

Mr. KEMPTHORNE. Mr. President, thank you very much.

SCHEDULE

Mr. KEMPTHORNE. Mr. President, we will continue now the debate on Senate bill 1, our efforts to curb the unfunded Federal mandates.

Last night we were able to come to an agreement so that we can anticipate which amendments we will be debating today. We do not anticipate that there will be any votes prior to 11:30 this morning at which time we anticipate that there will be more than one vote so that we will be voting en bloc.

Mr. President, at this point, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. THOMPSON). Without objection, it is so ordered.

AMENDMENT NO. 175

Mr. LEVIN. Mr. President, amendment 175 I believe is now before the Senate, which is the provision that would provide that there be a sunset of this bill on December 31, 2002.

The PRESIDING OFFICER. That is correct. Under the previous order, the Senator from Michigan is recognized to offer his amendment No. 175.

Mr. LEVIN. I thank the Chair.

This amendment would provide a sunset of the language which we will be adopting in S. 1 six years after the effective date of S. 1.

That is a pretty long sunset provision. We had a shorter sunset provision in S. 993 last year. And the shorter sunset provision was adopted unanimously by the Governmental Affairs Committee last year.

There was a discussion in the Governmental Affairs Committee last year relative to S. 993 as to whether or not a 3-, 4-, or a 5-year sunset was the appropriate length of time, and we finally agreed on 1998, which I believe was a 4-year sunset at that time.

S. 1 has no sunset provision. It should. We are skating out on a new pond, and I think probably every Member of this body wants to do a lot more to force us to consider the impact of what we do on State and local and tribal governments. My hunch is that everybody in this body agrees that we should give greater consideration to what the impact is of our actions on the expenditure of taxpayer dollars at a State and local level. I have felt that for a long time. One of the reasons I came to this body is because I felt that the Federal Government, the Congress, did not give adequate consideration to the impact of their actions on local government, in which I was an elected representative. I was president of a local city council in my hometown of Detroit and took great umbrage at

what the Federal Government was doing to our budget as well as what its programs were doing to our neighborhood. I came here with that instinct and it has grown.

The question is, How do we do it? How far do we go? To what extent do we use our internal procedures to force consideration of these impacts? Do we go beyond forcing consideration of the estimates to make sure we have the estimates of the impacts? Do we create points of order affecting points of order down the road? That is one of the key differences between S. 1 and S. 993.

I think all of us feel that we should and must do better and that we have had too great an impact on local and State government. But there are procedures in these bills which are complicated, particularly, may I say, in S. 1. S. 1 goes significantly beyond S. 993, which had the support, by the way—S. 993 had the massive support of Governors and local officials last year. S. 1 goes beyond that and, of course, also has the support of State and local officials.

But the new mechanisms that we have in S. 1 are complicated mechanisms. We added a new mechanism yesterday in order to avoid a problem. We added a new mechanism in the Byrd amendment. And it was a good amendment because it got Congress back doing the legislating instead of the agencies down the road. But in order to do that, we created another process force, so we have a number of additional complicated processes in S. 1 now as amended. And we should make sure that we can function OK with them. It is just, to me, sort of the right thing to do, that when you start out on a new road, you make sure that you have a checkpoint along the way. We sunset legislation around here that has been in place a long time to make sure the programs work. As a matter of fact, one of the first votes that I cast to break a tie in the Governmental Affairs Committee was to force the sunset of legislation. It was kind of a controversial vote. I got a whole lot of my supporters mad at me. It was one of the first votes I cast, a few months after I came here. I cast a tie-breaking vote which would have required us to sunset all these authorization bills on programs. The people who supported all those programs were very unhappy because I had a lot of support from them in my first election. They thought I would be jeopardizing programs by sunseting. I said we ought to review programs every once in a while. It is a pretty good idea. We ought to make sure programs are working. We ought to have action-forcing mechanisms to make sure this Congress, every once in a while, goes back and looks at how a program is operating, to make sure it is not wasteful, to make sure it is carrying out its purpose. I have been a supporter of sunset since the day I came here. I think most of us have talked about sunseting laws.

It can be argued that this is a process, this is not a program. But we sunsetted some processes around here and when you have a new process, such as this in S. 1, this is very different from that point of order under the Budget Act which looks at what the Federal Government is going to spend and makes an estimate. This is an effort to get an estimate on how much tens of thousands of local governments will need to spend and puts great weight on that estimate, gives it a great effect down the road. Even with the Byrd amendment, it still has a massive impact down the road.

I do not know why, if last year by unanimous vote the Governmental Affairs Committee put a 4-year sunset on S. 993, which was far less complicated than S. 1, we should not put a 6-year sunset on S. 1. We should have some sunset provision. Now, I offered the sunset amendment, which was a lot shorter, in committee this year. It was a 3- or 4-year sunset. It was tabled, regrettably on a party-line vote.

I think part of the reason we have taken so much time on this floor, by the way, is because in committee we had a bill of this magnitude which was introduced on a Wednesday night a few weeks back, went to a hearing the next morning, was supposed to go to a markup the next morning, and we delayed that for a day, then was supposed to come to the floor a day later without a committee report. That kind of discipline which makes it difficult to legislate was enforced in a number of cases on a party-line vote, which is too bad because this was a bipartisan bill, with the then ranking member of the committee, the principal cosponsor, and Senator GLENN, the principal sponsor of S. 993 last year. Nonetheless, that is what happened in committee.

I believe it is reasonable that we have a sunset, just the way most of us, I believe, feel we should do an awful lot more in the area of forcing us to consider the impacts of what we do on State and local governments, since they are the folks who raise the taxes. We should be much more aware of the impact of what we do on their budgets. I think most of us also support sunset. Most of the time we support sunset and talk about it.

Why 2002? Well, two reasons. First of all, the sunset that was tried in committee which was tabled was too short. There was an argument raised that that could somehow or other affect the time that a constitutional amendment to balance the budget would take effect. While I was not sure I followed the argument, nonetheless, there was an argument made. I have to believe, knowing this person who made that argument, that there was a connection that was perceived. That is not the intent of a sunset. This is not to be connected with any effective date in the event we adopt a constitutional amendment to balance the budget. One is that I want to disconnect the date from that issue and make sure there is no

perception that there is some relationship between a sunset provision here and effective date on a balanced budget. So we need a longer sunset to take away that perception.

Second, we need a longer sunset than the one offered in committee, because 2002, which is the date that we would sunset this bill in this amendment, 2002 is the time when the money runs out for the CBO to do these analyses. We have to reauthorize dollars in 2002 to the CBO and that is a logical time to review this process.

So there is a reason to do both the process review as well as to see how much money it takes to keep the process going at the same time. And those are the reasons we have chosen the date 2002 for this sunset provision.

It may be argued that nothing prevents us from reviewing these processes like we can review any program at any time. "We do not have to wait until 2002," it will be argued. "You do not need a sunset to review a program." And that is always true; that is an argument against sunset generically.

But nothing is much more difficult around here than to take away something that already exists. Unless it runs out on its own and you have to review it, it is difficult to take it away, to change it. We may not want to take it away. We may not want to change it. This thing may work just absolutely beautifully.

My fear is that S. 1 goes too far and we are going to find ourselves tied up too often in either knots or in avoidance, and that we are going to concoct all kinds of boilerplate to evade something if it is too tight. If the shoes are going to fit too tightly, we are just going to find a new pair of shoes to get around it. And, believe me, there are ways to get around S. 1.

But we should not be pushed to evade. That should not be the purpose or the effect of what we are doing. The effect of what we are doing is for us to consider the impacts of what we do on State and local government, not to force us to find a way to evade that obligation and responsibility because we have created a process which does not work well. That is not what any of us I hope want to do around here.

But it is difficult to change. One way to make it easier, a little easier, is to sunset something. And, given a 6-year period that is in this sunset provision, different from the one I offered in committee and longer than the one that was in S. 993, I think it is a reasonable approach to give us not only the opportunity but to make sure that we look at this process and to make it a little easier for us to change it one way or another. We may want to tighten it further. But if you bring it to an end and make yourself look at it, you can modify it a lot more easily.

So, for all those reasons, Mr. President, and my colleagues, I believe we should adopt the sunset provision. The 2002 date is longer than the one that

was in S. 993. It will permit us to do some review a lot more easily than we otherwise can, and will force us to do that review, as well. We should make sure that we have not put into place something which is either not working because it is being evaded or something which is too tight and can be adjusted or something which maybe should be tightened up in some regard because it has been too easily evaded.

I do hope we can adopt the sunset provision because, again, of all of the uncertainties that exist in this bill, we should really want to review at an earlier time. Let us make it easier on ourselves to do that review by having this reasonable sunset.

Mr. President, I was sorry that I did not yield myself time, because we are under a time agreement. I am wondering how much time I have remaining.

The PRESIDING OFFICER. The Senator has 14 minutes and 50 seconds.

Mr. LEVIN. I thank the Chair and I yield the floor.

Mr. KEMPTHORNE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho has 15 minutes.

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

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BURNS. Mr. President, I thank my friend and I thank the Chair.

My friend from Michigan makes a very persuasive argument on why we need the sunset.

If there has been one thing that has changed the landscape of this body and the other body over the last year, it has been the added ingredient of more men and women being elected to this Congress who have freshly been serving in local government. I think that is why you see quite a lot of interest in this piece of legislation, and why the leader chose this bill to be S. 1.

I submit to my friend from Michigan that we have laws now that have created a lot of problems and still have sunsets, but yet the law and the programs created under the law still continue.

A case in point is we have not reauthorized the Endangered Species Act, yet it has been funded and it comes on today. Many of those kinds of rules and regulations that we are going to have to deal with that really have an impact on communities—wetlands, endangered species, clean water, all of these acts—are now being funded and are in place, but have not been reauthorized by this Congress.

I suggest, if we have created a problem through this piece of legislation, we can fix it or unfix it here. But when we rely on a sunset to fix the problem, it does not get fixed. In fact, it rolls on and it is a lot easier to say, "Well, we will not reauthorize that this year. We will continue it and we will continue to fund it."

If there is one thing that really has the American people mad or made

them mad last November, it is this kind of a situation. So the sunset law really does not have much effect. But if there is no sunset law, it forces us to either fix or unfix the problem.

We have bills being funded now that should be brought up for reauthorization and debated on this floor of the Senate and in the House of Representatives.

So if we are trying to get away from this Federal Government, this Washington city, imposing unfunded mandates on local governments, then there should be something that forces us to either fix or unfix a problem created by this legislation.

I am not saying that there will not be some problems created by this legislation, because I have never seen a perfect piece of legislation come through this body or ever signed by the President. So let us make ourselves either fix it or unfix it as time goes on.

I come out of county government. I want to congratulate my friend from Idaho, who has been recognized here for his leadership not only on this piece of legislation, but I think we ought to recognize him for his stamina. He says it has been very good for his diet that he went off of over the holidays; it has been good for him and now he is getting back in shape.

Nonetheless, let Senators not take this piece of legislation and make it a meaningless piece of legislation because the Senator from Ohio said, "This is a landmark piece of legislation." This is a new direction. This makes the Senate take a look at what we do and the impact it has on our State, county, and city governments. I appreciate that.

I would submit that the sunset makes no difference at all. In fact, it alleviates us from taking the responsibility from what we really do in this body. I would not support my friend from Michigan although he makes an argument that is very persuasive.

I would not support this amendment. I yield the floor. I thank my friend from Idaho.

Mr. KEMPTHORNE. Mr. President, I just wish to thank the Senator from Montana. I know of his experience as a local official in Montana, as a county commissioner, and I appreciate the support in not wanting to see a sunset take place in this legislation.

Mr. LEVIN. Mr. President, I am happy to yield 6 minutes to the Senator.

Mr. GLENN. Mr. President, I think this legislation may fall in the category where we put a lot of things that we considered on Governmental Affairs Committee to be some of the grunt work of Government. It is not the spectacular consideration of B-2 and M1-A1 tanks and things like that that are easy to visualize mentally and get a handle on.

I think the choice of the word "sunset" may be a very poor choice of words. The word might more properly be "spotlight" or "searchlight," that

we will reexamine this thing under a microscope to see whether it is working or not working. It is not automatically terminated. Sunsetting, you are saying you are using that as a forcing device to say what we really will look at this thing and take a good look at it and see what is working and what is not working.

The Senator from Michigan very wisely, I think, tailored this to fit exactly the money flow that is already programmed for CBO. That runs out to 2002. So, in effect, before we reauthorize the money for CBO, we will have to take a look at it. This means that we really have to put the thing under a spotlight, a microscope, and really consider what is going on.

We know around here unless we are forced to do something like that we only rarely will go back and relook at a program and reanalyze it and make sure it is working right. I would say the reason I think this is so important that we do this is that this is historic legislation. It may be some of the grunt work of Government. It may be some of those mundane operations of Government that do not get that much public attention except a few editorials and the local officials who see this as being vitally important, as well as the State officials for the unfunded mandates that have been sent down to them over the years that are now just crushing them in, and crushing them in an economic vise from which they have no alternative but to do what they have been doing, scream to the Federal Government for relief.

This is historic. I believe that this piece of legislation is truly the first piece of legislation that is going to start redefining the Federal, State, and local relationships, the first such redefinition I think since clear back in the New Deal days of Franklin Delano Roosevelt. Prior to Roosevelt, people took care of people. Communities took care of their own people. Neighbors took care of neighbors then. We were not a mobile, flowing society with people and families moving all over the country. In those days, most of the people lived in the same community they grew up in and people took care of their own, and families took care of families, and so on. Then in the days of the Great Depression this country really lost control. The American experience was in danger of going down the tubes. We had whole sections of the country moving out, the Okie going to California, people no longer capable of families taking care of families and communities taking care of themselves. The New Deal came in with all of its proposals that assumed many of those responsibilities that the local communities had had before.

That resulted over the last 60 years in a mass of programs, some went too far, some were absolutely vital to the survival, to the social network and fabric of this country. So most of them were good. Some of them went too far. Now, some of the Federal mandates

have so hit the States and local communities that they can no longer survive under this kind of an economic impact without saying the Federal Government has to fund those responsibilities being given to us, or we just can not do it anymore.

So this is truly landmark legislation. We have come to a point where we are redefining this Federal, State, and local relationship. Now, I give that little bit of background to say that is why I think what the Senator from Michigan has done is so important. Because I think to say that if at the end of 6 years when the money runs out for this and we are getting ready to reauthorize the money for CBO to carry out their particularly important responsibilities under this act, at that point, we really will see how this relationship is working. That is all he is saying.

"Let's force ourself to look at it, something we never probably will do unless we are forced to do it by some amendment like this," and say that at that time period it will sunset, we will reauthorize and look at it. Nobody is proposing it will just go out of existence at that time. What he is saying, it will sunset and we will have to reauthorize and make sure it is fine-tuned and doing the job it is supposed to do.

I see this only as common sense. That is the reason why I am so glad to cosponsor the amendment and speak in support of it. I think this truly is landmark legislation, and I think it is only common sense that we require ourselves to reexamine this new Federal-State relationship at the end of this first 6-year period. It will probably take a good part of that period, the first 3 or 4 years, to really get this system working well.

We have forced upon ourselves the discipline here saying that we will no longer just pass things without taking into consideration in advance the economic impact on the States and local communities. We are saying we are forcing ourselves to do that, have to make these estimates and we have to have a vote that is required. It is not funded or not authorized for funding. Then we say a point of order will lie against it and we have to have a specific vote to go beyond that point and even consider that legislation.

The PRESIDING OFFICER. The time yielded has expired.

Mr. LEVIN. I am happy to yield one minute additional.

Mr. GLENN. Mr. President, we are saying we force ourselves to do that. This is very complicated, what we have gotten into with the proposed amendments here on the floor. It is very, very complex, very, very, intricate.

Dr. Weiss, our staff director on Governmental Affairs, drew up overnight a flowchart which I wish we had a print of it but I know this proposal will not be visible on TV, but it shows the intricate pattern of what can happen to an amendment once it is submitted, and it either goes through a "yes" track or a "no" track. This is a very complicated

piece of legislation. I know flowcharts like this always look more complicated than maybe are real and practical in every day life, but this is not a simple bill. It redefines the whole Federal, State, and local relationship.

I think Senator LEVIN is quite right in saying we should force ourselves, put in law that we know at the end of this period we will truly have to reconsider this thing. That is exactly what we will do. At that time we will fine-tune it and see where we will go from there. This is redefining the whole Federal-State relationship. It is landmark legislation. The least we can do is look at it at the end of this funding period and make absolutely certain it is working. If not, we will correct it then. I yield back the balance of my time.

Mr. KEMPTHORNE. Mr. President, I yield 5 minutes now to my friend from Maine, who like me is also a former mayor.

Mr. COHEN. Thank you, Mr. President, I rise in opposition to the amendment. I do so with some hesitation since I have very high regard for the former chairman of the Governmental Affairs Committee, now ranking member, and my good friend from Michigan, Senator LEVIN.

I must say that when the Senator from Ohio talked about this being grunt work on the Governmental Affairs Committee, coming from him I think that is a bit of an overstatement. A former marine-aviator-astronaut, we like to joke from time to time, saying what on Earth was he doing, and the fact is he has done a lot. He has done a lot and he continues to do a lot on the Governmental Affairs Committee, but the notion that somehow the Governmental Affairs Committee would not be reviewing and overseeing this particular piece of legislation, I think, is not entirely accurate.

I have worked with Senator LEVIN since I have been in the Senate. If there is one thing we do, it is conduct oversight. Week after week after week we conduct oversight on virtually every facet of our Government. I must say that they are correct, this is landmark legislation. This is a new concept that we are undertaking. A new relationship that we are trying to establish with the States and local communities.

But the notion that somehow, because we passed landmark legislation, that it is cast in concrete, I think, is simply inaccurate. It is subject to change each and every year. We can anticipate that there will be complications developed in the implementation of this act. It will be subject to the law of unintended consequences. We will see permutations and changes and complaints at certain points in terms of how it is going to ultimately function. But that is what our responsibility is on the Governmental Affairs Committee, to oversee exactly how a law is working and is being carried out through regulation and through its implementation.

So the notion that we are passing this law and it will never be subject to change is simply not a reflection of what goes on in virtually every other statutory provision, and certainly not with something as controversial as this.

I am not fond of recalling our experience with the special prosecutor law. Senator LEVIN and I have worked on that for many years now, since 1978, where it has come up for reauthorization every 5 years, and we had a sunset provision. We have discussed on several occasions making that law permanent because we felt we had a vital interest in seeing to it that we had a provision on the books that remained there and did not have to go through that period of time where we were under the gun, the guillotine coming down to chop off that bill.

We knew it was subject to political pressures and, in fact, it happened. At the very end of the Bush administration, because of the opposition that developed for political reasons—mostly on this side but not all—we lost that bill. Nearly half a year or more went by before we could bring it back up because of the political complications that developed with this administration.

So I would like to see the special prosecutor law made permanent and not be subject to sunset because of exactly the kind of pressures that were generated against that legislation.

Mr. President, we can repeal this law if we find that it is not working, if we find that it is contrary to the best interests of our country. If it is not really establishing a proper balance between the Federal and State relationship, we can repeal it at any time. We can change it, we can alter it, we can reshape it. We can do anything we want provided we exercise proper oversight. That is the function of the Governmental Affairs Committee. That is the function of the oversight committee that I now chair, with Senator LEVIN as the ranking member.

So the notion that somehow we need to have a cutoff period with the guillotine coming down unless we take action to reauthorize it, I think, is a mistake. I am sure there will be opportunities for us to reshape and modify the law to make it consistent with our articulated goals.

So for those reasons, I urge that we reject the amendment, or, if a motion is going to be made to table, I urge my colleagues to, once again, support the motion to table.

I want to reiterate my compliments to the Senator from Michigan for offering an amendment that relates to the bill, that is germane and relevant and important.

My compliments also to the Senator from Ohio for his steadfast performance on the Governmental Affairs Committee, doing the grunt work as well as the astronautic work he does and the more exotic items we share in the

Armed Services Committee and even the Intelligence Committee.

Of course, I will conclude by commending my colleague who is managing this bill. He has been on the floor, I think, at least a week and a half. It seems like 3 weeks. I commend him for his endurance and his steadfastness in purpose in passing this legislation. I yield the floor.

Mr. KEMPTHORNE addressed the Chair.

The PRESIDING OFFICER (Mr. SMITH). Without objection, it is so ordered.

Mr. KEMPTHORNE. Mr. President, I just want to thank the Senator from Maine. Throughout the course of this debate, which has gone on for many days, he has often been a strong voice on this legislation, S. 1, to help us curb these unfunded Federal mandates and to deal with mandates across the board. I thank him.

I yield the floor.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. How much time do I have remaining?

The PRESIDING OFFICER. The Senator from Michigan has 7 minutes remaining.

Mr. LEVIN. Mr. President, first, let me thank my good friend from Maine for his usual courtesies. We disagree on this one. We actually agreed on this last year when the Governmental Affairs Committee unanimously put a sunset provision in S. 993. Senator ROTH at that time, who was the ranking member, said—now this relates to S. 993, a less complicated bill than S. 1—Senator ROTH said before we had that unanimous vote that:

It does strike me that a 5-year period is a pretty reasonable time to test these proposals.

I am not suggesting Senator ROTH supports the sunset in this bill, by the way. I am simply saying that last year on a less complicated bill, with an even shorter sunset, we had a unanimous vote on the Governmental Affairs Committee. And then Senator ROTH last year said:

It is not that extended, and most sunset provisions that I have been acquainted with have been on a 5-year basis.

Then we took a unanimous vote. In fact, I believe that the Senator from Idaho last year, who is the prime sponsor of the bill, original sponsor of the bill, brought a bill to the floor, and supported a bill that had a sunset provision, a shorter sunset provision and a less complicated bill.

As a matter of fact, last year we received letters from all the mayors and all the Governors and everybody else saying, "S. 993 is just terrific, don't amend it, don't amend S. 993," we were told. Well, S. 993, as it came to the floor, had a sunset provision in it last year.

I am not a former mayor. I am only a former city council president, but I have great respect for local officials, as

a former local official, and even if I was not, I would have tremendous respect for local officials. I know what they go through. I know firsthand from 8 years on that firing line. I have been through this grind. So I respect what we are trying to do, what the Senator from Idaho is trying to do and what the Senator from Ohio is trying to do.

I happen to think S. 1 goes too far in terms of a point of order that is going to tie up this place. In terms of its general purpose, I happen to agree. But we have a national purpose to serve as well. We should force ourselves to consider the impact of these bills on local and State governments. We have not done it sufficiently. We should force ourselves to do it, to get these estimates.

But we should also realize that with a new mechanism—a new mechanism—this complicated that it makes sense to have a sunset provision, for all the reasons that sunset provisions are put in laws.

I was intrigued when the Senator from Montana said, "Well, we don't have sunset provisions in all these other laws," like a bunch of environmental laws that he mentioned. I think we ought to. I would have cast votes for sunset provisions in those kind of laws.

As I said before my friend from Maine came to the floor, I cast a tie-breaking vote my first few months in office which got everybody back home who supported me mad at me because I wanted to put sunset provisions in authorization bills to force us to take a look every once in a while and make it a little easier for us to cut back on some of those authorizations.

No one has had more experience with the independent counsel law than the Senator from Maine. My experience with him has only been for two reauthorizations, and he was on it right at the beginning. He was there at the birth. In fact, I think he was the midwife—I do not know if that is the correct gender—but he helped bring it into existence.

On the first reauthorization of the independent counsel law—and we set a time limit on it—we made some changes which were important. I think the history of the independent counsel law shows the value, actually, of setting a time limit. We have made some changes in that law. There was a gap which created a problem, and the Senator correctly points that out, but we have also made some changes to make that a little more accountable. We had an independent counsel that frequently has been subject to criticism, and I think legitimate criticism, for going too far, for spending money which he was not accountable for, for using personnel, for using offices, for travel. And so we have reined in that independent counsel. At least we tried to in some ways. And the reason we did it is we were forced to do it. We had a 5-year limit. Without that 5-year limit, would we have done it? Maybe. I hope so. My

friend from Maine is an optimist and an idealist in many ways, too, and I think his hope and belief is we would have done it. He may be right, but it would have been a lot harder if it had not run out and we were not forced to do it.

Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator from Michigan has 1 minute and 20 seconds.

Mr. LEVIN. I will simply close by saying that we had a bill last year which had a sunset, which was unanimously adopted by Governmental Affairs. It was a less complicated bill. It was a shorter sunset. I think good government tells us now have a sunset so that after 6 years we can take a look and either tighten it or loosen it.

By the way, some people assume that we would loosen it after 6 years. Not necessarily. There may be so many loopholes in this law we may want to tighten it after 6 years. And an action-forcing mechanism is a good thing when you have something this complicated. We ought to at least sunset it once—once—to make sure we are forced to come back to it and can more easily change it. It is tough to change things around here, but if they run out it is a lot easier to change things around here. When they expire, you have to do something. Then change becomes a little more easy.

I yield the floor, and if I have any time remaining, I reserve it.

The PRESIDING OFFICER. Who yields time?

Mr. KEMPTHORNE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. KEMPTHORNE. Mr. President, with regard to the comment that the Senator from Ohio made, which I think sets the stage for the historic nature of this legislation, that is, that this is the first legislation since the New Deal in which we are redefining this partnership between the Federal Government, between the national, State, and local components of that—when you put it in that context, it is even harder for me to think that in 6 years we are going to wipe it off the books.

The Senator from Michigan has said that we ought to review programs every once in awhile. Boy, I agree totally. S. 1 may need modifications, but I would not be content, nor do I think would the Senator from Michigan nor do I think would the Senator from Ohio, or any Senator, to wait for 6 years until the point of sunset before we would make those modifications if there was something that truly needed to be changed. We would not wait. I would not wait.

When you talk about what S. 1 provides, S. 1 is about accountability—accountability—so that we will know the cost and the impact of these mandates before we enact them, so that we will know what funds need to be provided to the State and local governments.

So with this being based on accountability, why would you sunset accountability? I do not think that it follows. In our partnership that we are forging in this new relationship with the Governors and mayors, I will tell you that I can stand here and quite enthusiastically affirm that the mayors, the Governors, the county commissioners, the school board administrators, do not want to see a sunset provision in S. 1.

If there is a problem, correct the problem. If there is a problem, correct the problem. But do not wipe the entire legislation off the books.

How long have we been working to deal with these unfunded Federal mandates? I remember at the joint hearing we had, my friend from Michigan, who was the president of the city council in Detroit, saying one of the reasons he came to the Senate was to deal with these types of issues, these mandates. I know that my friend from New Hampshire, the Presiding Officer of the Senate, has talked about this many times. We all want to do something about unfunded Federal mandates. So why is it, now that we are finally going to do something about it, we want to say in 6 years we will take this effort off the books?

What sort of a signal does that send to our State and local partners; what sort of signal does that send to the business leaders of this country that try to base their decisions on some predictability, to say that, well, we will do that but only for 6 years, and then we will see what happens, because at that point who knows what happens.

Mr. President, the sunset is not the solution. The solution is to review, make modifications when necessary, but not to wipe this off the books.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The time of the Senator from Idaho has expired.

Mr. LEVIN. How much time do I have remaining? How many seconds do I have remaining?

The PRESIDING OFFICER. The Senator from Michigan has 14 seconds remaining.

Mr. LEVIN. Mr. President, I will simply say that last year we were told any amendment to last year's bill would be viewed as a bill killer. That is what we were told by the National Governors Association, the legislatures, and counties. Last year's bill had a sunset in it. They opposed knocking out the sunset last year because they opposed any amendment and sunset was in the bill.

What has changed since last year? The Senator from Idaho supported sunset last year. What has changed since last year? You do not have to wait until 6 years comes to change the bill. There is no implication in a sunset amendment that you have to wait. You can change it tomorrow. It just makes sure we can change things more easily if we decide to do so.

My time is up.

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent that I be yielded 1 minute, 30 seconds for me, 30 sec-

onds for the Senator from Ohio, so we can just conclude this comment.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. KEMPTHORNE. Clarification. The State and local partners last year on S. 993 did not want weakening amendments. Also, last year in the draft on S. 993, I never included a sunset. I did not support a sunset. I did not vote for a sunset last year. But I understand the process. There were some things in S. 993 I may not have agreed to, sunset being one of them, but S. 993 in its form was fine.

I will now yield 30 seconds to the Senator from Ohio.

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, last year in support of the Senator from Michigan, we had a letter from the National Governors Association, the National Conference of State Legislatures, the National Association of Counties, the National League of Cities, and the U.S. Conference of Mayors.

In their letter to all Senators, they said:

Not only will we oppose any amendments not supported by the bill managers, Senators GLENN, WILLIAM ROTH, and DIRK KEMPTHORNE, but we view all amendments as an attempt to defeat our legislation. We urge the defeat of all partisan and extraneous amendments.

The reason I support Senator LEVIN is not to say we are going to put this out there and sunset it and there will not be any unfunded mandates in legislation. My view is that we put it out there as a forcing mechanism to make sure that we have to consider fine-tuning. We know around here we have lethargy, we have inertia; we never get around to some of these things unless we put a forcing mechanism on ourselves. So that is the reason I support this. It is not going to sunset it and do away with unfunded mandates. We force ourselves to do it. We are forced to take a look at it.

I yield my time, if I have any remaining.

Mr. EXON. Mr. President, I rise in support of the amendment offered by the distinguished Senator from Michigan which would establish a sunset date for the unfunded mandates bill.

Mr. President, this is a fair and reasonable amendment. Quite frankly, I was surprised that a sunset provision was not included in the legislation before us today. I remind my colleagues that last session's version of the unfunded mandates bill, S. 993, contained a sunset date.

It was my understanding, and also that of many of the negotiators who hammered out this bipartisan compromise, that we would have a sunset date. It is unclear why it fell off the radar screen.

Mr. President, I believe a sunset provision is crucial to the success of this bill. A sunset provision will help—not

hurt—this important piece of legislation. Let me spell out a few of the reasons why.

First, sunset provisions are a common sight on the legislative landscape. For example, the revenues used to fund the Superfund Program sunset this year. We have had sunset provisions in everything from the crime bill to school-to-work to the 1990 farm bill. This is not an alien provision.

Second, we are dealing with brand-spanking new legislation. It is untried and untested. Like a product coming off the assembly line for the first time, this bill needs a trial period so that any problems and bugs can be worked out.

The Congressional Budget Office has expressed concern over the analyses that are required by the bill. In testimony last year before the Senate Committee on Governmental Affairs, Director Reischauer gave a candid assessment of the difficulty in completing these analyses on a timely basis, not to mention, culling reliable information for them.

Now, a sunset provision in 1998 would allow Congress to pause and examine the job that CBO has performed to date. We could then fine tune, and if necessary, retool that process to make this bill even more effective.

Third, a sunset provision is not going to kill the Unfunded Mandates Program. This bill's time has come and I see nothing on the horizon to lead me to believe that it would be scrapped 4 years hence.

I would also point out that we have 57 cosponsors to date. If the legislation lives up to expectations, we should have no problem marshaling the same support we have today. If not, then Congress can begin the process anew.

Fourth, Mr. President, the unfunded mandates bill does not operate in a vacuum. We have to look at the unfunded mandates bill in the context of the Budget Act.

The caps and other major provisions of the act—including the supermajority points of order—expire in 1998.

Since we will have to revisit the entire Budget Act in 1998, it makes sense to be consistent and provide for a 1998 sunset provision in this piece of legislation as well.

Mr. President, this is a reasonable, well-thought-out amendment. I believe most of our colleagues can support it. In no manner does the sunset provision diminish the effect of the legislation. It merely demonstrates our commitment to quality legislation that meets not only today's needs, but tomorrow's as well.

Mr. ROTH. Mr. President, I strongly oppose this amendment, which would sunset the reforms of this legislation in the year 2002. There may be changes we might want to make to the statute, after it has been in effect a few years. But requiring that it is be sunsetted is another matter entirely.

This is not a Government program, whose value might become obsolete in the future. What we are talking about

here mainly is establishing a process for congressional consideration of certain types of legislation. I greatly doubt that the premises underlying this bill will become irrelevant in the foreseeable future. We should always be cognizant of the potential harm of unfunded mandates, not just for a few years.

What makes this amendment additionally objectionable is what it does to the chances of ratifying a balanced budget constitutional amendment. It greatly hinders that likelihood. The Governors and State legislators have spoken loud and clear on this issue. They have said that without protection against unfunded Federal mandates, they have little incentive to ratify such an amendment.

They fear, perhaps not unreasonably, that we might balance our budget on their backs—by shifting our costs to them through unfunded mandates. They would prefer that the protection against this be a part of the balanced budget amendment itself. They would certainly, at a minimum, want the statutory protections of this bill in place—and for a period longer than a few years.

Every statute is of course repealable. But this one, especially, ought not have that fact built into it. To do so would undercut the very purpose of this legislation—to assure State, local, and tribal governments that they have gained respect at the Federal level.

Therefore, I strongly urge rejection of this amendment.

Mr. GRAMS. Mr. President, as a strong proponent of sunset legislation, it is with some irony that I stand today in opposition to this amendment. But there is a clear distinction between sunset amendments that promote fiscal responsibility and those that promote political gamesmanship. And I submit that this amendment is the latter.

Because I believe firmly that Congress must act as gatekeeper when it comes to spending the taxpayers' hard-earned dollars, I authored the Budget Accountability Act as a Member of the House of Representatives. This is sunset legislation that helps ensure greater accountability of Federal programs and Federal tax collections.

For far too long, Congress has conveniently opted out of its oversight responsibilities. Without sunset legislation, Congress allows programs to live on in perpetuity, unchecked, often far beyond any intended usefulness. And without better oversight of our revenue code, we end up with excessive layering of taxes.

Under sunset legislation, revenue, and spending bills are reined in, no longer automatically renewed without regard to their viability or impact on the deficit.

I successfully attached sunset amendments to nearly two dozen bills during my 2 years in the House. But I cannot support my colleague's sunset amendment today. Mr. President, sunseting the Unfunded Mandate Relief Act has nothing to do with fiscal

responsibility. In fact, this amendment runs counter to the principles of fiscal responsibility.

S. 1 is about relief—relief from Government waste, relief from an overreaching Federal Government that can't seem to get its hands out of our pockets. Sunseting a bill which finally provides this desperately needed relief doesn't make any sense, and distorts the original intent of sunset provisions.

Instead of sunseting good legislation like the Unfunded Mandate Relief Act, we should be sunseting the burdensome and inflexible mandates from which S. 1 is designed to protect us.

Mr. President, as everyone in my home State of Minnesota knows, you won't stop a dog from barking by cutting off its tail. If we truly are serious about eliminating wasteful spending and providing tax relief, then I invite the gentleman from Michigan to join me in introducing real sunset legislation. In the meantime, I urge my colleagues to reject an amendment which is strong on politics, weak on policy, and runs counterproductive to the very agenda the American people sent us here to carry out.

The PRESIDING OFFICER. All time has expired.

Mr. KEMPTHORNE. I now move to table the amendment 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.

AMENDMENT NO. 197

Mr. GLENN. Mr. President, what is the regular order of business?

