

to war, who have served their country, and indeed as in the wonderful men who fought at the Battle of the Bulge and saved western civilization. But I wish to speak about another hero, a hero by the name of Sister Mary Adelaide Schmidt, school Sister of Notre Dame who taught me in Catholic elementary school. Sister passed away in the last few days at age of 97. She was born in 1898, when we did not even have the right to vote, but she certainly knew how to empower women, empower us with the message of the gospel, empower us with the skills that we needed to make it in the world, and to know how to claim our womanly virtue and at the same time make a difference.

Sister Adelaide played a special role in my life. This booming voice that you hear on the Senate floor today was a voice that was shy about speaking up when I was in the sixth grade. The same kind of voice, low pitched, husky, that can be heard throughout the Senate Chamber, could be heard throughout the sixth grade at Sacred Heart of Jesus Elementary School. As a result, I was shy about speaking up because my voice was lower than the other girls' in the classroom, when boys voices were changing.

Sister Adelaide asked me to stay after school, brought this out in her kindly way, to have me share that with her. And then for the next couple of weeks she said, let us make sure you know how you sound and how good it is going to make you feel. She had me read poetry, she had me read passages of the Psalms, she had me read out loud from both the Bible and contemporary works of literature. By the time I finished that stretch of time I knew how to speak up; I was comfortable in doing it. Two years later I ran for class president in the eighth grade and, as Paul Harvey says, "You know the rest of the story."

So today I would like to pay tribute to Sister Mary Adelaide and the enormous sacrifice that she made with her life that made a difference in so many others', like my own. And for all of the wonderful men and women who are teachers, and teach in religious day schools: Know that you have made a difference. I believe that they are unsung heroes.

So, Mr. President, I wanted to salute Sister Mary Adelaide.

#### NATIONAL SERVICE

Ms. MIKULSKI. Mr. President, I wanted to speak on the issue of national service. The new issue of Newsweek quotes the new Speaker of the House as unequivocally opposing national service because it is, in his words, "coerced voluntarism."

I believe the new Speaker does not understand national service or the grounding that went on behind it.

As one of the founding godmothers of this initiative, I rise this afternoon to express my dismay at yet another at-

tempt by Republican leaders to distort a bold approach to solving our country's problems.

It appears from these recent comments and others made earlier on the floor today, that some in this Congress will try to lump national service in with every other program headed for the chopping block as part of our institution's budget cutting fever.

Well, I am here today to say that national service is not a Government-run social program. And that is the point that the Speaker and some of national service's critics misunderstand.

It is not a program but a new social invention created to provide access to the American dream of higher education and to help create the ethic of service and civic obligation in today's young people.

Under national service, young Americans receive a reduction in their student debt, or a voucher for higher education, in exchange for full- or part-time community service. Service projects are driven by the choices of local nonprofits organized around one of four broad themes—public health, the environment, public safety, or education.

National service began as a concept with the Democratic Leadership Council and other Democrats like myself in the 1980's. But its purpose was not born of political gamesmanship or partisan advantage. It was designed to address two of the most pressing needs that our country faces. One, how can students pay off their student debt; and how can we create a sense of voluntarism.

The first is the issue of student indebtedness and access to higher education. Most college graduates today face their first mortgage the day they leave college—it is called their student loans. That debt often forces them to make career choices oriented strictly to getting them financially fit for duty.

Worse yet, for many the high cost of higher education simply denies them access to college at all.

By providing a post-service benefit, national service members can ease their student debt, or accrue savings that will help them go to school. It is not an entitlement, and it is not a hand out.

Educational benefits are linked to work service. Participants are eligible only when they have finished their work service commitment.

The second problem national service is designed to address is more idealistic. It is how to instill in young Americans what de Tocqueville called the habits of the heart. To address the sharp drop over the last two decades in the number of Americans who volunteer in their own communities, a fact representative of Americans disinvesting in those social institutions which helped build our country.

Bob Putnam, a Professor at Harvard, has written an article called "Bowling Alone." He says more people bowl today than a decade ago but few belong

to bowling leagues. So, Senator MIKULSKI, what does that have to do with national service?

The point is bowling alone is a metaphor for the way Americans have come to view civic involvement and citizenship. There has been an absolute decline in developing community involvement. People have less time available because many households have two wage earners instead of one. They are more mobile. We have a society that is more influenced by TV. And they are also less committed. There is a serious lack of a sense of civic obligation.

Fewer people attend PTA, groups like Red Cross and the Boy Scouts have fewer volunteers.

My point in saying this is that national service is an idea that promotes exactly the values that the Republican leader wishes to instill. The fact that we should not rely on Government, that there should be a role for non-profit organizations, that there should be for every opportunity, an obligation; for every right, a responsibility. And that is what national service is about. It is not coercive. Nobody is forced to get into the national service program. But I will tell you what they do. Their lives are significantly changed by it and their communities are significantly changed by it.

Young American men no longer have the shared experience of military service that served for the men of my generation as a rite of passage into adulthood. Where they learned that there was more to being a good citizen than just staying out of trouble. That instead, civic responsibility meant uniting with people of all different walks of life for a common purpose to help people help themselves; to be part of an American effort bigger than themselves.

National service is the latest in a long series of social inventions we have created to help provide access to higher education. We created night schools to teach immigrants English. We created the GI bill for returning veterans, and we invented community colleges to bring higher education close to home at a modest cost.

The argument that national service is coerced voluntarism is a knee-jerk statement that belies the facts. I chaired the Appropriations Subcommittee which has funded national service in the past. In the first 2 years of the Clinton administration, no one coerced anyone to participate. Instead, people were knocking down the doors to join.

Two facts make this point. First of all, there are more people who want to participate than there are opportunities.

In national service's first 2 years, about 1,500 organizations applied for funds. Only 300 were selected because of lack of funds. That is a selection rate of just 20 percent—a lower selection rate than peer-reviewed research grants at either the National Science

Foundation or the National Institutes of Health.

Second, in the current fiscal year, we provided enough funds to get about 23,000 people participating in full- or part-time national service. Yet since the President launched his call for a season of service, the Corporation for National Service has received calls from nearly 200,000 different persons wanting to participate in the program. So just 1 in 10 who have wanted to voluntarily participate have been able to do so.

Now some discount the kind of work undertaken through national service. They say it is trivial, or unnecessary, or even irrelevant. But I can tell you that in my own State of Maryland, national service is making a difference—not with fancy bumper sticker programs or activities that simply touch the surface of what is needed.

For example, 30 national service volunteers in Montgomery County are working with cops as victim assistance advocates for 1,000 senior citizens. They help teach crime prevention techniques and organize neighborhood watch activities. They work every day to make Montgomery County, MD, a safer place to live.

National service is helping senior citizens avoid crime by teaching crime prevention, organizing neighborhood watchdogs and rural, urban. In suburban areas they have service corps related to conservation. They are rehabilitating houses for low-income families. When we were hit by tornadoes, the National Service Corps moved in and helped families help themselves to be able to pull themselves out of the tragedy that affected them. There are many criticisms of national service, and Senator GRASSLEY raised a few related to bureaucracy. I do think we need to make sure that bureaucracy is kept at a minimum.

Mr. President, regardless about how one feels about it as an organization, let us not lose sight of the mission. We need new social inventions in this country to take us into the 21st century just like we need new technological inventions. We have continued creating social inventions that have provided access to the American dream around owning a home and acquiring higher education. In terms of acquiring education, we in the United States of America invented night school so immigrants could be able to learn English, citizenship, and move ahead. No other country in the world had it until we invented it. There is the GI bill that said "thank you" to Americans who made sacrifices in World War II, and part of that was to be able to have a VA mortgage and a VA opportunity to seek higher education. We even invented the community college system to make sure that you did not have to go away to be able to learn.

National service is an opportunity. It is an organization right now that is providing volunteer slots of 20,000 people a year to actually work hands on in their own community, primarily work-

ing through nonprofits and enabling themselves to pay off their student debt, helping the community. Mr. President, I believe their lives will be changed. I believe that when the voucher part of this program is over they will go on volunteering the rest of their lives.

I think it is an important program. I hope that before we go around attacking some of these programs that we take a look at their mission. If we have to fine tune the administrative aspects of it, so be it. But I believe national service is an important part of our national agenda and should have bipartisan support.

In rural, urban, and suburban places around Maryland, the Maryland service corps—like the Maryland Conservation Corps, Civic Works in Baltimore, and Community Year in Montgomery County—are teaming up to rehabilitate houses for low-income families.

These are but two examples of hundreds of ones that are taking place across America in 49 of the 50 States. They are fighting to make a difference in people's lives, 1 day at a time, one person at a time. Because in today's culture of mass marketing, mass production, and mass advertising, we need to teach every young American that he or she can make a difference. Whether they are from a middle-class suburb, a tough inner-city neighborhood, or a rural county that's economy is driven by the labor of the land.

