that we are going to try to save Social Security, and this is a prelude to the amendment that will be offered by this Senator, Senators CONRAD, DORGAN, HARKIN, and FEINSTEIN, at the time the balanced budget amendment is brought up.

The Social Security program we have in America is a simple, binding contract. Individuals collect Social Security payments after paying into a trust fund with their employer over a period of years. I want to make sure, Mr. President, that the Social Security trust fund is a trust fund and not a slush fund. We should not be able to use the moneys out of Social Security to pay for highways in New Hampshire or highways in Nevada. We should not be able to use the Social Security trust fund to pay for subsidies for farmers in Iowa or in Missouri. Those moneys that we collect into this trust fund should be used only for Social Security recipients, and that is all.

When I practiced law, I had a trust fund that I set up. I had to do that; we were required by the rules of the bar association. If I had a check that came for settling a case, as an example, the money went into the trust fund and I had to be very careful what I did with those moneys. It was different than moneys that were in my general account that I could use to pay rent and salaries of my employees. I could not use that trust fund money to pay anything other than what was allowed by law. If I did anything else, I violated that trust that was established, and then I could be disbarred or even criminally prosecuted. So the Social Security trust fund, I believe, Mr. President, should be treated the same way.

Congress has an obligation to uphold its end of the contract. So this unique, binding contract upon which millions depend should be protected, and it should not be a giveaway or an entitlement, even though it is not and even though people lump it into the entitlement category.

I congratulate my friend, the junior Senator from Iowa, for offering this sense-of-the-Senate resolution. I hope that all Senators will give this very serious consideration, as I know they will. We understand that this is a prelude to the real debate that will take place, which will be substantive law, and that is to exempt Social Security from the balanced budget amendment.

Mr. SPECTER. Mr. President, I ask unanimous consent that I may speak for 5 minutes as in morning business.

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

APPOINTMENT OF A NEW CIA DIRECTOR

Mr. SPECTER. Mr. President, I have sought recognition this afternoon to speak briefly about the pending appointment of a new Director of the Central Intelligence Agency and how we ought to structure a new term to really strengthen that position and, in effect, professionalize the position of Director of Central Intelligence.

I have talked to a number of my colleagues about the idea of legislation which would create a 10-year term for the Director of Central Intelligence, just as the Director of the FBI has a 10-year term. That legislation for the FBI was enacted relatively recently to strengthen the hand of the Director and to give independence and strength to that position.

It is my view, based on the experience that I have had on the Intelligence Committee—and I now serve as chairman of the Senate Intelligence Committee—that there is a real need for additional strength in the position of the Director, as we have seen what has happened to the CIA with the Aldrich Ames case, and as we take a look at the role of the Central Intelligence Agency and the national security interests of the United States into the foreseeable future.

The Director of the Central Intelligence Agency, I believe, has to come to that position in the Central Intelligence Agency, in that unique culture there, and say to the establishment: Look, I am going to be here longer than anybody else who was here, and it is my responsibility to do what is necessary to correct the problems of the agency and to do what is necessary to reorder the priorities and set the agency on a course which will protect the security interests of the United States.

We had the threat assessment hearings the week before last where the Director, James Woolsey, testified about the threats to the United States and responded, to some extent, about the Aldrich Ames case. There is no doubt that the unique culture of the CIA—I prefer to call it their ''unique culture,'' rather than the slang expression the ''old boy's network''—was at work in allowing Aldrich Ames to stay in a position where he could abuse the trust of the CIA and really do great damage to the United States' national security interest, even though there were many signs which should have led to his ouster. He failed a lie detector test, he was living beyond his means, he was drunk on duty, he had classified documents, he visited foreign agencies and foreign embassies without any justifiable reason. Many of the CIA contacts were killed as a result of what he had done. Many were placed in jeopardy. And that should have been corrected long before it finally came to light.

I believe that if we had a Director who had tenure, 10 years, in effect, being able to say, ''I am going to be here longer than the people I am confronting with,'' that kind of strength would do a great deal to enhance our national security.

We are facing some very perilous times. People ask, is there a real role for the Central Intelligence Agency? Based on the experience I have had on the Intelligence Oversight Committee, and now as chairman of that committee, I say, absolutely ''yes.''

We are looking at some very critical intelligence operations in assessing, for example, what is happening with North Korea with their development of nuclear weapons. I, frankly, have grave reservations about the agreement which exempts the North Koreans from inspection on the fuel rods for some 5 years, which is the best way to tell what they are doing with nuclear weapons. And as the hearing the week before last with Director Woolsey showed, the North Koreans now have the capacity to hit Alaska. The North Koreans are working with Iran on ballistic missile tests. When asked what is the potential for reaching the continental United States, nobody could give assurances that that is not an imminent problem.

