracy Mullin, President, National Retail Federation; George Allen, Executive Vice President, Arizona Retailers Association; J. Tim Brennan, President, Idaho Retailers Association; Bill Coiner, President, Virginia Retail Merchants Association; Spence Dye, President, Retail Association of Mississippi; Bud Grant, Executive Director, Kansas Retail Council; Jo Ann Groff, President, Colorado Retail Council; John Hinkle, President, Kentucky Retail Federation; John Mahaney, President, Ohio Council of Retail Merchants; Charles McDonald, Executive Director, Alabama Retail Association; Grant Monahan, President, Indian Retail Council; Sam Overfelt, President, Missouri Retailers Association; Ken Quirion, Executive Director, Maine Merchants Association.

Lynn Birleffi, Executive Director, Wyoming Retail Merchants Assn.; John Burris, President, Delaware Retail Council; Bill Dombrowski, President, California Retailers Association; Janice Gee, Executive Director, Washington Retail Association; Brad Griffin, Executive Vice President, Montana Retail Association; Jim Henter, President, Association of Iowa Merchants; Bill Kundra, President, Florida Retail Federation; William McBrayer, President, Georgia Retail Association; Larry Meyer, Vice Chairman & CEO, Michigan Retailers Assn.; Mickey Moore, President, Texas Retailers Association; Nick Perez, President, Louisiana Retailers Assn.; Dwayne Richard, President, Nebraska Retail Federation.

Bill Sakelarios, Executive Vice President, Retail Merchants Assn. of N.H.; Paul Smith, Executive Director, Vermont Retail Association; David Vite, President, Illinois Retail

Merchants Assn.; Melanie Willoughby, President, New Jersey Retail Merchants Assn.; Mary Santina, Executive Director, Retail Association of Nevada; Chris Tackett, President, Wisconsin Merchants Federation; Jerry Wheeler, Executive Director, South Dakota Retailers Assn.

CHAMBER OF COMMERCE OF THE  
UNITED STATES OF AMERICA,  
Washington, DC, January 3, 1995.

Hon. DIRK KEMPTHORNE,  
Dirksen Senate Office Building, U.S. Senate,  
Washington, DC.

DEAR DIRK: On behalf of the U.S. Chamber of Commerce Federation of 215,000 businesses, 3,000 state and local chambers of commerce, and 1,200 trade and professional associations, I sincerely commend your hard work and tenacity on the "Unfunded Mandate Reform Act of 1995," S. 1. The Chamber membership identified unfunded mandates on the private sector and state and local governments as their top priority for the 104th Congress. Accordingly, the Chamber supports this legislation and will commit all necessary time and resources to ensuring its passage early in this session.

I particularly want to thank you for responding to our concerns about the role of the private sector in this debate and the potential impact it could have had on the business community, especially small businesses. Your willingness to include the private sector in Title II of S. 1, "Regulatory Accountability and Reform," and your recognition of the potential unfair competition issue between business and state and local governments, make this a much strong bill that can have a significant impact on the current regulatory burden.

Again, Dirk, we appreciate your commitment to this issue. I look forward to working with you to secure passage of S. 1 as well as other issues that we can join forces on for the 104th Congress.

Sincerely,

RICHARD L. LESHER.

SMALL BUSINESS LEGISLATIVE COUNCIL,  
January 10, 1995.

Hon. DIRK KEMPTHORNE,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR KEMPTHORNE: We wish to express our support for the Unfunded Mandates Reform Act of 1995, S. 1, and urge you to vote for it. In particular, we strongly support the provision requiring the Congressional Budget Office to conduct an analysis of the direct cost of proposed mandates on the private sector.

Several years ago, we arrived at the conclusion that many of our "regulatory" problems were actually "legislative" problems. Congress had effectively assumed the role of regulator. Therefore, we concluded, the analysis of new "regulatory" requirements should begin during the legislative process. In effect, we argued that Congress should impose upon itself, the discipline of the Regulatory Flexibility Act.

For this reason, in addition to our general concerns about unfunded mandates, we support this legislation. It is important that Congress understand fully, the economic consequences of its actions on small business, in a timely manner. Small business is at the regulatory braking point. All too frequently, small business owners tell us, "I am not sure I can advise my son or daughter to join me in the business. It is not worth it, the hassles outweigh the joys. They just might be better off working for someone else." That is not a healthy trend for the country.

The Small Business Legislative Council (SBLC) is a permanent, independent coal-

ition of nearly one hundred trade and professional associations that share a common commitment to the future of small business. Our members represent the interests of small businesses in such diverse economic sections as manufacturing, retailing, distribution, professional and technical services, construction, tourism, transportation, and agriculture. Our policies are developed through a consensus among our membership. Individual associations may express their own views. For your information, a list of our members is enclosed.

Sincerely,

JOHN S. SATAGAJ,  
President.

#### MEMBERS OF THE SMALL BUSINESS LEGISLATIVE COUNCIL

Air Conditioning Contractors of America.  
Alliance for Affordable Health Care.  
Alliance of Independent Store Owners and Professionals.  
American Animal Hospital Association.  
American Association of Nurserymen.  
American Bus Association.  
American Consulting Engineers Council.  
American Council of Independent Laboratories.  
American Floorcovering Association.  
American Gear Manufacturers Association.  
American Machine Tool Distributors Association.  
American Road & Transportation Builders Association.  
American Society of Travel Agents, Inc.  
American Sod Producers Association.  
American Subcontractors Association.  
American Textile Machinery Association.  
American Trucking Association, Inc.  
American Warehouse Association.  
American Wholesale marketers Association.  
AMT-The Association for Manufacturing Technology.  
Apparel Retailers of America.  
Architectural Precast Association.  
Associated Builders & Contractors.  
Associated Equipment Distributors.  
Associated Landscape Contractors of America.  
Association of Small Business Development Centers.  
Automotive Service Association.  
Automotive Recyclers Association.  
Bowling Proprietors Association of America.  
Building Service Contractors Association International.  
Business Advertising Council.  
Christian Booksellers Association.  
Council of Fleet Specialists.  
Council of Growing Companies.  
Direct Selling Association.  
Electronics Representatives Association.  
Florists' Transworld Delivery Association.  
Health Industry Representatives Association.  
Helicopter Association International.  
Independent Bakers Association.  
Independent Bankers Association of America.  
Independent Medical Distributors Association.  
International Association of Refrigerated Warehouses.  
International Communications Industries Association.  
International Formalwear Association.  
International Television Association.  
Machinery Dealers National Association.  
Manufacturers Agents National Association.  
Manufacturers Representatives of America, Inc.  
Mechanical Contractors Association of America, Inc.  
National Association for the Self-Employed.

National Association of Catalog Showroom Merchandisers.

National Association of Home Builders.

National Association of Investment Companies.

National Association of Plumbing-Heating-Cooling Contractors.

National Association of Private Enterprise.

National Association of Realtors.

National Association of Retail Druggists.

National Association of RV Parks and Campgrounds.

National Association of Small Business Investment Companies.

National Association of the Remodeling Industry.

National Association of Truck Stop Operators.

National Association of Women Business Owners.

National Chimney Sweep Guild.

National Association of Catalog Showroom Merchandisers.

National Coffee Service Association.

National Electrical Contractors Association.

National Electrical Manufacturers Representatives Association.

National Food Brokers Association.

National Independent Flag Dealers Association.

National Knitwear Sportswear Association.

National Lumber & Building Material Dealers Association.

National Moving and Storage Association.

National Ornamental & Miscellaneous Metals Association.

National Paperbox Association.

National Shoe Retailers Association.

National Society of Public Accountants.

National Tire Dealers & Retreaders Association.

National Tooling and Machining Association.

National Tour Association.

National Venture Capital Association.

National Wood Flooring Association.

Opticians Association of America.

Organization for the Protection and Advancement of Small Telephone Companies.

Passenger Vessel Association.

Petroleum Marketers Association of America.

Power Transmission Representatives Association.

Printing Industries of America, Inc.

Professional Lawn Care Association of America.

Promotional Products Association International.

Retail Bakers of America.

Small Business Council of America, Inc.

Small Business Exporters Association.

SMC/Pennsylvania Small Business.

Society of American Florists.

JANUARY 10, 1995.

DEAR SENATOR: On behalf of the broad-based coalition listed below, representing millions of hardworking, tax paying voters, we urge your strong support of S. 1, the Unfunded Mandates Reform Act of 1995. Congress must begin to control the "unfunded mandates" crisis facing America today.

Our members are quite concerned over the burgeoning number of federal mandates imposed on state and local governments which lack adequate financial assistance for development, implementation and compliance. Without adequate funding, states and localities are forced to pass on these costs and the true financial burden is shouldered by private business and citizens through fees and taxes.

S. 1, a bi-partisan effort sponsored by Senator Dirk Kempthorne (R-ID) and John Glenn (D-OH) and supported by a majority of the Senate, is the critical first step to controlling the unfunded mandates crisis. This bill requires the non-partisan Congressional Budget Office (CBO) to analyze new legislation and determine the cost of any proposed mandate imposed on state and local governments. The bill also requires CBO cost estimates for impacts on the private sector. If these estimates are not completed, any proposed legislation may be ruled out of order.

This bill does not halt government actions. It is an important educational tool for Members of Congress who need to know the financial impact of legislation being considered before voting on it.

Now is the time to act. Support S. 1 without weakening amendments and begin to alleviate the burden of unfunded federal mandates.

Sincerely,

Associated Builders and Contractors, Inc.  
Building Owners and Managers Association.  
Denver Regional Transit District.  
International Council of Shopping Centers.  
National Association of Home Builders.  
National Association of Real Estate Investment Trusts, Inc.  
National Association of Realtors.  
National Restaurant Association.  
National School Transportation Association.  
Small Business Legislative Council.  
U.S. Chamber of Commerce.  
Washington Metro Area Transit Authority.

CHAMBER OF COMMERCE OF THE  
UNITED STATES OF AMERICA,  
*Washington, DC January 10, 1995.*

*Members of the U.S. Senate:*

The Senate is scheduled tomorrow to consider S. 1, the "Unfunded Mandate Reform Act of 1995." On behalf of the U.S. Chamber of Commerce Federation of 215,000 businesses, 3,000 state and local chambers of commerce, 1,200 trade and professional associations, and 72 American chambers of commerce abroad, I strongly urge you to vote "YES." The Chamber will include this vote in its annual "How They Voted" vote ratings.

The U.S. Chamber conducts a survey of its membership each congressional cycle to determine the most important legislative issues for the coming Congress. This year, the Chamber membership identified unfunded mandates on the private sector and state and local governments as its number one issue for the 104th Congress. We believe that the coverage S. 1 provides for the private sector represents a significant step forward in our ongoing battle to tame federal regulatory burdens. Accordingly, we have endorsed S. 1 and are devoting all necessary time and resources to secure its passage.