The PRESIDING OFFICER. The vote on the motion to table the Levin amendment will be held at 11:30. Under the previous order, the question is on agreeing to amendment No. 197, offered by the Senator from Ohio. There will be a period of 45 minutes for debate prior to a motion to table, 30 minutes under the control of Senator GLENN, and 15 minutes under the control of Senator KEMPTHORNE.

Mr. GLENN. I thank the Chair.

Mr. GLENN. Mr. President, I call up my amendment No. 197 at the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Amendment No. 197 is the pending question.

Mr. GLENN. Mr. President, I rise to offer this amendment to ensure the point of order requirements in S. 1 lie in only two places. One of those would be just prior to final passage, before we are getting ready to vote on the bill, for its consideration once it has been through the whole process. The other point where a point of order would lie would be when the bill comes back from a conference where it might have been changed somewhat, and so a point of order could lie at that point also.

I think we need to think about the purpose of this legislation. The purpose is to know what the total impact of a

bill is going to be on State and local governments. They are not really interested, as we go along, in each little piece of legislative maneuvering that we do here in the Senate Chamber. What they want to know when a bill is passed is does it hit them with a \$1 billion bill, no bill, or does it hit them with a new responsibility they did not have before? States and local governments want to know what does this legislation do to them? That is what this unfunded mandates bill was all about.

This bill was not supposed to be designed to create a legislative quagmire, some great swamp of procedural difficulties, that would make it so difficult to get things passed that even the finest of legislation would have trouble getting through.

A moment ago, I held up a flow chart that my staff director put together overnight that shows some of the procedures under this bill. I wish we had time to get this thing lined up in a better order on a chart so people could really see all the intricate maneuvers that go on here with the introduction of a bill. Basically, each amendment under the bill as it is now—this would be each amendment:

Step 1, the Parliamentarian would have a ruling on whether a mandate exists.

No. 2, there can be an appeal of that ruling.

No. 3 would be a vote on that appeal.

The fourth step an amendment would have to go through is the Parliamentarian would make a ruling on whether the cost exceeds the \$50 million threshold—determining once again if a mandate exists.

No. 5 would be an appeal of that ruling.

And No. 6 six would be a vote on the appeal of that ruling.

No. 7, the Parliamentarian would rule on whether requirements for funding have been met.

No. 8 would be appeal of that ruling.

And No. 9 would be a vote on the appeal.

That is what is in the bill now, and I do not quarrel with that as a procedure except to say what we are trying to do on each piece of legislation is to find out what the total overall impact on the States and local governments will be. That is what they are interested in as a bottom line. That is the purpose of this legislation.

My concern in applying the point of order requirements for CBO cost estimates for State and local funding to floor amendments, as S. 1 currently does, is that the procedure has the serious potential of just unnecessarily bogging down the whole legislative process. Why, when the final total, the final checkout counter total is what we are really interested in, do we want to go through all this self-flagellation of putting ourselves through a tortuous process where an amendment could have a point of order against it when it is proposed and then, if it is still approved,

that will have an impact on it being included as part of the bill because it has been approved. So then another point of order could lie back against the bill itself. We have had appeals from those rulings of the Chair.

At each point, then, as I see it, you have a possibility—if someone is interested in setting up another means of filibuster, this would be an excellent means of doing it. All you have to do is put in a whole bunch of amendments that exceed the \$50 million threshold and exceed the point of order and you have bogged this Chamber down for days and days on end. I guarantee it. I do not think there are many Members of this Chamber who would vote to put in a new filibuster process, yet that is basically what we are talking about doing.

We talk about the election last year. Everybody putting something down hangs it on the election of last year, November 8, as to: We want a leaner, better working Government. We want to cut out all the complexities of Government. We want to make Government flow. We want to make Government efficient.

If I ever saw anything that is going to make Government inefficient here in the Senate Chamber, it is a process such as we have before us now that basically sets up a brandnew filibuster process. I know my colleagues on the other side of this issue will say we have to have accountability. The accountability that I think we need to provide in this bill is the final checkout counter accountability of saying we have made our very best effort to assess the costs of legislation. We have considered the costs on the Senate floor. Here is the relationship with the States. And here is the final checkout counter tab, after all the amendments have been considered.

I know they will say at each one of these points, if someone is thinking about putting in a \$50 million addition to something or \$75 million addition, the accountability requirements of having a point of order lie at that time will mean they will think twice before they put that in.

I do not think that applies in this case. Because at each point where someone thinks about putting in an amendment like that, they are also going to have to consider that total at the time of reckoning at the end of consideration of all the amendments. We still will have a point of order lying against this whole process. In fact, in the amendment process someone may say, we think your \$75 million back there was too much so we modify it to another amount by this amendment.

Why should we have gone through a point of order and all the other unnecessary legislative procedures along the way, when what we really want is the final checkout tab? So the accountability requirement here, of making people think twice, I think, is just as strong under this as it would be if we kept this point of order lying at every point

along the way, which just sets up another potential filibuster procedure.

I want to pass an unfunded Federal mandate reform bill. I have been wed to this idea with both S. 993 last year and S. 1 this year. We have been on the floor now for 2 weeks with this legislation and much of it has been misinterpreted. Some of this legislation has been misinterpreted back home by some of our papers. I have been castigated as though I was delaying this, which I am not. I have fought and fought to get going on this legislation and get it through. But I want to do it right. I want to do it properly. However, I want it to be very clear I want to pass an unfunded Federal mandate reform bill.

I do not want, at the same time, to tie this legislative process in such a Gordian knot that it will delay good legislation unnecessarily, and I think that is the important point.

Applying points of order to floor amendments will just add bureaucratic overlay nonsense and accomplish very little in this whole process. I believe that kind of nonsensical bureaucratic overlay is not in the interests of the Senate nor is it in the interests of the State and local governments with whom we are trying to deal with in this legislation. To set up new, unnecessary procedures that can be misused by someone who, even with very good legislation, might want to set up a filibuster procedure by putting in new points of order and so on, just does not make any sense to me.

I understand points of order can currently be raised under the Budget Act on amendments that affect direct Federal spending but have not been scored by CBO. However, we are not talking about direct spending here; we are talking about estimates.

CBO has already told us that estimates in some of these areas will be fuzzy estimates at best. But we are still required to consider the best estimates we can get up front in this legislation. That is the purpose of this whole legislation. Fuzzy estimates for mandates, which are a different animal entirely, involve cost estimates for 87,000 different State and local jurisdictions.

Therefore, we should not overload the Senate with these new procedural requirements that are just not necessary on floor amendments. Nor should we at the same time overload CBO. CBO told my staff there is no way they could score all amendments containing possible intergovernmental mandates under the short timeframe that might be required on the floor. They might be able to provide a rough estimate, but it would require them a little longer timeframe to get a better estimate for us that could not be done in the time that legislation completes its consideration here on the floor. I think leaving each amendment subject to a point of order is just a prescription

for additional slowing down of the legislative process for possible real mischief if somebody's objective is to stop a good piece of legislation by overloading it with amendments that would exceed the \$50 million threshold limitation.

My amendment would see that the points of order lie in two places. I think this is a very logical. First would be after we know the cost of the bill. We will know the cost of all of the amendments, will have totaled them up and be able to say here is the cost, here is the impact on State and local governments, and now we have to decide. Is that too much? At that point, prior to final passage, the point of order would lie. Then the legislation, if approved, goes to a conference with the House of Representatives and we come back out of that conference. Sometimes the House has different money amounts involved, different requirements.

The conference report, as it comes back after having been negotiated with the House in conference, is sometimes different. At that point, it may have changed dramatically. So we need a second point of order that will lie at that point. That was the second point of order. The main one, of course, was just for the legislation. We have completed it, and ran through it. We have a point of order apply when we know what the total tab is. That is where the main point of order will lie. If it goes to conference, comes back with no change or tiny changes, then the point of order would probably not be required against it again. But if there are big changes that come back out of conference, then a point of order would lie at that point also.

The amounts themselves that have been offered under my bill would not be subject to individual points of order, as is the case in S. 1 where this whole procedure can get so bogged down. My amendment would reduce the potential burden on CBO. It gives them a little more time to refine their estimates as we are considering bills on the floor, and get them to us. This means we will probably have more accurate information. Most importantly, it will prevent us from having the potential of playing a 100-person game of negotiating a complex legislative labyrinth of some kind anytime we consider legislation with intergovernmental ramifications.

Further, my amendment would ensure the conference reports would still be scored, as is the case under S. 1. I have also indicated my willingness to modify the amendment to have the point of order lie against only the mandates at the third reading rather than against the whole bill. The bill would come out—a point of order could possibly lie against it at that point before you even get into amendments—then take all of the amendments in toto and have a vote on the impact of all amendments as a separate point of order.

So I would be willing to do that, if someone thought that was more satis-

factory. But there has been no agreement at this time by the other side. I repeat that I think what the States and local governments are interested in is not our legislative quagmire here in the Senate and how we may be able to use something like this as another way of filibustering. What they want to know is—when the final deliberations have been made—what is the total impact on the States and local governments? That is what they want, and that is what should be concentrated on.

I do not agree that this is some great force mechanism of accountability on each person who will somehow hesitate to offer an amendment for fear that they are going to be the ones that put us over the limit of \$50 million. I just do not think many people are going to be persuaded that is a big consideration for them, and, in addition, the points of order will be taken up later. A point of order will lay against the accumulation of all of these amendments anyway.

So they are under that same kind of accountability restraint whether the point of order would lie on their individual amendment or the cumulative effect of all of the amendments considered for a point of order at the end of the amending process.

If we allow points of order to lie on each floor amendment as it comes up, it seems to me we are sort of going down the road that will lead to a legislative traffic jam of grand proportions. Amendments will bottleneck legislation like cars on the beltway at rush hour here in Washington.

In trying to fix the problem with unfunded mandates, let us not go down that road. Let us not create legislative gridlock. I believe that my amendment makes sense. I urge its adoption.

I reserve the remainder of my time.

Mr. KEMPTHORNE. Mr. President, I yield now to the chairman of the Budget Committee such time as he would need.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. DOMENICI. Thank you very much, Mr. President, and I thank the Senator from Idaho for yielding time.

How much time does Senator GLENN have?

The PRESIDING OFFICER. The Senator from Ohio has 15 minutes and 11 seconds, and the Senator from Idaho has 14 minutes and 35 seconds.

Mr. DOMENICI. Mr. President, first, let me say to Senator GLENN that clearly I am not one—and I want to set the record straight from our side—accusing Senator JOHN GLENN of delaying, as an instrumentality here; that he has been on the floor trying not to have this happen. Quite to the contrary. I am reminded, one of the Republican Senators said yesterday, I believe at lunch, "What are we in for this year when it takes almost 3 weeks on a measure that the Democrats are for?" That is sort of befuddling. This is going to pass very heavily I believe. We have

been here an awful long time. This is an important bill. I want to address it.

First of all, there should be no doubt, Mr. President, that this unfunded mandate legislation and its enforcement are intended to change the culture of the United States Congress when it comes to voting out of committee and on the floor unfunded mandates as defined in this bill. This cannot be approached cavalierly, and there will be a very big burden on committees that have jurisdiction over bills that come to the floor that mandate costs on local government that we do not pay for. Let me describe why I think what the bill does is precisely right and why what Senator GLENN offers is not what we ought to do because of the basic philosophy of what we are trying to accomplish.

First, there should be no misunderstanding. Points of order are not self-executed. They are not self-executed. Somebody has to raise a point of order; point No. 1. A manager of a bill has to be very, very careful that the bill that is brought to the floor is not subject to a point of order, or clearly that manager and that committee understands that it is subject to a point of order, and could fail. That means there will be a lot of care and a lot of political analysis before you bring the bill to the floor. That is number one.

No. 2, we used to say one of the great qualities of the Senate is that if you think of an amendment here on the floor and you are smart enough, you just write it out; send it up there. There is no doubt about that. That is one of the fantastic qualities. And the person I remember so vividly over the years that did that the best was Senator Jacob Javits of New York. He did not need a staff. He would just write one up.

What we are saying now is you can do that. You can dream up an amendment while the bill is working its way through here. But we are changing things a little bit as to one kind of legislation, legislation and amendments that mandate local governments to do things and we do not want to pay for them. In that regard, we say you had better be prepared. You had better be prepared and get the estimated costs. And, if you do not have them or if they exceed the threshold, you had better be prepared to defend on the basis that if someone raises that point of order the Senate of the United States would want to say on that amendment, look, we want to waive it. We think it is so important and we do not think we can quite work out how we pay for it and the like, we think it is so important, we are going to waive it.

Frankly, I think it is important that we understand that the United States Senate understands that after the adoption of this legislation, if the Glenn amendment fails—and I hope it is tabled—when you get ready to offer amendments that affect mandates that are unfunded, you had better be prepared to defend them against the costs

you are sending down. Having said that, if a bill comes to the floor and it exceeds the threshold, it is subject to a point of order. Frankly, then a point of order could be made, it would fail, fall, or it would not. But now we have another tree coming along, and people want to offer an amendment.

If an amendment was subject to a point of order and the Senate, in its wisdom, waives it, then that amount of mandate is waived and there cannot be a point of order against the bill because that was added and increased the threshold. We make the decision, and if we want to waive it, we waive it. If we waive it, then my understanding of what we have done is you cannot then raise the point of order against the bill because the waived mandate makes the bill subject to the threshold dimensions.

On the other hand, it is true that if we do nothing and let the amendment go through—and that is the prerogative of the Senate—then at some point in time, if it made the bill subject to a point of order, you can still raise it at a later time, because that has never been waived.

Frankly, I believe the Senator from Ohio is overly concerned about how this is going to be used. I believe the way it is really going to be used is that people are going to want to get their amendments passed, and they are going to do everything they can to make it right by the Senate and to make it right by this law, and if it is a political issue instead of a dollar issue, they are going to win it. That will be a vote around here. Do you indeed want to do it, even though it breaks the threshold?

I am very proud that we made that simple. There is only a simple majority there, not a supermajority to do that waiving. I think that means that since we do not know the details of the future, we cannot guess everything in the future. We are giving Americans insurance that it can be voted in, if it is very important to America, even if it violates the threshold requirement.

The whole theme of this bill is a process for accountability. Heretofore, at best, we did not know what we were doing in terms of the mandate costs. At worst, we knew it and we were cavalier about it. So what, change this Clean Air Act and if it costs the States \$650 million over the next 3 years, so what. Anybody that likes that approach should not like this bill. But we are not going to be doing that anymore.

So when you have a serious amendment and you bring it here to the floor, it is at risk, I say to fellow Senators, if in fact it costs out such that it makes the bill subject to a point of order. And you have to work that. You cannot just come down here and say it is such a neat thing, I dreamt it up; I am running for office and I would like to get it down here. It is going to be put right up front, to the best of our ability, to analyze and if some Senator is careful,

he is going to stand up and say I raise a point of order. Again, this is not self-executing. The Senate can clearly, implicitly or explicitly, decide that it does not want to do anything about the fact that we break the threshold and order some mandates that are unfunded.

So in summary, I think we will too narrowly change the culture, change it into a narrow way, and if we let in all the amendments and at the end of it all, we address them. I think the culture has to be changed such that amendments are subjected to the highest scrutiny in terms of the mandate. Essentially, that is the difference between the two. Yes, there is a little more difficulty and it could be a little more cumbersome. But do we really want to make amendments heavily scrutinized and subject to a point of order then and there, or do we want to do less and let them get through because under this amendment there would be no point of order?

You could have a report saying it is a \$300 billion mandate on an amendment, and under this you wait until the end when everything is there and then take it up. I think it ought to be done in a very powerful, direct attack on the kind of willy-nilly way that we have assigned these mandates to our cities, States and counties.

Therefore, I hope the Senate will leave the bill intact. I commend my friend from Ohio for his thoughtfulness on this bill. I just believe that we have a basic disagreement. The Senator from New Mexico has a basic disagreement on this. I hope the Senate agrees with the Senator from New Mexico.

I reserve the remainder of my time.

Mr. GLENN. Mr. President, how much time is remaining?

The PRESIDING OFFICER. The Senator from Ohio has 15 minutes 11 seconds.

Mr. GLENN. Mr. President, we disagree, obviously, on this particular amendment. I want to respond first to the comment of my distinguished friend from New Mexico—and he is distinguished and he is head of the Budget Committee. He is very learned in that area and I appreciate that. He commented in the Republican caucus yesterday that one of their persons said, "If it takes this long for the Democrats to get something through that they want, what does that spell out for the rest of the year," or words to that effect.

I want to set the record straight on that, because I think there has been a great deal of gobbledygook about, and misrepresentation of, the Democrats on this side with regard to what we have done on legislation this year—deliberate misrepresentation, as the Congressional RECORD will show. Last year, we passed S. 993. I was part of that, along with Senator KEMPTHORNE. The mayors and Governors said: Do not amend it, do not do anything, put it through. Senator LEVIN brought that up a little while ago. I read that into

the RECORD. It was looked upon as very good legislation. Why did we not get it through last fall? We had it out of committee in August, and the Republicans that now accuse us of all kinds of delay had a 3-month scorched-earth, do-not-let-anything-through policy that prevented consideration of unfunded mandates or the Congressional Coverage Act last year.

We finally got down to trying to get a unanimous consent requirement to let those two bills get through last year and could not do it. That is the reason we did not have unfunded mandates and congressional coverage passed last fall, because there was a policy on the Republican side, apparently, to not let anything get through. One day, after one of the votes on an amendment, I followed one of the more vocal members of the Republican Party and happened to walk out by the elevators, and he was saying, "We beat another one." The press people out there said, "What was it?" He said, "Who cares, we beat it." That was the general attitude last fall that prevented unfunded mandates, which I was all for. I worked with Senator KEMPTHORNE, who took the lead in this area, and we had that legislation ready and could not get it through. That was the policy last fall. That is the reason we did not get it through. Some of the press look at it this year as just tit-for-tat. The shoe is on the other foot, so we are doing the same thing back to them. That is not true.

When we came in this year, S. 1—which is the successor to S. 993—had been made a priority and was given the prime designation of S. 1. It was designated as the prime bill that we are going to put through this year. I favored that. That designation is great, as far as I am concerned, because I am for unfunded mandates legislation. But the way they wanted to put it through was to ramrod it through with absolutely no changes, to show we are in some sort of legislative drag race with the House, apparently, and that we can beat them. So what was the procedure that was set up? It was set up this way: We will introduce the bill one day, have a hearing the next day, a markup the third day, and include on that third day sending it back to the Senate. That meant when we got to committee, there was not time to do anything on it.

I go to markup usually considering, OK, let us deliberately look at this and make sure we are doing the right job with this piece of legislation. Yet, when we came to markup, they had the hearing the second day, went to markup the third day. We came over with some perfecting amendments. They were not delaying amendments. They were to take care of some of the real problems with this bill. There were some things that had been omitted. Color and race had been left out of the discrimination clauses—substantive matters that had to be taken care of.

We were told there would be no amendments. We tried to put amendments in. They were voted down on a party-line basis, straight across the board. We were informed that there would no amendments approved that day, and we are going to vote this thing back to the floor. They told us that on the floor you can put in all the amendments you want—we will consider all these things on the floor. That is what we were told over and over again. OK. We could not do anything about that. It was also stated we are not going to have a committee report.

Normally around here, for those that are not as familiar with Senate procedure as others may be, a committee report is a very important document. These bills that are put in are in legalese, they refer to different parts of the code, and you have to really decode them to know what you are doing. And so the committee report is what most people rely on to look through and see the provisions that are put in layman's language so you can understand it.

They would not even put a committee report in. They said we are going to bypass that. The minority asked, "How are you going to take care of explaining this to people?" They responded, "Put something in the CONGRESSIONAL RECORD?" "How about minority views that are normally considered important?" "If you want to put minority views in, you should put them in the CONGRESSIONAL RECORD."

I have never seen such cavalier treatment of the minority since I have been in the Senate, and that has been over 20 years now.

We object. We had a rollcall vote on the committee report and the minority lost. So it was voted out and brought back here to the Senate.

To show my commitment to unfunded mandates, I voted even then to send it out of committee and back to the floor. I voted with the Republicans to get it out of committee and back to the floor, even though I objected strenuously to the whole procedure at that time.

Now, what happened when S. 1 came to the floor? This is where they say we have been on the floor now 2 weeks with this thing. Actually, what happened is Senator BYRD took up the issue of the absence of a report and objected to it, and for the first 2 to 2½ days, we had a debate on the committee report.

The majority finally agreed that they would do a committee report. "We will have it for you by tomorrow evening." Tomorrow evening came and went and there was no report, so we had to wait another day to get the committee report.

Then it turned out that the Budget Committee had not submitted its report, and there was another day's wait.

So all these things on procedure could have been taken care of had we been able to consider this legislation in committee, as we should have been able to do. This representation that we

have somehow delayed this legislation is beginning to wear a little thin with me. That is how we lost the first week.

Then they wanted us to consider immediately taking up the bill because the report was filed. Well, people had not even had a chance to see what was in the report. So it was finally agreed to put it off over the weekend.

So the first whole week of consideration, all last week, was because of the way we were cavalierly treated in committee and because Senator BYRD insisted on those reports being available so all Members would have a chance to know what was in this landmark, historic legislation. And I view this bill as being that kind of legislation.

Now, once we got into the bill on the Senate floor and got past the committee report problem, then what happened? Then the majority said, "Let's limit amendments." Limit amendments.

We had been told repeatedly in committee that we would be able, on the Senate floor, to go through the regular amending process. What happened? Now they want us not to put in amendments. Now they want to move the bill real quick, in a drag race with the House. And we objected to that.

In spite of being told that we would be able to bring up anything we wanted on the floor, cloture was filed when we tried to bring things up.

Well, cloture then flushes out amendments all over the place. Because if cloture is invoked, you cannot put amendments in after that. So everybody had a pet amendment. And in the Senate, not having germaneness rules, you can put in anything you want. We wound up with 117 amendments, which was unnecessary. We could have taken care of the important ones in committee had we been permitted to do that, instead of having this legislative process where we were rolled on the minority side.

Then, meanwhile, negotiations were on as to what amendments were really important. And so we finally wound up with the list being culled down earlier this week, and the ones that are important, we will consider those.

That is an abridgement of how we got to where we are right now.

So I tell you, I am wearing very thin on this thing. I have been accused back home by one of our major Ohio papers of being one who favored this legislation last year but, for political reasons, opposes it this year. That just is flat not true. It just shows that they were not paying attention to what was going on up here on the Hill during the committee process, what we tried to do, my commitment to this legislation, and working it out.

Finally, this week, we were able to work it out. Last night, working until after midnight, we finally got a time agreement on the final amendments that are important. These are substantive amendments.

The Senator from Michigan, who has brought these issues up, is a pit bull on

this. He goes into these discussions in committee on how the wording is going to affect the council back in Detroit, where he used to be on the council, and the States, Michigan and every other State across this country.

These are substantive matters that are being proposed here. These are not delay tactics.

If there were any delay tactics, it was because we were trying to get a committee report out that could explain this legislation to every Senator, including the 11 new Senators on the Republican side that have not been familiar with this process at all. There was objection during that first week and that is how we lost the whole first week.

And so, when these little barbs keep flying across the aisle about how we are delaying things, I will tell you, we are not being anti anything. I will tell you what the Democrats are being on this bill. We are being constructive, trying to put legislation through that has the fine points worked out in it so it is operable, so we can make these estimates, so we can make sure that States and local governments are taken care of properly. That is the purpose of this legislation.

The delay that we have had for the first week was all because of the procedures that were used in trying to ram this thing through. We were responding by saying, "OK, we want to have the normal procedures here so that every Senator will be informed."

That is sort of how we got to where we are now.

To say that somehow the Democrats are at fault on this is incorrect. I will tell you what the Democrats are doing. They are trying to protect Senate procedure that protects Republicans as well as Democrats.

I am just as committed to getting this unfunded mandate legislation through as I was last year. I think we worked it out. The amendment that Senator BYRD proposed took care of a lot of the problems, and I think makes this legislation a better bill.

Was that substantive? Are we delaying because of the Byrd amendment that was put through yesterday? No, that was excellent legislating of a very important nature on a bill that is landmark legislation. The majority said it was a delay mechanism when we changed the process of how things operate when bills go over to an agency, and what they can do, we would have given up our legislative authority to those agencies. It was agreed on the other side that this was something that we should correct, and we corrected it. Was that substantive? You bet it was substantive; very important for this legislation.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER (Mr. THOMAS). The Senator has 3 minutes and 17 seconds.

Mr. GLENN. Mr. President, I reserve the remainder of my time.

Mr. KEMPTHORNE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. KEMPTHORNE. Mr. President, we have had these discussions from time to time as to what side of the aisle brought up objections, what side of the aisle delayed progress, and what have you.

I refuse to engage in that, Mr. President, because we have in S. 1 an effort to stop unfunded Federal mandates. And, on behalf of the mayors, Governors, county commissioners, school board administrators, and business men and women of the country, I am not going to engage in what has happened in the past on the fingerpointing.

It is time for us to use that finger and to draw a line in the sand and say, "From this time forward, let us look to the future in what we can do together."

This is a bipartisan bill. The prime partner on this bill that I have had has been the Senator from Ohio. I am a Republican; he is a Democrat. This is a bipartisan bill.

It is about time that we quit just saying "bipartisan" if we do not mean it, but instead demonstrate to the American people that we can work together, because that is what they told us they wanted us to do on November 8: Stop the fingerpointing at one another and start looking to the future on behalf of the American public that sent us here to do a job for them, instead of being on each other.

I could bring up that last year, when we tried to get S. 993 through, it was the Republicans that cleared the deck. They agreed, even though I had some that wanted desperately to offer amendments, they would withhold all amendments. But we could not clear the deck on the Democratic side, but it does not matter now. That is past. Maybe in different social settings we could go over those war stories. I do not think the public wants the war stories right now. They want the Senate to enact this legislation.

So, Mr. President, with regard to the specifics of the amendment before the Senate, I have to defer to what the chairman of the Budget Committee stated. He has pointed out why he feels this is an objection. I know the Senator from Ohio is sincere in thinking that this may pose another filibuster tool. But in the 2 years I have been here, if there is one thing I have learned, it is that there are ample tools for filibuster, if that is what a Senator wants to do. I do not think this will be used as a new ploy in order to enact a filibuster because there are a variety of other opportunities to do that.

Mr. President, again, I would ask everyone, just as Senate bill 1 is prospective and not retroactive, let the Senate continue, in the debate, to be prospective and not retroactive and show the American people that we can take something that is bipartisan. Let Members pass it in this body today, send it to the House of Representatives, get bi-

partisan support there, send it to the President, and have him enact this. Then the mayors and Governors and the American taxpayers will say, "Thank you, folks, you did what we asked you to do, and now why not do it again on something else."

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, I yield myself such time as I may require.

I could not agree more with the distinguished Senator from Idaho. He has been an absolute delight to work with all through the last 2 years on this legislation. We were very cooperative. We have not tried to backstab each other. We have been upfront on every place we have had differences. In some areas we do have differences.

We have a little difference of opinion on this particular item. My proposal, I think, would improve the legislation. The other side does not think that is quite the case, so we have a little difference of opinion. But the basic bill itself will go through.

All through the first part of this debate, through the first week of this debate on the Senate floor, I outlined the procedure that was used to get this legislation through committee, which we objected to. But all through that first week on the Senate floor, I refrained from getting into some of these partisan barbs back and forth and so did the Senator from Idaho. He did not take part in those remarks. All the things that were coming up about the political nature of what the Democrats are trying to do, as though this is a political hotfoot we are using to reply to last year's scorch policy of 3 months in the fall, I stayed out of that. There were many of those remarks back and forth.

I finally got involved with it because I thought it was so unfair. Lo and behold all that drumbeat, drumbeat, drumbeat of how bad the Democrats were and how we were trying to stall this thing, drumbeat, drumbeat, over and over, apparently had some effect, as one of our major papers back in Ohio made scathing remarks about me, sort of implying that I have sold out. The paper implied that the only reason I am participating in the debate in this manner is because of some kind of party retaliation. That is not like me. Well, I would say to the papers, in reference to the little special they had on their editorial page, no, it is not like me, and that has not been me. If they had been paying attention to what was going on here, they would know that is not what was going on.

So when I hear my friend from New Mexico get up this morning and once again make a crack about the Democrats being at fault, and will this be the pattern all through the legislative session, that someone remarked to him about yesterday, obviously my skin is beginning to get a little thin on some of these things—blaming this particular delay just on the Democrats, when

I enunciated a little while ago the processes that were used in committee—high handed, cavalier. I cannot put any other words to it than that. I have never seen any minority treated like that in my 20-some plus years here in the Senate.

So that is the reason that I wanted to use some of my time on this amendment. My remarks did not apply directly to this amendment.

Let me say to my friend from Idaho, I think his remarks are exactly on, and I hope he takes the opportunities in the conference to get some of the other people to stop making these zingers across the aisle that are so unwarranted because we know what happened in committee and we know what happened last year.

He and I worked together to try to get this together. He said we could not get it through on the Democratic side, we finally were delayed, could not get it through the floor for regular debate as would normally be the case. We were only able to get it on a unanimous consent. And one Senator objected to unanimous consent at that time and that prevented us from getting it through last year without amendments.

Mr. President, if this bill is enacted as currently written, with points of order applied to amendments, it will be almost impossible to escape a point of order on an amendment whose cost estimate—assuming you can get it—exceeds the threshold.

I ask unanimous consent to print in the RECORD what every amendment will have to contain, according to section c(1)B of the bill, if it contains a mandate of at least \$50 million.

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

"(B) any bill, joint resolution, amendment, motion, or conference report that would increase the direct costs of Federal intergovernmental mandates by an amount that causes the thresholds specified in subsection (b)(1)(A) to be exceeded, unless—

"(i) the bill, joint resolution, amendment, motion, or conference report provides direct spending authority for each fiscal year for the Federal intergovernmental mandates included in the bill, joint resolution, amendment, motion, or conference report in an amount that is equal to the direct costs of such mandate;

"(ii) the bill, joint resolution, amendment, motion, or conference report provides an increase in receipts and an increase in direct spending authority for each fiscal year for the Federal intergovernmental mandates included in the bill, joint resolution, amendment, motion, or conference report in an amount equal to the direct costs of such mandate; or

"(iii) the bill, joint resolution, amendment, motion, or conference report includes an authorization for appropriations in an amount equal to the direct costs of such mandate, and—

"(I) identifies a specific dollar amount of the direct costs of the mandate for each year or other period during which the mandate shall be in effect under the bill, joint resolution, amendment, motion or conference report, and such estimate is consistent with

the estimate determined under paragraph (5) for each fiscal year;

"(II) identifies any appropriation bill that is expected to provide for Federal funding of the direct cost referred to under subclause (III);

"(III)(aa) provides that if for any fiscal year the responsible Federal agency determines that there are insufficient appropriations to provide for the estimated direct costs of the mandate, the Federal agency shall (not later than 30 days after the beginning of the fiscal year) notify the appropriate authorizing committees of Congress of the determination and submit either—

"(1) a statement that the agency has determined, based on a re-estimate of the direct costs of a mandate, after consultation with State, local, and tribal governments, that the amount appropriated is sufficient to pay for the direct costs of the mandate; or

"(2) legislative recommendations for either implementing a less costly mandate or making the mandate ineffective for the fiscal year;

"(bb) provides expedited procedures for the consideration of the statement or legislative recommendations referred to in item (aa) by Congress not later than 30 days after the statement or recommendations are submitted to Congress; and

"(cc) provides that the mandate shall—

"(1) in the case of a statement referred to in item (aa)(1), cease to be effective 60 days after the statement is submitted unless Congress has approved the agency's determination by joint resolution during the 60 day period;

"(2) cease to be effective 60 days after the date the legislative recommendations of the responsible Federal agency are submitted to Congress under item (aa)(2) unless Congress provides otherwise by law; or

"(3) in the case of a mandate that has not yet taken effect, continue not to be effective unless Congress provides otherwise by law.

Mr. GLENN. Could we have unanimous consent to have Senator LIEBERMAN have 1 minute?

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

Mr. LIEBERMAN. Mr. President, and my colleagues, I just want to add a word to say, as this debate has gone on, the Senator from Ohio, as is not just his habit but is at the very core of his nature, has conducted himself in a most thoughtful and serious way. In the 6 years I have been privileged to be a Member of the U.S. Senate, I do not think I have known a less partisan Member than JOHN GLENN of Ohio.

This complicated bill, with ramifications on just about every section of the United States Code annotated, I think we made a better bill as this process has gone on. A good part of the responsibility for making it better goes to the former chairman of the Governmental Affairs Committee, on which I am privileged to serve, and now the ranking Democrat, the Senator from Ohio. Whatever is being said in Ohio by any newspaper, I do not know, but if they are critical of Senator GLENN in his conduct on this bill, in my respectful opinion, they are wrong.

I thank the Chair.

Mr. KEMPTHORNE. Mr. President, I yield back the remaining time. 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.

AMENDMENT NO. 174

The PRESIDING OFFICER. Under the previous order, the question recurs on amendment No. 174, offered by the Senator from Michigan. Debate will be limited to 30 minutes equally divided and controlled by the Senator from Idaho and the Senator from Michigan.

Mr. KEMPTHORNE. Mr. President, acknowledging that we have a unanimous-consent agreement, I believe that votes would begin to occur at 11:30.

The PRESIDING OFFICER. The Senator is correct.

Mr. LEVIN. Mr. President, could I make an inquiry on that. Do I understand that the vote on the first amendment whose debate has been completed pursuant to the unanimous-consent would begin at 11:30?

The PRESIDING OFFICER. We have two votes beginning at 11:30.

Mr. LEVIN. But if debate is not completed with the time allotted by the unanimous consent, the vote would occur on that amendment at a later point, is that correct?

The PRESIDING OFFICER. In the opinion of the Chair, the Senator is correct.

Mr. KEMPTHORNE. Mr. President, what I am suggesting is to offer another unanimous-consent agreement that we would move the votes that have been ordered, so that they would not occur at 11:30, but they would move to a time after we have completed the debate on this next amendment.

Mr. LEVIN. Reserving the right to object, 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. 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 the previous vote time, which was to occur at 11:30, be moved so that the first vote will occur after all time has been consumed in debate on the remaining two amendments.

Mr. GLENN. Reserving the right to object, and I will not object, is there any idea of how much that would move the vote forward?

The PRESIDING OFFICER. It will be approximately 30 minutes before the next vote.

Mr. GLENN. I will not object.

Mr. KEMPTHORNE. It is my understanding it will be no later than 12 o'clock noon.

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

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I would like to ask a few questions of the manager relative to the way in which amendments would be dealt with.

The PRESIDING OFFICER. The Chair advises Senators time has been deducted equally. There was not the suggestion of the absence of a quorum.

Mr. LEVIN. I thank the Chair. How many minutes do I have remaining?

The PRESIDING OFFICER. Two and a half minutes.