When you take a look at the dismantling of nuclear weapons in the old Soviet Union, there are real problems to see to it that organized crime in Russia does not take over and place those weapons at the disposal of rogue nations. When you take a look at the role of CIA in terrorism or drugs or economy issue, where many intelligence agencies of government help the trade deficit, there is a vital role in the intelligence agency.

There has to be reform, first, of not having a repeat of the Aldrich Ames case and doing the job of the future.

I intended to introduce this legislation and to comment on it this afternoon and not to unduly interrupt the flow of this legislation.

I thank the Chair and yield the floor.

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

UNFUNDED MANDATE REFORM ACT

The Senate continued with the consideration of the bill.

AMENDMENT NO. 195

(Purpose: To propose a substitute amendment)

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

The PRESIDING OFFICER. Without objection, the pending being amendments will be set aside.

The clerk will report.

The legislative clerk read as follows:

The Senator from Ohio [Mr. GLENN] proposes an amendment numbered 195.

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

The PRESIDING OFFICER. Without objection it is so ordered.

(The text of the amendment is printed in today's RECORD under ''Amendments Submitted.'')

(Mr. INHOFE assumed the chair.)

Mr. GLENN. Mr. President, this amendment—and I do not want to scare anybody who may be watching and listening to this and I will give my reasons for submitting this amendment—this amendment is the old S. 993 that we brought out last year. I wanted

it to be on file and be available to be considered if we reach a point where that might be necessary. But I hasten to add immediately that, at least the way we are going right now, I do not think that will be necessary.

The situation we had gotten into here on the floor last week was such—and I will not go through all of what led up to it, but it was at a point where the majority leader filed cloture and did not have the votes to invoke cloture. There were some 117 amendments that had been put in from both sides of the aisle—mainly, about two to one, from the Democratic side, but from both sides of the aisle—and we found ourselves in a situation where it looked as though there might not be any move out of that parliamentary situation that we were in.

What would we do in that situation? What had happened was that S. 993 that came out last year with approval by the big seven, and we were happy to get it to the floor, but the situation that developed was we could not get it through last year.

Over the holidays, with the changed political climate, it was determined that what the House was liable to do and the movement that we would have to make toward what the House might do to enable a Senate bill to have a chance at passage meant that S. 993 should be amended or changed and somewhat toughened up. Now that was done with S. 1, using S. 993 as the basic structure from which to start.

The situation we found ourselves in, though, last week, the parliamentary situation, was that I could see the possibility that maybe nothing was going to move. S. 1 had generated some opposition for various reasons. Cloture, which was filed, could not be invoked. We had the vote on that. And there we sat in basically a stalemate.

I am committed to getting through unfunded mandate legislation. I do not want anyone to think that I am not.

But I would rather, if we got ourselves into another quagmire like that, I just want S. 993 refiled as a potential amendment—and I say potential; I am not planning to bring it up—but I want it filed so that if we reach another situation like that—and I hope we do not—that we would have that as a fallback position which would be better than getting nothing through; certainly much better, because we all viewed S. 993 last year as being fine legislation.

I understand where the Governors and the County Commissioners, mayors, and so on are coming from now in support of S. 1. It is tougher from their standpoint. But it also has some opposition.

Now, what would I foresee as a situation that might develop where we might want to drop back? Obviously, there are a number of different things that could happen on that. If we wound up with a filibuster on S. 1, which I do not anticipate we will, but if there were some provisions voted in here on the Senate floor that may be unpalatable, then we might have something like that required.

The amendment that I am putting in or will put in today and another one after this one and probably a couple more tomorrow morning address very substantive changes in the bill, procedures in the bill that I think should be corrected. They were things we were not able to bring up in the committee because of the rush to get it to the floor, which was another situation we talked about earlier today for a little while.

But you have several other concerns that do address specifically how this bill would operate, and I think those are important things to be considered. Those are not show stoppers, as I see it. Failure to put those things in are not basically things that would require us to go back to S. 993.

But let me just bring up some of the amendments that have been put in or proposed, some from the other side, as a matter of fact, some Republican-proposed amendments, such as judicial review.