All the private sector seeks in this debate is information and accountability. We do not seek federal funding for any private sector mandate. Our goal is to ensure that before any significant legislation can be passed or any major regulation imposed on the private sector, a cost impact analysis be done and made public. We also seek, at a minimum, a requirement that before any public sector mandate is funded, an analysis of the potential for unfair competition between the public and private sectors in the provision of the same goods or services is provided and aired. Our intent is to secure full and honest debate and to allow the public to communicate to Washington where their limited resources should be spent. Every day, American business and households, as well as state and local governments, have to consider the impact their actions have on their own bottom lines. Congress and federal regulators also

should be required to consider the financial impact of the mandates they impose.

This issue is about good government, jobs, and competitiveness. The business community recognizes that state and local governments struggle with such basic necessities as funding for additional police officers, ambulances and schools because an increasing portion of their budgets go toward complying with unfunded federal mandates. So too do businesses struggle—particularly small businesses—with generating jobs, making their businesses grow, and sometimes just staying in business.

NATIONAL ASSOCIATION OF  
WHOLESALE-DISTRIBUTORS,  
*Washington, DC, January 11, 1995.*

Hon. [Name],  
U.S. Senate,  
*Washington, DC.*

DEAR SENATOR [Last Name]: Shortly you will be called upon to consider S. 1, "The Unfunded Mandate Reform Act of 1995." As you know, in addition to addressing unfunded mandates imposed on state and local governments, the legislation includes a requirement that the Congressional Budget Office conduct a cost-impact analysis whenever Congress wants to impose an unfunded mandate of more than \$200 million on the private sector. On behalf of the 45,000 companies represented by the National Association of Wholesaler-Distributors (NAW), we strongly urge you to fight for passage of S. 1 as drafted, and oppose any efforts to remove or weaken the private-sector coverage language.

Clearly, S. 1 will force Congress to confront the real world impact of unfunded mandates on the millions of businesses, and their employees, that drive our economy, and who must implement and pay for the laws, rules and regulations that are imposed on them by Washington. Indeed, your support for S. 1 with its strong private sector coverage provisions, will tell every employer and employee in [State] and across the country that before considering an unfunded mandate you will carefully review the costs to American business associated with that mandate. This, in our estimation, represents sound government policy, sound business policy and sound economic policy.

With thanks for your consideration and best regards.

Cordially

DIRK VAN DOGEN,  
President.  
ALAN M. KRANOWITZ,  
Senior Vice President.

BROWNING-FERRIS INDUSTRIES,  
*Washington, DC, January 11, 1995.*

Hon. DIRK KEMPTHORNE,  
*Dirksen Building,*  
*Washington, DC.*

DEAR SENATOR KEMPTHORNE: We appreciate the attention you have given to views we previously expressed in connection with unfunded mandates legislation. We expressed our previous views at a time when one of our concerns was that unfunded mandates legislation could have retroactive effect. It is evident that S. 1 has a prospective effect only, which we understand was your intent all along.

After reviewing the legislation that will be considered on the floor and after discussions with your office, we recognize that among your objectives for S. 1 is creation of a favorable climate for the private sector. In fact, S. 1 seeks creatively to address the concern expressed in some quarters that unfunded mandates legislation could disadvantage the private sector where public-private competition takes place. Moreover, after many years of experience in working with you—most of

them prior to your tenure in the Senate—BFI is convinced that your dedication to free enterprise is unsurpassed.

With your commitment to assure equality for the private sector—no more, but no less—where competition exists between the public and private sectors, we are pleased to strongly support S. 1.

Sincerely,

RICHARD F. GOODSTEIN.

NATIONAL FEDERATION OF  
INDEPENDENT BUSINESS,  
*Washington, DC, January 3, 1994.*

Hon. DIRK KEMPTHORNE,  
U.S. Senate,  
*Washington, DC.*

DEAR DIRK: On behalf of the over 600,000 members of the National Federation of Independent Business, I urge you to vote in favor of S. 1, the unfunded mandates legislation, when it is considered by the Senate in January.

Unfunded federal mandates on the states and local governments end up requiring these entities to raise taxes, establish user fees, or cut back services to balance their budgets. Small business owners are affected by all of these actions.

Between 1981 and 1990, Congress enacted 27 major statutes that imposed new regulations on states and localities or significantly expanded existing programs. This compares to 22 such statutes enacted in the 1970s, 12 in the 1960s, 0 in the 1950s and 1940s, and only two in the 1930s. The Congressional Budget Office estimates that the cumulative cost of new regulations imposed on state and local governments between 1983 and 1990 was between \$8.9 billion and \$12.7 billion. These include environmental requirements, voters registration requirements, Medicaid, and others.

It was not the states and cities who paid roughly \$10 billion in unfunded mandates during the 1980s; it was taxpayers—small business owners as well as everyone else. In June 1994, a poll of all NFIB members resulted in a resounding 90% vote against unfunded mandates.

I urge you to strongly support S. 1.

Sincerely,

JOHN J. MOTLEY III,  
Vice President,  
Federal Governmental Relations.

WMX TECHNOLOGIES, INC.  
*Washington, DC, January 12, 1995.*

Hon. DIRK A. KEMPTHORNE,  
U.S. Senate, *Washington, DC.*

DEAR SENATOR KEMPTHORNE: I am writing to express our appreciation and support for your efforts in crafting the text of S.1, The Unfunded Mandate Reform Act of 1995.

As you know, WMX Technologies, Inc. is the world's largest environmental services company. In the United States, the WMX family of companies provides municipal solid waste management services in 48 states. These services include 132 solid waste landfills and 15,000 waste collection vehicles serving approximately 800,000 commercial and industrial customers as well as 12 million residential customers and contracts with nearly 1,800 municipalities. In addition, our 14 trash-to-energy plants produce energy from waste for the 400 communities they serve. Finally, our recycling programs provide curbside recycling to 5.2 million households in more than 600 communities and to 75,000 commercial customers throughout the United States.

We provide these services in a heavily regulated and highly competitive environment. In many cases, State, local and tribal governments are our valued customers, while in others they enter the market and provide

services as out competitors. While we do not object to their entry into the market, we have consistently sought to ensure that there is a level playing field upon which we can all compete fairly in the marketplace. For this reason, we have been keenly interested in efforts to ensure that the private sector is not competitively disadvantaged by unfunded mandate legislation that would preferentially relieve public sector participants from the costs of complying with Federal mandates.

WMX is deeply grateful to you for your sensitivity to this potential difficulty and your willingness to work with us to resolve it. We are confident that the legislation and amendments you will support on the floor of the Senate will provide the necessary safeguards to avoid unintended adverse impacts upon the private sector.

We look forward to working with you and your staff on this and other matters of mutual concern.

Sincerely,

FRANK B. MOORE,  
Vice President  
for Government Affairs.

CHAMBER OF COMMERCE OF THE  
UNITED STATES OF AMERICA,  
Washington, DC, January 18, 1995.

LETTERS TO THE EDITOR,  
New York Times, West 43d Street, New York,  
NY.

TO THE EDITOR: Your editorial in today's paper, "What's the Rush on Mandates?" categorically misrepresents the position of the U.S. Chamber of Commerce on the unfunded mandates legislation pending before Congress.

Over a year ago, we began working with Senator Kempthorne and Representative Clinger, the respective leaders on this issue in the U.S. Senate and House of Representatives, to ensure comprehensive coverage for the private sector. We have nothing but praise for their leadership on this issue and for their openness to the concerns of the private sector. Indeed, when we brought the issue of the potential for unfair competition to their attention (caused when only the public sector receives funding for mandate compliance in an area where they compete with businesses), they responded immediately by including language in both the Senate and House bills to specifically require Congress to address this issue.

The U.S. Chamber of Commerce has loudly and wholeheartedly endorsed this legislation and has committed all necessary time and resources to ensuring its passage and successful implementation. Contrary to your reporting, every communication we have sent to both Congress and our membership federation of 220,000 on this issue since the advent of the 104th Congress emphatically states our support for quick passage of this legislation.

Sincerely,

R. BRUCE JOSTEN.

The PRESIDING OFFICER. The Chair recognizes the Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I do want to respond to my friend from Idaho and say it is certainly the intention of the sponsors of the amendment—I am confident the desired impact of the sponsors of the amendment—to leave most of the contents of requirements of S. 1 intact, including the requirement that there be a Congressional Budget Office analysis of the cost of every Federal law which might result in a mandate on public and private entities, and that a measure

would be subject to a point of order—a point of order would lie if there was not such an estimate.

So we want to keep those facts in there, and we want to keep the second point of order in there with regard to the mandate that would impact State and local governments in the capacity of State and local governments, unique as it is, when they are not competing with anyone from the private sector. All we want to do here is to say that it is unfair to lower the bar on State and local governments when they are performing a function pursuant to a mandate that the private sector is also performing.

Yes, the Senator from Idaho is correct, this is just a point of order. But a point of order is more than just a point of order. It sets up here a two-track system, and we are saying to State and local governments, "You have the opportunity to put yourself on a course that says no money, no mandate, no responsibility," while the private sector has to pay the cost of fulfilling that mandate regardless.

Mr. President, I ask unanimous consent that the Senator from Illinois, Ms. CAROL MOSELEY-BRAUN, be added as a cosponsor of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LIEBERMAN. Mr. President, I yield such time as he may need to the distinguished Democratic leader.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. DASCHLE. Mr. President, I thank the distinguished Senator from Connecticut and commend him for the amendment.

I have watched the debate and am very moved by his arguments. I hope our colleagues will support the amendment. It is a crucial amendment, in my view, to improving the quality of this legislation.

As the Senator was just indicating, as currently written, this bill could create unfair competition between the public and private sectors by creating a presumption that public sector costs to comply with mandates should in nearly all cases be subsidized by the Federal Government.

In some cases, Federal mandates will affect both the public and private sectors in similar and, in many cases, nearly identical manners. The costs of compliance with minimum wage laws or environmental standards are incurred by both the public and private sectors.

Subsidization of the public sector in these cases could create a competitive advantage for activities performed by the public sector as it competes with the private sector in the same markets.

In the past few weeks, there have been a number of efforts made by both majority and minority staff to develop a compromise on this issue. I appreciate the work by Senator KEMPTHORNE to deal with this problem. He and others on the Republican side of the aisle recognize the potential problem here

and have worked in good faith to address it.

I felt that we were close to a solution with an agreement that language would be included in the committee report that would have clearly stated the policy of the Congress that where mandates would affect the public and private sectors equally, and where Federal subsidization of the public sector would competitively disadvantage private businesses, a Federal subsidy should not be provided.