Earlier today, one of my colleagues alluded to a General Accounting Office study that I initiated when I chaired the VA-HUD Appropriations Subcommittee. It is a routine review of the administrative costs of national service activities designed to help us improve it where possible, and guarantee as much money goes into service activities instead of overhead.

The fact that we began it in the last Congress demonstrates the long-standing desire of those who support the program to make it bipartisan, and focused on results, not rhetoric. It doesn't indicate any evidence that this initiative is off-track or funds wasteful service efforts.

To suggest otherwise is simply to let one's rhetoric get ahead of the facts.

So, I for one, look forward to the GAO's findings and intend to use them to improve national service, not undermine it.

As the new Republican majority takes shape in both Houses of Congress, I hope that they keep an open mind on national service. Rather than criticizing it, national service seems to be the kind of program they should like.

Service choices are selected on the basis of merit, not political muscle. And those choices are made at the State and local level, not by bureaucrats in Washington.

It rewards the kind of values like sweat equity and hard work that are the heart of American family life. It does not identify with victims, but instead calls people to self-responsibil-

ity—by helping not just yourself, but others too.

What better way to help a young woman on welfare but to help her understand that she can not only receive help, but provide it to others as well.

Benefits are earned through work, not a Government handout. There is no entitlement.

And national service promotes the kind of social cohesion—rich and poor, black and white—best achieved by people working together, a theme the new Speaker outlines so eloquently in his maiden speech as Speaker.

I worked for many years as a social worker and community organizer in Baltimore. I learned from that experience more than I have ever learned from memos and briefings in Washington. I am a better Senator because of what I learned from the people and the communities I worked with every day. The people who work in national service are also learning and being changed by their experience too.

It was 35 years ago that President Kennedy challenged Americans to ask not what their country could do for them, but what they could do for their country. In that spirit, I will join the President and my colleagues on both sides of the aisle in fighting to preserve national service in the days and months ahead.

I yield the floor under the unanimous-consent agreement that we had agreed to.

#### UNFUNDED MANDATE REFORM ACT

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The Senate from Idaho is recognized.

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

Mr. President, it was going to be my intent to seek unanimous consent that we proceed to a vote of the pending amendment before us, which, as I understand it, is the amendment on page 15, lines 23, 24, 25, and on page 16, line 1. But it is my understanding that there would be objection to that. Therefore, Mr. President, in order to continue to proceed forward, I move to table this amendment and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Idaho to lay on the table the committee amendment on page 115, lines 23, 24, and 25, and on page 16, line 1. On this question, 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 North Carolina [Mr. FAIRCLOTH], the Senator from Texas

[Mr. GRAMM], and the Senator from Texas [Mrs. HUTCHISON] are necessarily absent.

Mr. FORD. I announce that the Senator from New Jersey [Mr. BRADLEY] and the Senator from Massachusetts [Mr. KENNEDY] are necessarily absent.

I also announce that the Senator from Arkansas [Mr. PRYOR] is absent because of illness.

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

The result was announced—yeas 52, nays 42, as follows:

[Rollcall Vote No. 21 Leg.]

YEAS—52

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

NAYS—42

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

NOT VOTING—6

Bradley	Gramm	Kennedy
Faircloth	Hutchison	Pryor

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 and I move to lay that motion on the table.

The PRESIDING OFFICER. Without objection, the motion to table is agreed to.

The motion to lay on the table was agreed to.

COMMITTEE AMENDMENT ON PAGE 25, LINE 11

Mr. KEMPTHORNE. Mr. President, we now have before us the committee amendment which begins on page 25, line 11. It would be our hope that we could now have a meaningful discussion of this amendment which is properly before us, and that at approximately 1 hour from now we could seek a vote on this amendment. In all likelihood, that would be the last vote.

Mr. FORD. Mr. President I make a point of order that the Senate is not in order.

The PRESIDING OFFICER. The Senate will be in order.

Mr. KEMPTHORNE. Mr. President, as I believe my colleagues in the Senate know, S. 1 was considered and passed by two Senate committees, the

Budget Committee and the Governmental Affairs Committee, but there is one issue of disagreement between the two committees. That issue is which committee, if any, should resolve future disputes about whether legislation contains mandates that may be subject to a point of order.

During its markup, the Senate Governmental Affairs Committee added two amendments. The first made the Budget Committee responsible for determining mandate costs and the second amendment gave the Governmental Affairs Committee a role in deciding issues related to the point of order.

As I understand the Senate Governmental Affairs Committee's view, the committee expects that during those instances when the Parliamentarian must rule on a point of order under this section, there may be occasions when there is a need for consultation regarding the applicability of this law.

These two amendments provide that on all such questions that are not within the purview of the House and Senate Budget Committees, it is the Senate Governmental Affairs Committee or the House Government Reform and Oversight Committee that shall make the final determinations.

For example, on the question of whether a particular mandate is properly excluded from coverage of the act or is a bill which enforces constitutional rights of individuals, the Governmental Affairs Committee would be the appropriate committee to consult. On a question regarding the particular cost of such mandate, the Budget Committee would be the appropriate committee to consult.

Now, the Senate Budget Committee took a different view. The Senate Budget Committee struck these two amendments. The Senate Budget Committee's view is that the reference to the Budget Committee's role is unnecessary, for it is similar to language already in the Budget Act. In other words, the Budget Committee already has the responsibility to do the work that the Governmental Affairs Committee gave it.

About the issue of having the Senate Governmental Affairs Committee consulted about points of order, the view of the Senate Budget Committee is that it is not needed. For the past 20 years the Senate Parliamentarian and the Senate Budget Committee have 20 years of experience with these Budget Act points of order. S. 1 follows the exact same process now used in Budget Act estimates.

The Budget Committee does not believe there is a precedent for two committees to resolve Budget Act points of order. That is the issue as simply as I can explain it.

Since the markups, Senators DOMENICI and ROTH, the Budget and Governmental Affairs Committee chairmen, have discussed this issue and both have agreed to support the Budget Committee amendments. I believe that Sen-

ators GLENN and EXON, the ranking members of these two committees, have yet to reach agreement.

With that as an overview, Mr. President, I believe that we have the chairmen of the committees, the ranking members and other Senators that would like to address this issue. I yield the floor.

Mr. DOMENICI. Mr. President, could I ask the Senator to correct something? I heard the Senator say Senator EXON has not decided. He supported the amendment that I put forth in the committee, so I believe he is here to speak in favor of the amendment.

Mr. EXON. Mr. President, the Senator from New Mexico is certainly correct.

Mr. KEMPTHORNE. Mr. President, I accept that correction.

Really, my intent there was to point out that Senator EXON and Senator GLENN, as ranking members, have not yet come to an agreement. I think that is fair to say.

Mr. President, I yield the floor.

Mr. GLENN. Mr. President, I rise to oppose the Budget Committee's amendment.

Mr. President, I was elected to the Senate the same year that the Governmental Affairs Committee, then called Government Operations, enacted the Budget Act and the Budget Committee. The Senate rules provide that changes to the Budget Act are the joint responsibility of the Governmental Affairs Committee and the Budget Committee.

We gave the Budget Committee the responsibility to provide estimates on direct spending and created the Congressional Budget Office to help determine the costs of legislation to the Federal Government, and we now require that committee reports contain CBO estimates of such costs.

We have seen for many years that there have been some controversy that has resulted over different opinions as the costs of a particular bill, joint resolution, or regulation. We went through months of stormy debate last year over the costs of health care legislation, as my distinguished colleague, the chairman of the Budget Committee, mentioned earlier on the floor today.

Why did we do that? Because cost estimates in most cases are highly sensitive to underlying assumptions as to how a piece of legislation or regulation will be implemented and enforced. A so-called expert in making cost estimates who uses an underlying assumption that is wrong or highly speculative will provide a cost estimate that is no better than a wild guess by an amateur.

Nonetheless, for the purpose of having an orderly budget process, we have agreed to use CBO figures and in their absence, Budget Committee estimates in dealing with Budget Act estimation requirements. So we created the Budget Committee, gave them the jurisdiction and responsibility to oversee and provide technical cost estimates. And

now here we are some 20 years later, and the claim is made that their experience enables them to do estimation of the costs of Federal mandates on some 87,000 States, localities, tribal governments, as well as the private sector.

We in the minority of the Governmental Affairs Committee did not challenge the decision made without our input to have last year's unfunded mandates' bill rewritten as an amendment to the Budget Act. It was not written as an amendment to the Budget Act last year. Last year the Budget Committee did not seek or claim any jurisdiction over S. 993, a bill that in substance forms the basis for S. 1. I repeat, we did not object when that was proposed that it be rewritten as an amendment to the Budget Act.

Despite this decision, our staff worked with the staffs of Senator KEMPTHORNE and the Budget Committee to produce another bill that we could support. When the minority staff on our committee were confronted with the fait accompli that the bill was now to be an amendment to the Budget Act and the demand that last year's bill had to be strengthened to make it more difficult to avoid a point of order on a bill, the minority staff worked with their Democratic and Republican colleagues on both the Governmental Affairs and Budget Committees to try to produce a bipartisan result that we could all support.