Now, I think if judicial review was lodged against this where anyone who felt that the estimate on a particular proposal was not adequate and they would have the right in that case to file a case in Federal court and in effect stop legislation in its tracks, if judicial review was put in and passed, to me would be a way of stopping almost all legislation or a very high percentage of legislation that comes before the Senate. So I think if judicial review came in, was voted in here, this would result in such concern that I think—I am the last one that is going to threaten a filibuster—but I think that would cause a great, great deal of concern.

Now, another one that is coming up that would be very controversial, and I understand is going to be called up, were amendments that were proposed dealing with motor-voter, as it is called. There is a lot of passion involved with motor-voter, as we know from the very extended debate that took place on the Senate floor when motor-voter was put in last year. That would draw serious opposition.

Another one, a supermajority point of order requiring a 60-vote point of order. In other words, 60 votes would be required to grant a waiver to proceed with a bill. Now that sounds great, because it says, well, you are getting a supermajority of the Senate. But it does something else. It puts a great deal of power in the minority if you can garner 41 votes.

I do not want to see us get into a situation where we would have, in effect, a tyranny of the minority.

We had another one that would be a very, very important amendment, if brought up and if possibly passed, one that we would have to really take very, very seriously, and that is an amendment that I understand may be proposed which would extend the application of the act to past mandates as well as current mandates. If we did that, I do not know whether we would be getting into trillion dollar estimates and funding requirements if we passed that with no sorts of other restrictions on it than those I am aware of at this time. That is another one that would be a real threat to passage of this bill.

Now, I am not saying any one of these by itself would be a complete show stopper and block to passage of the bill. The reason I put S. 993 back in is to cover a combination of possibilities. Say that some of the corrections we wanted to put in committee are voted down here, and say that some of these amendments that I understand are going to be put in—I do not believe they have been put in yet—amendments on the Republican side that deal with the things that I just mentioned such as 60-vote point of order and the motor-voter and judicial review and the retroactivity. Say that several of these things passed. I think in that situation the view of S. 1 would change rather dramatically, and I might add, probably on the Republican side as well as on the Democratic side.

I wanted to point out the possibilities just to point out the reason why I am putting S. 993 back in, as a possible substitute amendment. It would be a fallback in case we have some of the dire things I have talked about happen, and got into a situation here we could not get out of, which we thought we were in last week when I mentioned the possibility of this. I am putting it back in, but do not plan to bring it up at this time.

I think we are in a whole different situation than we were in last week because last week we were faced with a situation where cloture could not be invoked. The votes were not there. There were great concerns about S. 1. There were some 117 amendments that were filed in advance of the cloture vote, because if cloture would happen to be invoked then amendments cannot be put in. Cloture was defeated. The number of provisions we debated last week have been stripped back. We have now under the new agreement, some 60 slots, I believe, 58 or 60 slots, available for amendments that have to be filed by Tuesday afternoon at 3:00. Votes, then, will start not later than 4 o'clock tomorrow afternoon.

This is much more manageable now. People have been coming to the floor and offering their amendments. We will have votes on them. We are in a whole different situation. I am not putting S. 993 back in as any scare tactic but there are possibilities that loom out here that this would be a last-gasp stopgap measure we could put in if really necessary. I want to stress that. I know there was a considerable amount of discontent in some quarters last week when I even brought this up. I wanted to make sure it was not misunderstood now.

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

The PRESIDING OFFICER. The clerk will call the roll.

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

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

UNANIMOUS-CONSENT AGREEMENTS

AMENDMENT NO. 179

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent that it be in order to order the yeas and nays on the Dorgan amendment numbered 179.

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

Mr. KEMPTHORNE. Mr. President, I now ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

AMENDMENTS NOS. 178 AND 179

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent that no amendments be in order to either the Dorgan amendment numbered 178 or 179, and that the vote occur on the motion to table amendment numbered 178 at 4 o'clock p.m. tomorrow, to be followed by a vote on or in relation to the Dorgan amendment numbered 179.

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

AMENDMENTS NOS. 191 AND 192

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent that it be in order for me to make a motion to table both Bingaman amendments numbered 191 and 192, and I be able for ask for the yeas and nays, and it be done with one show of seconds.

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

Mr. KEMPTHORNE. I move to table amendments 191 and 192 and 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. KEMPTHORNE. Mr. President, I now ask unanimous consent that no amendments be in order to either Bingaman amendments prior to the vote on the motion to table and that the two Bingaman votes occur in sequence following the vote with respect to the second Dorgan amendment.

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

AMENDMENT NO. 182

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent that no amendments to the Hollings amendment numbered 182 be in order prior to the vote on the motion to available that amendment.