Mr. LEVIN. Mr. President, two questions I would like to ask my friend from Idaho about how the amendment process would work. It really goes back to the Glenn amendment. First, the bill says that the requirement that there be an estimate apply to bills and resolutions. Is it the intent of the manager, the sponsor, that amendments offered on the floor are not subject to a point of order because they fail, when they are offered, to have a cost estimate?

Mr. KEMPTHORNE. Mr. President, that is correct.

Mr. LEVIN. It is correct then that they would not be subject to a point of order?

Mr. KEMPTHORNE. Mr. President, not based strictly because they do not have a cost estimate.

Mr. LEVIN. No, but a point of order would not lie for the failure of an amendment, as it is offered, to have a cost estimate in it, is that correct?

Mr. KEMPTHORNE. Mr. President, that is correct.

Mr. LEVIN. However, a point of order might lie if an argument is made that that amendment exceeds the threshold of \$50 million, is that correct?

Mr. KEMPTHORNE. Mr. President, that is correct.

Mr. LEVIN. And if the Budget Committee is unable to make that determination and so informs the Chair, would a point of order lie? As a general matter, would it lie?

Mr. KEMPTHORNE. Mr. President, again, in looking to the Budget Act and what may be some precedent that we could point to, if in fact CBO were to determine and so state that regardless of how much time they had they simply could not come up with an estimate, the Parliamentarian, as I understand it, may use that as a basis to recommend that no point of order would lie because there would not be basis.

However, it is not to suggest that that would exclude other elements that the Parliamentarian might consider in still coming to the conclusion that a point of order could still lie.

Mr. LEVIN. Is it fair to say that it is the understanding of the manager that generally, if there is no basis upon which to rule that the threshold is exceeded, if there is no basis to rule, that generally a point of order would not lie? However, it is not your intention to preclude the Chair from ruling that a point of order would lie if the Chair has information from other sources

than the Congressional Budget Office and the CBO that the threshold is exceeded?

Mr. KEMPTHORNE. I would suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. LEVIN. 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. LEVIN. Mr. President, I will restate my question.

I understood the Senator from Idaho to say that the Chair would not be precluded basically from upholding a point of order, or ruling that the threshold has been exceeded even if there is a statement from the Congressional Budget Office and the Budget Committee that it is unable to state that the threshold is exceeded. The Chair would not be precluded, from what the Senator said.

However, my question is, is it his intention that it would generally be the case that if the Chair has no basis to rule that a point of order would lie for the threshold being exceeded, that it would therefore not rule that a point of order lies?

It is my intent to ask the chairman of the Budget Committee, by the way, these questions as well when he is able to return to the floor. But I think it is important we get the intent of the manager on this question. It is a very important question as to whether this process can function.

Mr. KEMPTHORNE. Mr. President, in response, it is our intention that it would be the prerogative of the Parliamentarian to make that determination. We would not then establish here the parameters by which the Parliamentarian would make his recommendation.

Mr. LEVIN. I understand.

The PRESIDING OFFICER. The time of the Senator has expired.

The Senator has 5 additional minutes.

Mr. LEVIN. I am wondering if I could ask the Senator from Idaho on his time since—

Mr. KEMPTHORNE. Mr. President, I will yield 2 minutes, depending upon the questions, to the Senator from Michigan.

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

Mr. LEVIN. I thank the Chair and my friend from Idaho.

Now, this is the situation I wish to give to the Senator. CBO and the Budget Committee say there is no basis that they have to make an estimate that the threshold is exceeded. They have no basis, and they so inform the Chair. This is relative to an amendment.

If there is a statement from the CBO and the Budget Committee that there is no basis for them to state that the threshold is exceeded, then what other

sources would the Chair go to to have a basis to uphold the point of order?

I ask this because the bill itself states on page 25, line 20, that "for purposes of this subsection, the levels of Federal mandates for a fiscal year shall be determined based on the estimates made by the Committee on the Budget." That is what it says in the bill.

Now, if there is some other basis besides the Budget Committee or the CBO upon which a Chair could rule that a threshold is exceeded, I think then we ought to have it in the bill. Does the Chair read newspapers or does the Chair—what are the other sources that the Chair would rule on if the Budget Committee and the CBO has told the Chair that there is no basis upon which it can say that the threshold is exceeded?

Mr. KEMPTHORNE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. KEMPTHORNE. Mr. President, we have been instructed by the Parliamentarian that two other elements that could be considered will be the actual legislation from the committee itself, and it could be precedent that has been established.

Mr. LEVIN. But the legislation would be available to the CBO and to the Budget Committee, would it not? And precedent would be available to the CBO and the Budget Committee, would it not?

Mr. KEMPTHORNE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. KEMPTHORNE. I am sure that it would. I do not know it necessarily then would be the only tool that CBO and the Budget Committee would use in determining the estimate, but again I would not preclude the Parliamentarian from examining the legislation or precedents in their purview as to whether or not the point of order will lie.

Mr. LEVIN. I thank the Senator.

The PRESIDING OFFICER. The Senator has 2½ minutes remaining.

Mr. KEMPTHORNE. Mr. President, as I understand it we have 2 minutes remaining on the amendment that is pending before us?

The PRESIDING OFFICER. The Senator is correct.

Mr. KEMPTHORNE. I ask my friend from the State of Michigan if he would like to use additional time remaining?

Mr. LEVIN. I thank my friend. I ask unanimous consent I be allowed to use 3 minutes from my next amendment so I do not take up additional time of the Senate.

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

There being no further request for time, the Senator intends to use it now, 3 minutes to be extracted from then?

Without objection, it is so ordered. The Senator may proceed.

Mr. LEVIN. That is correct.

I thank my friend for his offer, but I do not want to delay the Senate so I have pulled forward 3 minutes from my next amendment.

Mr. KEMPTHORNE. Mr. President, just a parliamentary inquiry, it will be my intention to move to table the amendment. But would I do that following the expiration of the Senator's 3 minutes?

The PRESIDING OFFICER. The Senator is correct.

The Senator may proceed.

Mr. LEVIN. Mr. President, I am just going to use a couple of minutes because I want my friend from Connecticut to at least have a minute. We can pull forward more time from my next amendment. This amendment is intended to address the situation where there is a significant negative competitive impact on the private sector when you have a situation where there is competition, be it with a hospital, be it with a waste disposal, be it with an incinerator—whatever it is.

The amendment I have offered says if the committee certifies that there is a significant negative competitive impact on the private sector that then this special point of order would not lie. They would have to make that certification that there is added protection in that point of order, which takes us a step beyond last year's bill.

Where the committee itself certifies that there be a significant competitive disadvantage to the private sector if the public sector were paid to do it, or if the mandate were waived as to the public sector, then this additional step should not be taken.

I have sought to modify my amendment to make it a sense-of-the-Senate resolution. I have not been allowed to modify it. That is the rules of the game. So we will be voting on my original amendment.

If I have run out of time—I ask the Chair if I have any time left?

The PRESIDING OFFICER. The Senator has about a minute and 15 seconds.

Mr. LEVIN. I yield that time to my friend from Connecticut, and if the Senator from Connecticut needs additional time I then ask unanimous consent to pull forward some additional time from my next amendment.

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

The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I thank my friend and colleague from Michigan. I am glad to rise in support of the amendment that is currently being discussed, offered by the Senator from Michigan.

Last week I discussed at some length concerns that I have about the competitive disadvantage that will result to the private sector from this legislation. In particular, I discussed my concerns with the provision that creates a presumption that the Federal Government will pay 100 percent of the costs of the mandates, even where those mandates apply in the same manner to

the public and private sector. Even the opponents of the amendment I introduced last week, which was defeated, acknowledge that there were in fact many areas covered by the provisions of this bill, S. 1, where the public and private sectors do compete.

The sponsors of the legislation have stated in response to inquiries from colleagues they have sought to address that concern about the disadvantage to the private sector by requiring that the authorizing committee state in its report the degree to which Federal payment of public sector costs or the termination of the mandate would affect the competitive balance between State or local governments and the private sector, and any steps that the committee has taken.

Mr. President, I ask unanimous consent for an additional 2 minutes to complete my statement pursuant to the generous offer of the Senator from Michigan, that coming from the time which he has been allocated on the next amendment.

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

Mr. LIEBERMAN. Mr. President, as I set forth during the discussion of my amendment last Thursday, I do not believe it is appropriate to create a presumption of 100-percent Federal payment in any case where a law applies in the same manner to both the public and private sector. But certainly where we have a committee finding that such a disadvantage to the private sector will be created, the presumption of 100-percent funding is totally inappropriate. Otherwise, what is the point of the committee stating whether or not there will be a competitive disadvantage created? The Levin amendment would make certain that the presumption does not apply in those circumstances.

Mr. President, I strongly support the Levin amendment, but I want to emphasize that it does not go far enough. As Senator ROTH indicated in the debate relating to my amendment: we know right now that the public and private sector compete in many areas covered by S.1.

Let me take a few minutes to read from two letters I received on these issues after the debate on my amendment concluded. The first letter is from the International Association of Environmental Testing Laboratories dated Jan. 19, 1995, in support of the amendment I offered last Thursday. It states:

S. 1 as currently written threatens public health and the environment and disadvantages commercial environmental testing laboratories that provide the same services as government laboratories. * * * (B) exempting government laboratories from costs associated with important quality standards compliance, this legislation disadvantages commercial testing laboratories that provide the same services as government laboratories. Such a double standard not only hurts private sector laboratories, it also reduces tax revenues resulting from commercial laboratory operations:

I ask unanimous consent that the full text of this letter be included in the RECORD.

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

(See exhibit 1.)

Mr. LIEBERMAN. The second letter is from the American Legislative Exchange Council to Speaker GINGRICH dated Jan. 12, 1995. This group describes itself in the first paragraph of the letter as the "nation's largest bipartisan individual membership organization of state legislators dedicated to the principles of free enterprise and individual liberty". The letter states:

We are concerned that efforts underway to address mandates on state and local governments will unfairly impede the balance of competition, regulating private industry to meet standards not required by the public sector. Everyday private industry competes against the public sector to provide Americans with goods and services in areas such as transportation, the environment and many others. One example of this is waste water treatment facilities. Under the current mandate reform scenario, regulations on state and local governments would be lifted on many services. Unfortunately, private industry would not be exempted from these same regulations. Instead, they would continue to be forced to pass the costs of these regulations on to the consumer. This problem would obviously create an unfair advantage in favor of publicly operated services.

I ask unanimous consent that the full text of this letter be included in the RECORD.

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

(See exhibit 2).

Mr. LIEBERMAN. Mr. President, the Levin amendment would take an important step forward in eliminating unfair advantages to the private sector that may result from this legislation. I urge adoption of the amendment.

EXHIBIT 1

INTERNATIONAL ASSOCIATION OF ENVIRONMENTAL TESTING LABORATORIES,

Alexandria, VA, January 19, 1995.

Hon. JOSEPH I. LIEBERMAN,
U.S. Senate, Hart Senate Office Building,
Washington, DC.

DEAR SENATOR LIEBERMAN: The International Association of Environmental Testing Laboratories (IAETL) is writing to support the Kerry, Levin, Lieberman proposed amendment to Senate Hill No. 1 concerning unfunded mandates. As a trade association representing two-thirds of the environmental testing industry, IAETL supports your proposed amendment concerning the even-handed application of environmental laws to apply to both the public and private sectors. S. 1 as currently written threatens public health and the environment and disadvantages commercial environmental testing laboratories that provides the same services as government laboratories.

Environmental laboratories provide critical analysis of soil, air, and water for toxic contaminants. Such analysis is the basis for important public health and environmental decisions. IAETL believes that public health and the environment are threatened by exempting government laboratories from standards designed to ensure the quality and reliability of laboratory data.

In addition, by exempting government laboratories from costs associated with impor-

tant quality standards compliance, this legislation disadvantages commercial testing laboratories that provide the same services as government laboratories. Such a double standard not only hurts private sector laboratories, it also reduces tax revenues resulting from commercial laboratory operations.

Accordingly, IAETL supports your proposed amendment to S. 1 and suggests that you add the following bullet to your "Dear Colleague" letter concerning this issue:

Public laboratories, which provide analysis of soil, air, and water to protect public health and the environment from toxic contaminants, would be exempt from quality standards that apply to commercial laboratories performing the same critical services.

IAETL looks forward to working with you on the issue of unfair competition between the public and private sector. Please feel free to contact me should you have any questions concerning this issue.

Sincerely,

LINDA E. CHRISTENSON,
Executive Director and General Counsel.

EXHIBIT 2

AMERICAN LEGISLATIVE EXCHANGE COUNCIL

Washington, DC, January 12, 1995.

Hon. NEWT GINGRICH,
House of Representatives,
Washington, DC.

DEAR SPEAKER GINGRICH: The American Legislative Exchange Council (ALEC), the nation's largest bipartisan individual membership organization of state legislators dedicated to the principles of free enterprise and individual liberty, wishes to express concern with the issue of federal mandates as it relates to services provided by both the public and the private sectors.

We are concerned that efforts underway to address mandates on state and local governments will unfairly impede the balance of competition, regulating private industry to meet standards not required by the public sector. Everyday private industry competes against the public sector to provide Americans with goods and services in areas such as transportation, the environment and many others. One example of this is waste water treatment facilities.

Under the current mandate reform scenario, regulations on state and local government would be lifted on many services. Unfortunately, private industry would not be exempted from these same regulations. Instead, they would continue to be forced to pass the cost of these regulations on to the consumer. This problem would obviously create an unfair advantage in favor of publicly operated services.

As we have seen in the early days of the 104th Congress, just as laws are applicable to its citizens, they should also apply to Members of Congress. The same premise holds true in this case. Private industry should not be made to comply with regulations that exempt public sector providers. The rules must be consistent.

Thank you for your time. We appreciate your attention in this matter.

Respectfully,

Senator RAY POWERS (CO),
National Chairman.

SAMUEL A. BRUNELLI,
Executive Director.

AMENDMENT NO. 174

The PRESIDING OFFICER. The question occurs on amendment No. 174.

Mr. KEMPTHORNE. Mr. President, I yield back my time and move to table.

Mr. President, 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. This vote will occur after the previous two already ordered.

AMENDMENT NO. 219

The PRESIDING OFFICER. Under the previous order, the question occurs on amendment No. 219 offered by the Senator from Michigan [Mr. LEVIN]. Debate on the amendment is limited to 10 minutes equally divided.

The Senator from Michigan has already utilized his time and so the remaining time is under the control of the Senator from Idaho.

Mr. KEMPTHORNE. Mr. President, I suggest the absence of a quorum and ask unanimous consent it be charged to my time.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant 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. KEMPTHORNE. Mr. President, I yield 2 minutes to the Senator from Michigan so that he can explain his amendment.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, I have expressed the concern that there is a feature in this bill that would require estimates for the life of a mandate which could go 20, 30, 40 years. It could be unlimited, and that becomes an impossible task. We are kidding ourselves if we think we can get anything reasonable beyond the first 5 years, frankly, or 10 years, surely.

So this amendment puts a cap on the estimate requirement and says that in no event shall the estimate have to be for any year beyond 10 years. We have already acknowledged that the CBO has the right to tell us that they cannot estimate these costs, and that holds through for any number of years. The CBO usually estimates direct costs for 5 years, and that is it.

So this says for a maximum of 10 years, and, if the CBO can only do 5, obviously it will do 5. But this finally will set a cap on what otherwise would be an impossible task.

I understand that the managers of the bill will accept this amendment. I will be happy to have a voice vote on it. I do not need a rollcall if they accept the amendment.

Mr. KEMPTHORNE. Mr. President, I appreciate the efforts of the Senator from Michigan. I am prepared to accept this amendment.

Mr. GLENN. Mr. President, I accept it on our side, also.

Mr. KEMPTHORNE. I yield back our time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Michigan.

The amendment (No. 219) was agreed to.

Mr. KEMPTHORNE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. GLENN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 175

The PRESIDING OFFICER. Under the previous order, the question is on agreeing to the motion to lay on the table amendment numbered 175 offered by the Senator from Michigan [Mr. LEVIN]. 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 Texas [Mr. GRAMM] and the Senator from Arizona [Mr. MCCAIN] are necessarily absent.

Mr. FORD. I announce that the Senator from Hawaii [Mr. INOUE] is necessarily absent.

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

The result was announced—yeas 54, nays 43, as follows:

[Rollcall Vote No. 57 Leg.]

YEAS—54

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

NAYS—43

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

NOT VOTING—3

Gramm	Inouye	McCain
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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 motion was agreed to.

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

The motion to lay on the table was agreed to.

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent that the two remaining stacked rollcall votes be reduced to 10 minutes each.

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

VOTE ON AMENDMENT NO. 197

The PRESIDING OFFICER. Under the previous order, the question recurs on the motion to table amendment No. 197, offered by the Senator from Ohio [Mr. GLENN]. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Texas [Mr. GRAMM] and the Senator from Arizona [Mr. MCCAIN], are necessarily absent.

Mr. FORD. I announce that the Senator from Hawaii [Mr. INOUE] and the Senator from Louisiana [Mr. JOHNSTON], are necessarily absent.

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

The result was announced—yeas 53, nays 43, as follows:

[Rollcall Vote No. 58 Leg.]

YEAS—53

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

NAYS—43

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

NOT VOTING—4

Gramm	Johnston
Inouye	McCain

So the motion to lay on the table the amendment (No. 197) was agreed to.

Mr. KEMPTHORNE. 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.

AMENDMENT NO. 174

The PRESIDING OFFICER. Under the previous order, the question recurs on the motion to table amendment

numbered 174, offered by the Senator from Michigan, Senator LEVIN.

The yeas and nays have been ordered. The clerk will call the roll. This will be a 10-minute vote.

The bill clerk called the roll.

Mr. LOTT. I announce that the Senator from Texas [Mr. GRAMM] and the Senator from Arizona [Mr. MCCAIN] are necessarily absent.

Mr. FORD. I announce that the Senator from Louisiana [Mr. BREAUX], the Senator from Hawaii [Mr. INOUE], and the Senator from Louisiana [Mr. JOHNSTON] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 52, nays 43, as follows:

[Rollcall Vote No. 59 Leg.]

YEAS—52

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

NAYS—43

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

NOT VOTING—5

Breaux	Inouye	McCain
Gramm	Johnston	

So the motion to lay on the table the amendment (No. 174) was agreed to.

Mr. KEMPTHORNE. 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. KEMPTHORNE. Mr. President, I ask unanimous consent that the following amendments be withdrawn from consideration of the bill: Graham, No. 189; Levin, No. 176; Glenn, No. 195; Byrd, No. 200; Wellstone, No. 205; Grassley, No. 208; Kempthorne, No. 211; Glenn, No. 212; Byrd, No. 217; Brown, No. 220; Graham, No. 216; Brown, No. 221.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

So the amendments (Nos. 176, 189, 195, 200, 205, 208, 211, 212, 216, 217, 220, and 221) were withdrawn.

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, under the unanimous-consent agreement that was entered into last night, the order provided that after consideration of the next amendment, which involves S. 993, the bill of last year, which Senator LEVIN will present, 45 minutes for Senator LEVIN's use, 15 minutes for Senator KEMPTHORNE's use, Senator BYRD was to be recognized for 20 minutes prior to the vote on S. 993.

I ask unanimous consent that Senator BYRD's 20 minutes be moved to the time period following third reading of the bill before the final vote.

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

AMENDMENT NO. 218

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of amendment No. 218 offered by the Senator from Michigan [Mr. LEVIN]. There will now be 1 hour for debate, controlled as follows: 45 minutes under the control of Senator LEVIN, and 15 minutes under the control of Senator KEMPTHORNE.

Who yields time?

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I yield myself 15 minutes.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, last year we had a bill which came out of the Governmental Affairs Committee, S. 993. It was a good bill, a bill that I believe had something like 60 cosponsors or more, 67 cosponsors, including the Senator from Ohio, the Senator from Idaho, and many others. It was a bipartisan bill with strong bipartisan support.

The bill not only had the support of about two-thirds of the Senate as cosponsors, but S. 993, which came out of the Governmental Affairs Committee last year, had the strong support of the Governors, the mayors, local elected officials, the State legislators, the counties, the cities.

We got letters about S. 993 last year, strongly urging the support of S. 993, going so far as to say that the Governors and the State legislators and the counties and the cities' mayors would oppose any amendments to S. 993. That is this document, October 6:

The nation's State and local elected officials strongly urge the U.S. Senate to pass the state-local mandate relief bill, S. 993, before adjournment.

Later on in the letter:

We view all amendments as an attempt to defeat our legislation.

The Conference of Mayors, in a letter to Senator KEMPTHORNE last year said:

On behalf of the United States Conference of Mayors, I am writing to express my strong support for the Kempthorne-Glenn bill, S. 993, and to urge immediate passage of the legislation by the U.S. Senate.

They concluded by saying:

It is our belief that the bipartisan consensus we have built on this critical legislation will carry S. 993 to enactment and we pledge to oppose any and all amendments which would weaken the consensus bill.

They say, "any and all amendments."

Then the President of the Conference of Mayors said:

I would also like to echo a statement that you [addressed to Senator KEMPTHORNE] often make when talking about unfunded Federal mandates. The enactment of the Kempthorne-Glenn bill will not be the end in our mutual battle against unfunded Federal mandates, but the true beginning. S. 993 will provide us with a powerful weapon against new individual mandates bills, but it will remain our responsibility to carry on the battle with all the strength we can muster.

If not a consensus, we had a near consensus of local officials for S. 993.

S. 993 achieved a major goal. When you read the purposes of the bill in front of us, S. 1, S. 993 had the same purposes. If not verbatim it is pretty close to precisely the same purposes. Now I am reading from S. 1, but stating that S. 993 had the same purposes as S. 1, same stated purposes as S. 1:

To end the imposition, in the absence of full consideration by Congress, of Federal mandates on State, local, and tribal governments without adequate Federal funding, in a manner that may displace other essential [State, local and tribal] governmental priorities.

That was also a purpose of S. 993; to assure full consideration by Congress of Federal mandates.

Next:

To assist Congress in its consideration of proposed legislation, establish and revise Federal programs containing Federal mandates affecting States, local governments, tribal governments and the private sector, by providing for development of information, establishing a mechanism to bring such information to the attention of the Senate and the House, to promote, inform and deliberate decisions on the appropriateness of Federal mandates in any particular instance.

These are important purposes. They are also the purposes of S. 993. S. 993 accomplishes what S. 1 does in all but a few ways. And it is those few ways I will get to in a moment.

S. 993 requires a CBO estimate for both the private and the sector public costs. S. 993 contains a point of order if there is no cost estimate when a bill comes from a committee to the floor. S. 993 contains a point of order if the committee fails to authorize appropriations to the level of the cost estimate. But that is where S. 993 stops. It does not go further and create this Rube Goldberg mechanism which is in S. 1, which has become more and more complicated in some ways on the floor, and, happily, improved in some ways on the floor.

But the mechanism, that Rube Goldberg mechanism that S. 1 has for that additional point of order, remains and will bedevil this body to the benefit of nobody, including local officials. Because the more we try to tie ourselves up in a knot to protect the substantive

issue, the greater is the instinct to circumvent it with boilerplate, with loopholes, and there are many.

So if we do not come up with a mechanism which is workable, if we really think we are going to create here, by a mechanism which is going to so tie this place up that we are going to reduce mandates purely from the weight of the process, what we are underestimating is the capability of Members of Congress to write boilerplate into authorization bills which avoids the cumbersome mechanism. So we are not doing the State and local officials any good by adding this new point of order with its cumbersome mechanisms.

I believe the Senator from California wanted me to yield at this time, as she has done some wonderful work on a chart which actually fits in perfectly at this time. Ordinarily I would ask unanimous consent I be allowed to yield to another Senator without it showing as an interruption in the RECORD, but in this case I think, with the chart behind her, it is going to fit in very nicely with where I am in my remarks.

So I yield to the Senator from California 4 minutes.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I say to the Senator from Michigan, I thank him on behalf of many Senators for the role he has played in this debate. Along with both managers, I think he has brought these issues to the fore, and he has been persistent. Some of them have not been glamorous, but he has tried to protect the rights of Senators to offer amendments, he has tried to make everyone understand what this legislation really does.

For many days I have had this chart on the floor. I am not much of a chart person, but I guess I am turning into one because I think a picture is worth many words and we have had many words to describe this bill.

S. 993, which Senator LEVIN has offered to us as a substitute bill, is, in my view, a far superior bill to the bill that is before us, S. 1. It is intelligent. It reaches to the problem.

I come from local government, as does the Senator from Michigan. I did not like the unreasonable mandates when they came, but I want to make sure this U.S. Senate can respond to the people, to the children, to the elderly, to our families, to our people if in fact we need to move swiftly. And look what has happened with S. 993.

It started off as a very good concept and a very good bill. If you look here at the chart, I say to my friend, S. 993 stopped the process right here. All this green did not apply. We had the committee report a bill out and get an estimate from the CBO. That estimate of costs came here to the Senate floor, and if it was not done there would be a point of order and that was it. We would have to know, if we were doing something, what it costs. That is smart. That is right. And we would

have to take action. Then we got to S. 1, and all this green was added. Let me explain to the people what this means.

Everything in the green here deals with parliamentary procedure. Everything in the green here, and that is half the procedure. So half of S. 1 deals with unelected people making decisions for this Senate. People in the CBO are unelected. They may be wonderful, but they are unelected. People in the Parliamentarian's office may be great, brilliant—but they are not elected. They will be making life or death decisions for the American people. Because if they come up with a number that is over \$50 million, we can get caught in a debate over a point of order.

I say to my friend, one of the comanagers of the bill, Senator GLENN—he tried to improve this bill. He wanted to make sure when a Senator had an amendment it did not have to go through this process all over again. But the Glenn amendment was defeated. Amendments that would have streamlined this bureaucratic nightmare were systematically defeated by the other side.

My own amendments were defeated. Although we did very well, we could not get 51 votes to protect the children.

There is an "exceptions" section in this bill, S. 1. We wanted to say that any bill that would protect against child pornography, child sexual abuse, child labor law violation, or any bill that would protect the health of the frail elderly, pregnant women, or young children should also be added to the list of exceptions.

But our Republican colleagues said "No way."

Why? It is my view that the ultimate goal of this bill is in fact to tie our hands, to make it much more difficult for us to act. That is not why I came here. That is not why the people of my State sent me here. They want me to act if we find out new information about what lead in the water does to children and pregnant women. They want me to act to help protect them. This bill will make it very difficult to do so.

So I say to my friend from Michigan, thank you for offering us this amendment. I tried to make sure that the issue of illegal immigration would be acted on. That is one of the biggest unfunded mandates for California. All we have in this bill—God bless Senator GRAHAM for getting it through—is an amendment preserving the status quo so that we will not cut the Border Patrol. We have to increase the Border Patrol. The Graham amendment does not help us one bit in terms of adding more Border Patrol agents. It does protect us from cuts, but nothing in this bill will begin payments to my State of California for educating, incarcerating, or providing medical services to illegal immigrants.

So this bill, S. 1, is a giant disappointment. It sets up a bureaucratic nightmare that no local government could really support if they saw what it

did. S. 993 is the unfunded mandates bill that I am very proud to support. It would take this chart, take all of this off, and make it reasonable.

I am very proud to support my friend, Senator LEVIN, who is a great leader on this whole issue.

I yield my time to the Senator.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER (Mr. GRAMS). The Senator from Michigan.

Mr. LEVIN. Mr. President, I thank the Senator from California.

One of the problems with S. 1 is that this new point of order that was created originally delegated significant authority to the agency. That language was corrected by the Byrd amendment yesterday. But the Byrd amendment created in the process another complication, another wrinkle; worth doing in order to avoid the delegation for the agencies, but nonetheless, it created another hoop, another hurdle, for this legislation and for any appropriations bill.

The Byrd amendment said that we are not going to delegate the cuts to the agencies if the appropriation down the road does not equal the amount of the estimate. Instead, we will have the agency make a recommendation back to the Appropriations Committee which can then go back to Congress which can then adopt it or not adopt it. It is another step after the appropriations process is completed. Another step was added—as far as I am concerned, worthwhile doing again, in order to avoid the delegation, but it is another complication.

There are great and grave uncertainties in this process that we have created in S. 1. It is really processing wild. You have to leap this hurdle, you have to evade this trap, you have to swim this moat, you have to jump this hoop. It goes too far in this additional point of order that it adds which was not present last year. It puts tremendous new emphasis on an estimate, emphasis which is excessive. We want the estimate. We should insist on the estimate of costs. We should allow a point of order if there is no estimate when a bill comes to the floor. But S. 1 goes beyond that and requires certain additional language be added which would require the reduction of the mandate in outyears if in fact appropriation levels do not reach the estimate, which could be as much as 10 years earlier, unless the Congress adopts a resolution saying to the contrary.

The thing sounds simple to say the CBO or the Budget Committee will estimate. When is the mandate first effective? I gave an example the other day on the floor to show just how uncertain that issue is. I used the example of a hypothetical Senate bill which says the reduction in dangerous levels of mercury from incinerator emissions will be required after October 1, 2005, and that the EPA is designated to determine what constitutes a mercury level dangerous to human health. It is

a simple process; it sounds simple. It is stated simply. But it is not.

The question was asked: "Well, when is that mandate effective? What is the first fiscal year that it is effective?" Of course, when you read the bill, it sounds as if that would be October 1, 2005; that this hypothetical bill mandates reductions of these levels of mercury from incinerator emissions after October 1, 2005. So the commonsense answer is that is the fiscal year which the committee says it is first effective. The trouble with that is, if it is first effective in 2005, then it is useless because all the costs are going to be expended before 2005 in order that the incinerator complied by the October 1 deadline of 2005.

Then the statement is made: "Well, let us take a look at that CBO estimate." So I came up with the CBO direct cost estimate for 87,000 jurisdictions. Mind you, every amendment and bill is going to have to be estimated for 87,000 jurisdictions. But this is what the estimate comes back as. This is in this hypothetical. They say in the year 1, \$6 million; year 2, \$8 million; year 3, \$10 million; year 4, \$15 million; year 6, \$20 million; year 7, \$30 million; year 8, \$50 million; year 9, \$100 million; year 10, the last year before they must be in compliance, it comes out at \$200 million.

What is the first year of the direct costs that are levied or required by local governments? If we read the answers to the questions which I submitted to Senator KEMPTHORNE, it comes out one of two ways. It seems to me it is either the first year that the committee says is the effective date—it sounded like 2006, the way I read it—or the first year that the Budget Committee determines that local governments are going to be spending money as a direct result of the mandate. Well, the first year they do that is 1996 under this hypothetical estimate.

If you go 5 years from 1996, under the rule of this new process, if any of those first 5 years after the mandate is effective, it goes over \$50 million. If in any of the 5 years you go over the \$50 million, then you cross the threshold, and certain very significant things happen if you cross the threshold.

The trouble with that is you do not cross the threshold under this hypothetical if none of those first 5 years is above \$50 million. But then what year do you start? Based on what? The Parliamentarian, the Chair, the CBO, or the Budget Committee just picking a year out of the air? They now have a CBO estimate. Those are the numbers. They have looked. They have consulted with local officials. They have done all the consultations which they should with local officials to estimate what those 87,000 jurisdictions are going to do with this incinerator to comply. That is what they come up with.

What it results in is, if you follow the language of the bill or if you ignore the language of the bill, then you are in

violation of what period of time in the bill seems to be required.

So a critical issue, when is the first fiscal year when there is direct cost, is left vague. I have read the answers of my good friend Senator KEMPTHORNE to my questions, and it is still vague. The truth of the matter is we do not know. If the bill is going to determine the fiscal year, then it would seem to me it is going to be 2006. And at that point the purpose of the statute, which is to help local governments and to help us understand impacts, would be thwarted. If it is the first year where there are direct expenses, on the other hand, then it seems that the purpose of the bill might also be thwarted.

By the way, I just mentioned the fact that local governments are supposed to be consulted, assuming you can get a cross-section of local governments, or figure out how you would do this in this kind of case. You have an incentive here which is perverse. The higher the local governments say their costs are going to be, the more likely it is they are going to be off the hook or have the mandate paid for by the Federal Government.

The CBO is going to be required to consult with local government, and if it is in the interest of local governments to have a high estimate instead of a low estimate because it means the funds from the Federal Government will be greater rather than less, or it means that there will be something triggered which will let them off the hook altogether from the mandate, we have a perverse incentive.

These are estimates, I emphasize that there is no science to try to figure out how many new incinerators and in what period of time they are going to have to be put in place by some of the 87,000 jurisdictions. We know it is not an exact science; it is a wild guess. Even if any guesstimate can be made, it is still going to be a wild one, in many cases. We had a chart from CBO going through previous instances where they have made estimates of impacts on State and local governments, and they tell us that in many cases they cannot do it. We have taken care of that, to an extent, with an earlier amendment which says at least if the CBO cannot make an estimate, they are allowed to do so in the intergovernmental mandate, the way the bill originally allowed them to be honest relative to a private concern.

We should be aware of the fact that the incentive being created by this process will be for local governments not to be giving us their lowest estimates but their highest estimates. The more it is inflated, or the higher it is, if they come in at the top of the range instead of the bottom of the range, the more likely it is that they are going to get funding from the Federal Government, or that a point of order will lie which will force us to waive a mandate. I do not think it makes great sense to put so much reliance on an estimate

which contains one of these kinds of a perverse incentive.

Mr. President, I wonder how much time I have left under the time I have yielded myself.

The PRESIDING OFFICER. The Senator from Michigan has 20 minutes remaining. The Senator from Utah still has 15 minutes remaining.

Mr. LEVIN. Mr. President, earlier today, I asked the Senator from Idaho some questions about how this whole process would work on an amendment. He gave me the best answers he could, which were that, well, if the CBO was unable to make an estimate and if the Budget Committee was unable to make an estimate as to the cost to local and State governments of an amendment, that, first of all, a point of order would not lie for the failure to make an estimate. That estimate requirement does not apply to amendments. But what does apply to amendments is the threshold, the cost.

So if an amendment is offered and a point of order is raised that the cost of that to State and local governments is above \$50 million in any of the 5 fiscal years after it is effective, somehow or other the Chair is going to have to make a ruling. How does the Chair make a ruling? Talk about uncertainties. It is going to ask the Budget Committee. The Budget Committee is going to ask the CBO. My question to the Senator from Idaho was, "What happens if the CBO and Budget Committee cannot take an estimate? They say there is no way we can make an estimate on this amendment. What happens? Does the point of order lie if there is no way to make an estimate?" The answer was, "Maybe yes, maybe no. We cannot tell."

I gather from the answer that most of the time the Chair would rule, in the absence of any information from the Budget Committee or from the CBO, that a threshold has been crossed, and that the Chair would rule that a point of order does not lie. At least that would seem to be the case some or most of the time. But the Senator from Idaho said, "We cannot say how often that would be true," basically. I do not want to put words in his mouth, but I think the summary that I could best describe is that we are not precluding the Chair from ruling that a threshold has been crossed, even though it has no basis for making that ruling from the Congressional Budget Office or from the Budget Committee; that the Chair could turn to other resources, perhaps.