At least this would have established a basis for a Senator to go to the floor and argue for a waiver of the point of order in such cases.

Unfortunately, when the final committee reports were filed, the language that we had proposed to address this situation was substantially weakened. No strong statement of such policy was included to clarify that Congress should not be expected to subsidize the public sector to the detriment of the private sector.

Such a statement of policy is clearly needed in this bill. The pending amendment will provide that statement by establishing a well-considered and reasonable exclusion.

The exclusion is not intended to create a massive loophole, as some Members have suggested. It merely ensures that the competitive balance between the public and private sectors be maintained.

I urge my colleagues on both sides of the aisle to support this wise and fair amendment.

Mr. President, I think the Senator from Connecticut and others who have put a great deal of effort into structuring this amendment have thought through many of the very difficult obstacles that we face as we address this bill.

We want to support this bill. We want to find ways in which to address what we consider some of the shortcomings. Certainly as we consider some of the most significant problems with the implementation of this legislation, this is one of the most serious issues of all.

So, again, I hope our colleagues will see fit on both sides of the aisle to find a way to support this and to recognize its importance. It is important. We ought to pass it. I hope we can pass it this afternoon.

I thank the Senator for yielding. I yield the floor.

Mr. LIEBERMAN. Mr. President, I inquire of the Chair how much time remains?

The PRESIDING OFFICER. The Senator from Connecticut has 4 minutes, and the Senator from Idaho has 1 minute.

Mr. KEMPTHORNE. Mr. President, I appreciate this discussion. This is what we ought to be doing.

Just for clarification of the Lieberman amendment, where competition exists, paragraph B does not apply. So in the bill, on page 21, line 24,

all of page 22, all of page 23, page 24 down to line 21, it is exempt.

So, again, I think that we have stated the case. Why would we not want to go through the process of knowing what the cost is, the impact, and if there is some adverse impact with the private sector? I think the American public wants us to know that information so that we can discuss that and then the majority can rule. At any point you can seek a waiver and say, "No; in this case, we don't need to do that." But rather than inventing all of these scenarios, let us let the will of the Senate work by giving them a process that will enhance that.

Mr. President, I ask unanimous consent that immediately following the next rollcall vote Senator BIDEN of Delaware and Senator KEMPTHORNE from Idaho be allowed to engage in a colloquy not to exceed 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LIEBERMAN. Mr. President, I want to thank my friend and colleague from Idaho for what has been a very good, substantive debate and to make two points.

One, he is right that this amendment would have that effect regarding section (1)(B). So we remove from any mandate that equally affected the private and public sectors the requirement of section (1)(B), but it leaves (1)(A) intact. (1)(A) is the requirement to report the cost of any bill before the Senate can act on it. It says very simply it shall not be in order in the Senate to consider any bill or joint resolution that is reported by the committee unless the committee has published a statement of the director of CBO on the direct cost of Federal mandates in accordance with this proposal. So that remains intact. The evidence will be there.

Finally, I want to say this to my friend from Idaho. I think that he and Senator GLENN have done extraordinary work here. This measure, S. 1, really would force us finally to do what we should have done a long time ago. I sincerely believe that the passage of this amendment that I have offered leaves almost all of the intent of the bill intact, and certainly that part that imposes the most serious cost on State and local governments.

I think, with the amendment passed, the bill is a better bill. And may I say with thanks and appreciation to the Senator from Idaho, if we pass it with the amendment it is a truly historic accomplishment and will begin to dramatically affect the way in which we behave here and force us to behave in a much fairer way to our friends in the State and local and private sectors who have to live with the laws that we adopt.

Mr. President, I thank the Chair. I yield the remainder of my time.

Mr. KEMPTHORNE. Mr. President, I move to table the amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Idaho to lay on the table the amendment of the Senator from Connecticut. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from South Carolina [Mr. THURMOND] is necessarily absent.

Mr. FORD. I announce that the Senator from Louisiana [Mr. JOHNSTON] and the Senator from Vermont [Mr. LEAHY] are necessarily absent.

I further announce that, if present and voting, the Senator from Vermont [Mr. LEAHY] would vote "no."

The PRESIDING OFFICER (Mr. BENNETT). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 53, nays 44, as follows:

[Rollcall Vote No. 29 Leg.]

#### YEAS—53

Abraham	Gorton	McCain
Ashcroft	Gramm	McConnell
Bennett	Grams	Murkowski
Bond	Grassley	Nickles
Brown	Gregg	Packwood
Burns	Hatch	Pressler
Chafee	Hatfield	Roth
Coats	Heflin	Santorum
Cochran	Helms	Shelby
Cohen	Hutchison	Simpson
Coverdell	Inhofe	Smith
Craig	Jeffords	Snowe
D'Amato	Kassebaum	Specter
DeWine	Kempthorne	Stevens
Dole	Kyl	Thomas
Domenici	Lott	Thompson
Faircloth	Lugar	Warner
Frist	Mack	

#### NAYS—44

Akaka	Exon	Lieberman
Baucus	Feingold	Mikulski
Biden	Feinstein	Moseley-Braun
Bingaman	Ford	Moynihan
Boxer	Glenn	Murray
Bradley	Graham	Nunn
Breaux	Harkin	Pell
Bryan	Hollings	Pryor
Bumpers	Inouye	Reid
Byrd	Kennedy	Robb
Campbell	Kerrey	Rockefeller
Conrad	Kerry	Sarbanes
Daschle	Kohl	Simon
Dodd	Lautenberg	Wellstone
Dorgan	Levin	

#### NOT VOTING—3

Johnston	Leahy	Thurmond
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So, the motion to lay on the table was agreed to.

Mr. KEMPTHORNE. Mr. President, I move to reconsider the vote by which the amendment was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senator from Delaware [Mr. BIDEN] and the Senator from Idaho [Mr. KEMPTHORNE] are to be recognized for up to 10 minutes.

DELEGATION OF CONSTITUTIONAL AUTHORITY BY CONGRESS

Mr. BIDEN. Mr. President, I thank the Chair.

Mr. President, yesterday, or maybe even the day before yesterday, I responded to an assertion that I thought was overbroad—not made by the Senator from Idaho but by another Senator—as to what was within the constitutional authority of the Congress to delegate or not delegate in terms of legislative power. Mr. President, I got into this discussion about the constitutional issue and separation of powers issue, of how much we could and could not delegate and whether or not particular sections of this legislation, in fact, exceeded the constitutional authority we had to delegate power.

Before I begin this colloquy, I want to thank the Senator from Idaho and his staff for spending the time with me and going through it. Mr. President, this bill adds a new section to the Budget Act, section 408(C). That section, as I understand it, provides that a simple majority point of order shall lie against any authorization bill that imposes a mandate unless the authorization bill provides for the possibility that the Appropriations Committee may not appropriate the estimated cost set forth in the authorization bill to pay for the mandate.

Section 408(C) provides that the authorization bill must deal with that eventuality by designating a responsible Federal agency and by establishing criteria and procedures for that agency to scale back the mandate to match the funds that the Appropriations Committee has provided, or to declare the mandate to be in effect.

Now, let me ask my friend from Idaho, what would happen under this provision, and the provision I am referring to is section 408(C), if an authorization bill imposed a mandate, named a responsible Federal agency to implement the mandate, but did not provide any criteria at all for the agency to use in scaling back the mandate or declaring it ineffective? Would a point of order in section 408(C) lie in that case?

Mr. KEMPTHORNE. Mr. President, I say to my friend from Delaware, yes, that the point of order would lie.

Mr. BIDEN. Now, further, I ask my friend from Idaho, what if the authorization bill did claim to set out criteria and procedures for the responsible Federal agency but those criteria said in effect, "Federal agency, do what you think is right if the Appropriations Committee does not fund the full amount set forth in the authorization bill." Would a point of order lie in that circumstance?

Mr. KEMPTHORNE. Mr. President, yes, it would.

Mr. BIDEN. Mr. President, I thank the Senator from Idaho for his answers. I do appreciate them.

Mr. KEMPTHORNE. Mr. President, I would like to pose a question to my friend from Delaware. That is, can my colleague and ranking member of the Judiciary Committee tell me if his constitutional concerns regarding the delegation of authority to executive

branch agencies in this section have been satisfied?

Mr. BIDEN. Mr. President, the answer is yes.

As this colloquy has helped show, at least from my perspective, section 408(C) provides that authorization bills that impose a mandate and delegate authority to a Federal agency shall include criteria and procedures to guide the Federal agency's actions. To the extent that an authorization bill contains such criteria and procedures, it increases the likelihood that the delegation of authority is constitutional. To the extent that such a bill lacks appropriate criteria and procedures, it increases the likelihood that the delegation is unconstitutional.

The Senate could, of course, vote to overrule any point of order raised on this basis. But that does not necessarily mean that the delegation is constitutional because the Senate overruled a point of order. The ultimate question of constitutionality is for the courts to decide. Of course, ultimately, all these questions of the constitutionality of a delegation of authority through an executive agency are through the courts.

I am satisfied that the attempt has been made in the legislation to meet the constitutional requirements. I thank my colleague, the Senator from Idaho, for making these points clear to me. As far as I am concerned, on this point, I have no further concern.

Mr. KEMPTHORNE. Mr. President, I say to my friend from Delaware how much I appreciate his looking into this issue and sitting down so that we could go through this point by point.

Because of the universal respect for your legal ability, that was important to me. So I appreciate that the Senator made that effort, and I appreciate that the Senator has entered into this colloquy so we can, I hope, lay this issue to rest. It allows Members, again, to move forward on this bill, which is so important to all Members.

I do thank and show my respect to the Senator from Delaware.

Mr. BIDEN. Mr. President, I thank my colleague from Idaho for his overly generous references to my legal abilities.

In the event that the next election does not turn out as I wish, I hope everyone listened to it. And I wish it were true, although it is not warranted. I appreciate the sentiment.

Mr. BYRD. Mr. President, will the distinguished Senator from Idaho yield?

May I say that I, too, have great respect for the opinion and viewpoints of our friend from Delaware, the ranking member of the Judiciary Committee. He teaches courses in law, and has served as the chairman of that Judiciary Committee for many years.

And what he says carry great weight with me. But I must say that this Senator's concerns are not allayed. I will expound upon those concerns in due time, and I also expect to have an

amendment prepared, and perhaps a couple of amendments, which, if agreed to, will allay my concerns.

Mr. KEMPTHORNE. I thank the Senator from West Virginia.

Mr. LEVIN. I wonder if the Senator will yield briefly on this point and my friend from Delaware will also perhaps engage me in a colloquy, because I also have some continuing concerns on this issue, although I do think there has been some significant clarification.

The PRESIDING OFFICER. Does the Senator yield to the Senator from Michigan?