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

AMENDMENT NO. 196 TO AMENDMENT NO. 190

(Purpose: To modify the sense-of-the-Senate provision)

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent that the Senate now resume consideration of amendment numbered 190, and I send an amendment to the desk to the Harkin amendment.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

The Senator from Idaho [Mr. KEMPTHORNE] proposes amendment numbered 196 to amendment numbered 190.

Mr. KEMPTHORNE. 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:

The amendment is as follows:

Strike all after the word ''that'' and insert the following:

(1) social security is supported by taxes deducted from workers' earnings and matching deductions from their employers that are deposited into independent trust funds;

(2) over 42,000,000 Americans, including over 3,000,000 children and 5,000,000 disabled workers and their families, receive social security benefits;

(3) social security is the only pension program for 60 percent of older Americans;

(4) almost 60 percent of older beneficiaries depend on social security for at least half of their income and 25 percent depend on social security for at least 90 percent of their income;

(5) 138,000,000 American workers pay taxes into the social security system;

(6) social security is currently a self-financed program that is not contributing to the Federal budget deficit; in fact, the social security trust funds now have over $400,000,000,000 in reserves and that surplus will increase during fiscal year 1995 alone by an additional $70,000,000,000;

(7) these current reserves will be necessary to pay monthly benefits for current and future beneficiaries when the annual surpluses turn to deficits after 2018;

(8) recognizing that social security is currently a self-financed program, Congress in 1990 established a ''firewall'' to prevent a raid on the social security trust funds;

(9) raiding the social security trust funds would further undermine confidence in the system among younger workers;

(10) the American people overwhelmingly reject arbitrary cuts in social security benefits; and

(11) social security beneficiaries throughout the nation deserve to be reassured that their benefits will not be subject to cuts and their social security payroll taxes will not be increased as a result of legislation to implement a balanced budget amendment to the United States Constitution.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that any legislation required to implement a balanced budget amendment to the United States Constitution shall specifically prevent social security benefits from being reduced or social security taxes from being increased to meet the balanced budget requirement.

Mr. KEMPTHORNE. Mr. President, I ask for the yeas and nays on the second-degree amendment.

The PRESIDING OFFICER. Is there sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. KEMPTHORNE. Mr. President, I yield the floor.

AMENDMENT NO. 197

(Purpose: To have the point of order lie at only two stages: (1) against the bill or joint resolution, as amended, just before final passage, and (2) against the bill or joint resolution as recommended by conference, if different from the bill or joint resolution as passed by the Senate)

Mr. GLENN. Mr. President, I ask unanimous consent that the previous amendment be set aside, and that I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

The Senator from Ohio [Mr. GLENN] proposes an amendment numbered 197.

Mr. GLENN. 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:

On page 2, strike beginning with line 16 through line 4 on page 22 and insert the following:

''(1) IN GENERAL.—

''(A) STATEMENT REQUIRED FOR REPORTED BILL.—It shall not be in order in the Senate, after third reading or at any other time when no further amendments are in order, to consider any bill or joint resolution that is reported by a committee unless the committee has published a statement of the Director on the direct costs of Federal mandates in accordance with subsection (a)(6) before such consideration.

''(B) LEGISLATION OR THRESHOLD.—(i) It shall not be in order in the Senate to consider any bill, joint resolution, amendment, motion, or conference report—

''(I) after third reading or at any other time when no further amendments are in order, if the enactment of such bill or resolution as amended; or

''(II) if such bill or resolution in the form recommended by such conference report differs from the bill or resolution as passed by the Senate, and if the enactment of such bill or resolution in the form recommended in such conference report, would increase the direct costs of Federal intergovernmental mandates by an amount that causes the thresholds specified in subsection (b)(1)(A)(i) to be exceeded, unless the conditions specified in clause (ii) as satisfied.

''(ii) The conditions referred to in clause (i) shall be satisfied if—

Redesignate the clauses following accordingly.''

Mr. GLENN. Mr. President, this takes care of what I think is a difficulty in the bill. It would correct what I think is something we probably should have dealt with earlier on. That is this: The bill deals with points of order and when they will lie against legislation coming to the floor, to have the overall expense or the cost to the States and local communities considered in advance of considering the legislation and whether Congress will fund those costs.

As now crafted, as now structured, the bill would permit a point of order when the bill with Federal intergovernmental mandates first comes to the floor. Then there would be no more points of order that would lie against the bill but there could be points of

order invoked any amendment that may or may not contain an intergovernmental mandate. If we think about how a bill normally works its way through the Senate, a number of amendments can be brought up here on the Senate floor. They may well change completely the nature of the bill by the amendments and the cost of amendments that are incurred during the amending process here on the floor.

