

point of order, there is no basis for the Chair.

I think we may be caught in a bit of a technicality or semantics issue. I would be happy to sit down with the Senator and see if we cannot craft something here. Again, I am simply saying I do not want to see the Senate go with the same procedure as prescribed on the private sector because it will then allow the Senate to no longer deal with whether or not, as the Senator just said, we ought to come to the floor and seek a waiver. We would not be required to do that. I think we should when we are using the taxpayers' money in the million- and billion-dollar categories.

Mr. LEVIN. Madam President, the Senator from Michigan simply said we should allow the CBO to state that they cannot make an estimate in the intergovernmental site, in the same way they are allowing Members to say that on the private sector.

I did not say we should use the same procedure, but I say we allow them to be honest when it comes to the inability to estimate the cost of a private mandate. We should allow them to be honest when it comes to the cost of an intergovernmental mandate. That is all I am saying. It is an honesty amendment.

By the way, it will allow the Senate to legislate a lot better. We will not be gaining useful information if we force someone to make an estimate which is impossible to make. We are not doing ourselves a favor legislatively. Believe me, we are not legislating in a knowledgeable way, which is one of the purposes of this bill, and I have to say I totally agree with, that we know, where feasible, the cost of these estimates to State and local governments. By the way, where it is not feasible to know it, that it is a pretty good argument for not imposing.

There may be circumstances, by the way, where you still want to impose it. It may be the reasoning it is not feasible is it is dependent upon EPA estimates and there is no way, prior to a public hearing, prior to notice, prior to an administrative procedure, that EPA is going to whisper into the ear of the Budget Committee what their level of mercury will be 3 years in advance of their decision. So, there may be good reasons to just simply vote "no" on the mandate because we cannot get an estimate.

On the other hand, the majority may say, no, that would be unreasonable in this case to require and we do want to impose that mandate on local and State governments. We want all levels to reduce their level of mercury in incinerators, not just the local.

Mr. FORD. Madam President, as I understand, the Senator from Michigan retains his right to the floor regardless of the colloquy here.

The PRESIDING OFFICER. That is correct, the Senator from Michigan has unanimous consent.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, I am not trying to control the floor here at all. I am trying to have a colloquy which will help to illuminate, hopefully, and I would be happy to ask unanimous consent that I be allowed to yield the floor to the Senator from Kentucky, or if there is objection to this process from any one of the colloquies, I am happy to yield the floor, period.

Mr. GLENN. Madam President, reserving the right to object, the Senator wanted a couple of minutes, and I wanted to make another point on this before we leave this.

Mr. FORD. Madam President, I will be happy to yield to the Senator.

Mr. GLENN. Madam President, go ahead and we will come back.

Mr. FORD. Madam President, the thing that disturbs me here, and I think it is a legitimate disturbance, that those in the Senate that would like to help business, those that would like to see that business gets a fair shake, I think applying the laws to the Senate, that we apply to our constituents, was something that was very significant.

Now in this language we are saying that we can stick it to business out there as hard as we want to because we cannot get an estimate. But to reverse that and say to the intergovernmental agencies, the communities, the counties, and the States that they are going to be exempt. So we are coming down as a business-oriented climate, I hope, and we are saying that we are going to stick it to business, but we will let Government, intergovernmental agencies, cities, counties, States, et cetera, I just think that this is wrong.

If it is fair for Members to say that business—the regulations, et cetera, will be imposed on business, but not imposed upon public operations, then we have a real problem. It is my judgment, if I was business, I would be up here trying to defeat this bill because then I would not be allowed to compete because the regulations and fees, or whatever, to be imposed upon business, would be excluded from the public sector.

Therefore, we are in competition with incinerators, and Lord, do we have problems out there trying to find disposal sites. It would just be horrendous in my opinion.

Hospitals. I see hospitals now trying to make it work where they have a private hospital and a public hospital trying to come together on some sort of HMO and it makes it difficult. So, in that category we would apply rules to the private hospital that we would not apply to the public hospital and, therefore, they would not be able to come together in an ability to cover communities with health care.