Mr. KEMPTHORNE. Yes, Mr. President, I yield but retain my right to the floor.

Mr. LEVIN. My question would be this: The word "specific" is not in here. Would this be clearer, does the Senator from Delaware believe, if the word "specific" were added before the words "criteria and procedure"?

Mr. BIDEN. Mr. President, if I may respond, the answer is yes. I do not think it is necessary, but it would not do any damage to the section.

Again, I do not want to take too much time, but if you look at the case law here, the real issue is not whether or not we can delegate authority, it is how much authority can we delegate and with what specificity do we delegate.

So to the extent that we demand specificity, it increases the prospect that whatever authority is delegated is constitutionally permissible. That is why I said in my colloquy with my friend from Idaho that to the extent that an authorization bill contains such criteria and procedure, specific criteria and procedure, to the extent it does, it does not make it constitutional, it increases the prospects that it will be constitutional. To the extent that it lacks specificity, it diminishes the prospect that it would be held to be constitutional.

So neither the Senator from Idaho nor I, I believe, are asserting that this does not have the potential to raise a constitutional question, but merely to suggest, and I would refer—maybe what I should do before this bill is finished is refer to some of the case law that I think indicates that it is likely—likely—that the Court would, in fact, rule that we have not delegated authority beyond what we are constitutionally permitted to do.

And to relate to the degree of specificity, I have no objection. It is not my bill, so it is presumptuous of me to suggest what should and should not be added. I have no objection it be added. I think it strengthens it marginally without in any way weakening the intent of the legislation.

Mr. LEVIN. I thank my friends from Idaho and Delaware.

The PRESIDING OFFICER. The Senator's time has expired. The Senator from Idaho has the floor.

Mr. KEMPTHORNE. Mr. President, thank you.

The PRESIDING OFFICER. The Senator from Oklahoma.

AMENDMENT NO. 169 TO AMENDMENT NO. 31

(Purpose: To ensure Federal agencies provide a written estimate of the costs private sector mandates on the private sector during the regulatory process)

Mr. NICKLES. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Oklahoma [Mr. NICKLES], for himself, Mr. DOMENICI, and Mr. SHELBY, proposes an amendment numbered 169.

Mr. NICKLES. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the pending amendment, add the following:

(6) Notwithstanding any other provision of this Act, an agency statement prepared pursuant to Section 202(a) shall also be prepared for a Federal Private Sector Mandate that may result in the expenditure by State, local, tribal governments, or the private sector, in the aggregate, of \$100,000,000 or more (adjusted annually for inflation by the Consumer Price Index) in any 1 year.

Mr. NICKLES. Mr. President, first, I wish to compliment the leaders of this legislation, Senator KEMPTHORNE and Senator GLENN, for their patience and for their diligence in pursuing a piece of legislation which I think is very much needed and is a very good piece of legislation. They have taken giant steps toward eliminating unfunded mandates on public entities.

This legislation says if we pass legislation, we should know how much it costs on public entities, and if we are going to mandate something on a public entity that if we do not provide the funding that a point of order can be raised to stop that mandate. I think that is a good step. We should know what it costs and, frankly, if we are not going to provide the funding, we should have some capability to stop it, and this legislation has done that and I compliment the authors.

The legislation also says that if we have legislation pending that has a negative or has an impact on the economy of over \$200 million on the private sector, that CBO should score it; CBO should tell us what that impact is before it becomes final. I think that is good. If we are going to pass legislation, if we are going to make laws, we should know what its impact is on the economy before it is too late. Maybe the impact is positive, maybe it is negative, but we should know what it is. I think that makes us a lot more accountable. Hopefully, it will make us better legislators. So I think that is a very good provision.

The legislation also says that regulatory agencies, if they are going to implement regulations that would have an impact on the public sector of over



\$100 million, they should at least identify what that cost is. So if you have the EPA or OSHA or if you have any other regulatory agency make a regulation that has a negative impact or a positive impact on the public sector—State, city governments—we should know what that cost is if it exceeds \$100 million.

The amendment that Senator DOMENICI and myself and Senator SHELBY offered, and in which others have an interest, would go a step further and says if the regulatory agencies make a regulation that has a negative impact on the private sector of over \$100 million, we should know what that cost is, too.

In other words, the legislation does a great job in identifying costs and unfunded mandates from the legislators, from Congress, and it does a good job from the regulatory side in at least identifying the costs—not prohibiting it but at least identifying the costs from the regulatory side—as it impacts the public sector, but it is silent right now as far as the regulatory impact on the private sector.

That is what our amendment would do. It would say—and it does not prohibit the regulatory agency from implementing it, it says they would have to identify the cost.

I think it is a good amendment. It is one with which I hope my colleagues can concur.

I thank my friend and colleague, Senator DOMENICI, for his leadership because actually we have been working on this now for a couple of years. This is supported very, very strongly by all the business sector, all the private sector. I think it is an amendment that should receive unanimous support.

Mr. KEMPTHORNE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

#### UNANIMOUS-CONSENT REQUEST

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent that there be 60 minutes of debate on the Nickles amendment No. 169, equally divided between Senators NICKLES and GLENN, and at the conclusion or yielding back of time, a vote occur on or in relation to the amendment.

The PRESIDING OFFICER. Is there objection?

Mr. GLENN. Reserving the right to object—and I will object—we have objection on our side to proceeding with that time limit at this time. We might be able to agree to it later but not now.

The PRESIDING OFFICER. Objection is heard.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I join Senator NICKLES in urging the Senate adopt this amendment. I do not know how many Senators have participated with numbers of small business people in their States, but I happen to be a fortunate one.

I set up a little project in my State. I called it Small Business Advocacy

Council, and asked five small business leaders to head it from all over the State. Then we proceeded to invite groups of small businesses to five different parts of New Mexico for 2 to 4 hours to talk about the regulatory processes of this country as it applied to their well-being, to their businesses, to their ability to have more jobs and grow, and whether the regulations were reasonable and made common sense.

I was absolutely dumbfounded to hear with almost one voice, regardless from what sector—whether they were retailers, realtors, manufacturers, service businesses—with one voice, they were saying three things: One: “Senator, the Federal Government’s bureaucratic agencies enforcing regulations treats us as if we are their enemies, not constituents, not customers, not taxpayers, not small business people earning a living and paying people, but as if we are their enemies.”

I say this loud and clear: I do not have an answer to that. This amendment will not answer that. But I tell you, it is part of this great motion out there against big government. It is as much a part of big government ought to get littler as the literal size of government is being attacked.

Second, I regret to tell you that, again, with almost unanimous feeling, the three agencies of this Government that are most adversarial, less friendly, and thus for some less American happen to be OSHA, the Environmental Protection Agency, and the IRS. Now, frankly, I did not think the IRS was still in there since we reformed the tax laws, but they are, I say to my friend. They are right up there as the agency that treats people as if they were aliens, illegal, enemies.

Then the second thing that was harmoniously spoken about, nobody has a chance of looking at these regulations to see if they make sense and to see how much they cost. They cited innumerable examples of both unreasonable regulations and legislation that costs so much money that if slightly changed toward common sense could dramatically reduce the cost on people, on businesses, on our livelihood and our entrepreneurial advantage called opportunity America.

The third was, why does not somebody look at these before they adopt them—loud and clear—these regulations?

Now, again, we will through the year, under the leadership of Senator NICKLES and others, address these issues in a more specific manner as we talk about overregulations, unpropitious regulations, regulations that make no sense. But we can at least in this bill, which purports to try to help small business in some way, require that we know how much they are going to cost; that is, regulations to be promulgated and rendered effective against American business, whether it be in Idaho, Utah, Oklahoma, New Mexico, or New York.

All this amendment does is say to the regulatory processes of this country, if a regulation is going to exceed \$100 million, you must weigh it and tell us about its economic disadvantages.

Now, frankly, some may say we are not going to be able to do that in every case. We may not. But just as it is time to reorient our Federal Government versus our cities and States and counties in something we choose to call, again, refederalism, a new partnership, a return to the 10th amendment, which said we are not supposed to be doing so many things up here, we ought to do the same thing for small business to the extent that we can. We ought to be more understanding and more in partnership with them than adversarial. And a very simplistic, but, I believe, necessary approach to that, is to say these kinds of regulations are going to be measured in terms of their dollar impact, or cost is another way to say it, cost to American business, be it in your State, Mr. President, or mine, or in California. All total, a \$100 million impact is to be noted as to its effect on competitiveness, its effect on other aspects so it is more apt to be vested with something very, very simple, and that is that we understand before we do it because we have some evaluations, so we act with knowledge.

If we acted with knowledge of the impacts, I do not think my group in New Mexico, the small business advocacy group, in its four or five hearings with a lot of business people, would be telling us the horror stories we hear, nor would they be harboring the animosity, anger, and anguish they hold toward their own Government today.

Anybody who thinks that does not exist is just not talking to them. And anybody who thinks that is just because they do not want anybody to tell them what to do on anything is just not talking to the responsible business people I have been talking to. They just do not want to be treated irresponsibly. They want to be treated responsibly.

While I say we are not going to do that with specificity, we are not going to have a new approach to the whole regulatory process, we are not going to have a new approach which I believe we should have to receive input from those affected, we are not going to have statewide councils that might look at these regulations and report before they become effective so we might have some common sense, these are ideas that came out of these conferences of which I spoke. They are good ideas. We ought to do them. We ought to even consider on the regulatory process having them evaluated on an annual basis by an outside group for customer satisfaction.

Every businessman that serves a lot of people does that, has a private company come in and in a random way ask: Did we do what we said when we said we would take your \$138 and fix your car? Did we treat you right? They get

graded so the businessman knows if they are customer friendly.

We do not have a chance of doing that with Federal regulations. Maybe we will in the future. Let us take one small step today and put small business in this bill. If we are going to affect them nationally over \$100 million, let us get the impact of that in ways that are understandable. We may have to develop a few new techniques, but it is sure worth it to get started down that path just as much as it is for the public sector.

I thank the Senator for letting me join, and I yield the floor.

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, the problem of regulatory review is one that goes across the length and breadth of the whole Government, as we are all aware. We can pass all sorts of laws in the Senate or the Congress, the House of Representatives, whatever; we can pass all sorts of laws and then we pass them over to the executive branch to have the rules and regulations written, and sometimes the way things come out is completely different than what we expected when we passed the legislation. So regulatory review is a most important item with which we have to deal.

Now, I have been working in this area of regulatory review on the Governmental Affairs Committee for a long time, for a number of years, and I am very concerned about it. I compliment my colleagues from Oklahoma and from New Mexico for the work they have done and the interest they have taken in this particular area, and I think that is great.