What are those other resources if it is not the CBO or Budget Committee? Is it newspapers? Is it the last Senator the Chair has talked to? The bill tells us that these estimates are going to be based on the CBO and on the Budget Committee. That is what the bill tells us. When it comes down to the critical issue, the absolutely critical issue as to whether a point of order lies because a threshold has been crossed on an

amendment, we are left with the uncertainty and ambiguity doubled. We always have an uncertainty and ambiguity when CBO and Budget Committee make estimates. But now we have added the Chair and the Parliamentarian to this process. It is no longer, as the bill suggests, that we are going to be able to rely on the Budget Committee and the CBO. We are now told, no, even if they cannot give the Chair information upon which to rule on whether or not a threshold has been crossed, nonetheless the Chair still is not precluded from ruling that that threshold is crossed because the Chair could use other sources. A couple were mentioned by the Senator from Idaho. One was the bill itself and, of course, that was available to the CBO and Budget Committee. And another source that the Chair might look at, we were told, was precedent which, of course, is also available to the CBO and the Budget Committee.

So we have introduced another uncertainty, a great uncertainty, in this process. Were there uncertainties in S. 993? Of course, there were. S. 993, last year's bill on mandates, which I am offering as a substitute to S. 1, was not free of ambiguities, but there was not so much hinging on an ambiguity. It did not have this final point of order which got into the appropriations process down the road. That is what is new about S. 1.

Let us put ourselves into a real world situation. Let us say that my hypothetical bill has been offered, which would mandate reductions of dangerous levels of mercury in incinerator emissions after October 1, 2005. The EPA is designated to determine what constitutes a level of mercury that is dangerous to human health. Well, when is the EPA going to determine that? The first fiscal year in which the mandate is effective could, to a significant extent, be dependent on when is the EPA going to issue its ruling, how long it will take, and at what level will it be? What is the level? Someone has to make that estimate as to when that is. But that is complicated enough. An amendment comes along that says, no new incinerator can be built within 300 yards of a school or hospital after October 1, 2005. That is an amendment offered on the floor. No new incinerator after 2005.

Someone has to, presumably, figure out, "Well, how many new incinerators might be built within 300 yards of a school and during what time period in 87,000 jurisdictions?" Someone has to make that estimate.

Let us assume the offeror of the amendment has submitted the amendment to the CBO and to the Budget Committee prior to offering his amendment. Now we have a second-degree amendment that is offered on the floor that says, "No, we are going to reduce that to 100 yards of the incinerator instead of 300 yards from the incinerator." A second-degree amendment, with no possibility of an estimate, is

now offered on the floor and the maker of the amendment, of course, the second-degree amendment, did not know that the first amendment was going to be forthcoming. He did not have an opportunity to get his estimate. He suddenly is confronted with that first-degree amendment and he is trying to get a second-degree amendment in place. And now he is going to wildly scramble around to try to get an estimate from the CBO or the Budget Committee as to how much that second-degree amendment is going to cost.

And on this process, we are placing all of this weight. What is going to happen?

When we plunge ourselves into a procedural morass in order to prevent ourselves from being able to act, if we want to, in an easier, reasonable way, we are likely to force ourselves into evasion, into boilerplate, and we are tempted to use this for other purposes.

Yesterday, we had an amendment which was adopted, the Graham amendment, where a point of order now lies if you try to reduce Federal spending on immigration. Now a new process is being applied to a spending cut; the argument being that, if that cut were made, that would lead to more local spending. Well, the same thing can be true for dozens of amendments. We can start putting points of order on the reduction of spending by the Federal Government for all kinds of reasons where their may be a resulting increase in local spending.

My cities have to spend an awful lot more trying to fight the drug war if we do not stop drugs at their source. This is what we did yesterday, basically. Now we are going to use points of order to say any reduction in the level of expenditures to fight drugs at their source, which is the responsibility of the Federal Government, surely not the State or local governments. Drugs in Colombia, when the fields are being burned, are not the responsibility of my home State or my home city. The Federal Government does that. And to the extent it does not do that, we have more expenses for drug enforcement in my State. Now we will use the same process.

This is the temptation when you start using this kind of a process to achieve a substantive result to the degree that we have. This is all a matter of degree. It is all a matter of whether or not S. 1 goes too far and, in doing so, is going to create evasion and create the temptation to use the same kind of a process for other kinds of related purposes. The evasion of S. 1 is not difficult to conceive and it will do nobody any good if it is evaded. The evasion of S. 1 can simply be in the authorization bill, that "Nothing in this bill is permitted to cost local and State governments more than \$49 million in any fiscal year, and here are the criteria upon which that can be achieved."

So we will start using boilerplates. And then we will start using language in appropriations: "Notwithstanding

any prior law, we are going to appropriate to this level," a level, let us say, that is less than the estimate that was made 10 years before or 5 years before. So we end up with notwithstanding language in appropriations bills in order to get around this. If we go too far now, if we put too much weight on this kind of a process now, we are inviting people to evade them later.

If we do this right, if we have the right balance now, if we do what we did last year in S. 993, which is to require the estimate and, yes, we could even require the authorization, too—which it did last year—but stop short of this new point of order relative to the appropriations process, we will be striking a balance where we will be forcing ourselves in a reasonable way to consider these costs, a way which was so reasonable that last year all of the local organizations, mayors, States, and legislators supported our effort. But we will be avoiding the excess process, the Rube Goldberg mechanisms which are going to create such difficulty for us in the implementation.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Michigan has 7 minutes remaining, the Senator from Utah still has 15 minutes.

Mr. LEVIN. I thank the Chair and I yield the floor.

Mr. BENNETT addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. I yield 5 minutes to the Senator from Washington.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, 3 weeks of debate on this bill seems now to be coming to an end and the vote in favor of a restriction on unfunded mandates imposed on State and local governments almost certainly will be overwhelming.

During the course of this 3 weeks, however, we have been faced with votes on literally dozens of amendments. Those amendments have covered two fundamentally different sets of subject matter. The first set, the normal politics, a set of amendments that had nothing to do with unfunded mandates but cover much of what the agenda of this Senate is likely to be during the course of the next 6 months with regard to votes that will be overwhelmed by votes on the merits of those issues when they are brought up in due course. So that, in most respects, that debate has been irrelevant to the agenda of the Senate and of the Congress of the United States.

But dozens of other amendments, I think, including this last one which is about to be voted on, do relate to unfunded mandates themselves and almost without exception they have attempted to restrict the ambit, the scope of this unfunded mandates bill.

Now the bill itself, it seems to me, is already relatively modest. It does not ban unfunded mandates as most States

and local governments would have us do. It simply states that, if an unfunded mandate crosses modest threshold, it must consciously be weighed if a point of order is raised against it. Unfunded mandates will still be possible on the part of the Congress of the United States, as long as the Congress has voted on and is conscious of the fact that it is creating such mandates.

Even so, or perhaps particularly because this is the case, because it is not an absolute ban, what these amendments evidence, it seems to me, is a tremendous lack of trust in those who are elected in our States and in our local governments.

It appears to me that there is a high degree, literally, of legislative arrogance involved in the proposition that somehow or another only we know what is best for people in local communities; that only here in Washington, DC, in this body and in the House of Representatives, is lodged a degree of wisdom and responsibility necessary to see to it that there is proper protection for individuals in our society; that somehow or another without unfunded mandates our States and local governments will ignore the young and their schools, will ignore working people, will ignore the elderly, will ignore the very quality of the environment in which these locally elected officials themselves live.

I wonder how it is that responsible elected officials are only found here in Washington, DC, and not in our communities. I submit, of course, that that is not the case. The reason for this bill, the reason for an even stronger bill, would be that the responsibility for the lives and careers of people, in most cases, is best conducted by governments which are closest to them. That has been the genius of the American experiment. That is the direction in which many other free countries are moving and the direction in which we should move.

We need more personal humility. We need more belief that people elected in the States, in our counties, and our cities and towns, not only have the best interest of their constituents in mind but are able and willing to act on those best interests.

This bill is a modest start to return to a system of federalism which has made this country great. I, for one, am delighted that the great bulk of these amendments have been rejected and that we will pass a bill which will have at least some effect in restoring authority to the units of government which can best use it and which were conceived by our Constitution as the units which should exercise those powers.

Mr. BENNETT. Mr. President, I yield 5 minutes to the Senator from Indiana.

Mr. COATS. Mr. President, we are nearing the time when we are going to have a final vote on this very important piece of legislation. There has been extensive debate, numerous amendments, attempts to specify, clarify, declassify, and I think bring more

complication into this issue than need be.

The voters on November 8 said they wanted some very significant, major change in the way that Washington does its business, in the way it relates to the citizens which we were sent here to serve. There are some basic fundamental underlying principles that we pledged to the people in the fall of 1994 and which they endorsed on November 8: Live by the laws that you ask us to live by. Get your fiscal house in order. Do what we have to do. Do not spend more money than you take in.

Fundamental to and a big part of that mandate was the request from Governors and mayors and local units of government to "quit sending us mandates to comply with certain laws that you think are best for our communities, that you think are best for our people, and, by the way, that you think we ought to pay for."

I have here a chart of the State of Indiana with just nine cities highlighted, with the amounts that these cities have to spend on mandates sent by this body, on priorities that they do not feel are the top priorities in their communities. They are diverting money from police on the streets. They are diverting money from essential services that our local communities have determined are most important for the citizens that they represent. Yet those are shoved down the list, down the priority list, because the Federal mandate comes with a stamp that says, "Now, we have ordered it. You do it now. You figure out a way to pay for it."

Their Hobson's choice is either to raise taxes on citizens that do not want taxes raised for the mandates that are coming down, or to cut essential services. Given the tax climate that exists, the deficit climate that exists in our country today, what happens is that essential services are cut.

I have listed here city after city in Indiana, including Fort Wayne, IN, that has had to cut essential services that are necessary to the functioning of that community and reach the real needs of the people.

We have a very basic choice here. We can follow the mandate of the fall, the mandate of the people, and return authority back to the units of government that are closest to the people and back to the people; or we can continue to take the attitude that Washington knows best, that we can decide here what is best for every community in Indiana. It may be what is best for a particular community somewhere in our Nation. But one size does not fit all. One community's needs are not every other community's needs.

So we have a very basic decision to make. That decision is: Do we want to return authority and power to those units of government that are much closer to the people and give them the flexibility of providing the priorities; or, if we are going to mandate something that we believe is so important that ought to be mandated on a national basis, are we going to provide

the funds necessary to so that they can accomplish that mandate without subordinating other top, important priorities that affect that particular local community? I think it is that basic.

Some would say that oversimplifies it; you do not understand how it works. We have seen charts on how complicated this procedure is. There is a basic, fundamental question on which we will vote in just a couple of hours. That fundamental question is: Are we going to continue to dictate out of Washington decisions that our local citizens must live by, or are we beginning to turn that back to the people?

The very first act of the new Congress was to pass a bill which ensures that Congress will live under the same laws it imposes on the rest of America. It was an important first step in fundamentally altering the culture of Congress. We will pass better laws if we must live by them; if they cannot be complied with, they will not pass.

The bill before us today is equally important, because it ends business as usual. For too long, Congress has legislated with impunity. Not only has Congress exempted itself from provisions of the law; often we have indemnified ourselves from the costs. It has passed laws imposing burdens on States, communities, and businesses with little regard for the cost, and no accountability to the taxpayer. The \$4.7 trillion in accumulated debt only begins to tell the story of a Congress addicted to deficits; when we have lacked the resources we have simply passed on the costs.

Under current practice, Congress does not have to consider the cost of the mandates it imposes on State and local government and the private sector. This is an irresponsible way to legislate.

The bill we are considering will ensure that we know the cost of Federal mandates on localities before a bill passes, and it will require that we provide a funding mechanism to pay for them.

Under S. 1, mandates with costs to State and local government of more than \$50 million must have a CBO cost estimate. Congress must then include the funds by finding an offset or by raising revenues.

Legislation which imposes financial burdens of more than \$200 million on the private sector must also have a CBO estimate or be ruled out of order.

The cost of mandates to communities is significant, perhaps a sampling of communities around my State will shed some light on why this legislation is so important.

City:	<i>Total cost, fiscal year 1993</i>
Anderson	\$6,831,940
Columbus	1,382,719
Elkhart	2,162,928
Fort Wayne	5,837,492
Hammond	1,051,701
Lafayette	132,000
Mishawaka	162,447
South Bend	2,751,150

Terre Haute 151,585

These are big numbers for Indiana communities, yet they just begin to tell the story. When we require State and local government to respond to Washington's priorities—priorities Washington did not see fit to pay for—we preempt the spending priorities of local communities, regardless of their urgency. When a Federal mandate comes down, it moves to the top of the list.

This means that State and local leaders are forced to deal first, not with local concerns, but with Washington's agenda. One Indiana mayor characterized this as the my-way, but-you-pay approach to Federal policy.

As a result, our States and localities are faced with a Hobbsien choice—raise taxes, or forgo dealing with the real problems of the community.

Let me cite an example. There is no area of public concern more profound than crime. Yet many cities divert funds away from local law enforcement to pay for Federal mandates.

In a survey of 146 cities, conducted by the National Conference of Mayors and Price Waterhouse, it was estimated that over \$800 million annually—an average of \$5.5 million per city—would be available in 1995 if Federal mandates were funded.

Many of those cities said they would spend the freed moneys on crime prevention. Most of it, 62 percent, would be spent putting new police officers on the street. The rest would be spent upgrading patrol cars, modernizing equipment, and providing overtime pay for officers.

Bloomington, IN, estimates it would spend an additional \$90,000 on law enforcement. South Bend would spend over \$1½ million on new police protection for its citizens.

Federal mandates are hampering the ability of our cities to provide for the basic safety and security of their citizens.

Unfunded mandates also dramatically increase the cost of doing business. Complying with Federal regulations, as well as the liability exposure that results from Federal mandates and regulations, adds billions of dollars every year to basic business costs.

These burdens thwart growth and job creation. They increase costs for consumers. And they discourage people from going into business.

It is critical that Congress pass this legislation. We must return power and resources to States and communities so that they can deal effectively and creatively with the unique problems and priorities they face. We must relieve the burdens we have placed on the businesses of this country, and allow them to unleash their creative power to build a strong and growing economy.

The mayor of my home town, Fort Wayne, IN, expressed the sentiments of many when he said:

We need to change this irresponsible habit. If the same people who wrote the laws and drafted the regulations had to raise the

funds to pay for them, they would be much more careful about the costs.

In passing this legislation we take an important second step toward significant congressional reform and greater accountability to the American taxpayer.

Mr. LEVIN. I yield 4 minutes to the Senator from Delaware.

Mr. BIDEN. Mr. President, I will necessarily make this quick. I am fascinated by these arguments, particularly the last two arguments I have heard.

The fundamental question here is: Do we want to, in fact, deal with Federal mandates which should be local decisions or paid for by the Federal Government, or do we want to set in motion more gridlock? If we want to do the former and not the latter, we should vote for this amendment, No. 1.

No. 2, my friend from Washington is engaging in what I think is part of the litany that we have been hearing. Why do we in Washington think we know so much, and why, in fact, do we not have more personal humility?

If he means it, why are there exceptions in it? Why are there any exceptions? If he means what he says, why is there an exception here for civil rights? I will tell you why. We got in the business of being involved federally because States acted irresponsibly on occasion.

So if my friend from Wyoming has such humility, let him come and offer an amendment to strike out all the exceptions. Why are we keeping in here "constitutional rights of individuals"? They are not mandates. "Discrimination on the basis of race, religion, gender, national origin, handicap or disability status." Why is that not a mandate? It costs the States money to do those things. Why is that not a mandate?

So this unusual argument about whether or not we have humility or do not have humility, or Washington knows all or does not know all, that is a nice campaign rhetoric. What it is about is, why do we not stop telling the States to do things which are not essential unless we pay for them? Why do we not do it in a simplistic, straightforward way that does not allow a minority to tie up this body in gridlock for greater political purposes having nothing to do with looking out for the interest of the States? If we want to do that, we have a bill that was introduced last year that the manager of this bill was a cosponsor of last year, that does not create that complex chart that allows any one or two or several U.S. Senator or Parliamentarians to get involved in gumming up the works and creating gridlock.

Mr. President, like many of my colleagues, I was a local official before coming to the Senate. I know what it means to have to comply with legal duties imposed from a higher government. As a former county council member, I understand, and am sympathetic to, many of the complaints and

concerns we have heard from State and local officials who must respond to Federal mandates.

The bill before us today, S. 1, is not the legislation that we worked on so long and hard last year to address the issue of Federal mandates. That bill, S. 993, is being offered now as an amendment by Senator LEVIN; it will focus the Senate's attention on the costs involved in setting new requirements to be met by States and local governments. It will raise our awareness of the financial price that must be paid to meet our goals, and permits us to determine how that price will be paid.

Senator LEVIN's amendment changes the way we handle mandate legislation in this body, but it makes those changes subject to a sunset, in 1998, when the new process would end unless we choose to extend it. It will be an experiment—I believe a worthy experiment—to be sure that our attention is directed to all the consequences of new legislation.

Last year S. 993 had the enthusiastic support of a broad bipartisan coalition. Senator KEMPTHORNE, the acknowledged leader on this issue, was the original author of that proposal.

But I am afraid, Mr. President, that S. 1 could prove to be a recipe for confusion, frustration, and more political gridlock in the legislative process. It was rushed through committee, with no debate and no amendments. Indeed, it came from committee without a report explaining how it would work.

This should not be how we legislate.

The public debate about unfunded mandates over the past few years has been a healthy one, and has succeeded in bringing to the forefront the continual need to examine the costs associated with Federal requirements and, indeed, the appropriate role of the Federal Government. There are limits to what the Federal Government should do and should require.

We need to approach our many real public policy problems with common sense, to give greater flexibility to those who implement our laws, to be more goal-oriented and less process-oriented, and to reign in bureaucrats that get carried away with their charge.

As one example, I spent quite a bit of time last year, along with the Governor of Delaware, trying to demonstrate to the EPA that our State could meet new clean air standards without making all our citizens run their cars through an expensive treadmill test that yielded little pollution reduction. EPA got the message; the treadmill test is out.

We will pass an unfunded mandates bill this afternoon. If I had my first choice, it would be the substitute before us now. It had the full support of State and local government leaders last year, and is free of the hastily drafted, last-minute additions of this year's version.

But whichever version we vote for here today, we will assure that decisions that materially affect State and local governments are made from now on with a clearer view of their costs as well as their benefits.

Mr. President, if I have any time left—I may not—if I have any time left, let me say that this is about making local decisions that deserve to be local decisions at a local level. And if we impose more on local organizations, then what they have a right to ask for we should pay for.

But let me close by saying, I live in a city, in a State that has the highest cancer rate in the Nation. We, coincidentally, are on the border of southeastern Pennsylvania which has more oil refineries per square inch than any place in the Nation, including Houston, TX, and the prevailing winds are south.

If we did not have the Federal Government setting out a Clean Air Act, the idea that the people of Pennsylvania would vote to expend the money to clean up the air, the ambient air quality in Marcus Hook, PA, to save the lives in Delaware is zero. That is why we have national legislation.

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

Mr. BENNETT. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Utah has 5 minutes remaining.

Mr. BENNETT. I yield myself 4 minutes.

Mr. President, I have enjoyed this debate. I have enjoyed many of the things I have heard. The Senator from Michigan told us that S. 993 had near consensus from mayors, Governors, et cetera, and spoke very proudly of it. I was an original cosponsor of S. 993, and I was proud of it. I will point out to the Senator from Michigan, and everyone else, that S. 1 continues to enjoy exactly the same consensus, indeed, if anything, the consensus is stronger from the same people.

I will quote a letter addressed to the original cosponsors of S. 1, the Unfunded Mandate Reform Act of 1995, telling us:

Thank you for your leadership in listening to and acting on the nationwide call of State and local governments to pass S. 1.

I will not read the entire letter. I ask unanimous consent that it, and other letters in support of S. 1, be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. BENNETT. Mr. President, I will quote this relating to S. 1. They say:

The bill is reasonable, workable and long overdue. It has our unanimous bipartisan support, without weakening amendments.

Signed by Howard Dean, Governor of Vermont, chairman of the National Governor's Association; George Voinovich, Governor of Ohio; and Benjamin Nelson, Governor of Nebraska. They are the co-lead Governors.

Carolyn Long Banks, the president of the National League of Cities; Randall Franke, commissioner of Marion County, OR, the president of the National Association of Counties; Jane Campbell of the Ohio House of Representatives, president of the National Conference of State Legislatures; and Victor Ashe, mayor of Knoxville, president of the U.S. Conference of Mayors.

They are not talking about S. 993. They are talking about S. 1, which they want passed without weakening amendments.

I am relatively new to this body. I find it fascinating to go through the learning experience that comes to a freshman Senator. I was here on the floor for my first 2 years, and I learned about the filibuster. Indeed, I participated in the filibuster. I participated in and supported the filibuster that killed the President's stimulus package, and I did it because I thought it was the right thing to do and also a majority of the American people agreed.

It was, frankly, good politics. It helped us win the election because we stood against something that the majority of the American people were against. I participated in a filibuster on land use issues relating to the ownership of land in my State. Once again, I believed in it, we won it, and most of the people in my State and the Western States agreed. It redounded to our political benefit to participate in that filibuster.

I participated in a filibuster on campaign reform because I thought the bill, as written, supported one party to the detriment of the other. I believed in it. I understood that. The thing I have not understood about this debate, and I hope when it is over someone will explain to me, is why the minority party has chosen to mount the same kind of filibuster that we mounted on the minority 2 years ago against a bill that is supported by all of the Governors, all of the mayors, the President of the United States and a large number of the Members of their party.

The PRESIDING OFFICER. The Senator's 4 minutes have expired.

Mr. BENNETT. I thank the Chair and reserve the 1 minute.

EXHIBIT 1

January 10, 1995.

To The Original Co-Sponsors of S. 1, the Unfunded Mandate Reform Act of 1995:

Thank you!

Thank you for your leadership in listening to and acting on the nationwide call of state and local governments to pass S. 1.

As the elected leaders of all state and local governments, we appreciate your support for this critical legislation. We unanimously and strongly support S. 1 without weakening amendments. We are urging every Member of the 104th Congress to join you in support of S. 1 and the future savings it will bring to every taxpayer we serve.

S. 1 will bring an open, accountable, and informed decision making process to future federal proposals and regulations that impact state and local governments. S. 1 applies the same pay-as-you-go rules that Congress now requires for the federal budget to any mandates it would impose on state and

local governments. The bill is reasonable, workable, and long overdue. It has our unanimous bipartisan support, without weakening amendments.

Thank you again for your support.

Sincerely,

HOWARD DEAN,
M.D., Governor of Vermont, Chairman,
National Governors' Association.

GEORGE V. VOINOVICH,
Governor of Ohio, Co-Lead Governor on
Federalism, National Governors' Association.

E. BENJAMIN NELSON,
Governor of Nebraska, Immediate Past
President, Council of State Governments, Co-
Lead Governor on Federalism, National
Governors' Association.

CAROLYN LONG BANKS,
Councilwoman-at-Large, Atlanta, Georgia,
President, National Leagues of Cities.

RANDALL FRANKE,
Commissioner of Marion County, Oregon,
President, National Association of Counties.

JANE CAMPBELL,
Assistant Minority Leader, Ohio House of
Representatives, President, National
Conference of State Legislatures.

VICTOR ASHE,
Mayor of Knoxville, Tennessee, President,
U.S. Conference of Mayors.

—
NATIONAL ASSOCIATION
OF HOME BUILDERS,

Washington, DC, January 9, 1995.

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

DEAR SENATOR KEMPTHORNE: On behalf of the 180,000 members of the National Association of Home Builders (NAHB), I would like to urge your strong support for S. 1, the Unfunded Mandate Reform Act of 1995, scheduled for committee mark-up on Monday, January 9 and floor consideration on Wednesday, January 11. It is essential that we try to control the "unfunded mandates" crisis facing America today.

What is known as "unfunded mandates" to Washington insiders is really a cruel hidden tax on the housing consumer. It is time to stop these unfunded mandates. It is time to address the housing affordability crisis in this country. Supporting S. 1 is an important first step. Without this bill, unfunded mandates will continue to be passed on to the housing consumer.

The problems created by unfunded mandates are not limited to state and local government budget concerns, but affect all Americans and uniquely affects the housing consumer and homebuilding industry. Unfunded mandates often result in "impact fees" on new housing and housing subdivisions. These impact fees come in various forms such as sewer and water hookups fees, fees for new streets and infrastructure, fees for fire and police protection, assessments for schools, libraries, museums, parks and solid waste facilities. In addition, taxes are often levied or increased in the form of bedroom taxes, contribution-in-aid of construction (CIAC) taxes on utilities, increased property taxes, increased sales taxes, real estate transfer taxes, gasoline taxes.

These impact fees and special assessments add substantially to the cost of housing and represent one of the most dramatic price increases to the housing consumer. In California, for example, impact fees often exceed \$20,000 per new house. More common examples of impact fees include \$5,000 assessments per house in Florida and \$3,000 per house assessments in Maryland. The impact can really be seen when one considers that 20,000 housing consumers are driven out of the housing market for every \$1,000 increase in the price of a house.

Of equal concern is that the community as a whole suffers from such actions. Unfunded mandates reduce the ability of local governments to prioritize their own needs. In a time when everyone is working on limited budgets, compliance with federal mandates often requires funds to be diverted from other areas of state/local budgets such as education, emergency services or capital improvements.

S. 1 is a critical step in addressing this crisis by requiring that any bill to be considered by Congress be accompanied by a cost analysis as to the bill's potential effect on state and local governments and the private sector. Congress should be aware of the potential impact its laws will have on local governments and the private sector before they are voted on. Likewise, the American people should be informed of the impact of the laws being considered by Congress.

Again, I would like to strongly urge your support for S. 1 and opposition to any weakening amendments. We need to address this crisis and alleviate the imposition of unfunded federal mandates.

Sincerely,

THOMAS N. THOMPSON,
NAHB President.

THE UNITED STATES
CONFERENCE OF MAYORS,
Washington, DC, December 30, 1994.

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

DEAR SENATOR KEMPTHORNE: On behalf of the United States Conference of Mayors, I want to thank you for your continued leadership in our fight against unfunded federal mandates and to express strong support for the new bill, S. 1.

S. 1 is serious and tough mandate reform which will do more than simply stop the flood of trickle-down taxes and irresponsible, ill-defined federal mandates which have come from Washington over the past two decades. S. 1 will begin to restore the partnership which the founders of this nation intended to exist between the federal government, and state and local governments.

S. 1, which was developed in bipartisan cooperation with the state and local organizations, including the Conference of Mayors, is even stronger than what was before the Senate last year in that it requires Congress to either fund a mandate at the time of passage or provide that the mandate cannot be enforced by the federal government if not fully funded. However, the bill is still based upon the carefully crafted package which was agreed to in S. 993 and which garnered 67 Senate cosponsors in the 103rd Congress. The bill would not in any way repeal, weaken or affect any existing statute, be it an existing unfunded mandate or not. This legislation only seeks to address *new* unfunded mandate legislation. In addition, S. 1 would not infringe upon or limit the ability of the Congress or the federal judicial system to enforce any new or existing constitutional protection or civil rights statute.

The mayors, are extremely pleased that our legislation, which was blocked from final passage in the 103rd Congress, has been designated as S. 1 by incoming Majority Leader Bob Dole. We also understand and appreciate the significance of the Governmental Affairs and Budget Committees holding a joint hearing on our bill on the second day of the 104th Congress at which our organization will be represented.

I remember the early days in our campaign when many questioned our resolve. How could a freshman Republican Senator from the State of Idaho move the Washington establishment to reform its beloved practice of imposing federal mandates without funding? We responded to these doubters by focusing the national grass-roots resentment of un-

funded mandates into a well orchestrated political machine, and by joining with our state and local partners in taking our message to Washington.

The United States Conference of Mayors will continue in its efforts to enact S. 1 until we are successful. We will not let up on the political and public pressure. And we will actively oppose efforts to weaken our bill.

The time to pass our bill is now. Those who would seek to delay action will be held accountable, and those who stand with state and local government will know that they have our support and appreciation.

Thank you again for all of your hard work and commitment, and rest assured that we will continue to stand with you.

Sincerely yours,

VICTOR ASHE,
Mayor of Knoxville, President.

NATIONAL ASSOCIATION OF COUNTIES,
Washington, DC, December 29, 1994.

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

DEAR SENATOR KEMPTHORNE: On behalf of the National Association of Counties, I am writing to express our strong support for S. 1, the Unfunded Mandate Reform Act of 1995. We sincerely appreciate the leadership you have provided in crafting this new, strong bipartisan bill to relieve state and local governments from the growing burdens of unfunded federal mandates. Our NACo staff has reviewed the latest draft and they are convinced it is much stronger than S. 993, the bill approved in committee last summer.

While this legislation retained many of the basic principles from the previous bill, there were many improvements. Most significant among them is the provision that requires any new mandate to be funded by new entitlement spending or new taxes or new appropriations. If not, the mandate will not take effect unless the majority of members in both houses vote to impose the cost on state and local governments. Although the new bill will not prevent Congress from imposing the cost of new mandates on state and local taxpayers, by holding members accountable we believe it will discourage and curtail the number of mandates imposed on them.

Again, thank you for your leadership on this important legislation. County officials across our great nation stand ready to assist you in any way we can to ensure the swift passage to S. 1. If you have any questions, please contact Larry Naake or Larry Jones of the NACo staff.

Sincerely,

RANDALL FRANKE,
Commissioner, Marion County, Ore.,
NACo President.

NATIONAL LEAGUE OF CITIES,
Washington, DC, December 30, 1994.

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

DEAR SENATOR KEMPTHORNE: I am writing on behalf of the elected officials of the nation's cities and towns to commend you for sponsoring the Unfunded Mandate Reform Act of 1995. Of all the measures introduced to date, this legislation is undoubtedly the strongest, best crafted, and most comprehensive approach to provide relief for state and local governments from the burden of unfunded federal mandates.

The National League of Cities commits its strongest support for the Unfunded Mandate Reform Act. We will fight any attempts to weaken the bill with the full force of the 150,000 local elected officials we represent. Local governments and the taxpayers we serve have borne the federal government's fiscal burden for too long. We will not have

such an important relief measure thwarted in the final hour by special interests.

We commend you for continuing to foster the bipartisan support which your original mandate relief bill so successfully garnered in the last Congress. We will work hard to gain bipartisan support for mandates relief in the 104th Congress, because, as you are well aware, this bill will benefit all states, all counties, all municipalities, and all taxpayers, regardless of their political allegiance.

Again, please accept our sincere gratitude for your efforts.

Sincerely,

CAROLYN LONG BANKS,
President.

NATIONAL SCHOOL BOARDS ASSOCIATION,
Alexandria, VA, December 30, 1994.

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

DEAR SENATOR KEMPTHORNE: The National School Boards Association (NSBA), on behalf of the more than 95,000 locally elected school board members nationwide, would like to offer its strong support for the "Unfunded Mandate Reform Act of 1995" (S. 1). This legislation would establish a general rule that Congress shall not impose federal mandates without adequate funding. This legislation would stop the flow of requirements on school districts which must spend billions of local tax dollars every year to comply with unfunded federal mandates. We commend you for your unending leadership on this critical issue.

Today, school children throughout the country are facing the prospect of reduced classroom instruction because the federal government requires, but does not fund, services or programs that local school boards are directed to implement. School boards are not opposed to the goals of many of these mandates, but we believe that Congress should be responsible for funding the programs it imposes on school districts. Our nation's public school children must not be made to pay the price for unfunded federal mandates.

S. 1 would prohibit a law from being implemented without necessary federal government funding. S. 1 would allow school districts to execute the future programs which are required by the federal government without placing an unfair financial burden on the schools.

Again, we applaud your leadership in negotiating and sponsoring this bill which would allow schools to provide a quality education to their students. We offer any assistance you need as you quickly move this bill to the Senate floor.

If you have questions regarding this issue, please contact Laurie A. Westley, Chief Legislative Counsel at (703) 838-6703.

Yours, very truly,

BOYD W. BOEHLJE,
President.

THOMAS A. SHANNON,
Executive Director.

NATIONAL CONFERENCE OF
STATE LEGISLATURES,
Washington, DC., December 30, 1994.

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

DEAR SENATOR KEMPTHORNE: The National Conference of State Legislatures enthusiastically supports S. 1, the Unfunded Mandate Reform Act of 1995. We join you in urging your colleagues to co-sponsor this bill and approve this legislation in Committee and on the floor of the Senate. The National Conference of State Legislatures commends

your efforts, along with those of Senator Bill Roth, incoming Chairman of the Senate Governmental Affairs Committee, and Senator John Glenn, the outgoing Chairman of the Senate Governmental Affairs Committee, in forging the bipartisan mandate relief bill that is to be presented to the Senate next week as S. 1. We deeply appreciate your leadership in developing legislation that takes significant steps toward correcting the problem of unfunded federal mandates and for your openness to listen to our concerns during the negotiation process.

Your bill is a fitting first step in restoring the balance to our federal system by recognizing that the partnership with state and local governments has been significantly weakened by the growing federal practice of imposing unfunded mandates. No government has the luxury of unlimited resources, and the taxpayers of this country, our shared constituents, recognize that having the federal government pass its obligations down to the state and local governments does nothing to reduce their overall tax burden.

This bill is about information and accountability. The cost estimate, points of order, rules changes and other provisions contained in this legislation are absolutely necessary to get us back on track and have the federal government take responsibility for its actions. To make responsible decisions, members of Congress need to be fully aware of the financial burdens that federal legislation often places on state and local governments, and to understand the implications of those burdens.

As has been said often over the past year, the level of cooperation among state and local governments and members of the United States Senate during the negotiation process is unprecedented. Again, we appreciate your efforts, and those of the other Senators who helped forge this compromise, and wholeheartedly support passage of S. 1, the Unfunded Mandate Reform Act of 1995.

Sincerely,

JANE L. CAMPBELL,
President, NCSL.

CITY OF SAN CLEMENTE,
San Clemente, CA, January 6, 1995.

Re: Support of House and Senate legislation on unfunded federal mandates.

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

DEAR SENATOR KEMPTHORNE: On behalf of the City Council of the City of San Clemente, California, I am urging your support and early passage of the proposed House and Senate Legislation on unfunded Federal mandates.

Implementation of current unfunded Federal mandates have significantly increased local government costs, and are severely hampering our ability to fund and provide highly critical basic services, such as public safety, to our citizens. Proper compliance with current Federal mandates has forced closer scrutiny over environmental issues, imposed additional reporting requirements and forced cities to absorb higher employee costs.

The City of San Clemente strongly urges your SUPPORT and early passage of the proposed House and Senate legislation on unfunded Federal Mandates, and further requests that you oppose any weakening amendments. Local government revenue has been steadily decreasing for many years. We cannot afford the additional funding and staffing required to comply with Federal mandates, unless the legislation includes funding for such mandates.

Sincerely,

CANDACE HAGGARD,
Mayor.

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.*

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

Hon. DIRK KEMPTHORNE,
*U.S. Senate, Dirksen Senate Office Building,
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 government, make this a much stronger 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. LESHNER.

NATIONAL RETAIL FEDERATION,
January 4, 1995.