Now, I think it would be more appropriate the bill be subject to a point of order after we know what all the amending process has done to it. To have the point of order apply to possibly every amendment all the way through creates a situation that could be used if a Senator really wanted to filibuster something. He or she could put in a dozen different amendments containing Federal intergovernmental mandates, each maybe over $50 million, that might not even apply and might not be germane or relevant to the bill being considered and would then go through all the process of point of order on everything that was brought up in each of the amendments. I could see this as a possibility of a means of really creating a lot of delay.

What we are really interested in, it seems to me, is the final bill as amended on the floor before we vote on it. And at that point, we either say yes, we go ahead with these unfunded mandates because it is important for everybody in the whole country for whatever reason and therefore we waive the point of order. Or we say no, all these total of amendments here plus what the cost of the original bill should be subject to the points of order requiring cost estimates and funding.

It seems to me that is a more appropriate way to go than having the point of order lie on all amendments.

Mr. President, my amendment would apply the points of order in two places, not at the start of consideration on the floor as S. 1 requires, but it would apply at the end of consideration of legislation on the floor—just prior to third reading—and, at a second point, when it comes back from conference, because when it comes back from conference, sometimes it might be a completely changed bill from what went to conference with the approval of the Senate.

So my amendment would apply points of order at those two places. As I said, my concern in applying the point of order requirements for CBO cost estimates and State and local funding of floor amendments, as S. 1 currently does, is that it may unnecessarily bog down the legislative process, particularly for the first year or two when this act goes into effect. It is possible someone might raise points of order, as I said, on almost every amendment that is offered to any one bill.

I understand points of order can currently be raised under the Budget Act on amendments that affect Federal direct spending but have not been scored by CBO. However, the Budget Act scoring process has been in place for some time and the procedures in S. 1, on the other hand, are brand new. So we should not overload the Senate with these new procedural requirements on floor amendments, as I see it.

As I said, the amendment would see that the points of order lie in two places: First, just prior to final passage and then on the conference report. That way, only amendments that have been adopted would have to be scored by CBO, rather than having them score all amendments prior to their being offered, as would have to be done under S. 1. So the burden on CBO might be reduced. Only amendments adopted would be required to be scored, not amendments offered. Of course, Members bringing an amendment to the floor may wish to have a CBO cost estimate in order to know precisely what the effect of the amendment will be. My amendment will ensure conference reports will also still be scored, as is the case under S. 1.

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

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

UNANIMOUS-CONSENT AGREEMENT

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent that at 3:30 p.m. tomorrow, the Senate resume consideration of amendment No. 182, the Hollings amendment; that there be 30 minutes for debate prior to a motion to table, to be equally divided between Senators HOLLINGS and DOMENICI; that following that debate, it be in order for the majority manager, or his designee, to move to table the Hollings amendment; and that the vote occur on the motion to table immediately following the disposition of the Bingaman amendment No. 192.

Mr. GLENN. Mr. President, reserving the right to object, and I will not, where is the Bingaman amendment in the hierarchy now? Is that No. 4 that we have on our list?

Mr. KEMPTHORNE. Mr. President, that is correct. This will be No. 5.

Mr. GLENN. I will not object.

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

Mr. KEMPTHORNE. I yield the floor. I thank the Chair.

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

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

AMENDMENT NO. 198

(Purpose: To modify the exemption for matter within the jurisdiction of the Committees on Appropriations)

Mr. MCCAIN. Mr. President, I ask unanimous consent that the pending amendment be temporarily laid aside so that I may send an amendment to the desk and ask it be considered as offered as required under the unanimous consent agreement under which the Senate is currently operating.

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

The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN] proposes an amendment numbered 198.

Mr. MCCAIN. 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:

On page 25, strike lines 7 through 10, and insert the following:

(3) Committee on Appropriations.—Paragraph (1)—

(A) shall not apply to any bill or resolution reported by the Committee on Appropriations of the Senate or the House of Representatives; but

(B) shall apply to—

(i) Any legislative provision increasing direct costs of a federal intergovernmental mandate contained in any bill or resolution reported by such Committee;

(ii) any legislative provision increasing direct costs of a federal intergovernmental mandate contained in any amendment offered to a bill or resolution reported by such Committee;

(iii) any legislative provision increasing direct costs of a federal intergovernmental mandate in a conference report accompanying a bill or resolution reported by such Committee; and

(iv) any legislative provision increasing direct costs of a federal intergovernmental mandate contained in any amendments in disagreement between the two Houses to any bill or resolution reported by such Committee.