I had originally thought that perhaps I would oppose this on one ground and that is—not on substantive grounds but on the fact that I have legislation that will be in hearing on February 8 by the Governmental Affairs Committee. It is S. 100. It is a bill that deals with regulatory review in general all across Government. I hope we will take a broad view of this and make more sense out of regulatory review than the way we run it now.

We worked with IRA, Information and Regulatory Affairs, through the years, and OMB, through the last two administrations and this administration, and we hope that the new legislation will make more sense out of regulatory review across the whole length and breadth of Government, and make sure that we do not just let the regulation writers proceed without some bridle on them as far as ignoring the costs to public and private interests out there all across the country.

So, having said that, I am very, very sympathetic to what the distinguished Senator from Oklahoma is trying to do here in making sure that we get regulatory review.

Now, staff tells me that what Senators are proposing here is very similar or nearly identical—very similar any-

way to the Presidential Executive order that deals with this same subject. We are checking that right now. We are also checking with some of the people on our side who we think might have a particular interest in this particular amendment, and I will be able to give my colleague an answer as to whether we can accept this shortly. I do not want to delay this. But unless he wanted to talk or somebody else wanted to talk, I would just put in a quorum call at the time until we get an answer back. I hope it will be just a few minutes. It was my understanding in discussing this with my friend from Oklahoma he would be willing to have a voice vote on this and we could get on with other business.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I appreciate the comments from my friend and colleague from Ohio. To answer a couple of his questions, I am happy to have a voice vote. I am happy to proceed.

I have a hard time imagining anybody really opposing this amendment because, as you mentioned, it may parallel what the administration is trying to do. Certainly if regulatory agencies are going to have mandates on the private sector in excess of \$100 million, they should at least identify it. I think in any of the regular reform bills that will probably be included.

Plus the fact we are, in this legislation, telling the regulatory agencies to identify the costs if they have an impact on the public sector in excess of \$100 million. Certainly, if they are going to do that for the public sector, they should also do it for the private sector. They can probably do it at one and the same time. A lot of bills have impacts on both the public and private sectors. So I do not even think it will be a duplicative effort. It will just be done.

Again, if a regulatory agency is going to take an action that has an impact of over \$100 million, for all practical purposes they should have a cost estimate.

So I appreciate my colleague's interest in this. I also want to compliment him and assure him and Senator ROTH and others, Senator DOMENICI, Senator BOND, Senator HUTCHISON, and others—a lot of people have done a lot of work on regulatory reform. It is going to be very extensive. I am looking forward to that.

And we are not doing that here. I am talking about cost-benefit analysis, risk assessment, using science, as my friend and colleague from Ohio has alluded to in the past. It is important that we use real science in making some of our determinations.

I look forward to that debate and that bill, because I think it will be a giant step, one that should be bipartisan and one that will help rein in the excessive costs of regulation.

This particular amendment does not do anything to rein it in. It just says it should be identified. That by itself might help rein it in. If someone in the

private sector disagreed with it, we could dispute it. We could have a hearing. And if someone says this regulation from EPA costs \$500 million per year to the private sector, maybe the private sector would come in and say, we disagree, it costs \$3 billion. That would be good interest, good information for people to have. This does not stop the regulations from coming into effect. It just says they should be identified. It is identical with the regulation on the public sector. We think we should identify it for the private sector as well.

I know there was an interest a moment ago to have a 1-hour time agreement. I told the managers of the bill that is not necessary for this Senator. I think this is a commonsense amendment, readily understood. Hopefully, it will be agreed upon.

Several Senators addressed the Chair.

Mr. GLENN. Mr. President, just one further comment. I see another Senator seeking the floor here. Just one comment on this.

The only other caveat I had on this, this bill originally set out to deal with unfunded Federal mandates. We now have gotten into public overlap and so on, and we are into cross-pollination here in so many areas.

I do not think this particular amendment breaks any new ground in this. So I do not have any objection on that ground. We are going to try to deal with a lot of these things, though, in the regular review of S. 100.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. ABRAHAM. Mr. President I also rise in support of the amendment. As I think has already been articulated, the small businesses, and the private sector more generally, of this country are heavily inundated with burdens imposed by government and direct kinds of taxes and costs. They are actually, I think, burdened by regulations that impose mandates on them. So I believe the amendment is well in order and should be supported.

Mr. President, I rise in support of S. 1, which, of course, addresses the problem of unfunded Federal mandates. S. 1 would significantly limit the Federal Government's ability to require State or local governments to undertake affirmative activities or comply with Federal standards unless the Federal Government was also prepared to reimburse the costs of such activities or compliance. As with direct Federal expenditures, the financial burdens of such mandates fall squarely upon the middle-class taxpayer. I strongly commend Senator KEMPTHORNE for continuing leadership on this issue and for his sponsorship of S. 1.

Perhaps nothing better reflects contemporary trends in government than the enormous growth in the level of unfunded Federal mandates over the past two decades. An unfunded mandate arises when the Federal Government

imposes some responsibility or obligation upon a State or local government to implement a program or carry out an action without, at the same time, providing the State or local government with the necessary funding. Several recent illustrations of unfunded mandates include obligations imposed on States and localities to establish minimum voter registration procedures in the Motor Vehicle Voter Registration Act; obligations imposed on States and localities to conduct automobile emissions testing programs under the Clean Air Act; and obligations imposed on States and localities to monitor water systems for contaminants under the Safe Drinking Water Act. These examples, however, are only the smallest tip of the iceberg.

While there is virtually no area of public activity in which Federal mandates are absent, such mandates are most visible in the area of environmental legislation. Of the 12 most costly mandates identified by the National Association of Counties in a 1993 survey, 7 of them involve environmental programs such as the Resource Conservation and Recovery Act, the Clean Air Act, the Clean Water Act, the Endangered Species Act, the Safe Drinking Water Act, and the Superfund Act.

The negative effects of unfunded Federal mandates are at least fivefold: First, such mandates camouflage the full extent of Federal Government spending by placing an increasingly significant share of that spending off-budget, in the form of costs imposed upon other levels of government. While it is extraordinarily difficult to assess the dollar costs of unfunded mandates, a sense of their magnitude is evidenced by a 3-month study done earlier this year by the State of Maryland, in which they concluded that approximately 24 percent of their total budget was committed to meeting legal requirements mandated by Congress. Assuming the rough accuracy of this estimation, and assuming that Maryland is not subject to extraordinary levels of mandates, this would amount to approximately \$80 to \$85 billion imposed nationally upon all State governments. This figure does not include mandates imposed upon local governments. To calculate the true burden of Federal spending, the costs of these mandates must be added to an already bloated Federal budget. The Federal Government consumes the limited resources of the people every bit as much when it compels State or local governments to do something as when it directly does something itself.

Second, the impact of the unfunded Federal mandate is to distort the cost-benefit analysis that Congress undertakes in assessing individual pieces of legislation. The costs imposed by the Congress upon States and localities are rarely considered, much less estimated with any accuracy. As a result, the presumed benefits of legislative measures are not viewed in the full context of their costs. Legislative benefits tend

consistently to be overestimated and legislative costs tend consistently to be underestimated.

Third, unfunded Federal mandates burden State and local governments with spending obligations for programs which they have never chosen to incur while requiring them to reduce spending obligations for programs which they have chosen to incur. For the options are clear when mandates are imposed by Washington: Either State and local governments must raise taxes—since they do not have the same access to deficit spending as the Federal Government—or they must reorder their budget by reducing or terminating programs which had already been determined to merit public resources. With State balanced budget requirements and with taxpayers already burdened to the hilt by government demands for a share of their income, State and local governments are forced into a zero-sum analysis by unfunded mandates; every new Federal mandate must be compensated for directly by a reduction in another area of State or local spending. Further, every Federal mandate must effectively be treated as the number one spending priority by State and local governments, notwithstanding the sense of their community and the judgment of their elected officials. Such governments must first budget whatever is necessary to pay for the mandates and only afterwards evaluate the level of resources remaining for other spending measures.

Which leads to the fourth impact of the unfunded Federal mandate. An increasing proportion of State and local budgets is devoted to spending measures deemed to be important not by the elected representatives in those jurisdictions, but rather by decisionmakers in Washington. In 1993, for example, compliance with Federal Medicaid mandates cost the State of Michigan \$95.3 million, which exceeded by \$7 million the combined expenses of the Michigan Departments of State, Civil Rights, Civil Services, Attorney General, and Agriculture. Although the Supreme Court in recent years has reduced the 10th amendment to effective insignificance, I believe nevertheless that there are constitutional implications to this trend. It is lamentable enough that the Federal budget has grown at the pace that we have witnessed over the past generation; for Washington additionally to be determining the budgetary priorities of Michigan and Texas and Pennsylvania is for it to trespass upon the proper constitutional prerogatives of the States. To the extent that the States are straitjacketed in their ability to determine the composition of their own budgets, their sovereignty has been undermined.

Indeed, the Constitution aside, it is difficult to understand how a reasoned assessment of the efficacy of Federal Government programs over the past several decades would encourage anyone in the notion that Washington had

any business instructing other governments how best to carry out their responsibilities.

Finally, unfunded Federal mandates erode the accountability of government generally. The average citizen now finds that his State and local representatives disavow responsibility for spending measures resulting from Federal mandates, while his Washington representatives also claim not to be responsible. Lines of accountability are simply too indirect and too convoluted where Federal mandates are involved. The result is that the citizenry come to feel that no one is clearly responsible for what government is doing, and that they have little ability to influence its course.

I am particularly supportive of S. 1 because I believe that it will result in governments at all levels thinking more seriously about the proper scope of government. In truth, unfunded mandates are but one symptom of the more fundamental problem that the Federal Government has lost sight of the proper scope of its functions. While there are some mandates that are reasonable, Congress should be prepared to reimburse the States for the costs attendant to such mandates. In cases where the wisdom of mandates is more dubious, S. 1 would force upon Congress a more balanced and a sober decision-making process. Instead of neglecting the hidden pass-the-buck costs entailed in unfunded mandates, Congress instead would be forced to make hard-headed decisions about the costs and benefits of new programs. In at least some of these cases, I am confident that the legislative balance will be drawn differently than that we have consistently seen over recent decades. I am confident that the virtues of federalism will be recognized more readily when new programs are no longer free but must be explicitly accounted for in the Federal budget. The one-size-fits-all mentality which tends to underlie most Federal mandates may also be reconsidered in the process.

At the same time, State and local officials will also have to make difficult decisions. With Congress likely to curtail or terminate altogether some mandates when confronted with the requirement that they have to pay for them, State and local governments will have to determine whether they are willing to support such programs on their own. No longer will they be able to enjoy the benefits of such programs while being able to divert responsibility for their costs to the Federal Government. Rather, they will have to make equally hard decisions as those that will have to be made by Washington lawmakers about the relative merits of public programs.