In that spirit, the Governmental Affairs Committee produced a bill that recognized the varied interests of those supporting the principle that we should legislate unfunded mandates only with full realization of the burdens being imposed by such mandates. As we worked through the bill it became clear that the procedures in the bill had the potential for providing significant delays that could be exploited for purposes not of clarifying the effects of legislation, but for purposes of, in effect not lobbying but filibustering for purposes of perhaps stopping the legislation. Accordingly, we in Governmental Affairs felt wherever possible, the bill's procedures should be very clearly spelled out along with who has responsibility for what.

We recognize that making estimates of the cost of mandates is complicated and has the built-in conflict of interest produced by dependence on the States and local governments for most of the cost data. Because of the profound changes in the Senate procedures that the bill would allow in the case of legislation containing mandates, there is a quite legitimate question as to whether the Budget Committee alone, since budget process jurisdiction is shared with the Governmental Affairs Committee, should determine if a threshold has been breached by an amendment of a bill.

Nonetheless, since someone should be responsible for cost data and for overseeing the CBO State and local cost estimating process we agreed in S.

1 to give the Budget Committee explicit responsibility for this, which in my view I think they should have but they do not uniquely have, under the Budget Act.

This responsibility is actually shared with the Governmental Affairs Committee. We felt we had an agreement with Senator ROTH and myself, the chair and ranking member of the Governmental Affairs Committee, and Senators DOMENICI and EXON, chair and ranking member on the Budget Committee, on language in S. 1 that details the responsibilities of each committee in overseeing implementation of S. 1. All four of us cosponsor the bill.

Then, the Budget Committee took this explicit language out of the bill and I thought broke the agreement that we had. They thereby created a situation in which the chair, advised by the Parliamentarian, would be the entity that would determine whether the cost of a mandate exceeds the threshold. In other words, is it a Federal mandate or not?

Now, I have no doubt that the Parliamentarian would probably tend to look to the Budget Committee for guidance on this despite the fact that it is the Budget Committee's experience estimating the cost of Federal intergovernmental mandates is not significantly different than that of the Governmental Affairs Committee which under rule XXVI has had the jurisdiction over intergovernmental relations and federalism for many years going beyond the length of time we have had a Budget Committee in existence. In other words, our committee on Governmental Affairs has the mandate as part of our mandate, written into law and rules of the Senate here, that we deal with intergovernmental matters—Federal, State, and local matters—and that is written into our reason for being.

Should we depend on the uncertainty of the Parliamentarian's approach and our belief as to how he might act based on precedence dealing with things other than the cost of the mandates? I believe the Parliamentarian should be given explicit instructions in the bill to look to a specific committee for guidance on estimates. Since they want to do it, I support the Budget Committee having the responsibility to do the estimates. That is why both committees explicitly agreed to write that responsibility into the bill, not only for the Senate Budget Committee but also for the House Budget Committee in the case of legislation containing Federal mandates that come before the House.

Now, unfortunately, what has happened in this legislation is the Senate Budget Committee has taken out the reference we put in giving them and the House Budget Committee the responsibility for doing estimates but then in a later section they put language back there giving the House Budget Committee explicit responsibility to do the estimates, suggesting

that the Budget Act does not need something in it clarifying committee responsibilities in this area.

That raises the question of why the House Budget Committee is treated differently than the Senate Budget Committee in this Senate amendment. I do not believe they should be treated differently. But, frankly, the question before us is not only who should do the estimates that we may agree on, but who determines whether a bill contains a mandate.

This is not a trivial matter, and the Governmental Affairs Committee worked hard, in cooperation with Senator KEMPTHORNE and State and local government organizations, to produce a definition that we think makes sense.

The Governmental Affairs Committee has been in existence since 1920 and, under rule XXVI, has jurisdiction over intergovernmental relations. It has worked on this legislation for the better part of a year and is in the best position to make judgments about whether a bill contains a Federal intergovernmental mandate, meeting the definition in S. 1.

So in S. 1, we gave Governmental Affairs the explicit responsibility to make this determination for the Senate, and we gave our counterpart committee in the House, the Committee on Government Reform and Oversight, the same authority with respect to House bills.

The Senate Budget Committee, in marking up S. 1, now has removed the Senate Governmental Affairs Committee from determining for the Senate whether a mandate exists but has not removed the authority of the House Committee on Government Reform and Oversight from the bill. The result is that the House will have a process whereby the determination of whether a mandate exists will be made by a House Committee on Government Reform and Oversight. But in the Senate, the Parliamentarian, backed up by the entire body, will have to make the decision every time a challenge arises.

How will the Parliamentarian rule and to whom should he turn for consultation before making his ruling? There is no precedent, and there is no process. I think it is illogical and I think it is inefficient. I think it will result in further procedural delays in passing legislation through the Senate and more misunderstanding about what this process is that we are putting into place.

If the House Committee on Government Reform and Oversight is considered the appropriate body to make a final determination for the House on whether a mandate exists in a bill, it makes sense for the Senate to turn to its sister committee, the Governmental Affairs Committee, for that purpose. That is a responsibility, I would add, that we are given under the rules of the Senate as to what that committee is responsible for.

Mr. President, this is more than just a jurisdictional issue, although jurisdiction has been injected into the issue by rewriting last year's bill as an amendment to the Budget Act which, in my view, was unnecessary. The issue here is what is logical and what is efficient.

Many people have concerns that the procedures of this bill may be used to delay or kill legislation opposed on ideological grounds. I have those concerns myself, even though I am a supporter of the thrust of S. 1. Accordingly, I believe it is a disservice to good process to eliminate from this bill the specific responsibility of a Senate committee, the Senate committee assigned to intergovernmental relations, to make determinations of applicability of this legislation and turn that responsibility over to the Parliamentarian with no guidance and no precedent.

So, Mr. President, I urge the defeat of the Budget Committee amendment.

What this boils down to is, is the Senate assignment of responsibilities to the Governmental Affairs Committee, in this regard, one that the Senate wishes to carry out, or do we permit, because the bill was written as a change to the Budget Act, is it now to go to the Parliamentarian, which I think is unjustified?

So I urge the defeat of the Budget Committee amendment for those reasons, as well as the fact that we are treating the House and the Senate differently. The responsibilities do lie over in the House, split between the Budget Committee and the Government Reform and Oversight Committee over there, as it should be here.

I think to make the processes conform and to prevent any further misunderstanding about this bill, I urge defeat of the Budget Committee amendment.

I yield the floor.

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER (Mr. FRIST). The Senator from Delaware.

Mr. ROTH. Mr. President, I rise in support of the Domenici amendment, which was reported from the Budget Committee. The amendment has the effect of deleting any reference in the legislation to the Senate Committee on Governmental Affairs and the Senate Committee on the Budget in deciding whether a point of order may lie under the proposed section 408 of the Budget Act.

The Domenici amendment, reported from the Budget Committee, is identical with an amendment I filed but did not offer during Governmental Affairs' consideration of S. 1. I did not offer it because of opposition from the minority side of that committee and I wished to expedite reporting the legislation to the floor.

Under the precedents of the Senate, the Chair rules on all points of order except a few that it submits to the body itself and except where a statute may otherwise require. The only example of the latter is the Budget Act,

which gives the Budget Committee a special role on certain points of order.

S. 1 as introduced would create a new exception for Governmental Affairs while making clear that the Budget Committee's role on budget issues also carried over to "the levels of Federal mandates" for any fiscal year under proposed section 408.

At first look, one might assume that both committees should have distinct and equal roles in deciding points of order—that Governmental Affairs opine on whether a provision is a mandate covered by proposed section 408 and that Budget opine on whether provision contains sufficient funding. But the roles are not parallel at all. For the Budget Committee allows its chairman to act on its behalf because all that the chairman does is present the CBO figures to the presiding officer. The Governmental Affairs Committee would have no similar role in conveying its determination on whether section 408 applies or not to the provision against which a point of order is lodged.

All types of questions might arise as to whether or not a bill or amendment falls under this legislation. S. 1 contains a list of exemptions on matters affecting constitutional or civil rights, emergency relief, other emergencies, national security, and so on. These questions involve a lot more discretion than matching up a CBO estimate of costs with a provision's level of funding.

When an amendment is offered and a point of order is made under S. 1, how is it possible for an entire committee to meet and decide in time for the Chair to rule? It is not possible at all.

Suppose the point of order is made against an amendment that requires States to buy computers and software to create a database that facilitates registering to vote. Does such a provision fall within the exclusion in section 4 of S. 1 for those that "enforce constitutional rights?" Does the provision enforce a right to vote or only make it easier to enjoy? Is the exclusion limited to constitutionally required rights or does it cover any extra measures that simply involve constitutional rights?