Schools. What are we going to do to asbestos and all its removal in private schools? And the cost is over \$50 mil-

lion, so therefore we exclude public schools.

I think it is time that we all sit down and rethink this. When people say we are trying to filibuster this, we are not. I am not. I am for the bill. I am for the bill that says we should not put in unfunded mandates. I introduced a bill 8 years ago, 6 years ago. The Senator from Ohio and I have been on there for a long time. Got two cosponsors first time I introduced this legislation. And \$50 million was a threshold then. Still is the threshold.

So I am not against this legislation. But we have just gone so far, so far and attempted to jam it down our throat here, that some have just said, "No, let's wait a minute."

I think the public has benefited, particularly business has benefited, by the debate that has developed here. Now this, in my opinion, is what the Senate is all about: The right to debate. Now that we have had the right to debate, even though we are trying to be painted into a different position here, different image, I think this debate has been very successful and very useful, particularly as it applies to the business community.

So I want people who are saying this is a filibuster, it is not. Want to file cloture? Members can file cloture. Thirty-six amendments are floating out there in various and sundry types, on both sides of the aisle.

So we have, I think, played the role that our forefathers expected of the Senate when we are now questioning the aspects of this particular piece of legislation. So, it is not a filibuster. Not a filibuster in any stretch of the imagination. But it sure is, in my opinion, developing into something we better take a second look at because it has become so broad.

So I thank the Chair. I thank my friend from Michigan. I hope there will be a way to accommodate each side here so that the public and private sectors of our economy, both will be treated the same. Right now they are not.

If we are going to help business, we better sit down and try to help it out so business will not be placed at a disadvantage rather than the public being placed at an advantage. I thank the Chair.

The PRESIDING OFFICER. The Senator from Michigan has the floor.

Mr. LEVIN. Madam President, if I could just briefly, to my friend from Ohio, thank the Senator from Kentucky, my good friend, for focusing on a very important fundamental issue, which is whether or not we want to send a message, create a presumption, however we want to phrase it, that we are going to put the private sector at a competitive disadvantage in those areas where there is a lot of competition. And there are a lot of those areas. In the environmental area, we have gotten letters, by the way, from the environmental disposal community—I think three or four associations—strongly opposing what we are doing

here because it could put them at a competitive disadvantage.

So there is some real concern in the private sector, or at least parts of the private sector that compete with the public sector, about either the assumption or the presumption that we will be funding their competitors while we are not funding them.

And so Senator LIEBERMAN and I, and some others, will be offering some amendments later on in this debate to try to address that very significant point that the Senator from Kentucky has made.

Madam President, I am going to yield the floor in just 1 minute. I would just like to, before I yield the floor—and I have many more questions that I would like to pursue with the managers of the bill as to the way in which this process works, but I understand that they wish to make a unanimous-consent request, and I do not want to totally just dominate here. I want to try to clarify this process because it is very important what we are about to undertake.

My question of the manager of the bill, the Senator from Idaho, is this: The first question I asked had to do with when was that mandate effective. What is the effective date of that mandate in my hypothetical? I am wondering whether or not we can have that answer yet.

Mr. GLENN. Might I respond to that first? I did not get in that discussion before. If I might give my view on that, it seems to me you do this a couple of ways. The committee should have some idea of how long it is going to take for a State or local community to get ready for whatever the mandate is. In other words, if it is a water system, a sewer system or whatever it is that we are dealing with, they would have an idea of how long it is going to take in advance of the requirement date, such as the Senator puts down here, the year 2005.

If there was not a time put in, it would be my opinion that you would make an estimate of how many years it would take them to comply, and our sharing of the cost of that would start at whatever that time is. In other words, if the time limit that the Senator used in his example of the year 2005, if it was going to take 3 years in advance of that, the Federal funding portion of this, or whatever we worked out on that, would take the 3 years or 4 years or whatever the estimate was that would help them comply with that, or it would be worked out with the States. You could not wait until the mandate is to go into effect, in the year 2005 in his example, you could not wait until the year 2004½ and then say, "OK, we are now going to help a little bit because their expenditures, if they are going to comply with that mandate, have to be made many times years in advance to allow them to comply."