Perhaps the greatest long-term benefit of the present legislation is that it will force more open and honest decisionmaking and budgeting upon all levels of government. When greater governmental accountability is achieved, the public will be better positioned to

punish and reward public officials for actions. As a result, government will be more responsive to the electorate in its spending decisions. Government, in short, will be made more representative by this legislation.

Further, Federal bureaucracies themselves will have to be more respectful of the costs that they impose upon State and local governments. Currently, these bureaucracies give little or no consideration to such costs because none of those costs are borne by the agencies themselves. When the real costs of Federal regulation are attributed to the agency responsible for such regulation, agencies will gain an extraordinarily useful perspective on the burdens that they are imposing on other levels of government.

Going beyond the present measure, I would hope that we will be able to address several related matters in the near future. First, I do not believe that the bar on unfunded mandates should be limited to future initiatives. Given the burdens currently being borne by State and local governments, I favor in certain instances the retroactive application of the commonsense principle incorporated in this legislation. Second, I favor legislation that addresses the problem of conditional mandates. Conditional mandates arise when the Federal Government provides grants-in-aid to the States with strings or conditions attached. While these conditions may be reasonable and designed to ensure that money dispensed is being utilized effectively, other conditions may be far more tangentially related to the grants. I do not believe that Federal grant programs should be used to circumvent the present legislation's bar on direct Federal mandates. Therefore, I would support legislation such as that offered by Senator HATCH, which would prohibit conditional mandates unless they were directly and substantially related to the specific subject matter of the Federal grants-in-aid.

Mr. President, by changing the rules of the legislative process and forcing upon Congress more accountable decisionmaking, the present legislation will, in my judgment, contribute greatly to a more responsible and balanced legislative product. This measure is not antienvironment, anti consumer safety, or antiregulation, as its opponents have suggested. Rather, it is pro open and honest government decision-making. If a majority of the Congress continues to support a particular mandate, that majority has the unfettered discretion to promulgate the mandate; they are constrained only in their ability to hide the costs of the mandate and to obscure where governmental responsibility lies for the mandate.

I ask unanimous consent to have printed in the RECORD several resolutions and letters I have received from governmental bodies in Michigan in support of this legislation. In view of the strong support for this measure from the National Conference of State Legislators, the National Association

of Counties, and the National League of Cities, as well as on the basis of my own conversations over the past year, I am convinced that these writings reflect the overwhelming sentiment of Michigan communities, as well as communities across the United States.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CITY OF INKSTER,  
*Inkster, MI, January 5, 1995.*

Re unfunded mandates.

Senator SPENCER ABRAHAM,  
*Dirksen Building,*  
*Washington, DC.*

DEAR SENATOR ABRAHAM: Unfunded Mandates have very debilitating effects upon cities similar to Inkster. Perhaps I should not repeat the litany of complaints that you have already heard, but I am compelled to advise you of the limiting factors which automatically places the City of Inkster in a position of default under the existing rules and regulations related to these unfunded mandates.

Inkster is mandated to erect three (3) retention basins in regard to the Combined Sewer Operation program imposed by the Federal Government.

Listed below you will find some very important factors about the City of Inkster and how unfunded mandates affect our community:

We have an annual General Fund Budget of only \$10,908,350.00;

By Michigan law we can levy no more than 20 mills Real Property tax;

Our current levy is 19.52 mills;

Our water and sewer rates are controlled by the amount charged by the City of Detroit and they are outrageous;

Our bonding capacity is such that our share (\$23 million) for the first basin has to be guaranteed by Wayne County to the Michigan State Bond Authority and the State Revolving Fund;

Additionally, Inkster must lease the land upon which the basin will be sited for \$1,500.00 per year;

I need not go on. You can see the untenable position that we are in. I very strongly urge you to vote relief for all cities caught in this impossible web by supporting and seeking support to HB 5128 and SB 993 which will soon be considered.

Very sincerely,

EDWARD BIVENS, Jr.,  
*Mayor.*

CITY OF TAYLOR,  
*Taylor, MI, January 12, 1995.*

U.S. Senator SPENCER ABRAHAM,  
*Dirksen Office Building,*  
*Washington, DC.*

DEAR SENATOR ABRAHAM: As Mayor of the City of Taylor, I have watched with growing dismay the increase in unfunded federally mandated programs. Congress should implement the following provisions for any future legislation:

1. Require that state and local officials be afforded the opportunity to provide meaningful input (given a real voice in the planning.)

2. Require an assessment of costs and benefits associated with the planning and/or implementation of any federally mandated programs.

3. Federal funds should be budgeted/appropriated prior to enactment of any such legislation.

Senator Abraham, if implemented these suggestions will go a long way toward building a meaningful partnership between the federal, state, and local governments, to better serve the American people. I wish to commend you for your pro active position on

this vital issue and urge the support of your colleagues.

Sincerely,

CAMERON G. PRIEBE,  
*Mayor.*

CITY OF MUSKEGON,  
*Muskegon, MI, January 12, 1995.*

Hon. SPENCER ABRAHAM,  
*State Senator,*  
*Warren, MI.*

DEAR SENATOR ABRAHAM: I appreciated the opportunity to talk to you yesterday regarding my concerns about Unfunded Federal Mandates and the burden they place on cities such as Muskegon. These mandates create an undue burden that compounds the problems and difficulties already encountered by local municipalities. Therefore, I encourage you continued efforts in eliminating unfunded mandates.

Thank you for your assistance in this very important matter.

Sincerely,

JAMES W. PRUIM,  
*Mayor.*

CITY OF WYANDOTTE,  
*Wyandotte, MI, January 12, 1995.*

Hon. SPENCER ABRAHAM,  
*U.S. Senator,*  
*Washington, DC.*

DEAR SENATOR ABRAHAM: I am writing this letter as a result of the discussion I heard while watching C-SPAN this morning, January 12, 1995, at approximately 10:00 a.m. This discussion, which took place before a committee chaired by Senator Nancy Kassabaum from Kansas, has prompted me to send this FAX.

I thought Governor Thompson did an excellent job, however, I was disturbed by the comments made by Democratic Senator John Breaux from Louisiana and by Senator Ted Kennedy from Massachusetts, whose statements indicated their apparent distrust of the individual states. What I feel was really said by these senators was that we at the local level of government would not be sensitive to the needs of the poor unless the programs developed to assist the poor were designed in Washington. Where have they been?

Why do people in Washington feel that they are more honest and do a better job than those of us on the firing line day in and day out? As Governor Thompson suggested, let us design our own projects and hold us accountable for the results rather than having to abide by mandates written by bureaucrats in Washington who are, in my opinion, out of touch with what goes on in our cities on a daily basis.

Evaluate us based on our results rather than trying to pass laws and make rules that reduce the flexibility we all need. (Local) Government must have the authority to react more quickly in order to serve the people that Senate Kennedy and Senator Breaux, as well as the other senator from Minnesota, thought we would ignore.

This letter is meant to be straightforward and direct so there is no misunderstanding concerning my feelings about the issue of unfunded mandates.

Sincerely,

JAMES R. DE SANA,  
*Mayor.*

CITY OF DEARBORN,  
*Dearborn, MI, January 12, 1995.*

Hon. SPENCER ABRAHAM,  
*U.S. Senator,*  
*Washington, DC.*

DEAR SENATOR ABRAHAM: In response to your initial request for my opinion regarding

national issues requiring immediate attention, the issue of unfunded mandates stands out in my mind as one with extremely direct consequences for local governments.

According to studies conducted by Price Waterhouse, unfunded federal mandates will cost local governments nearly \$90 billion over the next five years. Cities will pay about \$6.5 billion this year and \$54 billion over the next five years, while counties will incur costs totaling \$4.8 billion this year and \$33.7 billion over the next five years.

I have attached a copy of a resolution that was adopted by our City Council. The resolution attempts to focus local and national attention on the threat unfunded federal mandates pose to local budgets and local citizens. It urges our representatives to force change in the way the federal government considers future mandates.

I believe that any action on this issue that views local governments as partners in the governance of this great country will benefit all of us who call ourselves public servants.

Respectfully submitted,

MICHAEL A. GUIDO,  
Mayor.

#### RESOLUTION

Whereas: Unfunded federal mandates on state and local governments have increased significantly in recent years (according to Price Waterhouse, unfunded mandates will cost local governments nearly \$90 billion over the next 5 years); and

Whereas: Federal mandates require cities and towns to perform duties without consideration of local circumstances, costs, or capacity, and subject municipalities to civil or criminal penalties for noncompliance; and

Whereas: Federal mandates require compliance regardless of other pressing local needs and priorities affecting the health, welfare, and safety of municipal citizens; and

Whereas: Excessive federal burdens on local governments force some combination of higher local taxes and fees and/or reduced local services on citizens and local taxpayers; and

Whereas: Federal mandates are too often inflexible, one-size-fits-all requirements that impose unrealistic time frames and specify procedures or facilities where less costly alternatives might be just as effective; and

Whereas: Existing mandates impose harsh pressures on local budgets and the federal government has imposed a freeze upon funding to help compensate for any new mandates; and

Whereas: The cumulative impact of these legislative and regulatory actions directly affect the citizens of our cities and towns; and

Whereas: The National League of Cities, following up on last year's successful effort, is continuing its national public education campaign to help citizens understand and then reduce the burden and inflexibility of unfunded mandates, including a National Unfunded Mandates Week, October 24-30, 1994; therefore, be it

*Resolved:* That the City of Dearborn, by its Mayor and City Council, endorses the efforts of the National League of Cities and supports working with NLC to fully inform our citizens about the impact of federal mandates on our government and the pocketbooks of our citizens; be it further

*Resolved:* That the City of Dearborn endorses organizing and participating in events during the week of October 24-30, 1994, and throughout the year; be it further

*Resolved:* That the City of Dearborn resolves to continue our efforts to work with members of our Congressional delegation to educate them about the impact of federal mandates and actions necessary to reduce their burden on our citizens.

CITY OF ST. CLAIR,  
St. Clair, MI, November 9, 1994.

Senator Elect SPENCER ABRAHAM,  
Senate Office Building,  
Washington, DC.

DEAR MR. ABRAHAM: Enclosed with this letter is a resolution adopted by the St. Clair City Council on Monday, November 7, 1994. The resolution details the City of St. Clair's stance on Unfunded Federal Mandates and the need for Congress to address this matter.

Also included is a pledge to vote on legislation which addresses Unfunded Federal Mandates. I, the members of the City Council and the residents of the City of St. Clair ask that you please sign the attached pledge to push for a vote on the unfunded federal mandates legislation. Please return a signed copy of the pledge to me at the following address: Bernard E. Kuhn, Mayor, City of St. Clair, 411 Trumbull Street, St. Clair, Michigan 48079.