(C) Upon a point of order being made by any Senator against any provision listed in Paragraph (3)(B), and the point of order being sustained by the Chair, such specific provision shall be deemed stricken from the bill, resolution, amendment, amendment in disagreement, or conference report and may not be offered as an amendment from the floor.

Mr. MCCAIN. Mr. President, this amendment is very basic. It would extend a provision of the Unfunded Mandate Reform Act to cover appropriations bills. As reported by the Governmental Affairs Committee, appropriations legislation was exempted from S. 1. I wish to repeat, appropriations legislation was exempted from this legislation.

This amendment would establish that any legislative provisions contained in an appropriations bill or conference report that create an unfunded mandate would also be subject to the point of order called for by this bill.

Clearly, Mr. President, this important legislation sponsored by Senator KEMPTHORNE is a proposal that warrants swift passage. Over the last year,

every Member of Congress has likely heard pleas for assistance from State and local officials in their home States for relief from the steadily increasing burdens of unfunded Federal mandates, and understandably so.

As the Governmental Affairs Committee noted in a report on this issue, State and local officials from across the country sent a powerful and unified message to Washington that:

> * * * unfunded Federal mandates imposed unreasonable fiscal burdens on their budgets; limited their flexibility to address more pressing local problems; forced local tax increases and service cutbacks; discouraged innovation at a local level; and hampered their ability to effectively govern.

The burdens which have been placed on the shoulders of States, cities, and counties in America have become intolerable. The CBO estimated the cumulative costs of Federal regulatory mandates on States over a 7-year period are as high as $12 billion.

A study released by the Environmental Protection Agency in 1990 estimated that the total annual costs of environmental mandates to State and local governments would rise a total of 67 percent by the year 2000.

The mayor of one of America's largest cities said that:

> When you pass a mandate down to us and we have to pay for it, the police force goes down, the firefighting force goes down. Recreation departments are in disrepair * * * because our capital budget is being sopped up by * * * the need to pay for federal mandates.

I strongly sympathize with these views and those that I have heard from so many city and town officials in my State of Arizona. The cumulative weight of the involuntary spending requirements that the Congress has been foisting upon State and local governments has finally reached the breaking point, and it is important that we pass this legislation to address the problem early in the 104th Congress.

There is, however, a significant omission in the bill we have before us. S. 1 applies only to legislation emanating from authorizing committees, and exempts appropriations bills. This is a big loophole, Mr. President, and given the tendencies of many Members of Congress, I fear it is a loophole that will be taken advantage of in short order.

If we exempt appropriations bills from the point of order procedure of this unfunded mandates bill, we will be tacitly allowing a process where Members will be tempted or pressured into using appropriations bills as vehicles to levy mandates upon State and local governments. Such an exemption would undermine the important objectives of what S. 1 is so admirably trying to achieve. This amendment to subject any legislative language in spending bills to a majority point of order regarding unfunded mandates will help ensure that doesn't happen.

The intent and impact of this amendment is simple, straightforward, and entirely reasonable, Mr. President. If a bill reported out of the Environment and Public Works Committee or the Labor Committee which creates a new mandate on State or local governments, those committees are required to authorize funding to pay for it. A point of order would lie against the bill if it were not properly funded. Surely we should establish this same procedural hurdle for appropriations bills if they contain new unfunded mandates.

I fully recognize, Mr. President, that existing Senate rules already bar appropriations bills from being used as vehicles for authorizations. If this restriction was uniformly adhered to, appropriations bills would only factor into concerns about unfunded mandates to the degree that they were adequately delivering Federal funds to State and local governments.

As all of my colleagues well know, however, this is often not the case. Appropriations bills can and have been used by the Senate for legislative purposes. This fact necessitates the amendment I am proposing here today.

It is surely not an unwarranted leap of faith, Mr. President, to anticipate that Members and staff in the Congress might be tempted to utilize appropriations bills as a vehicle for unfunded mandates in the future. Minds far sharper and more creative than my own could craft language into an appropriations bill that in effect would impose a new unfunded mandate on a State, local, or tribal government.

Indeed, Mr. President, if past experience on legislative language being inserted in appropriations bills is a guide, we should expect this to happen. I am concerned that exempting appropriations measures from S. 1 will be akin to locking the barn door while leaving a ground-floor window wide open. This exemption is a loophole that will surely prove too tempting for enterprising Members of Congress to leave untested, and we should act to close it before they do.