Equally nettlesome questions may arise in determining whether a provision increases the "stringency of conditions of assistance" to States with respect to certain entitlement programs. Every change in such conditions will raise the stringency issue. Suppose some changes increase stringency and some relax stringency. These are not always quantifiable issues and may be difficult to assess.

Since answering such questions is a far cry from delivering a CBO estimate to the presiding officer, I support the Domenici amendment deleting language which I believe is both unworkable and inappropriate.

The crux of the distinction is that S. 1, as introduced, would allow the subjective decision of one committee, or even one Senator, on a qualitative

matter to be the final authority. In contrast, the language of S. 1 does not give the Budget Committee's determination on the levels of Federal mandates the status of finality even though its determination is a quantifiable one informed by input from CBO, whose evaluations are thought to be politically unbiased. In view of such considerations, the language in question should be deleted. It is, as I said unworkable and inappropriate.

For that reason, I support the Domenici amendment.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I am not going to speak long. Senator EXON is here and he wants to speak also. I want to thank Senator ROTH, as chairman of the Governmental Affairs Committee, for supporting the committee amendment that is pending now, which amendment, essentially, would take out all reference to either the Budget Committee or the Governmental Affairs Committee having any new powers to pass judgment on a bill's relevance, on this bill fitting the definition, and on this bill exceeding the amount of money that are the limits in this bill.

It essentially is saying that we do not need to create new authority in a new committee, and certainly not of the type found on page 25, which I really do not believe that the Senate, under any circumstance, would have approved. Because it says that the Government Reform and Oversight Committee in the House and Governmental Affairs Committee in the Senate would make final determinations.

Essentially what we want on points of order is whether a bill or an amendment or resolution fits the definition of a mandate, and then what we need is to find out if it breaks the \$50 million mark in terms of cost to local government—we need that decision made by the U.S. Senate, not by a committee.

Essentially what our amendment will do, and Senator ROTH encapsulated it perfectly, is it will put the decision on what is a mandate to be made by the Chair upon advice of the Parliamentarian. And we have, over and over, tried to write language as to what a mandate is in this legislation. We have written language in this legislation as to what exceptions there are. So what Senator ROTH quite properly is saying is that decision as to whether a piece of legislation fits that or not should be made by the Chair upon advice of the Parliamentarian. That is what happens in many instances here. A question of germaneness under the budget. There is language, there is germaneness language, and the question is put to the Chair.

The Parliamentarian advises the Chair and the Chair rules. And if the Senate wants to get involved it then proceeds thereafter to say we do not like the decision, we will overrule it.

The Parliamentarian determines whether a question is divisible. The Parliamentarian also determines questions about extraneous provisions under the Byrd rule. We do not send that to the Budget Committee to make that determination. We do not send it to the Government Ops Committee. We send it to the desk and the Parliamentarian informs the Chair based upon precedent, based upon language. The Chair says that matter is extraneous.

And then who makes the final decision? The final decision is made by the Senate of the United States.

What we are doing by adopting the so-called Domenici amendment is saying: This bill creates no new authority in any committee to determine the relevancy of an amendment or a bill or resolution—that is, is it a mandate or not. It creates no new authority. We rely on the definitions and the exceptions and approach the Chair. If somebody brings something down here and we are wondering whether it is really a mandate, we will just have to say I raise a point of order. I will read it and then read the language that is in here, in the bill itself, and say this seems not to be a mandate.

The Parliamentarian will do what he does on many such occasions and advise the Chair. And then we will proceed as I have described before.

Let me get to the cost issue. Frankly, I think the role of the Budget Committee and the Budget Committee's chairman or chairperson—the role is not quite understood. The reason the chairman of the Budget Committee has a role is because he has the Congressional Budget Office standing behind him. It is not his role, but the role of the Congressional Budget Office, CBO, to furnish the information under the Budget Act that is to do the numerical evaluation. The chairman then delivers that to the Parliamentarian and says here is what CBO says.

The Parliamentarian then says to the Presiding Officer: CBO says this. We are obliged to accept CBO's information, unless the Senate changes it, this is the ruling. And the Chair so rules.

What is the chairman of the Budget Committee going to do when we have stricken the language? He is going to do the same thing with reference to what? With reference to having the CBO standing behind him or her, because they are charged with doing the economic evaluation and coming up with what? With dollar numbers. They are going to say this mandate only will cost local government \$42 million. They are going to say that.

The chairman is going to take it up to the Chair. What is the chairman going to tell the Parliamentarian? "Mr. Parliamentarian, they say 42. The statute says unless it exceeds 50 it is not subject to the point of order."

And the Parliamentarian will not take my word or the chairman's word. The Parliamentarian will read it and

he will turn around and say to the Chair, "The Congressional Budget Office, whom we are bound to accept numbers from on this, has spoken. And they say 42." He will say to the Chair, "This does not come within the purview." Let us not have any more mandates unless we pay for them.

What is the other role? The other role has to do with when the CBO says it is going to cost \$250 million. Therefore it is within the purview of the mandate legislation.

What is the chairman of the Budget Committee going to do when the Domenici amendment is adopted that does not give this authority to anyone new—no new committee, no new chairman? The very same thing. He will be backed up by the CBO, who will tell him \$250 million. He will carry it to the Chair in the same manner I have described.

The second part of this legislation has to do with regulations on business. Therein, there are no points of order but, again, we have to know what we are doing before we pass the legislation. And to know what we are doing requires that we actually understand the economic impacts.

Where are we to get them? We are not going to get them from a committee. No committee has final determination of that. The Government Ops, Foreign Affairs, Budget—we get them from the Congressional Budget Office. Because that is what this bill says. The chairman will bring that, through the Parliamentarian, to the Chair; and thus from the Chair the Senate will be advised.

So frankly I do not believe we need to change the practices. I believe we have the Congressional Budget Office and the Parliamentarian interpreting the intent of legislation vis-a-vis definitions in this bill or exclusions in this bill and we communicate those in one way or another. And we are suggesting that we have had 20 years of experience in communicating it through the CBO—from the CBO, through the chairman of the Budget Committee, to the Parliamentarian, to the Senate through the Chair, through the Presiding Officer.

So I would think that the issue here has both support of the chairman of Government Operations, the ranking member of the Budget Committee, Senator EXON, whom I will yield to momentarily, the chairman of the Budget Committee—and I hope we will dispose of this amendment without taking a lot of time tonight. But clearly that is not for me to decide. I do not intend to try to use any more time than I absolutely feel is necessary for me. With that I yield the floor.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, I yield myself such time is needed in support of the amendment offered by myself and Senator DOMENICI.

Mr. President, I rise in support of the distinguished chairman of the Budget

Committee and the amendment unanimously recommended by the Budget Committee regarding the role of the Budget and Governmental Affairs Committee in the application of this legislation.

My friend and colleague, the Senator from New Mexico, makes a lot of sense. When we write legislation such as the broad fresh brush of this legislation, we must be vigilant not to set dangerous precedents. Unfortunately in one very troubling area, we have let down our guard. Granting the Government Affairs Committee sole jurisdiction to determine whether or not a piece of legislation is an unfunded mandate is a very dangerous precedent. However, if we strike the Budget Committee amendment we would be vesting in one committee, the Government Affairs Committee, the authority to make final determinations on the applications of a point of order.

I am very uncomfortable with such a radical change. I have always relied on the good wisdom of the Parliamentarian on such matters and that is the time-tested course of action we should take with us on S. 1. Currently, for all other points of order under the Budget Act, the Chair turns to the Parliamentarian for any such determination of law. The Senate Parliamentarian's office is staffed with skilled and able lawyers, learned in the precedents of the Senate. They do an admirable job, often on very short notice. When the Parliamentarian determines that the budget estimates are required, the Parliamentarian turns to the Budget Committee as required by the Budget Act.

I am not a lawyer. But for my colleagues who are lawyers, I am advised that the Parliamentarian decides questions of law much as does a judge in a trial. The role of the Budget Committee is limited by law and precedent to questions of fact, not questions of law. The Budget Committee merely provides the budgetary numbers to the Parliamentarian, who then takes these numbers into account in advising the Chair. This system has worked well for 20 years. Over the years, the Chairs of the Budget Committee have fulfilled this advisory role with objectivity and without regard to partisan advantage. By and large, the Chair of the committee merely passes along a Congressional Budget Office estimate and only rarely does an analyst for the committee have to extrapolate from such estimates.

I have full confidence that Senator DOMENICI will continue to fulfill this role with objectivity and evenhandedness now that he has regained the chair of the committee. He did that previously. I think he will do so again. But let me say parenthetically that I shall be sure to point out most vocally any instance in which he does not.

Let me also say that it is altogether fitting that a single Senator be charged with this estimating responsibility.

The Presiding Officer must be able to turn to someone in the Chamber who can provide these estimates, sometimes long after the Congressional Budget Office has gone home for the night. Giving two committees this authority would almost certainly lead to confused advice to the Parliamentarian. The Chair must know who to turn to, as they have in the past, on such matters.