Hon. DIRK KEMPTHORNE,
*U.S. Senate, 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 firsthand 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; Lynn Birlieff, Executive Director, Wyoming Retail Merchants Association; J. Tim Brennan, President, Idaho Retailers Association; John Burris, President, Delaware Retail Council; Bill Coiner, President, Virginia Retail Merchants Association; Bill Dombrowski, President, California Retailers Association; Spence Dye, President, Retail Association of Mississippi; Janice Gee, Executive Director, Washington Retail Association; Bud Grant, Executive Director, Kansas Retail Council; Brad Griffin, Executive Vice President, Montana Retail Association; Jo Ann Groff, President, Colorado Retail Council; Jim Henter, President, Association of Iowa Merchants; John Hinkle, President, Kentucky Retail Federation; Bill Kundrat, President, Florida Retail Federation; John Mahaney, President, Ohio Council of Retail Merchants; William McBrayer, President, Georgia Retail Association; Charles McDonald, Executive Director, Alabama Retail Association; Larry Meyer, Vice Chairman & CEO, Michigan Retailers Association; Grant Monahan, President, Indiana Retail Council; Mickey Moore, President, Texas Retailers Association; Sam Overfelt, President, Missouri Retailers Association; Nick Perez, President, Louisiana Retailers Association; Ken Quirion, Executive Director, Maine Merchants Association; Dwayne Richard, President, Nebraska Retail Federation; Bill Sakelarios, Executive

Vice President, Retail Merchants Association of N.H.; Mary Santina, Executive Director, Retail Association of Nevada; Paul Smith, Executive Director, Vermont Retail Association; Chris Tackett, President, Wisconsin Merchants Federation; David Vite, President, Illinois Retail Merchants Association; Jerry Wheeler, Executive Director, South Dakota Retailers Association; Melanie Willoughby, President, New Jersey Retail Merchants Association.

NATIONAL ASSOCIATION OF REALTORS,
Washington, DC, January 9, 1995.

DEAR SENATOR: The Senate will soon consider S. 1, the "Federal Mandate Accountability and Reform Act of 1995." On behalf of the over 750,000 members of the NATIONAL ASSOCIATION OF REALTORS®, I would like to urge your support for S. 1 when it comes before the Senate.

Perhaps no other industry in America is more directly affected by the passing along of federal mandates to states, localities and the private sector than real estate. When the federal government imposes environmental, educational and other requirements, state and local governments have basically two options. They can either eliminate or reduce vital government services, such as police, fire, education, or raise fees and taxes to pay for them. When the compliance costs are passed along to the taxpayers in the form of increased property taxes, real estate transfer fees and impact fees this directly affects the affordability of housing and the marketability of the affected communities. And, most importantly, middle class, first-time home buyers are often forced out of the market.

S. 1 will insure that these "hidden" federal taxes are not imposed by requiring that proposed legislation include the funding for the federal mandates. If funding is not provided, then a point of order can be raised removing the bill from further consideration by the Senate. The bill also insures that any proposed regulations that impact the private sector by more than \$200 million include an analysis of the effect it will have on the nation's economy and productivity.

We support S. 1 and we urge you to oppose any floor amendments that would weaken its impact. There should be no carve-outs for broad categories, such as labor or environmental laws and regulations. Thank you for your consideration.

Sincerely,

STEPHEN D. DRIESLER,
Vice President and Chief Lobbyist.

Mr. LEVIN. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Michigan has 3 minutes remaining.

Mr. LEVIN. I yield 1½ minutes to my friend from Connecticut.

Mr. LIEBERMAN. Mr. President, I thank the Senator from Michigan and congratulate him on offering this amendment which is, in essence, S. 993, which was reported out of the Governmental Affairs Committee last year, an extremely balanced approach to the very real and justifiable concerns of State and local governments that we, in Washington, are passing measures which force them to spend money, but we do not give them money to pay those costs.

This measure had the widespread support of Governors and mayors. It

forced Congress to confront the fiscal impact of our actions.

Unfortunately, S. 1, which is before us now, simply goes too far. It creates an unintended, but I am convinced, very real and inequitable burden on private sector entities, businesses that are affected by these mandates but will not have the extra protection of a second point of order in this measure.

I am concerned also that S. 1 will put at risk a whole array of Federal laws protecting the environment, people's health, people's safety, people's rights that the public simply does not want us to endanger and, in that sense, the consequences of this bill are not only unintended, they are undesired.

Mr. President, this has not been a filibuster. This has been a reasonable, thoughtful discussion of a measure which, frankly, most people on the Democratic side of the Senate want to support but feel, in its current form as S. 1 simply goes too far and loses the balance, the critical balance that was so much a part of S. 993.

Mr. President, I rise in strong support of the amendment by my colleague, Senator LEVIN.

The amendment that he offers includes the text of the bipartisan legislation, S. 993, reported last year 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. It had the widespread support of Governors and mayors. This amendment establishes the principle that Congress must be forced to confront the costs that may be incurred by the State and local governments when we pass legislation. Through the point of order provision, it provides an opportunity for the fullest discussion if there is not a CBO cost estimate and if there are not funds authorized in the legislation we adopt to cover the costs on State and local governments. I was cosponsor of S. 993 and I am pleased to support this amendment now.

Last week in connection with the debate on an amendment I offered along with Senators KERRY, LEVIN, BUMPERS, DORGAN, GLENN, and others, I set forth in detail my concerns about the changes made in S. 993 as part of S. 1. In particular, S. 1 creates a new and, I think, 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 as originally introduced also provides that if the funding mechanism is an authorization 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.

So S. 1 is a much more extensive reach than that adopted in this amendment. It takes a problem and in its response reaches too far; and in doing so creates an unintended, and I am convinced, very real and inequitable burden on private-sector entities, businesses that are affected by these mandates. And I have been concerned that 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.

Mr. President, let me now say that I believe the discussions of the last several weeks have made numerous very important improvements in the bill. I cannot overstate the outstanding work of Senators LEVIN and BYRD who spent numerous hours working carefully through every provision of the bill and demonstrating persuasively to the sponsors that many of the provisions were not well thought out and made little sense. They convinced the sponsors to agree to important amendments that make S. 1 a far better bill. In particular, I am pleased about: First, Senator BYRD'S amendment which will ensure that Congress has an important role in the final decision on whether and how mandates will fail or become reduced in scope; second, Senator LEVIN'S amendment providing that if CBO cannot do a cost estimate on public sector mandates, the second point of order will not lie.

Let me say there that S. 1 could have been improved at an earlier stage. S. 1 is extremely important piece of legislation. Its provisions potentially affect virtually all of our laws. Yet it was rushed through the Governmental Affairs Committee without any opportunity for careful consideration. The markup took place one full working day after the hearing on the bill. The Republicans opposed consideration of all amendments and voted on a party-line basis to report the bill to the floor without a report. I associate myself fully with the remarks of Senator GLENN earlier this morning. This is not how the Governmental Affairs Committee usually operates and I hope we'll be returning to our usual careful approach to considering legislation.

I know, however, that even with the amendments, the basic presumption in S. 1 that I am concerned about remains: That the Federal Government will pay 100 percent of the cost of obligations imposed by the Federal Government on States and localities still exists. I will not go into all my concerns with this presumption. As I have previously stated, I believe that this presumption is inappropriate where laws apply in the same manner to

State, local or tribal governments and the private sector.

The presumption is inappropriate because it creates an unintended, but I am convinced very real and inequitable burden on private sector entities, businesses that are also affected by these mandates. Second, I am concerned that the process will create an unintended hurdle that may well impede the protection of people's health, safety, and employee's rights. Third, I am concerned that we may create differential standards for protection of our citizens. When we pass a law, we have determined that the national interest requires that the law achieve a goal, that there is a problem out there that requires a national solution to protect public health or the environment. We are adopting legislation establishing a value, a goal, to protect people. 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. They believe the Government has an obligation to ensure that they get clean air regardless of who is providing that air. Fourth, I am concerned about the extra burden on businesses, particularly small businesses, if publicly owned facilities do not do their share of cleaning up the air or our estuaries. Fifth, those of us who represent States which are victims of pollution from upwind are particularly vulnerable under this proposal. If municipal sewage plants in New York are exempt from future requirements, Connecticut industries will bear an even greater burden in cleaning up Long Island Sound. I think the Levin and Byrd amendments make some inroads into limiting the impact of this presumption. But I remain convinced that the presumption itself is inappropriate and that this amendment, embodying last year's bipartisan bill endorsed by Governors and mayors is the right approach. I urge adoption of the amendment.

Mr. LEVIN. I yield the Senator from Ohio 30 seconds.

Mr. GLENN. Mr. President, I would like to make some short remarks. I just am beginning to resent the implication that I am filibustering something that I am a cosponsor of, as we keep hearing that from the other side of the aisle.

I addressed this at some length this morning for about 15 or 20 minutes on what happened in committee. We got railroaded in committee and could not bring up amendments. We wanted to bring them up there and could not. We came to the floor with a guarantee that we would be able to bring up anything we wanted to bring up, and then cloture is filed against us here.

It has been one series of disasters after another in which the minority rights were trampled—no report from the committee, nothing at all. And yet I am a cosponsor of this legislation. The idea that we are somehow filibustering on this side is just not borne out

by the facts, and I think the RECORD shows that.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I believe I have 1 minute left. I yield myself that minute.

First of all, let me say, Senator GLENN was the chief sponsor of last year's bill. He is the cosponsor of this year's bill. He is not filibustering, nor am I, nor anyone else who offered amendments to improve this bill.

The committee process was significantly bypassed. S. 1 was introduced on a Wednesday night, the hearing was on a Thursday, and they wanted to go to markup on a Friday. The lesson to be learned here is it is useful to have a committee consider a bill. A lot of the amendments adopted here should have been offered and adopted in committee if we had the time.

There is no filibuster going on. It seems to me to suggest that people who cosponsor this bill, S. 1, such as Senator GLENN, are filibustering their own bill makes no sense at all.

Finally, I ask unanimous consent to print in the RECORD a letter relative to S. 993 signed by the same people who now support S. 1—which they do—but last October saying they strongly support S. 993 and would oppose any amendments to S. 993, the same president of the National League of Cities, the same Governor of Ohio.

The PRESIDING OFFICER. All the time of the Senator has expired.

Mr. LEVIN. Mr. President, I ask unanimous consent that this letter be printed in the RECORD.

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

NATIONAL GOVERNORS' ASSOCIATION, NATIONAL CONFERENCE OF STATE LEGISLATURES, NATIONAL ASSOCIATION OF COUNTIES, NATIONAL LEAGUE OF CITIES, U.S. CONFERENCE OF MAYORS,

October 6, 1994.

TO ALL SENATORS: The nation's state and local elected officials strongly urge the U.S. Senate to pass the state-local mandate relief bill, S. 993, before adjournment. Passage of this bill is our top legislative priority.

Not only will we oppose any amendments not supported by the bill managers, Senators John Glenn, William Roth, and Dirk Kempthorne, but we view all amendments as an attempt to defeat our legislation. We urge the defeat of all partisan and extraneous amendments.

Please stand with your state and local officials in support of this crucial legislation.

Sincerely,

GEORGE V. VOINOVICH,
Governor of Ohio, Co-
Lead Governor on
Federalism, National
Governor's Association.

RANDALL FRANKE,
Commissioner of Mar-
ion County, Oregon,
President, National
Association of Coun-
ties.

VICTOR ASHE,
Mayor of Knoxville,
Tennessee, Presi-
dent, U.S. Con-
ference of Mayors.

KAREN MCCARTHY,
Missouri House of
Representatives,
President, National
Conference of State
Legislatures.

SHARPE JAMES,
Mayor of Newark, New
Jersey, President,
National League of
Cities.

The PRESIDING OFFICER. The Senator from Utah has 1 minute.

Mr. BENNETT. Mr. President, I wish to quickly acknowledge, I mean no implication of dishonor among the Senators who have been working hard. I still see some indication that some Members of their party have done some things that look and talk and walk to this Senator a bit like a filibuster.

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

Mr. KEMPTHORNE. Mr. President, I thank the Senator.

Mr. President, S. 993 is the core, it is the base of S. 1. I am proud of what we developed in S. 993 last session. But it was last session. It is the building block upon which we then went forward and continued to develop S. 1.

For those Members who are thinking that they can vote for S. 993, last session's bill, and not vote for S. 1 and think that they can then say to their mayors and to their Governors, their county commissioners, their teachers, "Oh, yes, I voted to stop unfunded Federal mandates, I voted for S. 993," in today's environment, the fact that we have now moved forward with S. 1, I am afraid you will not get the sort of reception that they may have anticipated.

The PRESIDING OFFICER. All time on the amendment has expired.

Mr. KEMPTHORNE. Mr. President, I move to table the amendment and 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.

The PRESIDING OFFICER. The question is on agreeing to the motion. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Texas. [Mr. GRAMM] and the Senator from Arizona [Mr. MCCAIN] are necessarily absent.

Mr. FORD. I announce that the Senator from Hawaii [Mr. INOUE] is necessarily absent.

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

The result was announced—yeas 58, nays 39, as follows:

[Rollcall Vote No. 60 Leg.]

YEAS—58

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

NAYS—39

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

NOT VOTING—3

Gramm	Inouye	McCain
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So the motion to table the amendment (No. 218) was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

Mr. LEVIN. 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 Idaho is recognized.

Mr. KEMPTHORNE. 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. GREGG. 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. GREGG. Mr. President, the Senator from Idaho controls 20 minutes.

Mr. KEMPTHORNE. I yield 2 minutes to the Senator from New Hampshire.

Mr. GREGG. I thank the Senator.

CONGRATULATIONS TO THE MANAGERS OF THE BILL

Mr. GREGG. Mr. President, I wish to congratulate the Senator from Idaho and the Senator from Ohio for having brought us to the completion of this rather lengthy process of passing the unfunded mandates bill.

They have done an extraordinary job of managing this bill. They are in what has been a long and fairly tedious few weeks here of extraneous issues to the underlying question, which is passage of the unfunded mandates law.

When I first was elected to this body 2 years ago, I made one of my job priorities passage of this piece of legislation. I was happy to work with the Sen-

ator from Idaho to bring it to this point. And I congratulate him for all of his efforts in truly driving this process.

Effective unfunded mandates language is absolutely critical to the States, to the cities, and to the county governments of this country. If we are going to have government which is responsive, we have to have a Federal Government which, when it passes a law, does not end up taking all of the glory and none of the hard decisions, but rather takes the glory and also takes on the hard decisions. That means that this bill will put us all on notice that when an unfunded mandate comes to the floor of the House or the Senate and there is a vote on that unfunded mandate, people be held accountable as to whether or not they are supporting passing of laws on to the States and on to the cities.

It is very appropriate that this bill should be one of the first major pieces of legislation passed by this Congress because it represents a new approach to the way we govern this country. It represents an approach which recognizes federalism should exist. In real terms, federalism means that when the Federal Government takes actions, it creates costs for the local community and it also pays the costs that it incurs and puts on those local communities.

So I strongly support this piece of legislation. I congratulate the managers of the bill for bringing it to this point.

I yield the remainder of my time.

Mr. DASCHLE. 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. 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.

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent that the time set aside for different Senators to make their comments occur after final passage.

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

Mr. KEMPTHORNE. Mr. President I ask unanimous consent that amendment No. 222 be withdrawn.

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

So the amendment (No. 222) was withdrawn.

Mr. GLENN. Will the Senator yield?

Mr. KEMPTHORNE. Yes, I am happy to yield.

Mr. GLENN. In setting aside time for comments until after the final vote, I also ask unanimous consent that the time reserved for Senator BYRD be included in that time transferred until after the final vote.

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

AMENDMENT NO. 228 TO AMENDMENT NO. 210

(Purpose: To make technical corrections, and for other purposes.)

Mr. KEMPTHORNE. Mr. President I send to the desk the managers' amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be reported.

The legislative clerk read as follows:

The Senator from Idaho [Mr. KEMPTHORNE] proposes an amendment numbered 228 to amendment No. 210.

Mr. KEMPTHORNE. 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 amendment is located in today's RECORD under "Amendments Submitted.")

The PRESIDING OFFICER. Under the agreement, the amendment is agreed to.

So the amendment (No. 228) to amendment No. 210 was agreed to.

Mr. BAUCUS. Mr. President, I rise to support S. 1, the Unfunded Mandate Reform Act of 1995.

This bill will strengthen the partnership between the Federal and State government. That, in turn, will help us all do a better job protecting public safety and public health.

BACKGROUND

When the Framers of the Constitution met in Philadelphia, federalism was not an abstract theory. It was a practical necessity.

During the period of the Articles of Confederation, the Framers had experienced, first hand, the chaos that occurs when there is no strong Federal Government to bind people together and address matters of fundamental national interest.

At the same time, the Framers understood that, in most cases, State government, close to the people, governs best.

So the Framers enhanced the Federal Government's authority in certain areas. But, in the 10th amendment, they provided that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

This system established a partnership.

However, over the last few decades, the partnership has been weakened.

To begin with, Congress enacted a wide range of laws designed to address important national problems. Laws to protect civil rights. To promote social welfare. To improve public health. To fight crime. To protect the environment. And to accomplish other important goals.

In many cases, the Federal Government required States to take stronger action, or provided powerful incentives for them to do so.

As a result, our Nation made great progress.

But the cumulative cost of all of these laws began to mount. At the

same time, Federal funding did not rise. Instead, it fell.

Meanwhile, many State governments became more sophisticated. They wanted to address complex problems themselves, without instructions from Uncle Sam.

As a result of all this, State and local governments began to criticize what they called unfunded mandates. Today, the criticism has swelled into a virtual rebellion.

Now, let's step back for a moment. As with most issues, the unfunded mandates debate has had its share of hyperbole. In some cases, the estimates of unfunded mandates have been wildly exaggerated. And various special interests have used the term "unfunded mandates" loosely, to attack any Federal law they don't like.

But, at the core of this debate, there is a real problem. Take the case of Butte, MT. Because of various environmental laws, Butte is required to upgrade the drinking water system, at a cost of \$20 million; construct a new sludge treatment system, at a cost of \$7 million; and upgrade the landfill, at a cost of \$5 million.

Independently, each of these requirements makes sense. But their cumulative impact can be devastating, especially for a small city like Butte struggling to diversify its economy.

To address situations like this the Environment and Public Works Committee has been focusing on the impact that our environmental laws have on State and local governments.

During the last Congress, the committee reported a Safe Drinking Water Act and a Clean Water Act that each reduced burdens on local governments. And the committee considered a Superfund bill and an Endangered Species Act bill that would have given States more control over those programs.

In each case, we gave careful attention to the impact that our legislation would have on State and local governments. In fact, that was one of our primary concerns.

SUPPORT FOR THE BILL

The bill we are considering today will take another important step in the right direction.

The key provision of the bill is pretty straightforward. It requires that, when a bill comes to the floor of the Senate or House, Congress must consider whether the bill imposes a large new mandate on State or local governments. If so, the bill creates a procedural point of order against the bill, which can only be waived by a majority vote.

In other words, before imposing a new mandate on State or local governments, Congress must stop and think. We must consider the impact of the mandate, consider the alternatives, and make an affirmative decision that the mandate is appropriate.

By doing so, the bill reinforces the approach that the Environment and Public Works Committee has been taking over the last several years.

At the same time, the bill does not create any artificial barriers that would prevent Congress from enacting needed legislation.

This is an important point. In some cases, a provision that technically is an unfunded mandate may be the best solution to a problem.

Take the case of a pollution problem that has interstate effects. In other words, the pollution crosses State lines. One State may already have taken steps to address the pollution problem. But that State may be located downwind or downstream from another State that hasn't done a darn thing. The bad actor is pouring pollution into its neighboring State.

In a case like that, we may need a minimum Federal standard. And we may decide that it would be unfair to require the States that already have addressed the problem, and paid for it themselves, to subsidize a handful of bad actors who have lagged behind.

In other cases, a minimum Federal standard may be necessary to prevent the unfortunate race to the bottom that can occur if States weaken their environmental laws as a way of attracting jobs away from other States.

One State lowers its environmental standards. In response, other States are forced to lower their standards.

The result is an overall decline in environmental protection. Everybody is worse off.

In a State like Montana, which has progressive environmental laws, we don't want to be forced to lower our environmental standards in order to create new jobs, or to keep the ones we have.

So, Mr. President, there may be cases in which it is entirely appropriate to enact a provision that is, technically, an unfunded mandate. But, under the bill we are considering today, Congress can only do so if we have carefully considered the impact of the mandate, considered the alternatives, and affirmatively decided that it's the best solution to the problem.

CONCERNS

Of course, no legislation is perfect. During our consideration of this bill, I believe that there have been some significant improvements. And I want to thank the Senator from West Virginia [Mr. BYRD], the Senator from Michigan [Mr. LEVIN], and others for their diligent work.

However, I remain concerned over whether the Congressional Budget Office will be able to carry out its new responsibilities. To date, no one has been able to make reliable estimates of the cost of unfunded mandates. Furthermore, the Director of CBO has testified that his office will be hard-pressed to make the necessary assessments.

That should be a warning flag. We need to be realistic about how well this bill can be implemented. And we should be ready to fix any problems that arise in the future.

Another concern is whether we may be creating an uneven playing field that may favor the public sector over

private industry. I hope that will not be the result. But if it is, we may need to revisit that issue at a later date.

CONCLUSION

In any event, Mr. President, this is not the end of the unfunded mandates debate. It's really the beginning.

In the upcoming months, we will have the opportunity to reform the Safe Drinking Water Act, the Superfund law, and other environmental laws. In each case, we will have the opportunity to give States more flexibility and reduce unfunded mandates, while maintaining protection of public health.

If we do so, we will build on the progress we are making in this unfunded mandates bill, and do even more to strengthen the partnership between the Federal and State governments.

Finally, Mr. President, I wish to compliment the leadership of the Governmental Affairs Committee, Senators ROTH and GLENN, for their work on this bill.

Senators ROTH and GLENN have stood on this floor for 2 weeks. Their thoughtfulness, candor, and fairness are noted and appreciated.

Senator LEVIN is also to be strongly commended for his insightful and determined efforts to improve this bill.

I also wish to compliment the majority manager and prime sponsor of the bill, Senator KEMPTHORNE.

For the past 2 years, Senator KEMPTHORNE and I have worked together as members of the Environment and Public Works Committee. We've dealt with some thorny issues. Sometimes we've disagreed. But Senator KEMPTHORNE has always been thoughtful, diligent, and willing to consider other points of view in order to make progress.

He's taken the same approach here, and the result is a solid bill that will improve our consideration of environmental and other laws.

Mr. DODD. Mr. President, I support this bill. I believe that we should consider the effects of legislation we consider in this body on States and localities. I have some serious reservations, however, about the sweep, and the director of this debate.

THE FEDERAL ROLE

When the Articles of Confederation were conceived more than two centuries ago, the States were to be sovereign and independent. Seven years later, the Constitution was ratified as an antidote to the decentralized and weak National Government established by the articles. The Constitution strengthened the responsibility and authority of the National Government, and recognized the Federal Government's unique role in defining and protecting the basic rights and interests of citizens in all States.

Over 200 years, the expansion of commerce, the advent of wars, the growth of a sense of national character, and

the surge of information and technology have considerably altered the responsibilities of government at each level. We have grown and proposed as a Nation because our Constitution created a Government capable of withstanding such dramatic developments and changes.

LEGITIMATE STATE CONCERNS

I believe that a discussion of federalism is long overdue, but I am concerned with the direction of our current debate. I understand well the concerns of my State and local colleagues who are outraged over the proliferation of Federal mandates and regulations. And I understand well their frustration over the Federal Government's shifting of a substantial share of the cost of providing basic services to more local units of government.

SHARED RESPONSIBILITY

I am concerned, however, that we are moving further away from the notion of partnership and shared responsibility in this debate.

When the city of Houston seeks funding for a new sewer system, or the city of Detroit seeks money for improvements to its transit system, who do they come to for help? They come to us.

They come to the Federal Government because they believe that there is a national role in assisting them to serve their citizens. And they come to us because they believe that we have deep—though shrinking—pockets.

And, while we sometimes ask them to pay some of the costs, we do our best to help. We, too, recognize that there is a national interest in providing these services. We are willing to share some of the financial burden.

THE S. 1 APPROACH

Now we come to our present debate. The underlying message of this bill is that the Federal Government should only ask something of our State and local counterparts if it is willing to pay 100 percent of the costs. A point of order can be waived, but it can be raised on almost any bill with intergovernmental costs. The message is the National Government should not ask or expect States and localities to share a portion of these costs.

This is not an approach recommending shared responsibility, it is an approach that could cripple interdependence. The National, State, and local governments are not independent entities with their own unique set of constituents. They are interdependent units of government attempting to address similar problems with overlapping constituencies: the American people. We must not lose sight of this fact.

THE IMPORTANCE OF SOME MANDATES

Nor should we lose sight of the importance of some of the mandates we are discussing today. Let's put this in some perspective.

According to the National Conference of State Legislatures, here's a sampling of legislation it considers mandates: The Civil Rights Act, Clean Air,

Clean Water, and Safe Drinking Water, the Drug-Free Schools and Community Act, college work study, student loan reform, child support enforcement, and child nutrition legislation.

Surely we can all agree that the goals of these acts are important and national in scope. We can also agree that they have an important intergovernmental impact and benefit.

The National Conference of State Legislatures' definition of a mandate is broader than this bill's. But I am concerned that they and others will seek to expand the definition of an unfunded mandate to include every important social, environmental, and labor law that is not fully funded by the Federal Government. This would grossly undermine the importance of these programs, and jeopardize the protections afford to all Americans.

And it would disable our intergovernmental partnership.

COST SHIFTING—THE SHELL AND PEA GAME

Clearly there are genuine issues of concern in the debate over Federal mandates. If pressed to its logical extremes, an inordinate number of mandates could severely limit the States' flexibility in responding to unique regional needs, and abolish the number of fresh and innovative ideas that originate from local experimentation.

Paying for future programs is not, however, the only issue of concern to States and localities. Of equal concern is the financing of vital services.

I believe that this bill fails to adequately address the issue of Federal cost shifting—one of the most damaging forms of intergovernmental abuse. The bill does not prevent the Federal Government from engaging in a shell and pea game with taxpayer dollars—shifting the Federal share of financing vital services to States and localities.

S.1 does not consider a substantial cut in entitlement programs to be a mandate as long as these cuts are accompanied by a corresponding decrease in State and local governments' obligation to comply with the programs provisions.

So, if the Congress chooses to slash funding for a major entitlement program—let's take Medicaid for example—it can do so—as long as it tells the States they no longer have to comply fully.

But, what is the practical effect on State and local governments of slashing Federal funding for Medicaid? The costs of providing virtual health care services to the poor will not have been reduced—but the Federal contribution to addressing that need will now have diminished.

Who's going to fill the financial void? Some nonprofits, public hospitals, and private charities may pitch in. But, inevitably State and local governments are going to have to pick up much of the additional financial burden—whether or not they are required to by the letter of the law.

States and localities fear a balanced budget amendment so greatly for this

very reason. They are all too familiar with this game. They understand—and their recent experience has taught—that substantial reductions in Federal funding for vital services force more local units of governments to pick up much of the tab.

Cutting Federal funding for vital services is effectively an intergovernmental mandate.

It's a mandate on States and localities. And frankly, it's a mandate on the middle-class.

All too frequently, it's middle-class Americans who end up bearing a disproportionate share of the increased costs of providing important services.

Nothing in this bill precludes the Congress from shifting the burden of financing entitlement programs to the States.

Mr. President, if we are really serious about addressing the problem of intergovernmental mandates, we should take steps to assure that the Congress does not shift the obligation of balancing the budget to the States by asking them to control the costs of entitlements—something we have been woefully unable to do.

STRIKING A BALANCE

It is clear that the Federal Government should not and cannot impose costly new requirements on States and localities without considering how they will pay for those costs. It is also clear that we must develop a better balance between competing Federal responsibilities, and carefully review our budget priorities.

But in the long run, the solution to the unfunded mandates problem depends on better communication between all levels of government. We need to work together to set priorities and make sure that taxpayer dollars are being used efficiently.

CONCLUSION

Mr. President, I commend the managers of this bill for their hard work and genuine desire to assist our States and localities. This bill is a reflection of their commitment and a positive step forward.

Soon, my colleagues and I will have another opportunity to test our resolve toward improving intergovernmental relations as we debate a balanced budget amendment and make the tough budgetary decisions that follow.

I look forward to working with my colleagues to strengthen cooperation and partnership between all levels of government.

Ms. MOSELEY-BRAUN. Mr. President, when I came to the Senate 2 years ago, I was very surprised to discover that in Washington there was almost no discussion of an issue of great concern to State and local officials. That issue was the impact of mandates imposed by the Federal Government on State and local governments.

I asked several Federal agencies for information regarding the cost of mandates on State and local governments, and I found, quite simply, that no one

I could find in the entire Federal establishment knew their impact. That was one of the reasons my very first bill filed in the 103d Congress was legislation to require disclosure with regard to unfunded Federal mandates. That is why S. 1 has such bipartisan support, and why I am a strong supporter of S. 1—because it promises to curb the practice of imposing Federal mandates on State and local governments without advance, complete disclosure of the impact of those mandates.

S. 1 will greatly change the relationship between the Federal Government and State and local governments. And that is a good thing. Creating a mechanism that will help ensure that the voice of State and local governments is heard in Washington before legislation is enacted is both sound policy, and something that has long been needed.

S. 1 will also make Federal officials more accountable—and that, too, is a good thing. Asking the Federal Government to make its decisions with good information—with the best information we can get on the State and local governments that will have to live by those decisions—should not be controversial. Rather, it is the way decisions should always have been made, and the way decisions should always be made in the future.

S. 1 requires the congressional committees to report on the costs and benefits anticipated from any Federal mandates contained in the bills they report to the Senate for action, including the effects of the mandate on health and safety, and the protection of the environment. The report will also include information as to whether any mandates in the reported bill are to be partly or entirely offset.

The Congressional Budget Office [CBO] would be required to estimate the cost impact of the mandate on State and local governments, if it is likely to exceed \$50 million, before the legislation could be brought up on the Senate floor. CBO would also be required to estimate the cost impact of a proposed Federal mandate on the private sector if it exceeds \$200 million.

A point of order could be raised if the legislation would increase the cost of the mandate on State and local governments by \$50 million, unless spending to cover the increase is also authorized. Under the terms of S. 1, most mandates would only be effective during a fiscal year if Congress appropriated the funds to meet the costs of those mandates. If appropriations were cut, then the mandates would also be reduced.

S. 1, however, does not put Congress in a straitjacket. It does not prevent a congressional majority from enacting unfunded mandates. The points of order established by the bill can be waived by majority vote. What S. 1 really requires, therefore, is, as I have already said, for Congress to make its decisions with the information on the mandates in front of it, and, if Congress decides not to provide funding to

offset the costs of a particular mandate, to make that decision clear and explicit.

This legislation also ensures that the cost of mandates imposed during the regulatory process would be evaluated. Federal agencies would be required to estimate the anticipated costs to State and local governments of the rules they write to implement Federal legislation. Federal agencies will have to consult with elected representatives of State and local governments so that their concerns and suggestions are taken into account in the writing of rules.

The case for the changes made in S. 1 is compelling. The issue of mandates is the No. 1 issue for Governors, for mayors, and for other local elected officials across this country. Over and over, State and local officials from around this Nation, including my own State of Illinois, have told me and every member of Congress that unfunded mandates are taking over their budgets, and undermining their ability to manage their own local problems.

Governor Edgar of Illinois wrote me supporting S. 1, stating that unfunded mandates have consumed an increasing share of State and local budgets, and that they impose severe limitations on what can be achieved with Illinois resources. I have heard from numerous county boards in Illinois on this issue. Winnebago County sent me a resolution that was adopted by the county board on September 30, 1993, opposing State and Federal unfunded mandates. The mayor of Chicago sent me a copy of a report that was prepared called "Putting Federalism To Work For America," from November 1992, that analyzes the impact of Federal mandates on Chicago. I want to discuss a few concrete examples from that report.

In order to comply with carbon monoxide standards, the city of Chicago, recognizing that traffic jams contribute greatly to these emissions, established a plan to increase the efficiency of the traffic flow in the city. This involved designating some streets as one-way, posting no-parking zones, and enforcing these zones by towing. Even though the city achieved compliance with the carbon monoxide standards, as proven repeatedly by heavy monitoring by Federal employees, the U.S. Environmental Protection Agency demanded documentation that every car parked in a tow zone was actually towed.

The city had taken the necessary steps to ensure compliance with the carbon monoxide emissions standard more than 20 years ago, but in 1989 the Federal Government was still questioning the number of tow trucks on the streets of Chicago. This occurred despite the fact that Federal monitoring of carbon monoxide emissions proved that Clean Air Act standards were consistently met. At the same time that Federal workers were monitoring towing in Chicago, the main threat to the

Great Lakes was the disposition of airborne toxins from as far away as Mexico, a problem that should fall under the aegis of a Federal agency.

The Calumet Skyway toll bridge provides another example of a high cost, unfunded mandate. The bridge must be painted regularly. The last time the bridge was painted in the late 1970's, the price tag was \$10 million. The current cost has escalated to \$40 million. The \$30 million addition is attributable to the Clean Air Act which requires that no sand blasting be used where lead-based paint is involved. The technique specified to strip the old paint cannot allow lead chips to enter the air. The paint removed must be cocooned and other safeguards applied, including disposal requirements. Public health specialists disagree on the level of risk that would be imposed by less severe safeguards. They do appear to agree that the primary risk is assumed by workers who could be protected at a dramatically lower cost. Similar problems have quadrupled the cost of repainting the Loop elevated train structure in downtown Chicago. The report asks whether that extra \$30 million would have been better spent on crime control initiatives. And more importantly, it asks which level of government is in the best position to decide.

Mayor Daley has long been a leader in the effort to educate the Federal Government on the adverse impacts unfunded mandates have on his ability, and the ability of other mayors and local officials, to conduct the people's business and be accountable to the taxpayers. In a letter to me dated January 11, 1995, Mayor Richard Daley of Chicago reiterated that unfunded Federal mandates cost the city of Chicago over \$160 million in 1992, a figure that has only increased since then. His letter goes on to say that: "Fundamentally, this issue is all about giving local governments the flexibility to make the best use of local and federal dollars." That is hardly revolutionary, but is critically important to every level of government.

Mandates impact big cities and small communities very differently, yet rarely are regulations written to be sensitive to those differences. The problems faced by Chicago are different than those faced by small Illinois communities, and not all problems can be solved with the same solutions. We have passed a Federal mandate to require testing for lead in water. In 1976, the law was changed to prohibit lead-based soldering of water pipes. Before 1976, lead was used to solder pipes together. When inspectors recently performed the lead testing requirements, the community learned that there were no traces of lead in the municipal distribution facility. The lead was only found when tests were completed in private homes. The local government could not require private homeowners to change their water pipes. In fact, most experts agree that the real threat

to children from lead is from lead-based paint, and not water. But the city was required to spend thousands of dollars to test for lead in water. This was a tremendous expense to the local taxpayer, with very marginal benefits. And it makes it that much harder for that community to meet higher priority needs.

Regulations often do not account for the very real regional differences in this country. For example, part of the Federal clean water reference standard is a clear flowing trout stream. Illinois has no trout streams—and no trout in any of its rivers. Illinois has thick topsoil, and the water is full of rich silt. It is that rich soil that makes Illinois part of this country's breadbasket. In Colorado, water runs down mountains, so the clear flowing trout stream standard may be appropriate. That standard just does not fit the reality in Illinois.

These environmental regulations are important. They save lives. But we must develop regulations that are more sensitive to local variations and flexible enough to address the problems of communities of all sizes. I recognize that the Senate does not debate the implementing rules that are written after we pass laws. But these are very serious problems that go right to the heart of why citizens do not feel that the government is responding to their concerns.

S. 1 is a statement that the Federal Government has heard what our State and local elected officials have been telling us, and that the Federal Government is prepared to change the way it has been doing business. It is a recognition of the fact that the Federal Government has a responsibility to State and local governments in the mandates area, and that the Federal Government is now prepared to meet that responsibility.

While I strongly support S. 1, I also think it is important to keep in mind that an unfunded mandate is not per se a bad thing. Not every Federal mandate is bad; many have achieved a substantial amount of good for the American public. My support for S. 1, as it was reported by the Governmental Affairs Committee, therefore, is not a repudiation of the whole idea of mandates. The mandates the Federal Government used to make real progress in civil rights and our treatment of the disabled, for example, were essential to our progress as a nation, and as a people. I applaud the fact that S. 1 recognizes how essential those mandates were and are, and that under the terms of the bill, future civil rights legislation which builds on this tradition will be exempt from S. 1.

Federal action is sometimes necessary. There are mandates which improve the health and safety of all Americans. We have Federal mandates that prevent a factory from disposing hazardous waste in the regular sewer system. This protects the sewers from contamination, and avoids the burden that local communities would have to

shoulder to clean up the problem. Mandates can help prevent environmental degradation at the front end, so that we do not have to pay for clean up, which is always more costly, after the damage has been done. Federal mandates have helped to ensure that the water is safe to drink all across this country, and that disabled children receive a proper public education.

The reason we are here is not because mandates are wrong in principle. The real reason we are here is because of the budgetary shell game that was played in the 1980's. The 1980's were a time when many domestic programs were slashed, with mandates pushing the responsibilities onto hard-pressed State and local governments. I was in the Illinois House when President Reagan introduced the New Federalism. It was supposed to redefine the relationship among Federal, State and local governments. What it really did was to make large cuts in Federal taxes, and push off the responsibilities of providing necessary services to State and local governments—without sending the money. The net result of that exercise in fiscal subterfuge was an explosion of Federal debt from only about \$1 trillion in 1980 to closing in on \$5 trillion now.

S. 1 is designed to ensure that the kind of budget fraud we saw in the 1980's won't be repeated in the 1990's, or in the next century. Addressing our budget problems requires tough decisions. In the 1980's, there was a real attempt by the President to avoid making those tough decisions, and to try to delude the American people into believing that we could solve our budget problems on the cheap, without affecting the lives of the great majority of Americans. There was an attempt to avoid providing any real leadership on our budget issues, and to avoid telling the truth about our budget problems to the American people. That was wrong then, it is wrong now, and we will be paying the price of those wrong decisions for decades to come. S. 1 cannot undo the mistakes made in the 1980's. What it can do, and what we must do, is ensure that we don't repeat those mistakes, and that is another reason enactment of S. 1 is so important.

I believe that S. 1 will achieve a necessary balance. We need to balance the benefit of mandates with their costs. We need to balance the responsibilities of the Federal Government to ensure the safety of American citizens with the rights of State and local governments to prioritize their budgets.

It is the responsibility of all levels of government—Federal, State, and local—to protect their citizens. Governors, mayors, and village presidents will feel the same pressure of public opinion to protect health and safety, as well as the environment, as we do at the Federal level. When this legislation becomes law, all levels of government will still have to bear the costs to insure the safety and well being of the American people. But we will stop the cost shifting from Federal to State and

local governments that occurs because of a lack of information. Federal agencies will write better regulations with the benefit of counsel from State and local officials. And Senators will cast informed votes.

We are all in this together, Mr. President. The Federal Government, State governments, and local governments, are all trying to meet their responsibilities to the American people. What S. 1 does is very simple—it ensures that the Federal Government does not attempt to meet its responsibilities with the tax dollars raised at the State and local levels. S. 1 prohibits budgetary shell games, and by doing so, will help end confrontation between the various levels of government, and promote cooperating instead. And that, based on my experience at all three levels of government, will not make it tougher for us to address the problems the American people elected all of us to solve, it will make it easier.

I want to conclude by congratulating my colleague from Idaho, Senator KEMPTHORNE, and my colleague from Ohio, Senator GLENN, for their leadership in crafting this legislation and bringing it to the floor so promptly in the new Congress. I share their view that this bill is carefully balanced, and that it won't take much to upset that careful balance that has so contributed to the broad, bipartisan support this bill enjoys.

I strongly urge my colleagues, therefore, to support S. 1, and to enact the kind of bill that will preserve the strong, bipartisan coalition that has been the driving force behind the effort to address the mandates problem. That, I believe, is what the American people expect of us.

Mr. President, I ask unanimous consent to insert the letters the Governor Edgar and Mayor Daley, the resolution from the Winnebago County Board, as well as an editorial from the Chicago Tribune in support of this legislation, into the RECORD.

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

STATE OF ILLINOIS,

Springfield, IL, January 10, 1995.

Hon. CAROL MOSELEY-BRAUN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MOSELEY-BRAUN: I am writing to express my sincere thanks to you for your support of S. 1, the "Unfunded Mandate Reform Act of 1995."

Unfunded mandates have consumed an increasing share of state and local budgets, and impose severe limitations on what can be achieved with our existing resources. It is essential that Congress act now to reduce the burden of such mandates, particularly in the context of current initiatives to reduce the federal budget. The National Governors' Association and other groups representing state and local officials have made passage of a mandate relief bill their major legislative priority over the past several years.

I am very pleased that you are an original cosponsor of the mandate relief bill now under consideration. If I can be of assistance

to you as this important measure moves forward, please let me know.

Sincerely,

JIM EDGAR,
Governor.

CITY OF CHICAGO,
Chicago, IL, January 11, 1995.

Hon. CAROL MOSELY-BRAUN,
U.S. Senator,
Washington, DC.

DEAR SENATOR BRAUN: I am writing to urge your support for the Mandate Relief legislation about to be debated on the floor of the House and Senate. I am pleased that the new Congress has acted so quickly, with bipartisan support, to move this legislation.

My support for effective mandates legislation goes back several years. Along with countless other mayors, governors and county officials, I have long tried to make clear to the Congress and the Administration the adverse impacts unfunded mandates have on our ability to conduct the people's business and be accountable to our taxpayers. Chicago's 1992 study, "Putting Federalism to Work for America," one of the first comprehensive studies of this issue, conservatively estimated that mandates cost the city of Chicago over \$160 million per year—a figure that has only increased since then.

The legislation being considered in Congress will begin to address problem by setting up a strong process to discourage the enactment of new mandates, and to require that new mandates be funded if they are to be enforced. I recognize that it does not cover existing mandates, an issue which I believe Congress also needs to address.

Fundamentally, this issue is all about giving local governments the flexibility to make the best use of local and federal dollars. The importance given the mandates issue gives me hope that the new Congress—Democrats and Republicans alike—will be paying close attention to the real issues that face our communities and our citizens. Please vote in favor of HR5/S1.

Sincerely,

RICHARD M. DALEY,
Mayor.

RESOLUTION OF THE COUNTY BOARD OF THE
COUNTY OF WINNEBAGO, IL

Whereas, in November 1992, the citizens of the State of Illinois approved an advisory referendum question opposing unfunded state mandates; and

Whereas, units of local government can no longer afford to implement state and federal mandates without adequate state and federal funding mandates: Now, therefore, be it

Resolved by the County Board of Winnebago County to oppose the enactment of all state and federal unfunded mandates.

Be It Further Resolved by the County Board of Winnebago County that Winnebago County encourages the passage of Senate Bill 993 and House Resolution 140 to free local governments from obligations to carry out future federal mandates unless federal funds are provided.

Be It Further Resolved that copies of the foregoing be sent to the Senator Paul Simon, Senator Carol Moseley Braun, Congressman Don Manzullo, Winnebago County Legislators, County Board Chairman of DuPage, Kane, Cook, Lake, McHenry, Will and St. Clair counties and the National Association of Counties.

[From the Chicago Tribune, Jan. 12, 1995]

UNLOCKING THE MANDATE TRAP

Not content to spend the federal government a few trillion dollars into debt, Congress over the years has had a passion for spending the money of state and municipal governments as well. It does this by requir-

ing the local folks to pay for many programs and policies created in Washington.

These "unfunded mandates" have provoked a quiet revolution in the past couple of years. About a dozen states, including Illinois, have refused to comply with federal "motor-voter" legislation, which requires them to expand voter registration opportunities; California has sued to block the federal government from enforcing it. Some state leaders have threatened that, unless they get relief from mandates, they will oppose a balanced-budget constitutional amendment.

Their anger is understandable. The federal government gets to be the good guy, imposing popular measures such as the Clean Air Act and the Clean Water Act. The locals, in turn, have to raise taxes to pay for enforcement and lose autonomy in their spending decisions. The City of Chicago has estimated that in one recent year it spent \$70.8 million on unfunded mandates, including \$27 million in paperwork.

The Senate Thursday begins debate on a bill that would require Congress to pay for any new mandate that imposes more than \$50 million in costs on local governments. If Congress fails to do so, the mandate could be blocked by any member on a point of order.

The bill provides quite a loophole: Congress could override the point of order by a simple majority vote in each chamber. It also includes exemptions for anti-discrimination statutes and emergency assistance.

The bill faces assaults from the Right and the Left. Some Republicans want a wholesale ban, or at least a requirement of a three-fifths vote to override the point of order. Some Democrats want to exempt labor, public health and public safety laws.

The bill's impact will be limited. Requiring members to go on record as supporting an unfunded mandate—in effect, acknowledging they are passing on a tax hike to local payers—is a worthwhile step. But it won't stop unfunded mandates. Illinois lawmakers have often overridden their own anti-mandates law, but rarely catch flak from voters.

This tack, however, recognizes that there are times when it is appropriate for the federal government to set national policy and expect localities to pay the cost. When that happens, it will at least be clearer to voters who is responsible.

The measure has the support of the National League of Cities, the National Governors Association, and other representatives of state and local governments. They see it as a solid step toward easing their burden, and Congress should see it that way, too.

Mr. CONRAD. Mr. President, I rise today to express my support for S. 1, the unfunded mandates bill. I am a cosponsor of S. 1 because, although I recognize that mandates can serve important purposes, it is time to ensure that we fully understand the consequences of unfunded mandates for States and localities.

Unfunded Federal mandates have caused a tremendous impact in the communities of North Dakota. For example, Safe Drinking Water Act testing requirements cost some small North Dakota communities over \$100 per year per household. Water rates in Grand Forks, ND, increased by over 30 percent from 1990 to 1993. Water rates in Langdon, ND, doubled in 1994. While the goal of the Safe Drinking Water Act is desirable, I believe that the legislation has to be flexible and that the Federal Government must be respon-

sible while enacting unfunded duties upon small communities.

Mandates, including some unfunded mandates, have resulted in valuable and legitimate accomplishments. We benefit from a clean environment. We applaud school desegregation. We have made great progress toward addressing health and safety concerns. The Federal Government has also worked in partnership with local governments to achieve important objectives. As the Washington Post reported on January 22, 1995, the Federal Government will provide \$230 billion in grants to State and local governments this year. This partnership has worked in the past and it is my hope that it will continue to work in the future.

However, at times, this partnership has lost the notions of balance, common sense, and responsibility. As the Federal Government has tried to reduce spending and cut the deficit, responsibilities have been passed on to State and local governments, who are also struggling to operate their budgets in the black. For example, it is estimated that the Safe Drinking Water Act will cost North Dakota communities almost \$50 million per year in construction costs alone. Where will this money come from? The Federal Government has not provided the answer—nor the funds.

So, while we recognize that there are good mandates and difficult mandates, the question remains: Where do we find the balance? In short, how do we restore common sense to the Federal legislative process: First, we must recognize that there are no "one size fits all" solutions. The water policy or contaminant requirements that work for New York City, population 10 million, do not make sense for Hazelton, ND, population 240, or Underwood, ND, population 976.

In this regard, I am pleased that S. 1 provides for the analysis of rural communities' special needs in 3 separate areas; the CBO Director's study of intergovernmental mandates; the CBO Director's study of private sector mandates; and an agency's analysis of a regulation. These provisions are found in section 103 and section 202 of S. 1.

Second, we must make sure that the Congress is making fully informed choices when it considers mandates. That is what S. 1 does; it adds an informative step in the consideration of legislation. This step simply provides that the Congress will know the financial impact of the legislation. The point of order mechanism in S. 1 will not prohibit the Federal Government from passing along a mandate, but it will ensure that Congress has an idea of what the legislation may cost State and local governments before the laws are passed. We will exercise our legislative duties with informed responsibility.

While I am proud to be a cosponsor of this bill, I am also pleased that my colleagues are taking the time to offer amendments to ensure that it will

work in practice. S. 1 would affect every piece of legislation considered after January 1, 1996. We should therefore work together in a bipartisan fashion to assure that the new process works smoothly and has no unintended consequences. The new point of order process, as outlined in S. 1, should be open to suggestions for improvement. That is what the legislative process is all about.

Partisan accusations that Democrats are stalling or obstructing passage of S. 1 are without merit. This important piece of legislation went through introduction, hearings, and markup in 4 legislative days, came to the floor without a report, and meaningful amendments are immediately faced with a motion to table. While we must be responsive to States and localities, we must remember that we represent individuals. We owe it to the people of this country to pass the best possible legislation, and, like it or not, quality takes careful deliberation. For example, a sunset provision should be considered not as an effort to weaken the bill; but rather as a responsibility to improve the bill as it proves necessary over time.

In conclusion, Mr. President, this legislation represents a new sense of responsibility in Washington. November 8 was not about giving a mandate to partisan politics; rather it was the manifestation of a hope that the Federal Government will truly represent the people of the country, without regard to partisan politics as usual. Therefore, we must be responsible to other levels of government and work on maintaining a good working relationship among Federal, State, and local governments.

As water rates doubled in some small rural communities, North Dakota local governments faced the new mandates and struggled to budget responsibility. S. 1 will ensure that we at the Federal level legislate which contains an unfunded mandate. I urge my colleagues to support S. 1 and accept this responsibility.

Mr. GRAMS. Mr. President, for 2 long weeks, the Senate has been debating legislation to correct the problem of unfunded mandates—those costly Federal regulations handed down to the State and local levels, without the necessary dollars to carry them out.

Because of these unfunded mandates, State and local governments are often forced to raise taxes, change their priorities, or even reduce services to comply with regulations that may or may not benefit their constituents. Taxpayers, as usual get stuck with the bill. And mayors and State officials who don't obey risk being sued by the Federal Government.

In his State of the Union Address Tuesday night, President Clinton acknowledged this serious problem and called on Congress to legislate some relief. "It's time for Congress to stop passing on to the States the cost of decisions we make here in Washington," he insisted.

Under the legislation we're considering, Senators will be more informed as to the cost of these mandates. Under this legislation, we won't be so quick to pass one-size-fits-all mandates. We'll know the financial burden we're placing on the country, and our State, local, and tribal officials.

This is a great start, and I applaud Mr. KEMPTHORNE and Mr. GLENN for their leadership on this issue.

But as of this morning, the debate over the Unfunded Mandates Relief Act of 1995 has droned on for weeks.

Mr. President, what is the delay? President Clinton supports this bill. Nearly two-thirds of my colleagues in the Senate support this bill. The House passed its own version long ago. Our version will pass, too, and the vote won't even be close. So if there's little opposition to the bill and the principles behind it, what do I tell my constituents when they ask why we're not moving forward. * * * why we're not moving past unfunded mandates and on to the other crucial issues piling up ahead of us?

Mr. President, how can I explain this delay to Mayor Don Chmiel of Chanhassen, MN, who tells me that his city desperately needs relief from costly stormwater mandates triggered last October?

Mr. President, what excuse for the holdup can I give Mike Opat, a member of the board of commissioners in Hennepin County, MN? He tells me that if relief from unfunded mandates doesn't come soon, the most populated county in my State will not be able to provide needed services such as education, jails, health care, and social services for children and the elderly.

Mr. President, what do I tell Jim Kordiak, a commissioner in my home county of Anoka? He wrote to tell me, quote:

While each of us can think of hundreds of new programs that we feel might be of benefit to the community, I believe it is imperative that we restrain ourselves from the mandatory implementation of such services and, instead, return as much control as possible to local jurisdictions.

Mayor Norm Coleman of St. Paul sent me 10 pages of notes on the mandates his city is compelled to carry out—so many mandates, in fact, that the city can't put a pricetag on the costs to its residents. How do I explain our delay to Mayor Coleman?

Finally, Mr. President, what would you have me tell Martin Kirsch, the mayor of Richfield, MN, who wrote asking for my help in turning the unfunded mandates bill into reality?

My colleagues and I are ready to do just that—we've pledged our unconditional support to this bill and the people back home who want desperately to see it passed. But we've been hogtied by the opposition of a few Senators who are doing everything in their power to delay the inevitable and keep this bill from a swift vote.

The Washington Post says that some of my colleagues are manipulating the rules to slow this legislation down. But

let me suggest, Mr. President, that the American people are being manipulated along with the rules. They sent us here to change Government. They sent us here to pass good legislation like the Unfunded Mandates Relief Act. And they'll be furious when they find out we've been passing little else but time.

Senators do have the right to assert their positions on the floor. I'm not opposed to that. Having come from a body that restricted the rights of the minority and individual members for 40 years, I understand the need for free and open debate.

What I oppose is the cynical attitude of those who would use the rules of the Senate to derail good bills.

Congress is a great institution, but in the minds of the American people, it is growing smaller in stature and larger in contempt every day. We have an opportunity and a responsibility to correct this image and provide a Government of which every American can be proud.

Mr. President, I'd like to be able to go back home to Minnesota this weekend and tell Don Chmiel, Mike Opat, Jim Kordiak, Norm Coleman, and Martin Kirsch that the Senate heard their pleas for relief and passed the unfunded mandates bill. Let's stop these needless delays. Let's work together. Let's put this debate behind us, and start moving forward.

Mr. LEAHY. Mr. President, the Senate began debate on unfunded mandates with the premise that the Federal Government should not indiscriminately force State and local governments to implement Federal statutes.

With this premise, S. 1 goes to the heart of the way Government works in the United States. It seeks to change the balance between the Federal and State governments. I happen to agree with the premise and welcome a discussion about the balance of Government.

I agree that the distant reach of Federal Government should not tell States how to take care of the special needs of their communities. I have been working for months to get the Federal Government to condone a dairy compact that several New England States have chosen for themselves.

I also agree that local problems are best solved by local solutions. Again in Vermont, we worked to find flexibility in Federal statutes to deal with a superfund site, inspection and maintenance standards for Clean Air Act provisions, and other Federal laws.

I believe it is not fair for Congress to make the rules and force state legislatures to levy the taxes to pay for them.

For these reasons, I supported the attempt to pass S. 993, the Community Regulatory Relief Act of 1994, by unanimous consent last October. I thought it was a fairly balanced bill that addressed these issues. S. 993 had a sunset provision and established a reasonable process for controlling unfunded mandates.

Unfortunately, in addressing these issues and others, S. 1 leaves out a sunset provision and exposes Vermont to a host of new problems. While the Unfunded Mandate Reform Act returns some control to the State of Vermont, it also forces Vermont to abdicate some control to politicians in distant states that Vermonters do not elect.

It is difficult to speculate how this will affect prospective issues in the coming decades, but consider the implications if S. 1 had been law since the 1970s.

Vermont is downwind of one of the most industrially developed regions in our country. As I mentioned, I recognize that the cities of Chicago, Detroit, and Cleveland or the States of Illinois, Michigan, and Ohio should have the discretion to address air pollution for their residents. I do not believe that the mayors and governors of these governments have the discretion to send unlimited air pollution to Vermont.

If the elected officials of the Great Lake States had decided that controlling air pollution is not a priority, and the Clean Air Act had been scaled back or voided as it could be under S. 1, would that mean that Vermont is forced—automatically and without question—to bear the economic burdens of smog, acid rain and toxic pollutants?

These are not insignificant economic burdens. Acid rain in the Northeast has forced States to airdrop lime in lakes to restore the pH level. Air pollution was the target of years of research to determine the effects of acid deposition on forest health. Airborne pollutants have been demonstrated to stunt fish growth and alter riparian ecosystems. Many of these are direct costs to agencies, and ultimately to taxpayers, in Vermont.

Vermont would be hurt most by indirect costs. Without an enforceable Federal air pollution standard, would 8 million people still visit Vermont each year and contribute to our tourism economy? We cannot afford to subordinate our economic interests to the economic interests of another State.

Without an enforceable Federal air pollution standard, would the forests that cover three-quarters of my State support a healthy, sustainable forest products industry? The New York Times reported this summer that air pollution had tripled forest mortality in the east.

Would the sport fisheries draw anglers from the 70 million people who live within a day's drive of Vermont? Today, most of Vermont's fish can be eaten by humans without posing a health risk. Without a Federal mandate, we may not have this luxury.

How would acid rain affect the crops of Vermont farmers? This is a question that scientists can offer only speculation.

It seems to me that if there had been legislation prohibiting unfunded mandates when Congress addressed the Clean Air Act, Vermont would have had to assume responsibility for un-

funded problems. It is a disturbing irony.

Consider another example. Vermont shares more than 200 miles of Lake Champlain shoreline with the State of New York. I recognize that the Governor and State legislature should have the flexibility to decide sewage effluence guidelines for their towns and municipalities in the State of New York. But New York does not have the right to pollute Vermont and the lake that forms our common border.

While I am concerned about Vermont, I should think other States would have concerns themselves. If Vermont filled in all the wetlands in the Connecticut River Basin, is Springfield, Hartford, and New Haven prepared to deal with floods? New York could pollute its backyard on Lake Champlain while Vermont pollutes its front yard in Long Island Sound—more than 70 percent of the fresh water in the sound comes from the Connecticut River. Does New Jersey worry about having New York's municipal hospital waste on their beaches? Do Chesapeake Bay States worry about how Pennsylvania affects their fisheries and recreation resource? Is anyone in Louisiana and Mississippi concerned about putting their States at the end of our Nation's potentially biggest sewer line? These two States could be affected by the whims of 20 upstream States.

We can let States choose their destiny only to the extent that it is their own. A State does not have the right to harm another State. To me this bill implies that States retain their right to pollute their neighbors.

States also have to assume responsibility for their own action. If a State chooses not to abide by toxic waste disposal, I will have a hard time voting to spend millions for an EPA cleanup. If the State refuses to implement a certain standard of environmental health, I will have a hard time watching extra Medicaid and Medicare dollars go to an unhealthy population in some other State.

I raise these few examples only to illustrate my point: This bill has implications that will hurt the State of Vermont, the people of Vermont, and businesses in Vermont. While I support the premise for this legislation, I do not support the proposed answer to the problem. A better bill exists that protects the rights of each of the 50 States.

I want to vote for a bill that restores a balance to the Federal and State governments, but ultimately I need to protect Vermont's interests from the competing interests of other States. This allows one State to harm another State. I cannot support that kind of measure.

Mr. ROTH. Mr. President, in the course of deliberations on this legislation which are now in their third week, some question has arisen regarding the application of title IV to the provisions of title I. As the chairman of the committee that reported S. 1, I wish to

make clear to my colleagues how these two titles relate.

Title IV deals with the subject of judicial review. Many have summarized its provisions simply as no judicial review. But I would like to draw attention to the exact language of the provisions, particularly to the reference in section 401 that does limit judicial review over certain issues arising under "this Act." That reference to "this Act" means only "this Act" and not the subsequent legislation that may be processed under the procedures established in title I.

Yesterday, we adopted the Byrd amendment to title I, which makes reference to mandates becoming ineffective in certain circumstances. Some may be concerned that because of title IV there will never be a final or objective adjudication of the question of whether a mandate is effective or not.

That concern arises out of a misunderstanding of title I and title IV. Under title I we establish a process for Senate consideration of mandates legislation. So all that title I is is a process. Normally, Senate process does not give rise to judicial review. Title IV merely codifies that history in this context. It refers only to S. 1—"this Act"—and not to legislation that will be processed under the procedures in S. 1.

Under S. 1, subsequent mandates legislation will provide for funding levels, how certain contingencies are to be addressed, which agency is designated as the responsible agency for determining whether funding of the direct costs of the mandate is adequate, and so on. Agency action under that subsequent legislation may be subject to judicial review since only S. 1 is, under title IV, not subject to judicial review. If an agency wrongly determines that a mandate is effective or ineffective, title IV of S. 1 does not preclude judicial review.

I hope that this clarifies the application of title IV to this legislation and to subsequent mandates legislation.

Mr. BINGAMAN. Mr. President, I rise today to talk about the issue of unfunded mandates, and S. 1. In doing so, I would like to briefly discuss the origins of this issue, how I believe this issue should be addressed, and how the bill before us addresses this issue.

ORIGIN OF THE ISSUE

I first started to hear about this issue shortly after I arrived in the Senate. Coincidentally, at about the same time the Reagan administration was engaged in promoting the New Federalism, which was intended to empower States and localities to assume more control of domestic issues. In reality, the effect of this move was, in too many cases, to simply shift the problems and responsibilities, without shifting resources that would have really allowed the States and localities to address the issues. This is illustrated by the fact that in 1980, total grants to State and local governments

from the Federal Government were \$127.6 billion in constant 1987 dollars, and by 1990 the figure had dropped to \$119.6 billion, again in 1987 dollars. We ensured we would not be able to provide those resources with the changes in law recommended by the Reagan administration that led to 12 years of spiraling budget deficits. For over a decade, then, the Federal Government engaged in the practice of passing legislation, often in pursuit of worthy goals, that added to fiscal burden facing State, local and tribal governments.

HOW THIS ISSUE SHOULD BE ADDRESSED

Clearly, States and localities have a legitimate concern about unfunded mandates. I have spoken to too many States and local officials to believe otherwise. In talking to these officials, I have come away with the feeling that these officials are often not opposed to the underlying aim of a Federal mandate, they are instead concerned about how they will pay for it, or comply with regulations to achieve the aim. For example, I have met very few officials who think that the disabled should not have access to public buildings and transportation. I have, however, met many who have said that given all the cutbacks they have faced over the last decade, they honestly wonder how they can comply with requirements to grant that access. I have also spoken to many officials opposed to overly complicated regulations implementing mandates. In short, they do not want us to stop addressing problems, they instead want us to approach problems with a full understanding of how our actions will affect other levels of government, and wherever possible, to provide a means to help pay for those effects. They also want us to cut the redtape that too often subsumes the actual issue we are trying to address.

We should be aware of what we are asking of State and local governments. I am all for getting cost estimates of the effects of legislation on other levels of government. We should also actively solicit the participation of other levels of government in the development of legislation and regulations that may affect them. I firmly believe that we should take all steps possible to ensure that we meet our goals with a minimum of regulatory and bureaucratic redtape, especially at the State, tribal, and local levels. We should seek, wherever possible, to identify funding sources for new mandates. We must, however, also maintain the ability to confront pressing issues with national implications.

HOW S. 1 ADDRESSES THIS ISSUE

I believe that the bill before us does address some of the aspects of the problem of unfunded mandates correctly. It requires that we have information on the costs of unfunded mandates wherever possible on reported bills, for example. I am also encouraged by the provision establishing pilot programs to reduce the burden of mandates on smaller levels of government, and pro-

visions to increase the participation of other levels of government in the development of policy that will affect them.

I am concerned, however, that the provisions prohibiting the consideration of legislation without means of payment for mandates to State and local levels of government will have the effect of reducing our authority and ability to take action on issues of national public concern.

AMENDMENTS

For that reason, I offered two amendments that I thought would improve the bill with respect to this problem. One would have allowed a reporting committee to make a determination that the reported provision met a compelling national interest furthering the public health, safety, or welfare. In this case, while a report on costs would be prepared, lack of a funding mechanism would not have prevented the measure from being debated by the full Senate. I offered a similar amendment that would have required cost reports, but would have ensured that legislation relating to radioactive waste could also always be heard. Likewise, I supported similar amendments from my colleagues that sought to ensure that procedural hurdles would not prevent the Senate from fulfilling its responsibilities to meet pressing national needs.

I offered a third amendment which sought to ensure that the Senate maintained its authority over independent regulatory agencies by stating that no funding point of order would work against a provision that could probably be considered as a rule by the agencies exempt from the regulatory title of S. 1.

Unfortunately, my amendments, and many other amendments which would have improved this bill, were defeated in largely partisan votes. In reviewing these amendments, many of which would have corrected substantial procedural difficulties, such as the costing out of amendments offered on the floor, it has become apparent to me that some of my colleagues seem to be as interested in passing a potentially flawed measure quickly as they are in carefully drafting a proposal that will address the unfunded mandates issue in a way that best promotes the national welfare, and the welfare of the working people who ultimately are affected by the policies passed and implemented by all levels of government.

CONCLUSION

In short, Mr. President, the bill before us in many ways sidesteps the issue of forcing Congress to act responsibly in balancing pressing national needs and costs to other governments. It does so by saying we shall, in too many cases, simply not consider pressing needs, unless we can pay the full costs incurred of all levels of government.

Nevertheless, I feel compelled to support this legislation because, as flawed as it is, it does provide a means for the

Senate to better consider the costs imposed on others in legislation, and a means to improve the process through which regulations are made. I know that ultimately, it is these issues with which the State, local, and tribal governments in New Mexico are concerned. On careful review, I believe that the need to address those issues outweighs my concerns about the procedural chaos created by this legislation. I also take some comfort in the knowledge that we can revisit the issue and amend the bill where it proves to be unworkable.

I must say, however, that, when we are presented with a conference report on this legislation, I will also carefully review that report, and any and all changes made from the legislation we are passing today. If I determine that the conference report is even more flawed than the version passed today, I may vote against that conference report.

Mrs. MURRAY. Mr. President, local elected officials in my home State of Washington have discussed the cost of Federal laws with me since I came to the U.S. Senate. I understand their concerns; I served in my State legislature, and know it can be costly to comply with some Federal laws.

For that reason, I cast my vote for this legislation.

But, Mr. President, as you and all our colleagues know, I have some serious concerns about this bill. I think, in some senses, it might go too far. Some Senators might wrongly assume that passage of this bill means that they have free rein to gut environmental and labor laws, or health and safety regulations. That is not what the people of my State want. They just want us to be honest in budgeting. They want us to consider the cost of regulations and mandates we consider. They want us to use common sense in legislating. That means clean water, safe streets and neighborhoods—the benefits of Federal mandates.

Therefore, Mr. President, I will work within the new constraints of this legislation to ensure that America's environment, health, safety, and labor laws enjoy the highest standards in the world. The passage of this bill just makes me more determined than ever to fight for the well-being of future generations.

Mrs. BOXER. Mr. President, today the Senate will vote on the second part of the so-called Contract With America, a bill to require Congress to consider the financial impact on States and localities of new Federal legislation.

Let me be briefly clear: I believe that it is both necessary and appropriate for Congress to enact some type of unfunded mandates constraints. I have served in local government and I understand the problem.

I supported last year's unfunded mandates bill, S. 993, as did almost every other Senator, all of the Nation's Governors, mayors, and other State

and local officials, as well as the President of the United States. That is why I voted for S. 993 today. That bill is a fine bill—a bill that would work.

If the Senate had not been tangled up in partisan squabbling at the end of the 103d Congress, unfunded mandates restraints would have now been the law of the land. I deeply regret that S. 993 was not enacted. And today it was actually voted down.

S. 1 has many problems which I and others have tried to resolve. This bill creates a potential for endless delay, gives enormous power to unelected bureaucrats, contains troubling ambiguities that will mar its implementation, and utterly fails to address the biggest unfunded mandate of them all, illegal immigration.

But because I believe in the need to pass unfunded mandates constraints, I offered several amendments to S. 1 to make it a better bill.

First, I offered an amendment to ensure that the procedures the bill contains would not impede the ability of Congress to respond to the health and safety needs of society's most vulnerable citizens—most particularly, our young children, our pregnant women, and our frail elderly. My amendment was defeated on an almost straight party line vote by 44-55.

Second, I offered an amendment to exempt any legislation intended to prohibit, deter, study, or otherwise mitigate child pornography, child abuse, or child labor laws. The vote, again on an almost straight party line, was 46-53.

If just a few more Republican Senators had supported these limited exceptions, I believe we would have had a bill that met the need to constrain unreasonable Federal mandates without endangering the health and safety of our Nation's youngest and oldest citizens.

In addition, the Senate rejected my amendment to reimburse the states for the costs they incur because of illegal immigration. Thankfully, Senator BOB GRAHAM's amendment to hold the line on existing programs to stop illegal immigration was approved. But frankly, we need to ensure that we'll do much more than just hold the line, and S. 1 fails to do one thing to ease this tremendous burden on my State.

My State of California simply cannot continue to expend huge sums without getting reimbursed by the Federal Government, due to the Federal Government's failure to enforce the border. Ignoring reimbursement to the States is a major failure of S. 1.

The problem of unfunded mandates is too serious to ignore. We should create a process to ensure that we take a careful look at the burdens we place on other levels of government and the private sector, and to make our decision-making more deliberate and accountable. S. 993 was that bill.

But S. 1 invites failure. It creates a process that can be used to tie this Senate in knots, to block legislation needed to protect the health of our

most vulnerable people, to undermine our ability to respond when our children are being abused and exploited. I cannot support such a bill.

Mr. LAUTENBERG. Mr. President, last year I cosponsored the Kempthorne-Glenn legislation, S. 993, to deal with the unfunded mandates problem. Today, I will vote against the pending legislation, S. 1, but I want to reiterate my support for the sensible, workable proposal offered by Senator LEVIN. Had it been adopted, the Levin substitute would have forced the Congress to review any imposition of new, unfunded costs on the States and localities, but would not have tied us up in a procedural nightmare when we needed to address important national interests.

Last year's bill was built on a bipartisan consensus. It was rooted in the realization that the Federal Government had mistreated States in two fundamental ways. First, the Federal Government had, too causally and too often, imposed mandates without thorough consideration of the financial burdens State and local governments already face. And, second, the Federal Government had too frequently told the States what to do without giving them the resources and the flexibility to do it.

No one denies that problems resulted. No one denies that solutions need to be found.

But if I were to characterize last year's bill, I would say it was designed to sensitize us to the problem. To require us to think carefully and critically about what kind of burdens we were imposing before we imposed them. Under the terms of last year's bill, we would know how much of burden we were creating. We would have to acknowledge the magnitude of the burden before we passed legislation. We would no longer be able to hide behind ignorance. We would have to acknowledge the consequences of our decisions on our own States and our own constituents.