Furthermore, for my colleagues who may question whether this amendment is necessary, I would like to note the dilemma we already face in the case of appropriations legislation passed by the House of Representatives. According to Senate precedent, appropriations bills containing legislative language sent over from the House is deemed germane, and is not subject to a point of order.

We already experience problems with exceptions being made to the Senate rule that prohibits legislative language on an appropriations bill, so I hope we will not exacerbate this situation by creating a special new exemption for appropriations bills regarding unfunded mandates. Let us not miss this historic opportunity to stem the tide of oppressive Federal mandates by allowing them to be imposed by way of appropriations bills or conference reports.

Mr. President, if the basic rules of the Senate are followed and appropriations measures contain no new unfunded mandates, then this amendment would not affect them in any way. We should improve this important bill to curb the Congress's penchant for passing on millions of dollars of mandatory spending requirements onto States and local governments by adopting this amendment. To leave appropriations legislation exempted from the provisions of S. 1 is to leave a sizable loophole in the bill, and I urge my colleagues to support this amendment to remedy it.

I again thank my friend from Idaho who has probably had enough praise over the last week to last him for a long period of time, but he deserves every bit of it. I must say he has done a magnificent job. But I also point out to my friend from Idaho and remind him that when I asked him why were appropriations bills exempted from this bill language, his response was, ''Well, we could not get the bill passed.''

Then my question is, to him and to the other sponsors of this bill: Why is it, then, if we are not concerned about legislation being enacted on an appropriations bill and it not being subject to a point of order, then why should there be any objection whatsoever to this amendment? It seems to me by the very act of exempting appropriations bill from this point of order procedure we are tacitly saying we do not want to tangle with the Appropriations Committee and we do not want to make sure that there is not a loophole in this legislation by allowing legislation on appropriations bills.

I also say to the sponsors of this bill, if you do not think we have legislated on appropriations bills then I have a lot of legislation to show you. We have. It has happened time and time again where appropriations bills have been the vehicles for authorizing legislation which are stuffed into bills, many times in the dead of night, or in a conference committee, a conference between the two Houses so the rest of us who are not Members of that conference are unable to know about it.

This is a very serious issue. And I have to say after my 9th year, if I have grown a little bit cynical it is because I think I have reason to be so. We cannot allow authorization on appropriations bills. If we do not allow it then this amendment should cause no problem for anyone. The only reason you can assume why this bill exempted appropriations bills is because of the possibility in the future of authorizing legislation on appropriations bills.

I think I have made my point. There may be a desire to engage in extended debate on this issue. I do not intend to leave a loophole of this size in this unfunded mandates bill, which is a very critical bill, and then go back to the people I represent and say everything is fine. Because it is not going to be fine if we allow people to authorize on an appropriations bill and not be subject to the same point of order that there is on the authorizing legislation.

I again thank Senator KEMPTHORNE for his outstanding work on this very important and critical piece of legislation. If I could just tell him, I met with the mayors of my State a couple of months ago, I met with the county supervisors of my State, and there was one issue and one issue only they wanted to talk about and that was Senator KEMPTHORNE's legislation. So he is even famous in the State of Arizona as well as the State of Idaho.

So I thank my friend from Idaho and I yield the floor.

Mr. KEMPTHORNE. Mr. President, I just wish to thank the Senator from Arizona for his kind remarks and also to acknowledge his strong and enthusiastic support to curb these unfunded Federal mandates. He is one of the stalwarts in this effort. So I thank him.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota is recognized.

Mr. DASCHLE. Mr. President, I would like to use my leader time, if I could.

The PRESIDING OFFICER. The Senator is recognized.

MRS. ROSE FITZGERALD KENNEDY

Mr. DASCHLE. Mr. President, I join my colleagues in extending my sincere sympathy to my friend and colleague, Senator TED KENNEDY on the death of his mother.

Mrs. Rose Fitzgerald Kennedy lived a life that saw more than its share of public tragedy and private sorrow. Her courage and her profound faith in her church and her God gave her the strength to be the support of her children and an inspiration to all Americans.

Mrs. Kennedy's passing is a loss to our Nation. No one old enough to remember will ever forget the fortitude with which she bore the assassination of two beloved sons, President John F. Kennedy and Senator Robert Kennedy.

Her public strength helped the Nation endure, as her private strength has always been, in the words of her son John, ''the glue that held the Kennedy family together.''

The tragedies she suffered did not diminish her sense of service. Into an age where no one would have questioned a desire to retire from public life, she traveled tirelessly, promoting the work of the Joseph P. Kennedy Jr. Foundation, to aid the mentally retarded.

Her spirit and work earned her the admiration of the entire world and made Americans very proud.

So today I know that I express the sentiment of all of our colleagues in saying that our prayers are with her son, our colleague, TED, and her other children and grandchildren on this occasion.

I yield the floor.

UNFUNDED MANDATE REFORM ACT

The Senate continued with the consideration of the bill.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I ask unanimous consent that I be allowed to yield to the Senator from New Jersey, by the way, whose birthday it is today, and this is not in lieu of a birthday present I say to the Senator from New Jersey, I would ask unanimous consent that I be allowed to yield to the Senator from New Jersey for the purpose of his offering an amendment without losing my right to the floor.

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

Mr. LAUTENBERG. I thank the Senators and friends who are on the floor to wish me well on my birthday. It is one of those things, a time we would like to pass without notice, but, on the other hand, being here to recall it is something of value as well.

AMENDMENT NO. 199

(Purpose: To exclude from the application of the Act, provisions limiting known human (Group A) carcinogens defined by the Environmental Protection Agency)

Mr. LAUTENBERG. Mr. President, pursuant to the unanimous-consent request, I ask unanimous consent that the pending amendment be temporarily set aside so that I may offer an amendment to meet the terms of the unanimous-consent agreement. I send the amendment to the desk.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Jersey [Mr. LAUTENBERG] proposes an amendment numbered 199.

Mr. LAUTENBERG. 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:

On page 13, line 5, strike out ''or''.

On page 13, line 8, strike out the period and insert in lieu thereof a semicolon and ''or''.

On page 13, insert between lines 8 and 9 the following new paragraph:

(7) limits exposure to known human (Group A) carcinogens, as defined in the Environmental Protection Agency's Risk Assessment Guidelines of 1986.

Mr. LEVIN. Mr. President, last week we began a colloquy with the managers of the bill on some of the uncertain provisions and ambiguous provisions in the bill. I thought we could pick that colloquy up this evening. I have a number of amendments that have been offered. There are two additional amendments to be offered that have been listed for me. I think the number of the issues which have been raised, even though amendments both are filed and to be filed, could be clarified if I could discuss with the managers of the bill some of the provisions which I consider to be ambiguous. In order to do that, I thought I would again use the same hypothetical. If I could get copies of this to the two managers of the bill, this hypothetical Senate bill is the one I used last week. We went into the first ambiguity and then after about 3 hours of debate clarified it with an amendment.

This bill, hypothetical, to be offered after the effective date of this law mandates reductions of dangerous levels of mercury from incinerator emissions after October 1, 2005. Under this hypothetical bill the EPA is designated to determine what constitutes a mercury level dangerous to human health. The first question is when is this bill effective? That is not a theoretical question. That is a very critical question because there must be an estimate of the cost of an intergovernmental mandate the first year that it is effective. When a bill or amendment is effective becomes a critical issue and could mean the life or death of the bill or amendment because if the estimate of the mandate is more than $50 million in any year starting the first year it is effective, for 5 years, then certain things are triggered. Very significant things are triggered. Estimates, authorizations, language relative to appropriations, all must be in the bill. Agencies have to be designated to pull back from or to relieve the local governments of the mandate. That estimate and its effective date are absolutely central to this new version of the bill.

Last year we had a bill which had broad cosponsorship, including myself, where there was an estimate required but there was less hanging on it, on its specificity, on its certainty, on its length, and as to when it is first effective, when the mandate was first effective. A lot less was hanging on that because you did not have this mechanism, this new point-of-order mechanism, relative to the appropriation of funds. That is one of the things which is new this year. Unless we do it right it is going to complicate this process beyond anyone's wildest dream or nightmare. So that is the area that I want to discuss with my friends.

Last week I asked the Senator from Ohio what is the effective date of this mandate in my hypothetical bill. He basically said, well, it would have to be sometime before October 1, 2005. So I thought to clarify the situation I would give an actual or a hypothetical CBO estimated direct cost of the local government in my hypothetical so we can get some clarification and some legislative history as to what is intended by the mandate.

The chart that I have up gives the following CBO estimated direct costs for these 87,000 State, local, and tribal governments. In this hypothetical in fiscal year 1996, the estimated direct cost is $6 million. In fiscal year 1997, the estimated direct cost is $8 million; in 1998, $10 million; 1999, $15 million;