The amendment proposed by the chairman of the Budget Committee and unanimously approved by that committee would merely continue that practice, indeed. If the language slipped into the draft of S. 1 that this amendment corrects were merely dropped and there were no references to the committees at all, the Parliamentarian would continue his practice of turning to the Budget Committee for budgetary estimates. What is more reasonable than that?

I believe stripping the Domenici amendment from the bill would needlessly complicate the enforcement procedures in S. 1. With the Domenici amendment, we have the right mechanism to enforce violations of S. 1. Why clutter it up with a very cumbersome, clumsy, and untested process? The Budget Committee has for 20 years done this. They have the experience in dealing with language such as that contained in S. 1. We have served as the liaison with the Congressional Budget Office to provide the Parliamentarian with CBO cost estimates for all of that period.

Mr. President, there is no compelling reason to set such a dangerous precedent as that suggested by the underlying governmental affairs language. There is no compelling reason to grant one Senate committee such unprecedented power over matters better left to the Parliamentarian. There is no compelling reason to change what is not broken.

I urge my colleagues to accept the Budget Committee's amendment as unanimously accepted by the Budget Committee and clearly endorsed by Senator ROTH, the chairman of the Governmental Affairs Committee.

#### S.1 AND BUDGET COMMITTEE'S ROLE

Mr. ROTH. The Budget Committee's amendment strikes the roles of both the Budget Committee and the Governmental Affairs Committee in making determinations regarding the point of order in this bill. The bill would, with the amendment, become silent on how these determinations should be made. I wonder if the distinguished chairman of the Budget Committee would respond as to how the determinations of levels of mandates would be made under this legislation?

Mr. DOMENICI. I would be happy to respond to the distinguished chairman's question. First of all, the Budget Act generally provides that the determinations of budget levels for the purposes of Budget Act points of order are based on estimates made by the Budget

Committee. In practice, the Budget Committee works with CBO to provide these estimates to the Presiding Officer for the purposes of determining whether a point of order lies against legislation. In those instances where a CBO estimate is not available, the Presiding Officer turns to the Budget Committee for an estimate.

While this legislation does not explicitly give the Budget Committee this authority, I do not think this authority is necessary. The Budget Act generally assigns this responsibility to the Budget Committee. The committee's intent in this amendment is that the Presiding Officer continue to seek the advice of the Budget Committee for a determination of the budgetary levels in order to determine whether legislation violates this point of order.

Mr. ROTH. I understand that the Budget Committee would retain authority for making estimates for the purposes of determining the levels of mandates, but some may still have a question about the impact of striking the Governmental Affairs Committee's role. By striking the Governmental Affairs Committee's role in the bill, are we now giving the Budget Committee the authority to determine what constitutes a mandate?

Mr. DOMENICI. The determination on what constitutes a mandate would reside with the Presiding Officer. The Budget Committee's role would be limited to providing estimates on mandate levels.

Mr. ROTH. I wonder if the distinguished ranking minority member of the committee, the senior Senator from Nebraska, could respond to these questions?

Mr. EXON. I concur with the remarks made by the Senator from New Mexico. Let me reiterate several points. In this legislation, the authority given to the Budget Committee for the purpose of determining estimates coincides with the authority already granted by the Budget Act. The Budget Committee would continue to work with the Congressional Budget Office to produce the estimates of mandate levels. This bill grants the committee no new authority.

The Presiding Officer would have the final determination as to the applicability of this legislation. The Budget Committee would not be involved in this process. The committee's role would be confined to providing estimates.

Mr. President, I yield the floor.

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, I would like to respond to my friend from Nebraska briefly because I think there is some misunderstanding about what the provisions in this bill are, as well as to how the provisions were put into the bill. Nothing was slipped into, as he said, S. 1. Nothing was slipped into S. 1. It was in the bill submitted to the com-

mittee. We did not put it in. It was not an amendment in committee. It was placed into the legislation in the original language of the bill.

A little while ago, the statement was made that this particular portion of the language was introduced in the Governmental Affairs Committee. That is just not true. The language was put in as a part of the original legislation that was submitted, the part on page 25.

So any indication that something was slipped into S. 1, as though we were trying to get somebody else's jurisdiction, is just flat not true. There was basically an agreement made by all parties that were working on this bill that the division of responsibilities on this would be that the costs would be gone through and would be monitored by the Budget Committee. I had no objection to that. The mandates part of this, though, was part of the responsibilities the Senate, in our written instructions to the committee, the intergovernmental relations part, should be a responsibility of the Governmental Affairs Committee. There was no taking of somebody else's jurisdiction; quite the opposite.

What is in the bill now is that the amendment would provide for taking responsibility away from the Governmental Affairs Committee, where it logically resides and where Senate instructions would normally be interpreted, where it should reside, and give it to the Parliamentarian to make a judgment on what is a mandate or what is not a mandate.

I did not object to making this an amendment to the Budget Act. I did not expect at that point that making it a part of the Budget Act would mean that the Budget Committee then would insist that the mandates part of this or a judgment on the mandates part would be taken away from the responsibilities of the Governmental Affairs Committee.

If this makes sense, then let me make one other reference to change that was made and is included in the language on page 27 of the bill. It is in heavy print. This was not in the original bill. It specifically gives the responsibility for making cost judgments over in the House to the Budget Committee. And also in the House, on any judgment regarding mandates, it gives that responsibility to the House Committee on Governmental Reform and Oversight.

That was not in the original bill. That is, the Budget Committee here that we are mandating to the House that the Budget Committee over there will take up costs, and that the Committee on Governmental Reform and Oversight will deal with mandates. That was not even in the original bill.

So we are saying: House of Representatives, here is how you have to take up this legislation, and here is the division of responsibilities on making judgments on it.

At the same time, we come to the Senate, and instead of having the comparable committees in the Senate responsible for similar judgments over here, we say what is OK on the Budget Committee over here, we take it away from Governmental Affairs and give it to the Parliamentarian. Over in the House, you specifically made changes to provide specifically where the responsibilities would go and made them different than here in the Senate. I think that is wrong.

I do not see why we specify that over there. If it is so wrong here, why is it so right in the House of Representatives? I just do not see the logic of this at all. So what the Budget Committee did in its markup was to vitiate an agreement that we had made prior to the introduction of the bill. There was no language introduced in the Governmental Affairs Committee at all. This all came out of the changes that the Budget Committee insisted upon. I am sorry that our committee chairman, Senator ROTH, has left the floor because all this language we are talking about here was in the bill over there. Yet, he did not disagree with it in committee. He voted for the bill coming out of committee, supported the bill, moved it to the floor and wanted a vote on it. I was for that. I did not disagree.

We had lost on several amendments we proposed that we thought would have made it stronger over there. Now we come to the floor and suddenly what is good for the House of Representatives, in the wisdom of the Budget Committee in giving it to the oversight committee over there, jurisdiction over mandates and jurisdiction over costs over there, when they come out of CBO; yet when we come to the Senate, we say the Budget Committee would consider costs over here. I do not quarrel with that one bit. I think that is a logical place to be.

Suddenly, for reasons beyond my understanding, the Budget Committee tells the Senate Governmental Affairs Committee, without any action on the Senate floor, your jurisdiction is down the tubes, and it goes to the Parliamentarian. It does not make any sense to me. That is the reason I think we were dealt with very unfairly over here.

I will not ask the Parliamentarian, but I do not know whether the Parliamentarian prefers to have this particular responsibility, as a matter of fact. This puts an enormous responsibility on the Parliamentarian that is supposed to rule on Senate order and rules and not get off into the legislative function of making judgments that no Parliamentarian in the Senate has ever made except on points of order provided under the Budget Act. We are giving House committees specific responsibilities, but we are saying the Senate cannot have those same responsibilities in our comparable committees. So that is the reason I get exercised on this when I think it is a little bit ridiculous. I repeat that this was

not something slipped into S. 1, as my colleague referred to. This was in the bill as submitted to the committee.

I yield the floor.

Mr. EXON. Mr. President, it may be a misunderstanding and we may be talking by each other on some of these matters. I simply point out what I think the ranking member of the Governmental Affairs Committee just alluded to, and that is the fact that what we are trying to do is leave the process the way it was. There can be no argument but what if you would follow the position taken by the ranking member of the Governmental Affairs Committee, we would not be making a change. The normal order is for the Parliamentarian to rule. The Governmental Affairs Committee bill would differ with that and change it. We objected to this Governmental Affairs proposal during negotiations. We did not control the process. They said they would take out the language, as we understood it, between meetings of the staff.

Mr. GLENN. Will the Senator yield?

Mr. EXON. I will say this, and then I will be glad to yield. I also simply say that with regard to the House of Representatives, we merely included what we understood our colleagues in the House wanted to do. We do not choose to impose any solution on the House of Representatives. We think we are doing here what our colleagues in the House want to do. Also whether it is unanimously agreed to over there or not, I know not. I simply say that I am not confusing the ranking member of the Governmental Affairs Committee in bad faith. It might be that we are talking past each other.