Mr. LEVIN. That is the reason, if my friend will yield, the reason I requested this information is exactly that. If the law or the bill states that after October

1, 2005, emissions of mercury at an unsafe level will be permitted and delegates the EPA to make the determination of what level is unsafe to human health, my question is: Now you are CBO. Is there any way of knowing what is the first year that any local government will modify its incinerator? Some local governments may start in the year 1998, 2000, 2001. Does it just take a wild stab in the dark as to how many incinerators that are publicly owned will be modified in each of the 5 years up to 2005? How can it possibly make that estimate?

And if—if—the managers of this bill are saying, in that case, the effective date of that mandate is before October 1, 2005, there better be a definition in this bill—there is not now—as to how you arrive at an effective date. It just simply says "the effective date of the mandate." I think anybody reading that mandate that requires reductions of dangerous levels of mercury from incinerator emissions after October 1, 2005, would say the effective date of that is October 1, 2005.

The Senator from Ohio very correctly points out that a lot of the expenditures would have to be made in the years up to then. Absolutely. But we are triggering a point of order. We are triggering a required appropriation in order to avoid a very serious result from occurring.

The Appropriations Committees in each year, up to 2005—if my friend from Ohio is correct, which I think he is—would have to appropriate money to local governments. They have to be told how much to appropriate and they have to be told that 10 years in advance. This estimate of costs to State and local governments must be made in the authorization bill now. Someone has to figure out what is the effective date. This is not just some casual report. This triggers a point of order and a mandatory appropriation downstream in specific amounts, some of which are, again, impossible to estimate. But that is the earlier debate we had, the earlier discussion.

The question here is: If we are going to say the effective date is earlier than October 1, 2005, which is the first date that they must comply with a new mandate, if the effective date is going to be earlier than that, we better define "effective date" in this bill, because there is a lot that hangs on this. There is a point of order and there are appropriations downstream in specific amounts which must meet those estimates if certain things are going to follow.

So, again, we are not just talking about reports here. We are talking about points of order and specific appropriations that are going to be dependent on when this mandate is effective.

I thank the managers of the bill and, again, they have requested that I yield so that they can make a unanimous-consent request, and I am happy to yield the floor, but I do hope that at some point after their request, I will be

able to again seek or obtain recognition so we can pick up our colloquy at that point.

I thank the Chair, and I yield the floor.

Mr. KEMPTHORNE addressed the Chair.

The PRESIDING OFFICER (Mr. THOMPSON). The Senator from Idaho.

Mr. KEMPTHORNE. Mr. President, I appreciate the Senator from Michigan. It is very apparent that his background in local government has helped him to understand. I think we were trying to communicate together. I think there may be a way that we can resolve this, and it may be something other than what he is recommending and may be something other than what I was recommending. I think we may be able to resolve this.

Mr. President, I am going to put in a quorum call just for the purpose of notifying a Senator who may have an interest in what will be a unanimous-consent request that I will make. I ask unanimous-consent that during the quorum call, I will have the right to retain the floor so that when we lift the quorum call, I will again have the floor.

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

Mr. KEMPTHORNE. Therefore, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded and that I be allowed to speak as if in morning business.

The PRESIDING OFFICER. Is there objection?

Mr. KEMPTHORNE. Mr. President, reserving the right to object.

Ms. MIKULSKI. I am sorry, I cannot see the Senator.

Mr. KEMPTHORNE. I certainly have no reason to not allow the Senator from Maryland to proceed.

But, again based on my earlier unanimous consent, I would again ask that upon completion of her remarks that I would have the floor?

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

The Senator from Maryland?

Ms. MIKULSKI. Mr. President, knowing there is important legislative work to be done on the issue of unfunded mandates, I will not take unduly the time of the U.S. Senate. However, I do wish to speak on two items, one, an unsung hero from Maryland who has just passed away and the other on the issue of national service.

SISTER MARY ADELAIDE SCHMIDT

Ms. MIKULSKI. Mr. President, when we think of the word "hero," we usually think of brave men who have gone