Thank you in advance for your attention to our concerns. If you have any questions, please do not hesitate to contact me.

Sincerely,

BERNARD E. KUHN,  
Mayor.

#### RESOLUTION NO. 94-54

Whereas, unfunded federal mandates on state and local governments have increased significantly in recent years; and

Whereas, federal mandates require cities and towns to perform duties without consideration of local circumstances, costs or capacity, and subject municipalities to civil or criminal penalties for non-compliance; and

Whereas, federal mandates require compliance regardless of other pressing local needs and priorities affecting the health, welfare and safety of municipal citizens; and

Whereas, excessive federal burdens on local governments force some combination of higher local taxes and fees and/or reduced local services on citizens and local taxpayers; and

Whereas, federal mandates are too often inflexible, one-size-fits-all requirements that impose unrealistic time frames and specify procedures or facilities where less costly alternatives might be just as effective; and

Whereas, existing mandates impose harsh pressures on local budgets and the federal government has imposed a freeze upon funding to help compensate for any new mandates; and

Whereas, the cumulative impact of these legislative and regulatory actions directly affect the citizens of our cities and towns; and

Whereas, the National League of Cities, following up on last year's successful effort, is continuing its national public education campaign to help citizens understand and then reduce the burden and inflexibility of unfunded mandates; now, therefore, be it

*Resolved,* That the City of St. Clair endorses the efforts of the National League of Cities and supports working with NLC to fully inform our citizens about the impact of federal mandates on our government and the pocketbooks of our citizens; and

*Be it further resolved,* That the City of St. Clair endorses organizing to receive a written pledge from our representatives in Washington to vote on federal relief from unfunded mandates; and

*Be it further resolved,* That the City of St. Clair resolves to continue our efforts to work with the members of our Congressional delegation to educate them about the impact of federal mandates and actions necessary to reduce their burdens on our citizens.

#### UNFUNDED FEDERAL MANDATES WEEK PLEDGE

I pledge to the voters and taxpayers of the City of St. Clair to ensure a vote in Congress on federal unfunded mandates relief legisla-

tion for state and local governments before April 1, 1995.

If we in Congress fail to have a recorded vote to demonstrate accountability by that date, I pledge to submit a written report to the Mayor and Council of the City of St. Clair specifically detailing my efforts and the specific steps I will take to ensure action.

Signed:

MICHIGAN TOWNSHIPS ASSOCIATION,  
Lansing, MI, January 12, 1995.

Hon. SPENCER ABRAHAM,  
U.S. Senator,  
Washington, DC.

DEAR SENATOR ABRAHAM: The Michigan Townships Association urges your yes vote on S. 1, the Unfunded Mandates Reform Act. On behalf of all Michigan township officials, I also encourage you to resist any and all amendments that would weaken the intent of this proposed legislation.

Michigan has had a state law since 1978 designed to prevent the imposition of mandated costs on local governments. During its passage, however, 15 or more "loopholes" were written into the language that weakened the intent of the Bill. Please hold the line against these attempts to water down the intent of S. 1.

Sincerely,

JOHN M. LA ROSE,  
Executive Director.

Mr. NICKLES. Mr. President, I wish to congratulate the Senator from Michigan for an outstanding speech, a relatively new Member to our body, but as evidenced by his speech and by his work in the Senate this month he in my opinion will prove to be an outstanding asset to the State of Michigan without any doubt and certainly to this body and to our country.

So I compliment him on his remarks. I thank him very much for his support of our amendment as well.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, I thank the Chair.

Mr. President, I wanted to ask a question of my friend from Oklahoma about the meaning of his amendment. As I understand it, the statement that would be required to be prepared, pursuant to section 202(a), if this amendment is adopted, would have to be prepared for either the private sector or the public sector providing they reach in either case \$100 million annually adjusted for inflation. Is that correct? In other words, if the public sector mandates the cost of \$100 million in any one year, that will trigger the reform.

Mr. NICKLES. The Senator is correct.

Mr. LEVIN. If the private sector mandate is \$100 million more, that would trigger the reform.

Mr. NICKLES. The Senator is correct.

Mr. LEVIN. But if they were both \$60 million, there would not be a report triggered.

Mr. NICKLES. The Senator is correct again.

Mr. LEVIN. I thank the Senator for that clarification.

I have one other question. Perhaps my friend from Ohio will want to help on this. There could be an easy answer to it. In any 1 year, is that any one of the 5 fiscal years that are estimated, or is that any 1 year? When? Anytime, ever? What does that 1 year reference? I am sorry I did not have a chance to ask it of either Senator before. I am asking this on the floor. Perhaps we could get an answer to that later. I am just not sure what that means, "1 year."

Mr. NICKLES. Mr. President, just looking at the language on page 35 of the bill, that is really where we are amending the section, that section 202, that is the one which defines the call for reports. Basically it says the report shall be issued if you have regulatory impact of in excess of \$100 million or the public sector in any one year. I would think that would be any one calendar year. Regulatory agencies would be analyzing the cost of their changes, and they would have an annual cost. They may do an annual cost over several years. My guess would be that would be in any one particular calendar year. That is just my reading. We did not amend that language. We just included private sector in our amendment.

Mr. LEVIN. I thank the Senator from Oklahoma for that. Maybe I should address this then to the managers. What does the reference "any one" year mean, on line 15, page 35? Is that any one year, ever? Is that any one year of the 5 years of the 5 fiscal years? What is that reference?

Mr. KEMP THORNE. Will the Senator yield?

Mr. LEVIN. I would be happy to.

Mr. KEMP THORNE. I apologize. Will the Senator repeat the question?

Mr. LEVIN. My question is this: On line 15, page 35, there is a reference to the \$100 million which the Senator from Oklahoma is now amending to apply to either public or private. And my question that properly should have been addressed to the Senator from Idaho is: Is that 1 year, 1 year of the 5 fiscal years for which the estimate is being made? Or is that some other reference? I assume that means a fiscal year, too. I am trying to clarify what the reference is.

Mr. NICKLES. If the Senator will let me respond, again, I think you are right. The reference is to the legislation. My guess is that the regulatory agencies would determine the fiscal impact. I would think they would do it not on fiscal year but on calendar year—I may be incorrect—and that if the regulatory impact exceeded \$100 million, as adjusted for inflation in subsequent years, then they would have to identify the costs.

Again, I do not see that as a big burden. If you are going to have a regulatory impact on the public sector in excess of \$100 million, they should know it and identify it. If they are going to have a regulatory impact on

the private sector in excess of \$100 million, for subsequent years—my colleague mentioned 5 years, and I do not know what regulatory agencies—we do 5-year budgeting, although not very well. But I do not know that when they issue those regulatory statements, they automatically cover 5 years. I am not sure.

Mr. LEVIN. While we are on this line—I am wondering, while we are focused on this one line of the bill, I have not had a chance to ask my friend from Idaho this question either. Is the reference to "adjusted annually for inflation," adjusted from the effective date of the law, so that if the law is effective January 1, 1996, that that is the baseline for the \$100 million, and then if it is 3 percent inflation, on January 1, 1997, this then will reread \$103 million? Is that the intent of the Senator from Idaho?

Mr. KEMP THORNE. In response to the Senator, Mr. President, that is my understanding of the intent, yes.

Mr. LEVIN. I thank the Senator.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. GLENN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GLENN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GLENN. Mr. President, we have finished checking on our side, and we would be glad to accept the amendment of the distinguished colleague from Oklahoma. As I said earlier, we will be addressing this same regulatory review problem in the Governmental Affairs Committee with the hearing on S. 100, which is legislation I put in on a broader gauge of regulatory review consideration. We welcome the Senator's input on that, so we can work this out together. We would be happy to accept his amendment on this side.

Mr. KEMP THORNE. Mr. President, we also would be very supportive of accepting this amendment. We thank the Democratic side for the agreement. We commend Senator NICKLES and Senator DOMENICI for their work on this. It is an important addition to the bill.

Mr. NICKLES. Mr. President, I thank my friends from Idaho and Ohio, as well as Senators DOMENICI and SHELBY. I appreciate their cooperation.

The PRESIDING OFFICER. Is there further debate?

The question is on agreeing to the amendment of the Senator from Oklahoma.

The amendment (No. 169) was agreed to.

Mr. KEMP THORNE. Mr. President, I move to reconsider the vote.

Mr. GLENN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan [Mr. LEVIN] is recognized.

#### AMENDMENT NO. 170

(Purpose: To include gender in the statutory rights prohibiting discrimination to which the Act shall not apply)

Mr. LEVIN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN], for himself, Mr. GLENN, Mr. KEMP THORNE, and Mr. GRASSLEY, proposes an amendment numbered 170.

The amendment is as follows:

On page 12, line 18, insert "age" after "gender,".

Mr. LEVIN. Mr. President, this bill has certain exclusions in certain areas where sponsors of the bill have determined that it should not apply. Section 4 on page 12 reads that "The provisions of this act and the amendments made by this act shall not apply to any provision in a bill, or joint resolution before Congress, and any provision in a proposed or final regulation that"—and then there is a list of six exclusions. These are important exclusions, because what the bill would do is to say where any of these six things exist, no point of order would lie, and there is not going to be any presumption that a mandate has to be funded in order to apply to State and local governments. For instance, if a mandate enforces the constitutional rights of individuals, that mandate is going to apply to State and local governments and there is not going to be any presumption of nonapplicability in the absence of a mandate.

The next exclusion under section 4 is, "If the bill or the joint resolution establishes or enforces any statutory rights that prohibit discrimination on the basis of race, religion, gender, national origin, or handicap or disability status."

It is that exclusion that I believe is deficient, and it is that exclusion to which my amendment is addressed. We have laws that protect people against age discrimination, which are very vital laws in this country.

Those laws have been fought over, fought for, and they are vital to Americans. We have mechanisms to enforce that antidiscrimination law. And it is important that age discrimination be placed in the same paragraph and also excluded from this bill's applicability and that we also require State and local governments to carry out the national purpose of no discrimination based on age.

Just as we have said that where there is a statutory right that prohibits discrimination based on race or religion or gender or national origin or handicap or disability status, this law is going to not be applicable. A mandate,

even if it is unfunded, is going to apply to State and local governments where it establishes or enforces rights that prohibit discrimination based on any of those factors.

So this amendment would add the word "age" to that subsection 2 so we would protect age discrimination laws the way we do other discrimination laws and we would apply age discrimination laws to State and local governments without any presumption that they would have to be given the funds in order to implement this mandate.

That is the heart of this amendment.

I know that the managers have accepted the amendment, since both of them are cosponsors of it. I understand that the Senator from Ohio, however, may have a modification to it and that he may want to address that.

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

The Chair would advise the Senator from Michigan that the amendment is out of order.

Mr. LEVIN. I thank the Chair.

I am wondering if we could note the absence of a quorum so we could discuss this.

Mr. GLENN. Perhaps we could go ahead and I could discuss this without it being out of order while we get an input from a couple other Senators that have an interest in it. If we could discuss it until we get that information, we might just save a little time.

The PRESIDING OFFICER. Is there objection? Hearing none, the Senator from Ohio is recognized.

Mr. GLENN. I thank the Chair.

Let me congratulate my friend from Michigan. He has not been pointed out much on this whole bill, but there is no one who has looked into this in any more detail and with real detail on specific wording and taking an active part and making sure that this legislation, if passed, is going to be workable—workable. And that is the important thing of having someone like the Senator from Michigan, who does look into details. We, too, often pass things out of here that do not have that kind of scrutiny and we wind up regretting later that we really did not take time to go into details.

In committee, in considering this legislation the other day when we were brushed aside pretty much in the committee by party-line votes, he was trying to lead the charge there on making sure that the language was workable, that we corrected errors in the bill, and that we made it as workable as possible.

Now, that was not possible in committee, but he is continuing that effort here on the floor. He certainly deserves every credit for what he has been doing on this, and I am the first to acknowledge that. He has really been a tiger in seeing that this thing was done properly, and I want to commend him for that.

I think, once again, he has come up with the suggestion here where age was

left out. In almost all the legislation we pass now, we make sure that these areas of minority discrimination, of age and disabilities and so on are left in the bill.

I had originally planned to put in an amendment on this myself. My amendment would have been a little more broad than the one that the Senator from Michigan has proposed. My amendment would have said, "that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability." So in one line it was taking a little broader sweep than just correcting age.

I believe, in the original planning of the bill, that color was also left out. And that is normally considered as part of our standard litany in new legislation with regard to those people we wish to protect within our society.

Mr. President, with the parliamentary situation being what it is, I cannot offer a second-degree amendment to the amendment that the distinguished Senator from Michigan has proposed. I submit to him, I wonder if he might prefer to swing the little broader loop that I was going to propose with my amendment and perhaps, if he wished to modify his amendment with some of this language, that would take care of not only the age but the color that was also left out and in one line then include the things we normally include in it. And it would read, then, "that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability."

I yield the floor.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER (Mr. FRIST). The Senator from Michigan.

Mr. LEVIN. Mr. President, first, let me thank my good friend from Ohio for his very fine comments. His leadership on the Governmental Affairs Committee has been extraordinary over the years. He is now ranking member. He has continued to not only insist on legislation which is workable, as he phrases it, which is so important, but he has also fought hard to protect the rights of all the members of that committee so that we would have an opportunity to offer amendments.

I would remind this body that the Senator from Ohio is a chief cosponsor of this legislation and was the principal sponsor of last year's legislation, which was somewhat different but not greatly different and aimed at exactly the same purpose. So he is an expert on this subject of unfunded mandates and has been a leader in the fight to try to reduce the number of unfunded mandates.

Whatever is easier, I would be happy either to modify the amendment or that it be second degreed as soon as we can get clearance that I can make my amendment in order by asking that the committee amendment be set aside so that it be in order.

Mr. BYRD. Mr. President, is the Senator making that request?

Mr. LEVIN. Mr. President, I ask unanimous consent that the committee amendment be laid aside so that the amendment which I sent to the desk be in order. I understand it is not in order and I understand why. So I do ask unanimous consent that the committee amendment be laid aside for that purpose and then apparently it would again become the pending business as soon as this amendment and its modification were disposed of.

Mr. BYRD. Mr. President, reserving the right to object; of course, I will not object.

Mr. President, as I say, I have no objection and will not object, but I want to compliment the Senator for a trait that I discovered many years ago about this Senator from Michigan. He goes over matters with a fine-tooth comb. He is meticulous. He is a meticulous, careful craftsman. And I have said this to him privately on several occasions. I congratulate him. I want to do it publicly.

And also I think this points out the beneficial effects of proceeding with a little more care, taking a little more time and not acting in quite so much haste. It underlines what I said a number of times, that we need to slow down and take a look and carefully examine what we are doing. And it seems to me that in this instance we can feel assured that we did the right thing. I congratulate the Senator.

Is the Senator going to ask for the yeas and nays?

Mr. LEVIN. Mr. President, I believe they will accept this amendment. If they do, in this case I will not ask for the yeas and nays unless there are others that would request the yeas and nays. I believe the managers have accepted this and, indeed, have cosponsored it. In this instance I will not ask for the yeas and nays. But there may be others who would want the yeas and nays.

Mr. KEMPTHORNE. Would the Senator yield?

Mr. LEVIN. I yield.

Mr. KEMPTHORNE. That is correct, Mr. President. We are certainly supportive of accepting this amendment and would state that I agree with the Senator, that there was no intention to leave out these classes. In fact, we had discussed that they would be included in the managers' amendment. I think this is very appropriate to proceed with this amendment as proposed by Senator LEVIN.

I would point out also when we think about the pace, that the language that we have in S. 1 dealing with this is the identical language that was in Senate bill 993 last year that went through committees in both the Senate and the House. This was not addressed.

Again, it was not done intentionally. This is appropriate to correct it. We appreciate the Senator from Michigan.

Mr. LEVIN. Mr. President, I do not know if I have the floor or not.

The PRESIDING OFFICER. The Senator from Michigan has the floor.



Mr. LEVIN. Mr. President, let me say to my friend from West Virginia that he is the legislative craftsman par excellence, as far as I am concerned. And he has been a role model in this regard, reminding all Members of the importance of taking the time to craft laws which will work in the real world.

There are times we have the best of intents and we have the worst of unintended consequences. We have to take the time to work through bills such as this. That is a different bill from last year in very significant ways. He has been a role model, indeed, in this area for me and to the extent that I got involved with nuts and bolts, as he has pointed out.

I am grateful for his comment. It is in large measure because there have been a lot of people who have set a standard in this area, that I think is very important for me to follow. I am thankful for the comments.

Mr. BYRD. Will the Senator yield?

Mr. President, I think it is important to the extent that it ought it to be given public recognition. The kind of public recognition that is given to a rollcall vote. We have had rollcall votes on matters of lesser importance, at least in my view. I am just looking at it from one man's vantage point. I think we ought to have a rollcall vote on it. This is an important amendment. At some point in time we ought to do that.

I have not made the request, but I will make the request at the appropriate time.

The PRESIDING OFFICER. The request made by the Senator from Michigan is pending.

Mr. LEVIN. Mr. President, if the majority leader would just withhold, I have a pending unanimous-consent request that they have not yet ruled on, that the committee amendment be set aside in order that my amendment, as modified by the Senator from Ohio, be in order. That was a pending unanimous-consent request, and I am wondering if the majority leader might withhold to see if there is any objection to that.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEVIN. Mr. President, I thank the Chair and I thank the majority leader.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. DOLE. The Senator from West Virginia has the floor. I want to make an inquiry.

If the yeas and nays are ordered, I wonder if we might have that vote occur at about 8:30. I think a lot of people left with the understanding there might be debate but no vote. I will check with the Democratic leader. I do not have any quarrel with the rollcall. Maybe we can have a couple more amendments by that time, too.

Mr. BYRD. Mr. President, I certainly have no problem with that.

May I say to the distinguished leader I felt that this is a very important amendment. We will have this bill, it is

very important to a lot of people in this country. The word "age" and other words, that I understand the Senator from Michigan and the Senator from Ohio are interested in. It gives the public recognition to an amendment just that important. A rollcall vote is more noticed in conference with the House, as well, than a voice vote. It also shows that this bill is being improved by our taking a little time. By our taking a little time, studying the bill, debating, probing. So we are making some improvements.

Would the distinguished majority leader like to lock in the vote at this point?

Mr. President, while we are on this amendment, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. GLENN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. ROBB. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBB. Mr. President, I ask unanimous consent, although it is not necessary, that we turn to a period of morning business for about 7 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBB. Mr. President, thank you. The Senator yields to the Senator from Ohio.

#### AMENDMENT NO. 170, AS MODIFIED

Mr. GLENN. If the Senator would yield for a moment. When we sent the Levin amendment to the desk, it did not have the changed language that I suggested. He was changing his own amendment. The copy that was sent to the desk was not the proper copy. We would like to modify that amendment, and since the yeas and nays have been ordered that would normally not be in order.

I would ask unanimous consent that Senator LEVIN be permitted to modify his amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment will be so modified.

The amendment (No. 170), as modified, is as follows:

On page 12, strike lines 17 through 19 and insert "that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap or disability;"

Mr. GLENN. I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

#### CORPORATION FOR PUBLIC BROADCASTING

Mr. ROBB. Mr. President, there is a serious debate going on over whether the Federal Government should con-

tinue to play a role, the small part it currently plays, in supporting the Corporation for Public Broadcasting.

On Tuesday, in a speech before the National Press Club, Ervin Duggan, president of the PBS, outlined reasons why support from the Government is important, and I ask unanimous consent to have Mr. Duggan's speech printed in the RECORD at the end of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. ROBB. Mr. President, today I would like to reiterate my support for public broadcasting because of the important educational role it plays in our society. We invest very little and we get a lot in return.

Public broadcasting does not rely solely, or even mostly, on Government support. Only 14 percent of its budget comes from Congress, approximately \$1.09 per person. The rest of its funding comes from 5 million Americans and hundreds of corporations who understand the importance of quality commercial-free educational broadcasting.

Public broadcasting is no longer just MacNeil/Lehrer, "All Things Considered," "Sesame Street," and the Civil War series. I have been particularly impressed with the way public broadcasting is using new technology for education. Hundreds of thousands of Americans, who otherwise would not have the opportunity, can earn their high school or college degree through courses shown on public television. At 60 colleges—and that number is growing—students can earn a 2-year degree through PBS telecourses.

Millions of teachers use television's best programs, like Ken Burns' remarkable Civil War series, in the classroom. Many of these programs are now available to educators on laser disk for interactive learning.

Many public broadcasting stations are currently on the Internet, along with PBS, NPR, and the Corporation for Public Broadcasting.

In times of budget deficits, we all understand that we have to make the most of our limited resources, but we must also understand that one of the targets of our resources is education and that education, as we know it today, encompasses more than just a classroom. It is libraries, movies, television, radio, computers, museums, and the many other outlets of information available.

In today's society, where quality educational programming is so rare, public broadcasting fills a unique and important niche, and it asks us to invest so little—one-fiftieth of 1 percent of our budget.

Most of us in Washington have the opportunity to enjoy local public television programming through WETA, one of the top five public broadcasting stations in the country. But public television also reaches out to the far corners of our country—and in my own