I simply point out that S. 993 did not include the Governmental Affairs' language that is in S. 1 that we are asked to vote on. So a change, therefore, has been made. Maybe there is some misunderstanding on the part of the Governmental Affairs Committee on this. I simply point out, Mr. President, that not only the total Budget Committee—Members on both sides of the aisle, including myself as the ranking Democratic Member, and Chairman DOMENICI, and our position is supported by Senator ROTH, the chairman of the Governmental Affairs Committee support the amendment. I would like at this time, Mr. President—and then I will yield and be glad to respond to any questions from my friend from Ohio that I might—to refer to part of a colloquy that will be included in the RECORD, which indicates a question Senator ROTH asked me as part of the colloquy, and my response was—I hope this might help clear up the matter—"I concur with the remarks made by the Senator from New Mexico. Let me reiterate several points. In this legislation, the authority given to the Budget Committee for the purpose of determining estimates coincides with the authority already granted in the Budget Act. The Budget Committee would continue to work with the Congressional

Budget Office to produce the estimates of mandated levels. The bill grants the committee no new authority. The Presiding Officer would have the final determination as to the applicability of the legislation. The Budget Committee would not be involved in that process. The committee's role would be confined to providing estimates, which is a role the committee has always played, and we hope the Senate, by supporting the amendment offered by the chairman of the Budget Committee, will continue in that traditional role."

Mr. GLENN. The Senator from Nebraska answered the question I was going to ask. But I do not understand yet why it is right for the Senate to dictate to the House, when it is in the legislation what the jurisdictions of different committees will be.

My friend from Nebraska says, "We understand they wanted it that way." Well, I do not automatically accede to the House having legislation over there that says, well, we think somebody in the Senate wants it, so that is the way we will do it. Yet, we dictate in this thing very specifically. The language is even almost identical from one part to the other in the language that provides for the assignment of responsibilities here in the Senate. It was in the legislation. And that is over in the House. Yet, we very specifically said, by action of the Budget Committee, OK, that is alright over in the House, we agree with that in the House. This is a logical definition of where things should go in the House. In the Senate we have to take the responsibility away from the Governmental Affairs Committee that, by the rules of the Senate, deals with matters of intergovernmental relations up and down the line, and we are going to take that responsibility away, without saying anything about it, and put it in this legislation and give that authority to the Parliamentarian. I just think that is illogical. I cannot accept the explanation by my friend from Nebraska as to exactly why we are doing this when it seems to me so logically in the other direction. If it is logical for assigning this to the House the way we did, then it is logical to assign it to the Senate the way we did.

I yield the floor.

Mr. EXON. Mr. President, as we may be beginning to make progress on this, maybe we can agree to this amendment. I advise my friend from Ohio that this Senator did not negotiate with the House of Representatives on this matter. I understand that the majority side has been negotiating with them. I have been told by the majority side that the House of Representatives endorses and wants us to leave this matter. We are checking on that right now. I hope that I can reach Senator DOMENICI so he can come back on the floor, since I believe it was he or one of the Republican members of the Budget Committee who did the actual negotiations with the House on this and not



this Senator, or as far as I know any Democrat or minority member of the Budget Committee.

Let me emphasize once again that the Budget Committee has always followed the procedure, as has the Senate for 20 years, that when matters with regard to points of order have been raised on the figures supplied to the Budget Committee—which most people would agree is the authority on this, has the staff to follow it, and has the responsibility to work with CBO to get exact numbers—that those matters have traditionally been decided by the Parliamentarian, advising the Chair. We simply want to leave that the way it has always been and not change it.

I hope that we will have a more definitive answer to the legitimate question raised by the Senator from Ohio with regard to what is the pleasure of the House of Representatives on this matter. It was not our intention to be doing anything except to try to parallel the processes that will be necessary to work out, I suggest, some parliamentary questions that are going to be raised and to which points of order might lie. In that instance, the Parliamentarian would be advising the Presiding Officer as to what the situation was.

I emphasize again, as has Senator DOMENICI and as has Senator ROTH, the chairman of the Governmental Affairs Committee, that all we are doing is trying to leave this the way it was.

Now, I happen to think that the Budget Committee should legitimately play a role when budgetary matters are considered, and it is simply the position of the Budget Committee that we should leave well enough alone and not try to fix something that is not broken.

I yield the floor.

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, I agree completely with what the Senator from Nebraska just said. I do not propose to change the point of order at all. We do not change that. There is nothing about a point of order in this particular section of this thing. It has worked well for 20 years. I agree with that, with the Budget Committee, with the cost estimate and whether points of order lie, and the Parliamentarian makes that judgment.

What we are talking about is what happens when it is not clear as to what is a mandate and what is not. Now, I think this problem would occur only very infrequently. I think most of the legislation put in will appear to be very clear when there is a mandate or when there is not a mandate.

But what happens when there is a question about what is a mandate or what is not a mandate? That is the question.

We do not propose to change the point of order that has worked well for 20 years. I agree with that. The language we are talking about here has

nothing to do with points of order. It has to do with who makes the determination on what is a mandate and what is not.

Over in the House, by the wisdom of the Budget Committee here, we give that authority to the Budget Reform and Oversight Committee in the House to make that determination in the few times it may come up. We see no reason why over here that should not be in the committee that has the assigned jurisdiction over intergovernmental matters—Federal, State, and local—assigned by the rules of the Senate, and the committee does its best to carry those out.

So I submit it does not have anything to do with points of order. I support the points of order, the procedure we have had in the Senate for 20 years. I see nothing wrong with that. This is a whole different matter from that.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, with regard to the question of whether the Parliamentarian can do what this bill would ask him to do, let me say that we have given the Parliamentarian even more difficult tasks in the past than this one.

For example, the Byrd rule that we are familiar with, on extraneous matters on reconciliation bills, which are very important, and it is a very complicated statute that requires many decisions of law.

Furthermore, the War Powers Resolution, to cite another example, requires the Parliamentarian to make hard choices.

In the Senate, the Parliamentarian can consult with whatever committee he wishes.

The point that we are making here as members of the Budget Committee, supported by the chairman of the Governmental Affairs Committee, is that the process in place has worked well.

Why do we find ourselves in this debate that has taken the last hour's time of the Senate? Because we are passing an important new piece of legislation called S. 1, which has to do with mandates on governmental agencies. What we are simply saying, Mr. President, is that we are not trying to interfere at all with the responsibility that we in the Budget Committee recognize fully is in the prerogative and responsibilities of the Governmental Affairs Committee with regard to the affairs of different levels of Government.

What we are simply saying, Mr. President, is that we, as a Budget Committee, feel that we should leave well enough alone with regard to points of order that would affect the budget. We think that it has worked very well to leave that authority completely in the hands of the Presiding Officer with the advice and counsel of the Parliamentarian. It has worked well in the past and we want to continue it that way.

I suggest, absolutely, that we think there is a matter of jurisdiction here, but more important than the matter of jurisdiction is keeping a system in place that works well. We still feel that the attempts by the Senator from Ohio, the ranking member of the Governmental Affairs Committee, would complicate a process that we think has worked very well under the jurisdiction of the Budget Committee.

Now, I would certainly emphasize once again that if we have a point of order—and we hope that the Presiding Officer, under the advice of the Parliamentarian, would go back to the Budget Committee for the exact figures and numbers—there is nothing to say that if it is the opinion of the Chair or the Parliamentarian that other committees should also be consulted about this, then that would be something that could be done.

I will simply say that what we are objecting to is the specific inclusion of the provision the Governmental Affairs Committee is trying to get approved in this legislation. That is why we have offered the amendment authored by the Senator from New Mexico, the chairman of the Budget Committee, and supported by Senator ROTH, the chairman of the Governmental Affairs Committee.

I hope with that background, Mr. President, that we could come to a vote quite soon on this. I hope and I urge the Senate to support the recommendations made unanimously by the Budget Committee, by the chairman of the committee, Senator DOMENICI, by myself, the ranking member, and strongly supported also by the chairman of the Governmental Affairs Committee, the distinguished Senator from Delaware.

I yield the floor.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, first of all, I want to comment on some of the remarks of my friend from Nebraska by making a parliamentary inquiry.

I make the inquiry of the Chair as to whether the Parliamentarian has previously ruled as to whether or not language in a bill or an amendment has constituted a mandate on State and local governments.

The PRESIDING OFFICER. The Parliamentarian has not so ruled.

Mr. LEVIN. Now, when we say, "Just keep doing it the way we have done it before," let us understand what we are talking about.

We have a Budget Act—and I will get to that in a minute, because the Budget Act makes specific references to the Budget Committee.

I will come to that one in a minute. What we have heard on this issue is just leave it the way it has been done. Let the Parliamentarian rule the way he has ruled for 20 years on these points of order.