If, on the other hand, I were to characterize this year's bill, I would say it was designed to paralyze us, to prevent us from requiring States to do anything unless we fully paid them to do it.

That, I suspect, is not how the proponents of the legislation would characterize it. They would point out that the bill allows us to impose unfunded mandates if, by a majority vote, we choose to do so. But, Mr. President, I believe that even the proponents would agree that the bill enshrines the principle and the presumption that the Federal Government should not impose requirements on the States unless it pays them to carry out the mandate.

I believe, Mr. President, that the legislative history of this bill demonstrates that point. Several amendments were offered to exempt some class or group of activities from the strictures of this legislation. Time after time those amendments were de-

feated. And the justification for that was, in essence, that we ought to protect the principle that there would be no unfunded mandates. While the Senate might, on a case-by-case basis, waive that principle, the presumption is that it ought to be protected.

Mr. President, on a philosophic level, I do not agree. And on a practical level, I do not believe the bill we are passing is workable. Let me explain.

While I believe we need to be sensitive to the burdens the Federal Government imposes on States, I also believe the Federal Government can—and in some cases should—impose those burdens. The odds ought not be stacked against a Federal mandate by the legislative roadblocks contained in this bill.

Philosophically, the Federal Government has a fundamental responsibility to set the tone and framework for our national life, to set minimum standards to protect the health and safety of our people, to protect our national security and welfare, and to deal with issues that are interstate in nature and can't be effectively tackled by the States.

Periodically, as a people, we have sought to limit national power. Before the Civil War, John C. Calhoun advanced the notion of nullification, allowing States to ignore Federal laws they didn't agree with. And just a few decades ago, southerners called for increased States rights in the face of Federal civil rights legislation.

We rejected those ideas because ours is a Federal system of government. And in that system, the Federal Government has certain obligations.

When States suffer from a disaster, they turn to the Federal Government for help. When California was plagued by floods and earthquakes and fires, they turned to Washington to help them clean up. And when our shore was ravaged by nor'easters, New Jersey also sought similar assistance.

But the Federal Government's role is not just limited to acts of God. We must also respond to acts of indifference.

The Federal Government should act when local and State governments don't want to spend the money to prevent pollution or to immunize children. We should be there to stop gun-running across State lines or the spread of HIV-contaminated blood. We have a role in fighting the flood of illegal immigrants across our borders or the flow of people across State lines as a result of "benefit shopping."

I am proud to say that New Jersey, my home State, is relatively affluent. It is also compassionate and progressive. We have some of the toughest environmental laws in the country. We care for our disabled. We have tough gun control laws and occupational safety regulations. But those strengths could disadvantage us if Federal standards are weakened or eliminated.

Let's take a few examples.

In the late 1980's, we had to close our beaches when raw sewage and medical

waste washed up on our shores. It cost us millions of dollars and was a major setback to our State's economy, image, and quality of life. But it was a problem we could not solve alone. The Federal Government had to step in and require New York to treat its wastes, to regulate disposal of medical wastes, and to cover its garbage barges. Mayor Koch still complains to me about this unfunded mandate. But that mandate helped us manage a crisis. And the standards imposed on New York were necessary.

Federal standards do more than help us correct problems. They help prevent them. Let me give you an example: Many people in New Jersey say that biggest fear is gun violence. But without the Brady bill—an unfunded mandate that requires background checks by local police when purchasing a gun—we really could not stop the gun violence from coming into New Jersey. That happened right before the Brady bill went into effect, when a former New Jersey resident bought a gun in Arizona, bypassing a background check that would have been required in our State, and shot four people at close range, in cold blood, at a motel in Saddle Brook. We need the Brady bill.

Our first try at a constitution, the Articles of Confederation, had to be scrapped after a few years because they put too much power in the States and they encouraged disunity and divisiveness.

States, by their very nature, are insular. Their goal is to take care of their own. But we are one nation, and in the words of Alexander Hamilton, "a nation without a national government is an awful spectacle."

We need to approach national problems with national solutions. We need to establish Federal policies to tackle issues with interstate effects. And we need to promote a national government motivated by a concern for decency, equity, and compassion.

That is why the Federal Government has set standards to prevent States from cutting off food stamps to children or eliminating aid to legal immigrants. As a nation, we agree that we need to reform welfare; as a U.S. Senator, I am not prepared to allow States to abolish it.

Philosophically, then, I am troubled by this bill.

Practically, I am appalled by it.

Despite significant improvements made in the mechanics of the bill by Senator LEVIN and others, it still presents us with a legislative maze.

It imposes an unacceptable burden on the Congressional Budget Office, which is tasked with the responsibility of providing us with cost estimates on literally hundreds of bills and amendments—a task which, in some cases, will be impossible.

It creates at least two points of order which can be raised against any bill or amendment and will, in some cases, prevent the Senate from dealing efficiently with what should be routine

matters. Despite the fact that the American people have told us that they have had quite enough of delay and procedural ploys and gridlock, this bill will give any individual Senator an opportunity to impede progress on any legislation. The Senate will, I am convinced, rue the day that it created the procedure contained in this bill.

Mr. President, I believe that the bipartisan work we did last year should have been ratified this year. Instead, blown by changing political winds, some Members decided we should go further than they had last year. The net result is a bill which superficially claims to be similar to last year's effort but is, in reality, a mandate for gridlock and an expression of unfounded fear of a federal system of government. It is also, unfortunately, a bill that I cannot support.

Mr. KOHL. Mr. President, I believe that for too long we in this body have taken a paternalistic attitude toward our colleagues in State and local governments, by telling them that we know best how they ought to conduct their business. We have been too willing to require State and local governments to address a problem, without giving them the financial assistance necessary to carry out that mandate. We forget that, if we pass the buck to State and local governments to fix these problems, we should also be willing to pass the bucks to pay for it, or be explicit that we are not doing so.

It is for that reason that I support this bill and intend to vote for final passage.

I appreciate the frustration of State and local officials as they have watched Federal funding to counties decline dramatically in the last decade, just as they have experienced a sharp rise in the demands the Federal Government has placed on them to fund Federal regulations and programs.

Let's face it, the Reagan-Bush policies which shifted more responsibility to State and local governments often did not include the necessary funds to pay for these programs. I have seen one estimate that funding to local governments under the Reagan administration declined by 50 percent. When you combine this shift with the erosion of the local tax revenue base caused by the recession of the early 1990's it is no surprise that State and local leaders are throwing up their hands in despair.

However, having said that, I agree with many of the comments made by my colleagues in the past week and a half regarding the complex nature of this bill, and the potential unintended consequences that might arise under this legislation.

That is why I offered an amendment, which was adopted, to ensure that we have not created a disincentive for States and local governments to take action. We must not stifle innovation at the State and local level by suggesting that those who wait for Congress to act will be rewarded with Federal funds. We must work to ensure that

this legislation does not penalize those States and local governments that are working to solve their own problems. This legislation was not intended to create gridlock at the State and local level.

That is also why I supported a sunset amendment. We will need to step back at some point down the road and determine if this process to make Congress explicit about the cost of mandates, and make us pay for them, has tied our own hands too much.

Mandates are not necessarily a dirty word and we should all remember that there are some good things that are in all our interests. The exclusions in the bill reflect some of these priorities: The constitutional rights of individuals, laws and regulations that prohibit discrimination on the basis of race, religion, gender, national origin, or handicapped, or disability status, emergency assistance at the request of States and local governments, and legislation necessary for our national security. There are other priorities which I wish had been included in the exemptions in this bill, such as legislation relating to class A human carcinogens, legislation which would impact the well-being of pregnant women, young children and the frail elderly, and legislation relating to child pornography, child labor laws, and child abuse.

Mr. President, I regret that these amendments were not adopted and that many other important clarifying amendments were tabled, often along party lines.

I support this legislation because I believe we have an obligation to be explicit about the mandates we are passing along to our States and local governments. Whether we decide to pay, for the mandate or not, we should be honest about what these mandates will cost.

Because, Mr. President, we all know who really pays in the end, and that's the taxpayer.

Mr. BRADLEY. Mr. President, we are about to finish work on S. 1, the unfunded mandates legislation. This has been a difficult process, and I regret to say that I cannot support the final product. In the final analysis, I feel it will create a real obstacle to the kind of laws that we need to protect my State and my constituents.

Earlier, I offered an amendment to the bill that highlights the way all governments—Federal, State, and local—often pass on the costs of supplying needed services and that we need to work together to reduce the total bill paid by the taxpayer. I was pleased that this amendment was adopted nearly unanimously.

In a nutshell, my point was: What difference does it make to a taxpayer if we cut Federal taxes, or refuse to raise them to pay for needed programs, and the taxpayers' State taxes increase? What difference does it make to the taxpayer if State taxes decrease or stay the same, when local taxes or property taxes increase in lock step? to

get control of the problem, we have to work together.

This bill's stated purpose is to slow a process that is becoming all too common. We face a deficit that we all decry. We are loath to raise taxes or truly cut spending. Yet, we all see in our States problems, issues that require a Federal response. The result is: We pass a law, and we pass on the bill.

This cannot go on. It has to change. We have to take into account the full cost—along with the benefits—of the laws we propose. And the legislation before us attempts a response.

On the other hand, I represent my State of New Jersey. We know too well why national programs are often needed. For years, another State dumped sewage off our shore that polluted our shoreline. Without a Federal law, and Federal water quality standards, how could we protect our own? Air currents likewise have no respect for State boundaries. We're downwind of too many States that, frankly, aren't very concerned about our problems with air quality and our status as the second worst region in the country. It doesn't surprise me that the Governor of Ohio is strongly against Federal air quality regulations. But we in New Jersey can not clean up for them, too. This legislation makes it far too easy to block the creation and implementation of Federal laws intended to protect a State like New Jersey.

We need a better accounting of the costs that are sometimes too slyly passed along. We need to give the Governors and mayors more funding and more regulatory flexibility to reduce costs. But, we need national programs, from time to time, and we don't need new ways for naysaying legislators or bureaucrats to keep us from protecting our own.

Mr. President, eliminating or minimizing unfunded mandates is a laudable goal. But it cannot provide a straitjacket for the Congress or be the excuse for legislators to stop needed laws for the protection of the public. This bill should drive a rational decision on public mandates. It does much more.

Last Congress, the Senate Government Affairs Committee reported an unfunded mandates bill that almost all of us would have supported. It wasn't as aggressive a bill as some would argue for. But that bill did require authorizing committees to recognize and acknowledge explicitly the cost to State and local officials of regulatory mandates. It represented real progress, and was strongly endorsed by Governors and mayors around the country.

The Senate, however, has now complicated the issue immensely. Two weeks ago, we began the consideration of legislation that was substantially altered from the bill reported last Congress. Hearings on the bill were simply perfunctory and many of my colleagues have come to the floor with basic questions of how this bill will work in the future.

Let me illustrate some of my own concerns about this legislation by talking about a specific piece of legislation, not a hypothetical, that I've introduced. It's a bill that I'm very proud of, that has strong bipartisan support, and is even implicitly part of the Contract With America. The bill is, frankly, a collection of mandates on States. It is the Interstate Child Support Enforcement Act, which I introduced last Congress as S. 689 and will reintroduce this year.

A single parent has lost her ability to support her children when an absent parent moves out of State to evade court-ordered child support. This bill would repair all the holes in the interstate system of child support, to make those absent parents take responsibility for their children. This is a new bill, and these are new mandates, so there is no question that this legislation would apply to it.

Child support enforcement exemplifies a certain type of Federal mandate on States: The mandate that smooths and improves relationships among States, to make an effective Federal system possible.

Some advocates for improving child support enforcement argue that States don't do a good enough job of collecting, because \$6 billion or so of court-ordered child support goes uncollected. They advocate replacing the State-based system with a fully Federal system, a whole new bureaucracy.

I would rather make the State-based system work. If States are required to give full faith and credit to child support orders from another State, if they are required to use comparable support order forms, if they are required to withhold lottery winnings, for example, from deadbeat parents no matter where the children live, then the State-based system can work efficiently and cheaply. The mandate to California improves the program in New Jersey, and vice versa. The only alternative to this kind of mandate, which will be undercut by passage of this bill, is a new Federal bureaucracy.

I do not imagine that a new bureaucracy would ever be the option preferred by the manager of this bill.

Second, my colleagues have raised questions about whether it is practical to ask the Congressional Budget Office to estimate costs to States and localities. In the case of child support enforcement, we have already asked CBO to estimate the costs to States, and they have worked hard at the project. They have surveyed States, asking what they are already doing and asking them to estimate the cost of the new tasks that the legislation would require. Not only do we not yet know the exact cost, but I doubt that we know for sure, after more than a year of research, whether the total cost of the mandates, offset by savings, would even exceed \$50 million, and thus fall under the purview of this bill.

CBO doesn't get these figures out of thin air, after all. We are unfortu-

nately overly dependent on States' own estimates, sometimes their overestimates, of the costs, and we are also forced to depend on outside advocacy organizations or State bureaucrats, both of which may have their own ideas about policy. The point has been made several times: Let's not treat this CBO analysis with a reverence that even the CBO would have to admit is undeserved.

Third, S.1 will track and complicate all legislation for years beyond when the authorizing committee acts. I'm sure many of the bill's supporters look at this as a positive feature of the bill. But I join the many Senators who have raised questions about the possibility of shifting legislative authority to regulators and bureaucrats, if authorized funding—needed to offset the mandate costs—is not fully forthcoming from the appropriators.

The response to these concerns has generally followed one line. Under the terms of S.1, the authorizing committee will lay out "procedures under which such agency shall implement less costly programmatic and financial responsibilities * * * to the extent the an Appropriation Act does not provide for the estimated direct costs of such mandate." In other words, we expect the authorizing committee to lay out which mandates become inoperative if the appropriators fail to provide 100 percent of the amount.

Mr. President, I'm sorry, but this just doesn't pass the straight face test. Do we really expect the authorizing committees to provide a complete or even partially complete roadmap to account for all of the infinite possibilities open to future appropriators? The appropriators might provide 10 percent of the money, then go to 30 percent, then back to 20 percent—do we really expect that guidance provided by the authorizing committee will answer the issues raised? If this bill wasn't so important, we'd be laughing about this provision and its ludicrous implications.

If we take this idea seriously, every authorizing committee will have to come up with a complex decision tree for every law. If the appropriations are 30 percent, it would say, then implement regulation X, but only partially implement regulation Y. If appropriations are 40 percent, enforce X and Y but not Z. If we cannot map this out, we're leaving it up to bureaucrats to decide which laws to enforce. And this is a simple case. One appropriation directly funds three mandates. What happens in a more complex case, such as a block grant that States can use as they choose to fund mandates or their own priorities?

I hope my colleagues will consider the implications of this question before they begin their parallel drive to convert categorical Federal programs into block grants. Again, I will use child support as an example. Federal funds help States collect child support from the absent parents of children on

AFDC. For some activities, the Federal Government pays 75 percent of the cost of the mandate; in other cases there is an enhanced match to provide an incentive by rewarding success. The formula is complex, but in no case does the Federal Government pay 100 percent which is appropriate because it is the responsibility of the State to enforce child support and minimize welfare costs.

I have seen reports that the latest Republican proposal on welfare reform will involve consolidating hundreds of individual programs into one, open-ended block grant. Presumably this would include the \$2.2 billion IV-D program for States to collect child support. What happens if that program is folded in with many other welfare programs into a block grant of \$20 or \$30 billion, with no more matching rate or incentive payments? States could spend all the money to collect child support, or none of it? Is the mandate now to be considered totally unfunded, since there is no money specifically directed to it? Or is it now fully funded, since States could pay for it by shifting welfare funds away from other needs?

Mr. President, yesterday, we passed an amendment offered by Senator BYRD which tried to address these two issues by creating yet another legislative procedure. While I appreciate the intent of the amendment and endorse it, let no one think that this amendment solves these problems. Even if the authorizing committees act responsibly, even if the appropriators do everything they can, this new process still does not mitigate against real possibilities that have nightmarish implications.

What if there is an across-the-board sequester of funding? Does every agency stop implementing regulations?

The Byrd amendment was agreed to and improved the bill. But amendment after amendment was voted down, often on a party line. We tried to prevent regulations from targeting the private sector. This was rejected. We tried to prevent new roadblocks to legislation protecting children and the elderly. Rejected. We tried to make workable the point of order. Rejected.

Mr. President, I say today that I would have supported a bill to protect the States and local governments against unfunded mandates. I would have supported the legislation from last Congress, which was loudly endorsed on a bipartisan basis and by all the State and local government groups. But I cannot endorse S. 1.

In the past, we have passed legislation to clean the air and water. We've passed legislation to protect the public health and safety. We've passed legislation to ensure the preservation of our oceans, our beaches, our public lands. We do not do this because we desire to pass costs on to the States. We do this because this is what the public demands.

Certainly, we have to consider the costs to the States and local governments when we pass important legisla-

tion. This bill goes much farther. I believe that this bill will, if passed, be used to undercut fundamental laws that exist or will be created to improve our world and safeguard the public. I cannot support such a step.

Mr. MOYNIHAN. Mr. President, our Nation's Governors, mayors, and county executives have long sought relief from the imposition of unfunded mandates by the Federal Government. For too long, we have thought too little about the consequences of Federal decisions on the budgets of States, cities, counties, and towns. With the passage of S. 1, the Unfunded Mandate Reform Act, the Senate has undertaken an important and historic restructuring of the intergovernmental relationship between Washington and State and local governments.

Much of the debate on this bill has been about achieving an appropriate balance between the need to reduce the fiscal burdens on State and local governments and concern over impairment of the ability of Congress to legislate in areas where Federal responsibility is clear. Several amendments were debated on the floor in an attempt to achieve this balance. Among the amendments which I supported, but which was defeated, was one which would have excluded from S. 1's procedures mandates intended to apply equally to governmental entities and the private sector. Passage of this amendment would have expressly precluded situations from arising where either health and safety standards would apply differently to State and local governments than to the private sector, or where the private sector could have been placed at a competitive disadvantage. Although a separate amendment was approved requiring authorizing committees to include a description of any action taken by the committee to avoid any adverse impact on the competitive balance between the public and private sectors, this situation will nonetheless bear close watching.

Despite the failure of this amendment and others I supported to be adopted, I have concluded that, on balance, S. 1 is worthy of support. It recognizes—for the first time—that the Federal Government must consider the budgetary impact on States and localities of the laws we enact and the regulations we promulgate. This was an important acknowledgement and, I believe, a positive step.

I commend the managers of this legislation, and look forward House passage ad swift approval by the President.

Mr. KEMPTHORNE. Mr. President, I ask that we now go to third reading of the bill.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

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

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass? The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Texas [Mr. GRAMM] and the Senator from Arizona [Mr. MCCAIN] are necessarily absent.

Mr. FORD. I announce that the Senator from Hawaii [Mr. AKAKA] and the Senator from Hawaii [Mr. INOUE] are necessarily absent.

I further announce that, if present and voting, the Senator from Hawaii [Mr. AKAKA] would vote "nay."

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

The result was announced—yeas 86, nays 10, as follows:

[Rollcall Vote No. 61 Leg.]

YEAS—86

Abraham	Feinstein	Mikulski
Ashcroft	Ford	Moseley-Braun
Baucus	Frist	Moynihan
Bennett	Glenn	Murkowski
Biden	Gorton	Murray
Bingaman	Graham	Nickles
Bond	Grams	Nunn
Breaux	Grassley	Packwood
Brown	Gregg	Pell
Bryan	Harkin	Pressler
Burns	Hatch	Pryor
Campbell	Hatfield	Reid
Chafee	Heflin	Robb
Coats	Helms	Rockefeller
Cochran	Hutchison	Roth
Cohen	Inhofe	Santorum
Conrad	Jeffords	Shelby
Coverdell	Johnston	Simon
Craig	Kassebaum	Simpson
D'Amato	Kempthorne	Smith
Daschle	Kennedy	Snowe
DeWine	Kerrey	Specter
Dodd	Kerry	Stevens
Dole	Kohl	Thomas
Domenici	Kyl	Thompson
Dorgan	Lott	Thurmond
Exon	Lugar	Warner
Faircloth	Mack	Wellstone
Feingold	McConnell	

NAYS—10

Boxer	Hollings	Lieberman
Bradley	Lautenberg	Sarbanes
Bumpers	Leahy	
Byrd	Levin	

NOT VOTING—4

Akaka	Inouye
Gramm	McCain

So the bill (S. 1), as amended, was passed, as follows:

S. 1

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Unfunded Mandate Reform Act of 1995".

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to strengthen the partnership between the Federal Government and State, local, and tribal governments;

(2) to end the imposition, in the absence of full consideration by Congress, of Federal mandates on State, local, and tribal governments without adequate Federal funding, in

a manner that may displace other essential State, local, and tribal governmental priorities;

(3) to assist Congress in its consideration of proposed legislation establishing or revising Federal programs containing Federal mandates affecting State, local, and tribal governments, and the private sector by—

(A) providing for the development of information about the nature and size of mandates in proposed legislation; and

(B) establishing a mechanism to bring such information to the attention of the Senate and the House of Representatives before the Senate and the House of Representatives vote on proposed legislation;

(4) to promote informed and deliberate decisions by Congress on the appropriateness of Federal mandates in any particular instance;

(5) to require that Congress consider whether to provide funding to assist State, local, and tribal governments in complying with Federal mandates, to require analyses of the impact of private sector mandates, and through the dissemination of that information provide informed and deliberate decisions by Congress and Federal agencies and retain competitive balance between the public and private sectors;

(6) to establish a point-of-order vote on the consideration in the Senate and House of Representatives of legislation containing significant Federal mandates; and

(7) to assist Federal agencies in their consideration of proposed regulations affecting State, local, and tribal governments, by—

(A) requiring that Federal agencies develop a process to enable the elected and other officials of State, local, and tribal governments to provide input when Federal agencies are developing regulations; and

(B) requiring that Federal agencies prepare and consider better estimates of the budgetary impact of regulations containing Federal mandates upon State, local, and tribal governments before adopting such regulations, and ensuring that small governments are given special consideration in that process.

SEC. 3. DEFINITIONS.

For purposes of this Act—

(1) the terms defined under section 408(h) of the Congressional Budget and Impoundment Control Act of 1974 (as added by section 101 of this Act) shall have the meanings as so defined; and

(2) the term "Director" means the Director of the Congressional Budget Office.

SEC. 4. EXCLUSIONS.

This Act shall not apply to any provision in a bill, joint resolution, amendment, motion, or conference report before Congress and any provision in a proposed or final Federal regulation that—

(1) enforces constitutional rights of individuals;

(2) establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability;

(3) requires compliance with accounting and auditing procedures with respect to grants or other money or property provided by the United States Government;

(4) provides for emergency assistance or relief at the request of any State, local, or tribal government or any official of a State, local, or tribal government;

(5) is necessary for the national security or the ratification or implementation of international treaty obligations; or

(6) the President designates as emergency legislation and that the Congress so designates in statute.

SEC. 5. AGENCY ASSISTANCE.

Each agency shall provide to the Director such information and assistance as the Di-

rector may reasonably request to assist the Director in carrying out this Act.

TITLE I—LEGISLATIVE ACCOUNTABILITY AND REFORM

SEC. 101. LEGISLATIVE MANDATE ACCOUNTABILITY AND REFORM.

(a) IN GENERAL.—Title IV of the Congressional Budget and Impoundment Control Act of 1974 is amended by adding at the end thereof the following new section:

"SEC. 408. LEGISLATIVE MANDATE ACCOUNTABILITY AND REFORM.

"(a) DUTIES OF CONGRESSIONAL COMMITTEES.—

"(1) IN GENERAL.—When a committee of authorization of the Senate or the House of Representatives reports a bill or joint resolution of public character that includes any Federal mandate, the report of the committee accompanying the bill or joint resolution shall contain the information required by paragraphs (3) and (4).

"(2) SUBMISSION OF BILLS TO THE DIRECTOR.—When a committee of authorization of the Senate or the House of Representatives orders reported a bill or joint resolution of a public character, the committee shall promptly provide the bill or joint resolution to the Director of the Congressional Budget Office and shall identify to the Director any Federal mandates contained in the bill or resolution.

"(3) REPORTS ON FEDERAL MANDATES.—Each report described under paragraph (1) shall contain—

"(A) an identification and description of any Federal mandates in the bill or joint resolution, including the direct costs to State, local, and tribal governments, and to the private sector, required to comply with the Federal mandates;

"(B) a qualitative, and if practicable, a quantitative assessment of costs and benefits anticipated from the Federal mandates (including the effects on health and safety and the protection of the natural environment); and

"(C) a statement of the degree to which a Federal mandate affects both the public and private sectors and the extent to which Federal payment of public sector costs or the modification or termination of the Federal mandate as provided under subsection (c)(1)(B) would affect the competitive balance between State, local, or tribal governments and privately owned businesses including a description of the actions, if any, taken by the committee to avoid any adverse impact on the private sector or the competitive balance between the public sector and the private sector.

"(4) INTERGOVERNMENTAL MANDATES.—If any of the Federal mandates in the bill or joint resolution are Federal intergovernmental mandates, the report required under paragraph (1) shall also contain—

"(A)(i) a statement of the amount, if any, of increase or decrease in authorization of appropriations under existing Federal financial assistance programs, or of authorization of appropriations for new Federal financial assistance, provided by the bill or joint resolution and usable for activities of State, local, or tribal governments subject to the Federal intergovernmental mandates;

"(ii) a statement of whether the committee intends that the Federal intergovernmental mandates be partly or entirely unfunded, and if so, the reasons for that intention; and

"(iii) if funded in whole or in part, a statement of whether and how the committee has created a mechanism to allocate the funding in a manner that is reasonably consistent with the expected direct costs among and between the respective levels of State, local, and tribal government; and

"(B) any existing sources of Federal assistance in addition to those identified in subparagraph (A) that may assist State, local, and tribal governments in meeting the direct costs of the Federal intergovernmental mandates.

"(5) PREEMPTION CLARIFICATION AND INFORMATION.—When a committee of authorization of the Senate or the House of Representatives reports a bill or joint resolution of public character, the committee report accompanying the bill or joint resolution shall contain, if relevant to the bill or joint resolution, an explicit statement on the extent to which the bill or joint resolution preempts any State, local, or tribal law, and, if so, an explanation of the reasons for such preemption.

"(6) PUBLICATION OF STATEMENT FROM THE DIRECTOR.—

"(A) Upon receiving a statement (including any supplemental statement) from the Director under subsection (b), a committee of the Senate or the House of Representatives shall publish the statement in the committee report accompanying the bill or joint resolution to which the statement relates if the statement is available at the time the report is printed.

"(B) If the statement is not published in the report, or if the bill or joint resolution to which the statement relates is expected to be considered by the Senate or the House of Representatives before the report is published, the committee shall cause the statement, or a summary thereof, to be published in the Congressional Record in advance of floor consideration of the bill or joint resolution.

"(b) DUTIES OF THE DIRECTOR; STATEMENTS ON BILLS AND JOINT RESOLUTIONS OTHER THAN APPROPRIATIONS BILLS AND JOINT RESOLUTIONS.—

"(1) FEDERAL INTERGOVERNMENTAL MANDATES IN REPORTED BILLS AND RESOLUTIONS.—For each bill or joint resolution of a public character reported by any committee of authorization of the Senate or the House of Representatives, the Director of the Congressional Budget Office shall prepare and submit to the committee a statement as follows:

"(A) If the Director estimates that the direct cost of all Federal intergovernmental mandates in the bill or joint resolution will equal or exceed \$50,000,000 (adjusted annually for inflation) in the fiscal year in which any Federal intergovernmental mandate in the bill or joint resolution (or in any necessary implementing regulation) would first be effective or in any of the 4 fiscal years following such fiscal year, the Director shall so state, specify the estimate, and briefly explain the basis of the estimate.

"(B) The estimate required under subparagraph (A) shall include estimates (and brief explanations of the basis of the estimates) of—

"(i) the total amount of direct cost of complying with the Federal intergovernmental mandates in the bill or joint resolution, but no more than 10 years beyond the effective date of the mandate; and

"(ii) the amount, if any, of increase in authorization of appropriations under existing Federal financial assistance programs, or of authorization of appropriations for new Federal financial assistance, provided by the bill or joint resolution and usable by State, local, or tribal governments for activities subject to the Federal intergovernmental mandates.

"(C) If the Director determines that it is not feasible to make a reasonable estimate that would be required under subparagraphs (A) and (B), the Director shall not make the estimate, but shall report in the statement that the reasonable estimate cannot be made

and shall include the reasons for that determination in the statement. If such determination is made by the Director, a point of order shall lie only under subsection (c)(1)(A) and as if the requirement of subsection (c)(1)(A) had not been met.

“(2) FEDERAL PRIVATE SECTOR MANDATES IN REPORTED BILLS AND JOINT RESOLUTIONS.—For each bill or joint resolution of a public character reported by any committee of authorization of the Senate or the House of Representatives, the Director of the Congressional Budget Office shall prepare and submit to the committee a statement as follows:

“(A) If the Director estimates that the direct cost of all Federal private sector mandates in the bill or joint resolution will equal or exceed \$200,000,000 (adjusted annually for inflation) in the fiscal year in which any Federal private sector mandate in the bill or joint resolution (or in any necessary implementing regulation) would first be effective or in any of the 4 fiscal years following such fiscal year, the Director shall so state, specify the estimate, and briefly explain the basis of the estimate.

“(B) Estimates required under this paragraph shall include estimates (and a brief explanation of the basis of the estimates) of—

“(i) the total amount of direct costs of complying with the Federal private sector mandates in the bill or joint resolution, but no more than 10 years beyond the effective date of the mandate; and

“(ii) the amount, if any, of increase in authorization of appropriations under existing Federal financial assistance programs, or of authorization of appropriations for new Federal financial assistance, provided by the bill or joint resolution usable by the private sector for the activities subject to the Federal private sector mandates.

“(C) If the Director determines that it is not feasible to make a reasonable estimate that would be required under subparagraphs (A) and (B), the Director shall not make the estimate, but shall report in the statement that the reasonable estimate cannot be made and shall include the reasons for that determination in the statement.

“(3) LEGISLATION FALLING BELOW THE DIRECT COSTS THRESHOLDS.—If the Director estimates that the direct costs of a Federal mandate will not equal or exceed the thresholds specified in paragraphs (1) and (2), the Director shall so state and shall briefly explain the basis of the estimate.

“(4) AMENDED BILLS AND JOINT RESOLUTIONS; CONFERENCE REPORTS.—If a bill or joint resolution is passed in an amended form (including if passed by one House as an amendment in the nature of a substitute for the text of a bill or joint resolution from the other House) or is reported by a committee of conference in amended form, and the amended form contains a Federal mandate not previously considered by either House or which contains an increase in the direct cost of a previously considered Federal mandate, then the committee of conference shall ensure, to the greatest extent practicable, that the Director shall prepare a statement as provided in this paragraph or a supplemental statement for the bill or joint resolution in that amended form.

“(c) LEGISLATION SUBJECT TO POINT OF ORDER IN THE SENATE.—

“(1) IN GENERAL.—It shall not be in order in the Senate to consider—

“(A) 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; and

“(B) any bill, joint resolution, amendment, motion, or conference report that would increase the direct costs of Federal intergov-

ernmental mandates by an amount that causes the thresholds specified in subsection (b)(1)(A) to be exceeded, unless—

“(i) the bill, joint resolution, amendment, motion, or conference report provides direct spending authority for each fiscal year for the Federal intergovernmental mandates included in the bill, joint resolution, amendment, motion, or conference report in an amount that is equal to the direct costs of such mandate;

“(ii) the bill, joint resolution, amendment, motion, or conference report provides an increase in receipts and an increase in direct spending authority for each fiscal year for the Federal intergovernmental mandates included in the bill, joint resolution, amendment, motion, or conference report in an amount equal to the direct costs of such mandate; or

“(iii) the bill, joint resolution, amendment, motion, or conference report includes an authorization for appropriations in an amount equal to the direct costs of such mandate, and—

“(I) identifies a specific dollar amount of the direct costs of the mandate for each year or other period up to 10 years during which the mandate shall be in effect under the bill, joint resolution, amendment, motion or conference report, and such estimate is consistent with the estimate determined under paragraph (5) for each fiscal year; and

“(II) identifies any appropriation bill that is expected to provide for Federal funding of the direct cost referred to under subclause (III);

“(III)(aa) provides that if for any fiscal year the responsible Federal agency determines that there are insufficient appropriations to provide for the estimated direct costs of the mandate, the Federal agency shall (not later than 30 days after the beginning of the fiscal year) notify the appropriate authorizing committees of Congress of the determination and submit either—

“(1) a statement that the agency has determined, based on a re-estimate of the direct costs of a mandate, after consultation with State, local, and tribal governments, that the amount appropriated is sufficient to pay for the direct costs of the mandate; or

“(2) legislative recommendations for either implementing a less costly mandate or making the mandate ineffective for the fiscal year;

“(bb) provides expedited procedures for the consideration of the statement or legislative recommendations referred to in item (aa) by Congress not later than 30 days after the statement or recommendations are submitted to Congress; and

“(cc) provides that the mandate shall—

“(1) in the case of a statement referred to in item (aa)(1), cease to be effective 60 days after the statement is submitted unless Congress has approved the agency's determination by joint resolution during the 60-day period;

“(2) cease to be effective 60 days after the date the legislative recommendations of the responsible Federal agency are submitted to Congress under item (aa)(2) unless Congress provides otherwise by law; or

“(3) in the case of a mandate that has not yet taken effect, continue not to be effective unless Congress provides otherwise by law.

“(2) RULE OF CONSTRUCTION.—The provisions of paragraph (1)(B)(III) shall not be construed to prohibit or otherwise restrict a State, local, or tribal government from voluntarily electing to remain subject to the original Federal intergovernmental mandate, complying with the programmatic or financial responsibilities of the original Federal intergovernmental mandate and providing the funding necessary consistent with the costs of Federal agency assistance, monitoring, and enforcement.

“(3) COMMITTEE ON APPROPRIATIONS.—(A) Paragraph (1)—

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

“(ii) 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.

“(B) Upon a point of order being made by any Senator against any provision listed in subparagraph (A)(ii), 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.

“(4) DETERMINATIONS OF APPLICABILITY TO PENDING LEGISLATION.—For purposes of this subsection, in the Senate, the presiding officer of the Senate shall consult with the Committee on Governmental Affairs, to the extent practicable, on questions concerning the applicability of this section to a pending bill, joint resolution, amendment, motion, or conference report.

“(5) DETERMINATIONS OF FEDERAL MANDATE LEVELS.—For purposes of this subsection, in the Senate, the levels of Federal mandates for a fiscal year shall be determined based on the estimates made by the Committee on the Budget.

“(d) ENFORCEMENT IN THE HOUSE OF REPRESENTATIVES.—It shall not be in order in the House of Representatives to consider a rule or order that waives the application of subsection (c) to a bill or joint resolution reported by a committee of authorization.

“(e) REQUESTS FROM SENATORS.—At the written request of a Senator, the Director shall, to the extent practicable, prepare an estimate of the direct costs of a Federal intergovernmental mandate contained in a bill, joint resolution, amendment, or motion of such Senator.

“(f) CLARIFICATION OF APPLICATION.—(1) This section applies to any bill, joint resolution, amendment, motion, or conference report that reauthorizes appropriations, or that amends existing authorizations of appropriations, to carry out any statute, or that otherwise amends any statute, only if enactment of the bill, joint resolution, amendment, motion, or conference report—

“(A) would result in a net reduction in or elimination of authorization of appropriations for Federal financial assistance that would be provided to State, local, or tribal governments for use for the purpose of complying with any Federal intergovernmental mandate, or to the private sector for use to comply with any Federal private sector mandate, and would not eliminate or reduce duties established by the Federal mandate by a corresponding amount; or

“(B) would result in a net increase in the aggregate amount of direct costs of Federal

intergovernmental mandates or Federal private sector mandates otherwise than as described in subparagraph (A).

“(2)(A) For purposes of this section, the direct cost of the Federal mandates in a bill, joint resolution, amendment, motion, or conference report that reauthorizes appropriations, or that amends existing authorizations of appropriations, to carry out a statute, or that otherwise amends any statute, means the net increase, resulting from enactment of the bill, joint resolution, amendment, motion, or conference report, in the amount described under subparagraph (B)(i) over the amount described under subparagraph (B)(ii).

“(B) The amounts referred to under subparagraph (A) are—

“(i) the aggregate amount of direct costs of Federal mandates that would result under the statute if the bill, joint resolution, amendment, motion, or conference report is enacted; and

“(ii) the aggregate amount of direct costs of Federal mandates that would result under the statute if the bill, joint resolution, amendment, motion, or conference report were not enacted.

“(C) For purposes of this paragraph, in the case of legislation to extend authorization of appropriations, the authorization level that would be provided by the extension shall be compared to the authorization level for the last year in which authorization of appropriations is already provided.

“(g) EXCLUSIONS.—This section shall not apply to any provision in a bill, joint resolution, amendment, motion, or conference report before Congress that—

“(1) enforces constitutional rights of individuals;

“(2) establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability;

“(3) requires compliance with accounting and auditing procedures with respect to grants or other money or property provided by the United States Government;

“(4) provides for emergency assistance or relief at the request of any State, local, or tribal government or any official of a State, local, or tribal government;

“(5) is necessary for the national security or the ratification or implementation of international treaty obligations; or

“(6) the President designates as emergency legislation and that the Congress so designates in statute.

“(h) DEFINITIONS.—For purposes of this section:

“(1) The term ‘Federal intergovernmental mandate’ means—

“(A) any provision in legislation, statute, or regulation that—

“(i) would impose an enforceable duty upon State, local, or tribal governments, except—

“(I) a condition of Federal assistance; or

“(II) a duty arising from participation in a voluntary Federal program, except as provided in subparagraph (B)); or

“(ii) would reduce or eliminate the amount of authorization of appropriations for—

“(I) Federal financial assistance that would be provided to State, local, or tribal governments for the purpose of complying with any such previously imposed duty unless such duty is reduced or eliminated by a corresponding amount; or

“(II) the control of borders by the Federal Government; or reimbursement to State, local, or tribal governments for the net cost associated with illegal, deportable, and excludable aliens, including court-mandated expenses related to emergency health care, education or criminal justice; when such a reduction or elimination would result in increased net costs to State, local, or tribal

governments in providing education or emergency health care to, or incarceration of, illegal aliens; except that this subclause shall not be in effect with respect to a State, local, or tribal government, to the extent that such government has not fully cooperated in the efforts of the Federal Government to locate, apprehend, and deport illegal aliens;

“(B) any provision in legislation, statute, or regulation that relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority, if the provision—

“(i)(I) would increase the stringency of conditions of assistance to State, local, or tribal governments under the program; or

“(II) would place caps upon, or otherwise decrease, the Federal Government’s responsibility to provide funding to State, local, or tribal governments under the program; and

“(ii) the State, local, or tribal governments that participate in the Federal program lack authority under that program to amend their financial or programmatic responsibilities to continue providing required services that are affected by the legislation, statute, or regulation.

“(2) The term ‘Federal private sector mandate’ means any provision in legislation, statute, or regulation that—

“(A) would impose an enforceable duty upon the private sector except—

“(i) a condition of Federal assistance; or

“(ii) a duty arising from participation in a voluntary Federal program; or

“(B) would reduce or eliminate the amount of authorization of appropriations for Federal financial assistance that will be provided to the private sector for the purposes of ensuring compliance with such duty.

“(3) The term ‘Federal mandate’ means a Federal intergovernmental mandate or a Federal private sector mandate, as defined in paragraphs (1) and (2).

“(4) The terms ‘Federal mandate direct costs’ and ‘direct costs’—

“(A)(i) in the case of a Federal intergovernmental mandate, mean the aggregate estimated amounts that all State, local, and tribal governments would be required to spend in order to comply with the Federal intergovernmental mandate; or

“(ii) in the case of a provision referred to in paragraph (1)(A)(ii), mean the amount of Federal financial assistance eliminated or reduced;

“(B) in the case of a Federal private sector mandate, mean the aggregate estimated amounts that the private sector will be required to spend in order to comply with the Federal private sector mandate;

“(C) shall not include—

“(i) estimated amounts that the State, local, and tribal governments (in the case of a Federal intergovernmental mandate) or the private sector (in the case of a Federal private sector mandate) would spend—

“(I) to comply with or carry out all applicable Federal, State, local, and tribal laws and regulations in effect at the time of the adoption of the Federal mandate for the same activity as is affected by that Federal mandate; or

“(II) to comply with or carry out State, local, and tribal governmental programs, or private-sector business or other activities in effect at the time of the adoption of the Federal mandate for the same activity as is affected by that mandate; or

“(iii) expenditures to the extent that such expenditures will be offset by any direct savings to the State, local, and tribal governments, or by the private sector, as a result of—

“(I) compliance with the Federal mandate; or

“(II) other changes in Federal law or regulation that are enacted or adopted in the same bill or joint resolution or proposed or final Federal regulation and that govern the same activity as is affected by the Federal mandate; and

“(D) shall be determined on the assumption that State, local, and tribal governments, and the private sector will take all reasonable steps necessary to mitigate the costs resulting from the Federal mandate, and will comply with applicable standards of practice and conduct established by recognized professional or trade associations. Reasonable steps to mitigate the costs shall not include increases in State, local, or tribal taxes or fees.

“(5) The term ‘amount’, with respect to an authorization of appropriations for Federal financial assistance, means the amount of budget authority for any Federal grant assistance program or any Federal program providing loan guarantees or direct loans.

“(6) The term ‘private sector’ means all persons or entities in the United States, including individuals, partnerships, associations, corporations, and educational and nonprofit institutions, but shall not include State, local, or tribal governments.

“(7) The term ‘local government’ has the same meaning as in section 6501(6) of title 31, United States Code.

“(8) The term ‘tribal government’ means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601 et seq.) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians.

“(9) The term ‘small government’ means any small governmental jurisdictions defined in section 601(5) of title 5, United States Code, and any tribal government.

“(10) The term ‘State’ has the same meaning as in section 6501(9) of title 31, United States Code.

“(11) The term ‘agency’ has the meaning as defined in section 551(1) of title 5, United States Code, but does not include independent regulatory agencies, as defined in section 3502(10) of title 44, United States Code, or the Office of the Comptroller of the Currency or the Office of Thrift Supervision.

“(12) The term ‘regulation’ or ‘rule’ has the meaning of ‘rule’ as defined in section 601(2) of title 5, United States Code.

“(13) The term ‘direct savings’, when used with respect to the result of compliance with the Federal mandate—

“(A) in the case of a Federal intergovernmental mandate, means the aggregate estimated reduction in costs to any State, local, or tribal government as a result of compliance with the Federal intergovernmental mandate; and

“(B) in the case of a Federal private sector mandate, means the aggregate estimated reduction in costs to the private sector as a result of compliance with the Federal private sector mandate.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of contents in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended by adding after the item relating to section 407 the following new item:

“Sec. 408. Legislative mandate accountability and reform.”.

SEC. 102. ASSISTANCE TO COMMITTEES AND STUDIES.

The Congressional Budget and Impoundment Control Act of 1974 is amended—

(1) in section 202—

(A) in subsection (c)—

(i) by redesignating paragraph (2) as paragraph (3); and

(ii) by inserting after paragraph (1) the following new paragraph:

“(2) At the request of any committee of the Senate or the House of Representatives, the Office shall, to the extent practicable, consult with and assist such committee in analyzing the budgetary or financial impact of any proposed legislation that may have—

“(A) a significant budgetary impact on State, local, or tribal governments; or

“(B) a significant financial impact on the private sector.”;

(B) by amending subsection (h) to read as follows:

“(h) STUDIES.—

“(1) CONTINUING STUDIES.—The Director of the Congressional Budget Office shall conduct continuing studies to enhance comparisons of budget outlays, credit authority, and tax expenditures.

“(2) FEDERAL MANDATE STUDIES.—

“(A) At the request of any Chairman or ranking member of the minority of a Committee of the Senate or the House of Representatives, the Director shall, to the extent practicable, conduct a study of a Federal mandate legislative proposal.

“(B) In conducting a study on intergovernmental mandates under subparagraph (A), the Director shall—

“(i) solicit and consider information or comments from elected officials (including their designated representatives) of State, local, or tribal governments as may provide helpful information or comments;

“(ii) consider establishing advisory panels of elected officials or their designated representatives, of State, local, or tribal governments if the Director determines that such advisory panels would be helpful in performing responsibilities of the Director under this section; and

“(iii) if, and to the extent that the Director determines that accurate estimates are reasonably feasible, include estimates of—

“(I) the future direct cost of the Federal mandate to the extent that such costs significantly differ from or extend beyond the 5-year period after the mandate is first effective; and

“(II) any disproportionate budgetary effects of Federal mandates upon particular industries or sectors of the economy, States, regions, and urban or rural or other types of communities, as appropriate.

“(C) In conducting a study on private sector mandates under subparagraph (A), the Director shall provide estimates, if and to the extent that the Director determines that such estimates are reasonably feasible, of—

“(i) future costs of Federal private sector mandates to the extent that such mandates differ significantly from or extend beyond the 5-year time period referred to in subparagraph (B)(iii)(I);

“(ii) any disproportionate financial effects of Federal private sector mandates and of any Federal financial assistance in the bill or joint resolution upon any particular industries or sectors of the economy, States, regions, and urban or rural or other types of communities; and

“(iii) the effect of Federal private sector mandates in the bill or joint resolution on the national economy, including the effect on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of United States goods and services.”; and

(2) in section 301(d) by adding at the end thereof the following new sentence: “Any Committee of the House of Representatives or the Senate that anticipates that the committee will consider any proposed legislation establishing, amending, or reauthorizing any

Federal program likely to have a significant budgetary impact on any State, local, or tribal government, or likely to have a significant financial impact on the private sector, including any legislative proposal submitted by the executive branch likely to have such a budgetary or financial impact, shall include its views and estimates on that proposal to the Committee on the Budget of the applicable House.”.

SEC. 103. COST OF REGULATIONS.

(a) SENSE OF THE CONGRESS.—It is the sense of the Congress that Federal agencies should review and evaluate planned regulations to ensure that the cost estimates provided by the Congressional Budget Office will be carefully considered as regulations are promulgated.

(b) STATEMENT OF COST.—At the written request of any Senator, the Director shall, to the extent practicable, prepare—

(1) an estimate of the costs of regulations implementing an Act containing a Federal mandate covered by section 408 of the Congressional Budget and Impoundment Control Act of 1974, as added by section 101(a) of this Act; and

(2) a comparison of the costs of such regulations with the cost estimate provided for such Act by the Congressional Budget Office.

(c) COOPERATION OF OFFICE OF MANAGEMENT AND BUDGET.—At the request of the Director of the Congressional Budget Office, the Director of the Office of Management and Budget shall provide data and cost estimates for regulations implementing an Act containing a Federal mandate covered by section 408 of the Congressional Budget and Impoundment Control Act of 1974, as added by section 101(a) of this Act.

SEC. 104. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Congressional Budget Office \$4,500,000 for each of the fiscal years 1996, 1997, 1998, 1999, 2000, 2001, and 2002 to carry out the provisions of this Act.

SEC. 105. EXERCISE OF RULEMAKING POWERS.

The provisions of section 101 are enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they shall be considered as part of the rules of such House, respectively, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of each House.

SEC. 106. REPEAL OF CERTAIN ANALYSIS BY CONGRESSIONAL BUDGET OFFICE.

Section 403 of the Congressional Budget Act of 1974 is amended—

(1) in subsection (a)—

(A) by striking paragraph (2);

(B) in paragraph (3) by striking “paragraphs (1) and (2)” and inserting “paragraph (1)”; and

(C) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively;

(2) by striking “(a)”; and

(3) by striking subsections (b) and (c).

SEC. 107. CONSIDERATION FOR FEDERAL FUNDING.

Nothing in this Act shall preclude a State, local, or tribal government that already complies with all or part of the Federal intergovernmental mandates included in the bill, joint resolution, amendment, motion, or conference report from consideration for Federal funding for the cost of the mandate, including the costs the State, local, or tribal government is currently paying and any ad-

ditional costs necessary to meet the mandate.

SEC. 108. IMPACT ON LOCAL GOVERNMENTS.

(a) FINDINGS.—The Senate finds that—

(1) the Congress should be concerned about shifting costs from Federal to State and local authorities and should be equally concerned about the growing tendency of States to shift costs to local governments;

(2) cost shifting from States to local governments has, in many instances, forced local governments to raise property taxes or curtail sometimes essential services; and

(3) increases in local property taxes and cuts in essential services threaten the ability of many citizens to attain and maintain the American dream of owning a home in a safe, secure community.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) the Federal Government should not shift certain costs to the State, and States should end the practice of shifting costs to local governments, which forces many local governments to increase property taxes;

(2) States should end the imposition, in the absence of full consideration by their legislatures, of State issued mandates on local governments without adequate State funding, in a manner that may displace other essential government priorities; and

(3) one primary objective of this Act and other efforts to change the relationship among Federal, State, and local governments should be to reduce taxes and spending at all levels and to end the practice of shifting costs from one level of government to another with little or no benefit to taxpayers.

SEC. 109. EFFECTIVE DATE.

This title shall take effect on January 1, 1996 or on the date 90 days after appropriations are made available as authorized under section 104, whichever is earlier and shall apply to legislation considered on and after such date.

TITLE II—REGULATORY ACCOUNTABILITY AND REFORM

SEC. 201. REGULATORY PROCESS.

(a) IN GENERAL.—Each agency shall, to the extent permitted in law—

(1) assess the effects of Federal regulations on State, local, and tribal governments (other than to the extent that such regulations incorporate requirements specifically set forth in legislation), and the private sector, including specifically the availability of resources to carry out any Federal intergovernmental mandates in those regulations; and

(2) seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with achieving statutory and regulatory objectives.

(b) STATE, LOCAL, AND TRIBAL GOVERNMENT INPUT.—Each agency shall, to the extent permitted in law, develop an effective process to permit elected officials (or their designated representatives) of State, local, and tribal governments to provide meaningful and timely input in the development of regulatory proposals containing significant Federal intergovernmental mandates. Such a process shall be consistent with all applicable laws.

(c) AGENCY PLAN.—

(1) EFFECTS ON STATE, LOCAL, AND TRIBAL GOVERNMENTS.—Before establishing any regulatory requirements that might significantly or uniquely affect small governments, agencies shall have developed a plan under which the agency shall—

(A) provide notice of the contemplated requirements to potentially affected small governments, if any;

(B) enable officials of affected small governments to provide input under subsection (b); and

(C) inform, educate, and advise small governments on compliance with the requirements.

(2) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to each agency to carry out the provisions of this section, and for no other purpose, such sums as are necessary.

SEC. 202. STATEMENTS TO ACCOMPANY SIGNIFICANT REGULATORY ACTIONS.

(a) **IN GENERAL.**—Before promulgating any final rule that includes any Federal intergovernmental mandate that may result in the expenditure by State, local, or tribal governments, and 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, and before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any such rule, the agency shall prepare a written statement containing—

(1) estimates by the agency, including the underlying analysis, of the anticipated costs to State, local, and tribal governments and the private sector of complying with the Federal intergovernmental mandate, and of the extent to which such costs may be paid with funds provided by the Federal Government or otherwise paid through Federal financial assistance;

(2) estimates by the agency, if and to the extent that the agency determines that accurate estimates are reasonably feasible, of—

(A) the future costs of the Federal intergovernmental mandate; and

(B) any disproportionate budgetary effects of the Federal intergovernmental mandate upon any particular regions of the Nation or particular State, local, or tribal governments, urban or rural or other types of communities;

(3) a qualitative, and if possible, a quantitative assessment of costs and benefits anticipated from the Federal intergovernmental mandate (such as the enhancement of health and safety and the protection of the natural environment);

(4) the effect of the Federal private sector mandate on the national economy, including the effect on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of United States goods and services; and

(5)(A) a description of the extent of the agency's prior consultation with elected representatives (or their designated representatives) of the affected State, local, and tribal governments;

(B) a summary of the comments and concerns that were presented by State, local, or tribal governments either orally or in writing to the agency;

(C) a summary of the agency's evaluation of those comments and concerns; and

(D) the agency's position supporting the need to issue the regulation containing the Federal intergovernmental mandates (considering, among other things, the extent to which costs may or may not be paid with funds provided by the Federal Government).

(b) **AGENCY STATEMENT; PRIVATE SECTOR MANDATES.**—Notwithstanding any other provision of this Act, an agency statement prepared pursuant to subsection (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.

(c) **PROMULGATION.**—In promulgating a general notice of proposed rulemaking or a final rule for which a statement under subsection

(a) is required, the agency shall include in the promulgation a summary of the information contained in the statement.

(d) **PREPARATION IN CONJUNCTION WITH OTHER STATEMENT.**—Any agency may prepare any statement required under subsection (a) in conjunction with or as a part of any other statement or analysis, provided that the statement or analysis satisfies the provisions of subsection (a).

SEC. 203. ASSISTANCE TO THE CONGRESSIONAL BUDGET OFFICE.

The Director of the Office of Management and Budget shall—

(1) collect from agencies the statements prepared under section 202; and

(2) periodically forward copies of such statements to the Director of the Congressional Budget Office on a reasonably timely basis after promulgation of the general notice of proposed rulemaking or of the final rule for which the statement was prepared.

SEC. 204. PILOT PROGRAM ON SMALL GOVERNMENT FLEXIBILITY.

(a) **IN GENERAL.**—The Director of the Office of Management and Budget, in consultation with Federal agencies, shall establish pilot programs in at least 2 agencies to test innovative, and more flexible regulatory approaches that—

(1) reduce reporting and compliance burdens on small governments; and

(2) meet overall statutory goals and objectives.

(b) **PROGRAM FOCUS.**—The pilot programs shall focus on rules in effect or proposed rules, or a combination thereof.

SEC. 205. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect 60 days after the date of enactment.

TITLE III—REVIEW OF UNFUNDED FEDERAL MANDATES

SEC. 301. BASELINE STUDY OF COSTS AND BENEFITS.

(a) **IN GENERAL.**—Not later than 180 days after the date of enactment of this Act, the Advisory Commission on Intergovernmental Relations (hereafter in this title referred to as the "Advisory Commission"), in consultation with the Director, shall begin a study to examine the measurement and definition issues involved in calculating the total costs and benefits to State, local, and tribal governments of compliance with Federal law.

(b) **CONSIDERATIONS.**—The study required by this section shall consider—

(1) the feasibility of measuring indirect costs and benefits as well as direct costs and benefits of the Federal, State, local, and tribal relationship; and

(2) how to measure both the direct and indirect benefits of Federal financial assistance and tax benefits to State, local, and tribal governments.

SEC. 302. REPORT ON UNFUNDED FEDERAL MANDATES BY ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS.

(a) **IN GENERAL.**—The Advisory Commission on Intergovernmental Relations shall in accordance with this section—

(1) investigate and review the role of unfunded Federal mandates in intergovernmental relations and their impact on State, local, tribal, and Federal government objectives and responsibilities;

(2) make recommendations to the President and the Congress regarding—

(A) allowing flexibility for State, local, and tribal governments in complying with specific unfunded Federal mandates for which terms of compliance are unnecessarily rigid or complex;

(B) reconciling any 2 or more unfunded Federal mandates which impose contradictory or inconsistent requirements;

(C) terminating unfunded Federal mandates which are duplicative, obsolete, or lacking in practical utility;

(D) suspending, on a temporary basis, unfunded Federal mandates which are not vital to public health and safety and which compound the fiscal difficulties of State, local, and tribal governments, including recommendations for triggering such suspension;

(E) consolidating or simplifying unfunded Federal mandates, or the planning or reporting requirements of such mandates, in order to reduce duplication and facilitate compliance by State, local, and tribal governments with those mandates; and

(F) establishing common Federal definitions or standards to be used by State, local, and tribal governments in complying with unfunded Federal mandates that use different definitions or standards for the same terms or principles; and

(3) identify in each recommendation made under paragraph (2), to the extent practicable, the specific unfunded Federal mandates to which the recommendation applies.

(b) **TREATMENT OF REQUIREMENTS FOR METRIC SYSTEMS OF MEASUREMENT.**—

(1) **TREATMENT.**—For purposes of subsection (a) (1) and (2), the Commission shall consider requirements for metric systems of measurement to be Federal mandates.

(2) **DEFINITION.**—In this subsection, the term "requirements for metric systems of measurement" means requirements of the departments, agencies, and other entities of the Federal Government that State, local, and tribal governments utilize metric systems of measurement.

(c) **CRITERIA.**—

(1) **IN GENERAL.**—The Commission shall establish criteria for making recommendations under subsection (a).

(2) **ISSUANCE OF PROPOSED CRITERIA.**—The Commission shall issue proposed criteria under this subsection not later than 60 days after the date of the enactment of this Act, and thereafter provide a period of 30 days for submission by the public of comments on the proposed criteria.

(3) **FINAL CRITERIA.**—Not later than 45 days after the date of issuance of proposed criteria, the Commission shall—

(A) consider comments on the proposed criteria received under paragraph (2);

(B) adopt and incorporate in final criteria any recommendations submitted in those comments that the Commission determines will aid the Commission in carrying out its duties under this section; and

(C) issue final criteria under this subsection.

(d) **PRELIMINARY REPORT.**—

(1) **IN GENERAL.**—Not later than 9 months after the date of the enactment of this Act, the Commission shall—

(A) prepare and publish a preliminary report on its activities under this title, including preliminary recommendations pursuant to subsection (a);

(B) publish in the Federal Register a notice of availability of the preliminary report; and

(C) provide copies of the preliminary report to the public upon request.

(2) **PUBLIC HEARINGS.**—The Commission shall hold public hearings on the preliminary recommendations contained in the preliminary report of the Commission under this subsection.

(e) **FINAL REPORT.**—Not later than 3 months after the date of the publication of the preliminary report under subsection (c), the Commission shall submit to the Congress, including the Committee on Government Reform and Oversight of the House of Representatives and the Committee on Governmental Affairs of the Senate, and to the

Present a final report on the findings, conclusions, and recommendations of the Commission under this section.

SEC. 303. SPECIAL AUTHORITIES OF ADVISORY COMMISSION.

(a) EXPERTS AND CONSULTANTS.—For purposes of carrying out this title, the Advisory Commission may procure temporary and intermittent services of experts or consultants under section 3109(b) of title 5, United States Code.

(b) DETAIL OF STAFF OF FEDERAL AGENCIES.—Upon request of the Executive Director of the Advisory Commission, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Advisory Commission to assist it in carrying out this title.

(c) CONTRACT AUTHORITY.—The Advisory Commission may, subject to appropriations, contract with and compensate government and private persons (including agencies) for property and services used to carry out its duties under this title.

SEC. 304. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Advisory Commission to carry out section 301 and section 302, \$1,250,000 for each of fiscal years 1995 and 1996.

TITLE IV—JUDICIAL REVIEW

SEC. 401. JUDICIAL REVIEW.

(a) IN GENERAL.—Any statement or report prepared under this Act, and any compliance or noncompliance with the provisions of this Act, and any determination concerning the applicability of the provisions of this Act shall not be subject to judicial review.

(b) RULE OF CONSTRUCTION.—No provision of this Act or amendment made by this Act shall be construed to create any right or benefit, substantive or procedural, enforceable by any person in any administrative or judicial action. No ruling or determination made under the provisions of this Act or amendments made by this Act shall be considered by any court in determining the intent of Congress or for any other purpose.

Mr. KEMPTHORNE. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

CHANGE OF VOTE

Mr. GLENN. Mr. President, I either misstated my vote or my vote was mismarked before on the Levin amendment No. 218. I was recorded as having voted "no" on that. I intended to vote "aye." Since it does not change the vote, I ask unanimous consent that my vote be changed to "aye" on that.

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

(The foregoing tally has been changed to reflect the above order.)

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will come to order.

Mr. DOLE. Mr. President, first I want to commend the managers of this bill, particularly my colleague Senator KEMPTHORNE. This is his third year, and I think he has done an outstanding job working with the distinguished

Senator from Ohio, Senator GLENN. He is someone who made this commitment and stuck with it.

Just for historical purposes, we have been on this bill a long, long time. The vote was 86 to 10. I think we could have finished it probably a week ago. We had 44 rollcall votes taken, 8 were unanimous. Of those 44 votes, 9 were taken on committee amendments that had been adopted unanimously in committee.

We started on this bill on Thursday, January 12, at 10:35 a.m. We had 10 full days debate on S. 1. We used about 58 hours 34 minutes: The Democrats, 36 hours 55 minutes; Republicans, 21 hours 39 minutes.

There were 211 amendments submitted to the desk. Of those 211, 68 were actually proposed—50 proposed by my Democratic friends, 18 proposed by Republicans; 30 were agreed to; 20 were tabled; 16 were withdrawn; 2 second-degree amendments fell; 3 have yet to be disposed of.

These are just sort of background facts on how long it has taken and how many amendments and how many hours.

I assume the next bill may take as much time. I hope not. If this was a warmup, we have a lot of work ahead of us.

I will also suggest that this is the first step in forging a new partnership. The 10th amendment to the United States Constitution reads:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

That is what this legislation is all about. The idea that power should be kept close to people, that is federalism. It is the idea on which our Nation was founded.

But I think we have made it very clear that we, in effect, have dusted off the 10th amendment in this effort. It has been a very successful effort. I know that we came close last year but did not quite get it. We wanted to do it in, I think, the last 2 days of the session. Maybe we could have done it in 2 days then, but it took 10 days now.

The distinguished Senator from Idaho, Senator KEMPTHORNE, Senator GLENN, Chairman ROTH, Chairman DOMENICI, and others, deserve immense credit for working together on a bipartisan basis with representatives from State, local, and tribal governments, Democrats, Republicans, and independents, private sector groups and key Members from the other body. In fact, a few moments ago, I saw the distinguished Governor of Ohio, Governor Voinovich, who has been one of the leaders in working with Governors, mayors, and everybody else across the country, calling Senators of both parties.

On the other side, my particular thanks to Congressman CLINGER and Congressman PORTMAN, because they crafted the bill that is before us today. It seems to me that all this hard work

is going to be a departure from business as usual and also, we are making a big, big step in the right direction.

THE FIRST STEP IN FORGING A NEW PARTNERSHIP

The 10th amendment to the U.S. Constitution reads:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people.

Federalism. The idea that power should be kept close to the people. It's the idea on which our Nation was founded. But there are some in Washington—perhaps fewer this year than last—who believe neither our States nor our people can be trusted with power. Federalism has given way to paternalism—with disastrous results.

In the 104th Congress, we plan to dust off the 10th amendment and restore it to its rightful place in the Constitution. Adoption of this legislation is the first step in that process, the first step in forging a new partnership between Congress and our partners at the State and local level. This partnership is bipartisan, as the vote demonstrated and as the support among officials at all levels of State and local government already demonstrates.

CHANGE FROM BUSINESS-AS-USUAL

The distinguished Senator from Idaho, Senator KEMPTHORNE, Senator GLENN, Chairman ROTH, Chairman DOMENICI, and others deserve immense credit for working together on a bipartisan basis with representatives from State, local, and tribal governments—Democrats, Republicans, and independents—private-sector groups and key Members in the other body—particularly Congressmen CLINGER and PORTMAN—to craft the bill that is before us today. All that hard work has produced a bill that will lead to a dramatic departure from business-as-usual in Washington.

Mr. President, for far too long, Congress has operated under the false assumption that legislation that did not affect the Federal budget had no cost. Nothing could be further from the truth.

According to private estimates, in 1994, the private sector and State and local governments spent between \$600 and \$800 billion complying with Federal regulations. In last year's budget, President Clinton projected that in 1994 the Federal Government would collect a total of \$549.9 billion from Federal income taxes on individuals.

In other words, State and local governments, private businesses, and ultimately taxpayers and consumers paid more to comply with Federal regulations than the Federal Government collected from Federal income taxes on individuals.

This bill will change the way we do business in Washington. It will lead to a more informed debate on the Senate floor, a debate that will require us to consider the potential cost of a new

mandate to State and local government and to the private sector, before the mandate is adopted.

For far too long, Congress has given State and local governments new responsibilities without supplying the money needed to fulfill these new obligations. Those unfunded mandates have forced State and local officials to cut services or increase taxes in order to keep their budgets in balance.

The costs are immense. California Governor, Pete Wilson, estimates that unfunded mandates cost his State \$7.7 billion last year.

MORE INFORMED DECISIONS

This new process is a reality check for advocates of new mandates. It forces those who want to expand the reach of the Federal Government to consider the potential cost of their actions to State and local governments and to the private sector—before they take action. It is a reality check for advocates of new mandates.

Those who want to create new mandates or expand existing ones have a choice: Either get an estimate of the potential cost of a new mandate and pay the full cost of imposing that mandate on State and local governments up front or try to get a majority of the Senate to agree that the Federal Government should not finance the new mandate.

This legislation is really about good government and accountability. Here's the bottom line: The potential costs of new legislation should be considered before the legislation is adopted.

WHO BENEFITS MOST FROM MANDATE RELIEF?

There has been a lot of discussion about who this legislation helps. It certainly is a top priority for State and local government officials—Democrats and Republicans—who are sick and tired of dealing with a Congress that passes the buck. I have met personally with representatives from the so-called Big 7—Governors, mayors, State legislators, county officials, school boards, and so forth. They know that mandate relief will make it easier for State and local officials to balance their budgets each year.

But, the real beneficiaries of this legislation are the people who ultimately pay all the bills for unfunded mandates: individual Americans.

People—not government—pay all the taxes, both hidden and direct, generated by unfunded mandates. Federal mandates on businesses lead to higher prices for goods and services people on those businesses.

When faced with an unfunded Federal mandate, State and local government officials make a choice—they cut services or raise taxes in order to comply with the new Federal requirements and balance their budgets.

Stemming the flow of unfunded Federal mandates from Washington will help keep State and local taxes down and help prevent cuts in education, crimefighting and other State and local services.

Mr. President, this is a good Government initiative that is long overdue. I am confident that it will be approved with broad bipartisan support. I hope that those in the other body will be able to act on this legislation without major changes and that we can get this important legislation to the President as quickly as possible.

So I want to again congratulate my colleagues.

UNFUNDED MANDATE REFORM ACT

Mr. DASCHLE. Mr. President, I thank the majority leader for yielding. I did not have the opportunity to listen to his entire statement, but his comments at the end reflect sentiments that I had intended to express.

This is the end of business as usual, at least as it affects our relationship with the States, local governments, and tribal governments. I commend the managers of the bill on both sides of the aisle for their hard work. They have done an outstanding job in the course of the last 2 weeks to bring us to this point.

Senator KEMPTHORNE and Senator GLENN have shown the demeanor and the comity between themselves, and certainly the patience in working with all of us, to make passage of this bill possible.

Let me also say that because we took the time, because we deliberated thoroughly for the last 2 weeks, because we have had the opportunity to offer amendments and considered them carefully, this is a much better bill than the version that was presented to this body just 2 weeks ago. It has been improved by the process. Those improvements resulted in broad bipartisan support for the legislation in the end.

To all of my colleagues, I say it is important that everyone understand the difference between the House and the Senate. Certainly, it is possible to pass legislation through the House more quickly, but I do not believe that all the legislation that goes through the House is exactly as we would like it in the Senate. The responsibility of the Senate is to deliberate more carefully and to deal more deliberately with the legislative issues at hand.

There are many very complicated and difficult questions we have had to face with this issue, as there will be with other bills that will come before us. The amendment process is our only means to effectively deal with those questions in a meaningful way.

So it is with great admiration that I come to the floor this afternoon to congratulate the two managers of this legislation. But I must remind my colleagues that the minority feels very strongly that as these amendments and bills come before us, we will take our time, we will do what we must to ensure that all matters related to the legislation get thorough consideration. We will be as supportive as possible when we agree with our Republican

colleagues on the merits. But certainly we must object when the process does not allow us or accord us the opportunities the minority deserves as these complicated bills come before us.

Mr. President, I yield the floor.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER (Mr. KEMPTHORNE). The Senator from South Carolina.

Mr. THURMOND. Mr. President, I was pleased to cosponsor S. 1, the Unfunded Mandates Reform Act of 1995, a bill to curb the practice of imposing unfunded Federal mandates on States and local governments.

This is an important piece of legislation, and I am delighted it has passed.

I wish to commend our majority leader, Senator DOLE, and all the others who joined on this bill as cosponsors. I especially wish to commend Senator DIRK KEMPTHORNE, the Republican manager of the bill, and Senator JOHN GLENN, the Democrat manager.

Senator KEMPTHORNE is a new Senator, yet he managed this bill as if he were a veteran of 20 years. He artfully handled it with great skill and much grace. We are very proud of his efforts. I predict this bill is going to bring great results to this Government, and I look forward to those results in the years ahead.

Mr. President, over 1 year ago, in October 1993, thousands of mayors, county commissioners, and Governors met in front of their town halls, court houses, and State houses and gathered here in Washington to speak out against, what is popularly described as, the unfunded mandates issue.

Unfunded Federal mandates arise when the Federal Government, through legislative or executive action, directs State and local governments to establish a particular policy or program, without providing the financial resources to implement that policy or program.

Mr. President, this situation emanates from our unique system of government. By design of our Founding Fathers, governmental power in our Nation is divided between the National Government and State and local governments. The National Government, with delegated and implied powers, coupled with the supremacy clause of article 6 of the U.S. Constitution, has taken upon itself to direct the States in many areas of law and public policy. On the other hand, the 10th amendment to the Constitution specifically reserves to the States or to the people, powers not delegated to the United States by the Constitution. Thus, a natural tension arises between levels of government, particularly when it involves unfunded mandates.

Federal laws and regulations place a heavy burden on State and local governments, as well as businesses and consumers. Cities and counties are hit particularly hard by Federal environmental rules which require expensive capital expenditures and operational