The Parliamentarian has never ruled on whether or not there is an intergovernmental mandate. The Parliamentarian has never ruled, and I will make this a parliamentary inquiry of the Chair. Has the Parliamentarian ever ruled whether or not a provision in a bill requires compliance with accounting and auditing procedures with respect to grants or other money or property provided by the U.S. Government? Have we ever had a ruling like that from the Parliamentarian?

The PRESIDING OFFICER. No.

Mr. LEVIN. Mr. President, I can go on and on through these exemptions. I think the point is clear. We are skating out on a new pond.

The Parliamentarian has never ruled on these issues, whether or not language constitutes a mandate; whether or not, because it is an exception to the requirement provision if a bill enforces the constitutional rights of individuals, establishes or enforces a statutory right that prohibits discrimination based on rights. I can go through all of these with the Parliamentarian but I know the answer.

This is a new process that is being undertaken. The Parliamentarian has not ruled on this type of thing before. And we are asking the Parliamentarian to undertake on every bill, resolution, amendment, et cetera, every one, subject to a point of order. This is not just a Byrd rule on reconciliation. This is not just a War Powers Act.

I agree the Parliamentarian has some difficult decisions to make. I fully agree with my good friend from Nebraska on that issue. This is on every bill that comes to this floor, every amendment that comes to this floor, the Parliamentarian will have to rule as to whether or not there is a mandate on that. Because if there is, it is out of order.

When I say he will have to rule, he may have to rule on every bill. He may have to rule, and will have to, if somebody raises a point of order. But if the language which exempts local government from paying for a mandate is not in a bill or resolution, and if it does not have that other language relative to the appropriations, and if it does not have an estimate, it is subject to a point of order. Anybody can raise a point of order on every amendment, every bill, that comes to this floor.

The Parliamentarian, for the first time in history, is going to have to rule as to whether or not language in a bill constitutes an intergovernmental mandate. The Parliamentarian has never ruled on anything like that before. We have just heard from the Parliamentarian through the Chair. I could go on and on and on, by the way, as to other elements of the bill which constitute exceptions to the mandate requirement where the Parliamentarian has never ruled. The argument that, look, this thing has worked for 20 years, why change a good thing, does not work when it comes to the question of what constitutes a mandate or an exception

to the mandate requirement. The argument simply is not applicable to that.

Now, should the Parliamentarian on that issue consult with Governmental Affairs? I use the term "consult" with Governmental Affairs? I think the answer is "yes." I think we ought to provide language which, in effect, says that. That is the intent of the language which is in the bill which would be struck by the Budget Committee amendment.

While my dear friend from Nebraska is on his feet I am wondering whether or not I might have unanimous consent to ask the Senator from Nebraska a question and not lose my right to the floor?

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

Mr. LEVIN. Mr. President, I listened very carefully to the Chairman of the Budget Committee and to the ranking member, Senator EXON.

Is it my understanding that the way the Senator from Nebraska reads this bill, that the Budget Committee is bound to accept the estimate of the Congressional Budget Office relative to the cost of an intergovernmental mandate, and is simply the transmission belt or the liaison to transmit the data from the Congressional Budget Office?

Mr. EXON. Mr. President, the answer to my very dear friend is that, no, the Budget Committee does not have to accept in toto the dollars and cents on anything submitted by the Congressional Budget Office to the Budget Committee.

But for all practical purposes, we do it that way.

Mr. LEVIN. Mr. President, I thank my friend from Nebraska.

Now, the next question would be, is the Parliamentarian bound under the Budget Act to accept the figures given to it by the Budget Committee?

Mr. EXON. Mr. President, my answer would be that obviously I would think that since the Parliamentarian does not have an estimating organization under his control, I would think the precedent, as the Senator from Michigan fully well knows, that the Parliamentarian would go along with whatever information he had at hand from the reliable source which we think in this instance is the Budget Committee.

Mr. LEVIN. Mr. President, is it the Senator's understanding of the Budget Act that in determining a figure under the Budget Act in ruling on scoring, for instance, that the Parliamentarian must accept the figure given to it by the Budget Committee?

Mr. EXON. Mr. President, I am not an authority on that as the Senator from Michigan knows. I am not a lawyer so I cannot give him a legalistic answer to the question.

I would simply amplify what I said before: in practice, that is the way it has always worked. It has worked very, very well. We do not think it should change.

Mr. LEVIN. Mr. President, let me make a parliamentary question, whether or not under the Budget Act the Parliamentarian is required to accept the scoring figure from the Senate Budget Committee?

The PRESIDING OFFICER. The Budget Act does authorize the Parliamentarian to accept the figures given by that Budget Committee.

Mr. LEVIN. My parliamentary inquiry is, is the Parliamentarian bound to accept the figure from the Senate Budget Committee?

The PRESIDING OFFICER. Where the law authorizes the Budget Committee to make those estimates, the Parliamentarian is then obliged to accept those estimates.

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

Now, that becomes a very critical point because the law in many places does not just simply throw the budget number at the Parliamentarian and say, "here, you figure it up." It assigns that responsibility to the Budget Committee.

I was interested in the Senator from New Mexico's comment about leaving this to the Parliamentarian, as though the law assigns certain responsibilities to the Budget Committee. The way I read the law, the four references out of the five in the Budget Committee's report, it is the Budget Committee—not the Parliamentarian, but the Budget Committee—which makes the determination at the budget level when there is a point of order.

Suddenly, it becomes unnecessary to be specific about assigning this function to the Budget Committee. Why are we shy here about assigning the same function to the Budget Committee, which is to try to figure out what a mandate costs, when we have made that same assignment to the Budget Committee—not the Parliamentarian—to the Budget Committee over and over and over again, in the Budget Act? I said four "overs" because I got four sections of the Budget Act.

For instance, section 311(C) for purposes of this section, and this is a point of order section, "the levels of new budget authority, budget outlays, new entitlement authority and revenue for fiscal year shall be determined on the basis of estimates made by the committee on the budget of the House of Representatives or of the Senate," as the case may be. Why are we shy about doing it in this bill?

Why are we shy about being explicit in this bill the way we have been explicit over and over again in the Budget Act, assigning a responsibility to the Budget Committee, so it is clear?

Do we want to leave ambiguity—there is enough ambiguity in this bill already, I must say. We have a new point of order which is incredibly complex which, in many instances, is going to be made against a bill for not containing an estimate which cannot be made. A point of order is going to lie

against a bill for not containing an estimate when we know now some estimates cannot be made. We have been told by the Budget Office. And yet a point of order is going to lie.

We are creating a point of order for the absence of something which cannot be supplied. That is pretty complicated for being straight with ourselves and with all those local officials and State Governors. It is pretty complicated. We know it cannot be supplied at times, and yet we are telling them that a point of order is going to be made for the failure to supply an estimate which is impossible to be made. You watch those points of order being waived like mad down the road. But that is neither here nor there. The point is we have a complicated bill.

We have a complicated bill with a new point of order which was not in last year's bill. And, by the way, the reason for the language which the Senator from Nebraska objects to in the bill and seeks to strike through the Budget Committee amendment is, there is a new point of order and there was an effort made to clarify who would make a determination.

Do we want to just leave it to the Parliamentarian and kid ourselves? The Parliamentarian is not in a position to determine how much it would cost 87,000 local governments to put in a new scrubber on an incinerator to get rid of mercury. Come on. That is not the job of a Parliamentarian. The Parliamentarian is going to be handed a number by the Budget Committee and they will have been given a number, maybe, if we are lucky, by the CBO. That is the way it is going to happen, just the way the Senator from Nebraska has indicated. The CBO will try to make an estimate. If it cannot, precedent is the Budget Committee is just going to be the liaison, the transmission belt. Even though legally, I think the Senator from Nebraska is correct, it is not obligated to do so, it will as a matter of precedent.

But this is a very, very complicated bill, and we should not leave ambiguity on purpose. We should not leave it on purpose. If it is going to be the Senate Budget Committee which is going to make a determination and hand it to the Parliamentarian, let us say it is the Budget Committee. Let us just say it. We do it in other places in the Budget Act. I read one of them, and I will not read the other. There are many places in the Budget Act. We say that the Budget Committee shall make the estimate.

We know where the Budget Committee gets it. That is where they should get it: the Congressional Budget Office. That is exactly the right place to look. But why be ambiguous.

I was intrigued by the committee report of the Budget Committee, where it says that:

The committee does not believe that the authority needs to be explicitly stated . . .

Why?

In the absence of a CBO estimate—

Here they talk about an absence of an estimate, which is news to me because we did not think it was possible. Now there is acknowledgement there may not be one.

the committee intends that the determinations of levels of mandates be based on estimates provided by the Senate Budget Committee.

The argument here is you do not have to make it explicit because it is implicit that the Senate Budget Committee is going to give to the Parliamentarian the figures, if it has any, from the Congressional Budget Office.

What everybody knows would happen. That is what my friend from Nebraska referred to when he said it has worked for 20 years. Estimates come in from the Congressional Budget Office to the Budget Committee, the Budget Committee hands them over to the Parliamentarian, and the Parliamentarian rules. But we have been explicit about that. We have said that the estimates would be made by the Budget Committee.

One of the sections which is being stricken by the amendment before us makes it clear that it is the Senate Budget Committee which will make the estimate. I do not know why there is any reluctance to do that. It has been done over and over again.

But I think what the Senator from Nebraska is saying is that there is some reluctance to have the Governmental Affairs Committee be involved on the question of whether or not there is a mandate. This is no longer a question of the number of or the cost of something. This is now a question of whether or not there is a mandate at all. The cost issues under the language of the bill are left for the two committees. How much is for Budget; whether it was left to the Governmental Affairs.

I believe that it is proper for Governmental Affairs to be at least consulted—at least consulted—on the question of whether or not an intergovernmental mandate exists when the Parliamentarian has had no experience in doing that, and I think properly should not be put in a position where they are going to have to make decisions of this nature.

So I hope that the committee amendment from the Budget Committee will be defeated and that we can work out some language which would at least require consultation with the Governmental Affairs Committee on the question of whether there is a mandate or whether or not there is an exclusion from the mandate, leaving it to the Budget Committee to, again, determine the amount of the cost, which is the traditional thing that the Budget Committee has determined.

So I thank my friend from Nebraska for responding to my questions, and I yield the floor.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER (Mr. ASHCROFT). The Senator from Nebraska.

Mr. EXON. Mr. President, I have listened with keen interest to my friend from Michigan and the points he has made.

I will simply reply that in the first interest, several sections vest the Budget Committee with decisions on matters of fact, not matters of law. Under the situations we are talking about, the Parliamentarian is the chief legal advisor to the Presiding Officer. He is the official in whom we should vest this power. I believe from the beginning that is what we intended to do. It is inappropriate to vest that power in another committee.

I will simply say that the Senator from Michigan could have conducted a similar set of inquiries with regard to any new point of order. Of course, the Parliamentarian has not ruled on a point of order that has not yet been adopted or enacted into law. I do not know that there would be a different ruling from a Parliamentarian in the future, but I hope that that Parliamentarian will continue to rule on the precedents of the past.

But neither does the Governmental Affairs Committee have any expertise at all in this matter. And certainly I would simply say to the U.S. Senate that regardless of the twists and turns of this matter, and regardless of this debate, which has carried not so much on the specifics of the amendment offered by the chairman of the Budget Committee, Senator DOMENICI from New Mexico, but has carried over into some concerns that I know the Senator from Michigan has on the whole matter of mandates and how they are going to be enforced.

I simply say that those kinds of considerations and arguments that are going to be made in very articulate fashion, I suggest, by my friend from Michigan, probably refer to—and may be appropriate on—passage of the whole mandate bill. I have talked with the Senator from Michigan. He has done a lot of research on this. I was very much interested and impressed with the information that has been brought to his attention in the form of a letter, after inquiry by the Senator from Michigan, from the Congressional Budget Office that raises a whole set of new questions about whether or not CBO can make these estimates, and they have said in some instances they have no way of making these estimates.

I believe part of the argument that is being made against the amendment offered by the Senator from New Mexico are arguments that will be made along the same lines, but possibly in a little different fashion, by the Senator from Michigan. The Senator from Michigan talks about allowing consultation with the Governmental Affairs Committee. I have no objection to that. But the language of the bill provides no such compromise. The bill says that the Governmental Affairs Committee, "shall have the authority to make the final determination." That is what we are trying

to strike in the pending committee amendment.

It is open to a compromise, I suggest, regarding consultation. But to get to the compromise first we have to adopt the Budget Committee amendment to page 25 that strikes the exclusive power—and I emphasize, Mr. President, exclusive power—of the Governmental Affairs Committee that they want to maintain as they wrote S. 1, and is a part that the Budget Committee and chairman of the Governmental Affairs Committee is trying to correct for the reasons that we have outlined.

The basic reason is why change a system that has worked well? Leave well enough alone. That is the heart of the argument. And that is why we hope the Senate will adopt the amendment offered by the Senator from New Mexico.

Mr. President, I had hoped and had agreed earlier, a couple of hours ago, on a time agreement—an hour equally divided. I think the RECORD will clearly show the Senator from Nebraska felt, when we started this debate, we were on controlled time. I find out later that has not been the case.

May I suggest in the interests of moving the Senate along in expeditious fashion, since we have been on this a long time and I suspect not a great deal new is going to be said pro and con on the amendment by the Senator from New Mexico, that we agree to, I suggest, a 20-minute extension of time equally divided from this time forward and then have a vote? Is there any objection to that?

Mr. GLENN. Mr. President, 5 minutes; 3 minutes?

Mr. EXON. How about right now?

Mr. LEVIN. I need about 3 minutes.

Mr. EXON. OK. I still have the floor. Before I lose the floor, let me make one more try.

I ask unanimous consent that there be 10 more minutes of debate, 5 minutes controlled by the Senator from Ohio or his assignee and 5 minutes controlled by the Senator from Nebraska?

The PRESIDING OFFICER. Is there objection?

Mr. GLENN. Mr. President, I agree to a time limit but I want to make a couple of phone calls first before I agree to a specific time limit. I think the Senator from Michigan had a couple of comments to make and I will make the phone calls while he is doing that.

Mr. EXON. Let the RECORD show I tried.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, first, I just have one additional question of the Senator from Nebraska. That has to do with the House of Representatives. We are in a position here where he, as ranking member of the Budget Committee, has said it is inappropriate to vest power in the Governmental Affairs Committee. Yet that is exactly the power that is being vested in the House Committee on Government Op-

erations in this bill. And this amendment does not touch that.

If it is inappropriate to vest that power in a committee of the Senate, it seems to me it is equally wrong to vest it in a committee of the House.

But in terms of vesting power in committees, the Budget Act vests power in the Budget Committee. I want to just make reference to four sections of the Budget Act where, on points of order, the power is vested in the Budget Committee.

I think I have made reference before to section 311(c), for purposes of this section the levels of new budget authority—et cetera:

Shall be determined on the basis of estimates made by the Committee on the Budget of the House of Representatives or the Senate, as the case may be.

There is power vested right in the Budget Committee.

In section 313(e), and these are points of order sections: For purposes of this section the levels of new budget authority, budget outlays, et cetera, "shall be determined on the basis of estimates made by the Committee on the Budget of the Senate."

Power is vested in the Budget Committee directly, right in the Budget Act. Yet one of the two sections which is being stricken here is exactly that. It puts the power to make the estimate of the cost of any mandate in the Budget Committee, exactly as we have done over and over again. There is nothing unusual about that at all. The Budget Committee has explicit power vested in it over and over again in the Budget Act to make these kinds of determinations of outlay. Yet in the bill as introduced, it wants to put that precise power of the Budget Act here—suddenly we find there is a committee amendment by the Budget Committee striking that clear grant of power.

I think it is useful, just in terms of avoiding ambiguity itself. This thing is going to be complicated enough. We might as well not build in an ambiguity. Make it clear. The budget committee has the power. Relative to Governmental Affairs, there is this power granted in the House which is left in place. The Budget Committee apparently does not want this power to be granted to the Governmental Affairs Committee here. It seems to me what is sauce—fair for the goose is fair for the gander. If it is right for the House, it is right for the Senate. My understanding was the Senator from Ohio had worked out an agreement relative to this kind of reference and if that, in fact, was correct, then it seems to me this would be a move away from what was in the original bill agreed to by the Senator from Ohio.

Finally, I would say, Mr. President, I hope that this amendment would either be defeated or be tabled, because unless you have clarity as to where the responsibility lies to both determine whether there is a mandate or an exception, and to determine the amount

of the mandate—unless you have clarity on that, we are making into law ambiguities which are going to bedevil us just about every day we operate around here.

We ought to clarify where the responsibility lies. We have done it before. It was in the original bill. We should leave it the way it was in the original bill and defeat the Budget Committee amendment. I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent that following my suggestion of the absence of a quorum, that when we come back after the order for the quorum call is rescinded that I retain the right to the floor.

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

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. 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 yield the floor, and I will look to the Senate from Ohio to make a request.

Mr. GLENN. Mr. President, what is the business before the Senate?

The PRESIDING OFFICER. The 11th reported committee amendment is the pending question.

Mr. GLENN. I 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.

The PRESIDING OFFICER. The question is on agreeing to the motion to table.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from North Carolina [Mr. FAIRCLOTH], the Senator from Texas [Mr. GRAMM], the Senator from Oregon [Mr. HATFIELD], and the Senator from Texas [Mrs. HUTCHISON] are necessarily absent.

I further announce that, if present and voting, the Senator from Oregon [Mr. HATFIELD] would vote "nay."

Mr. FORD. I announce that the Senator from New Jersey [Mr. BRADLEY] and the Senator from Massachusetts [Mr. KENNEDY] are necessary absent.

I also announce that the Senator from Arkansas [Mr. PRYOR] is absent because of illness.

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

The result was announced—yeas 27, nays 66, as follows: