

majority of the Committee members are physically present. The vote of the Committee to report a measure or matter shall require the concurrence of a majority of those members who are physically present at the time the vote is taken.

RULE 6—VOTING

6.1 Roll calls. A roll call vote of the members shall be taken upon the request of any member.

6.2 Proxies. Voting by proxy as authorized by the Senate Rules for specific bills or subjects shall be allowed whenever a quorum of the Committee is actually present.

6.3 Polling. The Committee may poll any matters of Committee business, other than a vote on reporting to the Senate any measures, matters or recommendations or a vote on closing a meeting or hearing to the public, provided that every member is polled and every poll consists of the following two questions:

(1) Do you agree or disagree to poll the proposal; and

(2) Do you favor or oppose the proposal.

If any member requests, any matter to be polled shall be held for meeting rather than being polled. The chief clerk of the committee shall keep a record of all polls.

RULE 7—SUBCOMMITTEES

7.1 Assignments. To assure the equitable assignment of members to subcommittees, no member of the Committee will receive assignment to a second subcommittee until, in order of seniority, all members of the Committee have chosen assignments to one subcommittee, and no member shall receive assignment to a third subcommittee until, in order of seniority, all members have chosen assignments to two subcommittees.

7.2 Attendance. Any member of the Committee may sit with any subcommittee during a hearing or meeting but shall not have the authority to vote on any matter before the subcommittee unless he or she is a member of such subcommittee.

7.3 Ex Officio Members. The Chairman and Ranking Minority Member shall serve as nonvoting ex officio members of the subcommittees on which they do not serve as voting members. The Chairman and Ranking Minority Member may not be counted toward a quorum.

7.4 Scheduling. No subcommittee may schedule a meeting or hearing at a time designated for a hearing or meeting of the full Committee. No more than one subcommittee business meeting may be held at the same time.

7.5 Discharge. Should a subcommittee fail to report back to the full Committee on any measure within a reasonable time, the Chairman may withdraw the measure from such subcommittee and report that fact to the full Committee for further disposition. The full Committee may at any time, by majority vote of those members present, discharge a subcommittee from further consideration of a specific piece of legislation.

7.6 Application of Committee Rules to Subcommittees. The proceedings of each subcommittee shall be governed by the rules of the full Committee, subject to such authorizations or limitations as the Committee may from time to time prescribe.

RULE 8—INVESTIGATIONS, SUBPOENAS AND DEPOSITIONS

8.1 Investigations. Any investigation undertaken by the Committee or a subcommittee in which depositions are taken or subpoenas issued, must be authorized by a majority of the members of the Committee voting for approval to conduct such investigation at a business meeting of the Committee convened in accordance with Rule 1.

8.2 Subpoenas. The Chairman, with the approval of the Ranking Minority Member of

the Committee, is delegated the authority to subpoena the attendance of witnesses or the production of memorandum, documents, records, or any other materials at a hearing of the Committee or a subcommittee or in connection with the conduct of an investigation authorized in accordance with paragraph 8.1. The Chairman may subpoena attendance or production without the approval of the Ranking Minority Member when the Chairman has not received notification from the Ranking Minority Member of disapproval of the subpoena within 72 hours, excluding Saturdays and Sundays, of being notified of the subpoena. If a subpoena is disapproved by the Ranking Minority Member as provided in this paragraph the subpoena may be authorized by vote of the members of the Committee. When the Committee or Chairman authorizes subpoenas, subpoenas may be issued upon the signature of the Chairman or any other member of the Committee designated by the Chairman.

8.3 Notice for taking depositions. Notices for the taking of depositions, in an investigation authorized by the Committee, shall be authorized and be issued by the Chairman or by a staff officer designated by him. Such notices shall specify a time and place for examination, and the name of the Senator, staff officer or officers who will take the deposition. Unless otherwise specified, the deposition shall be in private. The Committee shall not initiate procedures leading to criminal or civil enforcement proceedings for a witness's failure to appear unless the deposition notice was accompanied by a Committee subpoena.

8.4 Procedure for taking depositions. Witnesses shall be examined upon oath administered by an individual authorized by local law to administer oaths. The Chairman will rule, by telephone or otherwise, on any objection by a witness. The transcript of a deposition shall be filed with the Committee Clerk.

RULE 9—AMENDING THE RULES

These rules shall become effective upon publication in the Congressional Record. These rules may be modified, amended, or repealed by the committee, provided that all members are present or provide proxies or if a notice in writing of the proposed changes has been given to each member at least 48 hours prior to the meeting at which action thereon is to be taken. The changes shall become effective immediately upon publication of the changed rule or rules in the Congressional Record, or immediately upon approval of the changes if so resolved by the Committee as long as any witnesses who may be affected by the change in rules are provided with them.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

UNFUNDED MANDATE REFORM ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 1, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1) to curb the practice of imposing unfunded Federal mandates on States and local governments; to strengthen the partnership between the Federal Government and State, local and tribal governments; to end the imposition, in the absence

of full consideration by Congress, of Federal mandates on State, local, and tribal governments without adequate funding, in a manner that may displace other essential governmental priorities; and to ensure that the Federal Government pays the costs incurred by those governments in complying with certain requirements under Federal statutes and regulations, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Committee amendment on page 15, line 6.

The PRESIDING OFFICER. The pending question is the committee amendment on page 15, line 6.

Mr. KEMPTHORNE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

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

Mr. President, we have begun a good discussion on S. 1, a bill that is designed to realign federalism so that our State and local partners realize that they are indeed partners and not special interest groups that are out there. It also pays attention to the private sector so that we will know as a decisionmaking body the cost and the impact of these mandates before we vote to impose them. Of course, it provides for a waiver so that if we choose to take some altered course we may do so.

It enhances our decisionmaking ability. As a result of many hours of discussion yesterday where we talked about this, a number of Senators were able to address some of their points and the support that they have for this bill. Some raised concerns of specific aspects of that bill. But as a result of that, we realize that reporters all across America are beginning to truly focus on this issue by calling the city halls and county courthouses and the school districts in their regions. And they are asking the mayors and the county commissioners, "What about these unfunded mandates? Is this truly a problem and can you give us some examples?" So the stories are starting to come forward of what these unfunded Federal mandates are, which are hidden Federal taxes.

In today's USA Today, for example, is a good story talking about Columbus, OH, and the unfunded Federal mandates. Really Columbus, OH, is one of those cities—Mayor Gregory Lashutka is not only an effective mayor but a good friend of mine—one of the first cities to document these unfunded Federal mandates. It has become a good source of information for many of us.

I received in the mail, also, Mr. President, a letter. Because we talked about the cities, the counties, and the States, we referenced the schools. But I think this helps make the point about the impact on the schools.

This is a letter from James B. Appleberry, president of the American Association of State Colleges and Universities, and C. Peter Magrath, president, National Association of State

Universities and Land-Grant Colleges. I would like to just read a couple of statements that they make in their letter dated January 6.

We write on behalf of the institutions—

—Which I just referenced.

in support of S. 1, the Unfunded Mandate Reform Act of 1995. Together AASCU and NASULGC represent virtually all of the nation's public four year colleges and universities, enrolling more than 5.5 million students.

They go on to cite that:

Our associations have a long-standing public policy position of discouraging congressional efforts to pass legislation that imposes unfunded Federal mandates on the states. We know that Federal mandates are generally for worthy purposes, but our concern rests on the fact that Federal mandates diminish a State's ability to address its own priorities.

They go on to point out the reduction that they have experienced in funding at the State level. They say:

In recent years, states have been forced to divert scarce discretionary dollars from vital state programs in order to comply with new Federal directives. Public higher education, funded primarily from state discretionary funds, is one of those areas where State appropriations have been severely diminished as a result of newly mandated federal initiatives. Since 1982, financial support of higher education from State and local funds has dwindled from 7.6 percent of all revenues to 6.2 percent in 1993. When inflation and decreased State funding are taken into account, higher education's purchasing power has dropped by \$7.7 billion since 1990.

This reduction in funding is not happening because the states have stopped valuing higher education, but rather because unfunded Federal mandates have dried up all sources of a State's discretionary revenue. The main response to depleting state of discretionary funds available to public colleges and universities has been to cut services and raise tuition. The subsequent tuition increases force students is to either borrow greater amounts or to forgo a postsecondary education.

This is at the heart of the education of this Nation, but because of these unfunded Federal mandates, the end result may be that students are forgoing postsecondary education, students who would like to continue in their educational opportunities.

What about the children at the elementary and secondary grade level? This is the letter dated January 11, 1995, from Boyd Boehlje, who is the president of the National School Boards Association. They state that:

The National School Boards Association, on behalf of the more than 95,000 locally elected school board members nationwide, strongly supports S. 1, "The Unfunded Mandate Reform Act of 1995" and urges you to reject all weakening amendments.

They go on to say that:

S. 1 will bring an open, accountable, and informed decisionmaking process to future proposals and regulations that impact school districts and other local and State governments. School districts in your state need the protection.

He says:

The bill is reasonable, workable, and long overdue. It has our strongest support, and

needs to move through the process without weakening amendments.

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

Strong statements, Mr. President, from leaders of elementary, secondary, as well as the universities of this Nation pointing out the impact of unfunded Federal mandates on our children and on our students of this country.

Mr. President, we have received the committee reports, one from the Governmental Affairs Committee, the other from the Budget Committee. They have now been presented to Members of the Senate. They have been published. I know this was a concern of the Senator from West Virginia. So again, that has been taken care of so that all Senators have the opportunity to examine them.

UNANIMOUS CONSENT REQUEST

Mr. KEMPTHORNE. Mr. President, because the reports are now in Senators' hands, I ask unanimous consent that the Republican planing committee amendments be considered, en bloc, agreed en bloc, and the motion to reconsider be laid upon the table with the following exceptions: the amendment on page 25, the amendment on page 27, and the amendment on page 33; I further ask unanimous consent that all adopted committee amendments be considered as original text for the purpose of further amendments.

The PRESIDING OFFICER. Is there objection?

Mr. PRYOR. Mr. President, reserving the right to object, if I might, I want to compliment our distinguished friend from Idaho for his long-time commitment to the goals and to the premises that this piece of legislation represents. But I think, Mr. President, it needs to be said that this is a far-reaching, a very, very far-reaching piece of legislation.

It is the most far-reaching piece of legislation that this body, the 104th Congress of the U.S. Senate, has yet considered.

Mr. President, I sat through, the other morning, a very extensive debate in the Committee on Governmental Affairs relative to this particular piece of legislation. And in that committee, there were two issues that very much concerned me, two issues that I am afraid, at least for the moment, at that time were disposed of. One of those issues was a vote taken by the committee relative to a committee report. That committee report, by the way, as the Senator from Idaho has now demonstrated, has been filed. We have that particular report from the Committee

on Governmental Affairs. However, the committee at first voted not to accompany this bill with a committee report.

I want to compliment my friend from West Virginia, Senator BYRD, who has in the last 2 days—in my opinion, justifiably so—requested, before this measure be considered, a committee report from the other committee of jurisdiction, which is the Committee on the Budget. In my opinion, even though I am a member of the Governmental Affairs Committee, the Budget Committee report is more meaningful to this particular bill than the Governmental Affairs Committee report.

The Budget Committee has now made its report. It has been given to the Senate, but only in the past few hours. This morning, we received this particular report on the Unfunded Mandates Reform Act of 1995. We now have the report. I must say, and tell my colleagues that it is no news that since 10 o'clock, we have been in a meeting with Mr. Greenspan, Alan Greenspan, relative to the financial and economic crisis in Mexico. That has consumed most of our morning. We have been in recess most of this Friday morning, I might add. I do not know how many people have had the opportunity, I respectfully submit, to look at this particular committee report.

Finally, I think the issue of a sunset of 3 years, which was left unresolved by the Committee on Governmental Affairs, is an issue that I think needs to be addressed as we proceed with this bill. A measure of this far-reaching impact and consequence is a measure which, in my opinion, at this time needs a careful consideration of a sunset provision, where all of this measure would sunset at the end of 3 years, in order to afford the Congress—the House and Senate—the mayors, Governors, and all of us who are involved in this vast restructuring process, the opportunity to see if we have made the right or the wrong decision, and to see if we need to make changes in this particular concept that we have brought to this great country of ours.

So with that being said, Mr. President, I have reserved the right to object, and I have not entered an objection. I see the distinguished Senator from West Virginia; and I see the distinguished Senator from Michigan, who has been very much involved in the formation of this particular legislation.

I yield the floor at this time.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER (Mr. DEWINE). The Senator from West Virginia.

Mr. BYRD. Mr. President, I must begin by saying that Senator KEMPTHORNE came to my office earlier and showed me this request. I am much impressed with this Senator. He is a decent, fine Senator who wants to move on with this bill. He is certainly extending every courtesy and every cooperation that one could expect. I applaud him for that.

As to the request itself, I was supplied this morning with a copy of the report by the Committee on the Budget. I had said yesterday a number of things; perhaps I should repeat some of them. I said, first of all, that I am not taking on the role of traffic cop. That is somebody else's job. It is not my job to be a traffic cop. Then they say: Why, Senator BYRD, are you up here? Why are you here being a traffic cop yesterday and today?

If that is the role I am being perceived as playing, I should say that this is a massive bill. I am not for it; I am not against it. I do not know where I am on this bill. I have not had an opportunity to study a committee report, although the committee report that was accompanying the bill which came from the Committee on Governmental Affairs was available yesterday.

I was on the floor all day and into the evening. I personally have not had any opportunity to read that. I never had any opportunity to read the bill. That is nobody's fault that I had no opportunity to read the bill. But I was not aware that the bill the Senate was going to act on would be the bill reported out of the Committee on Governmental Affairs. I had read about a Budget Committee bill, and I also had read that the minority—meaning the Democrats on that committee—had not been permitted to have a committee report in which they had hoped to express individual views or minority views, or whatever.

I have always stood for the rights of the minority. When I was in the majority, I stood for the rights of the minority. I stood for the rights of the minority just recently, when there was the effort to modify the filibuster rule. I have been in the minority; I have been in the majority. So I have had some experience in both situations.

I have also been a Member of the House, a long time ago, and there was a reason for the constitutional Framers' decision to have two Houses, each with a particular role to play in its sphere of action. I have never been very convivial with respect to making the U.S. Senate a second House of Representatives. I want the Senate to remain what it is; namely, the premier upper body in the world today. Two reasons being—among others—that we have the right to offer amendments here, as long as we want to offer amendments and feel the need to offer amendments; also, that we have unlimited debate, which can only be proscribed by cloture motion agreed to or by unanimous-consent agreements.

So I felt that the minority—in this case, on the Budget Committee—had a right to ask for a report, as I stated yesterday, so that the whole record would be clear. As I stated earlier, every bill or resolution that comes to the floor does not necessarily have to have a committee report. There are a lot of minor bills that come to the floor and there are often no committee reports accompanying those bills. No-

body raises any fuss about that. But this is not a minor bill. I do not know what is in the bill, but I know enough about this bill to know it is no minor bill.

I have read that it is part of the Contract With America. I do not know what the Contract With America states. I have read that there is one, but I have not read it. Well, some would say: Why have you not read it? Well, I have never read the Democratic platform. I have been in politics now going on 49 years, and I have never yet read a Democratic platform. Why? Because I did not have any part in writing that platform. I am going to be guided by my own conscience and by the facts in a given situation, not by some party platform.

I do not read party platforms; do not expect ever to read a party platform. Why waste my time on a party platform? I have my own platform to deal with my conscience and try to do what is right and best as I see it for the Nation, for my State, for the U.S. Senate, this institution, and for my fellow man.

There are a couple of things that even supersede those. My dedication to my family and my Maker—and I am not of the religious right or the religious left. I do not claim to be a religious man, but I have some very definite ideas concerning religion and concerning the fact that I am going to have to meet my Maker one day and live in eternity. I believe that.

Eternity is a long time. Would Senators like to know how long eternity is?

I take this handkerchief in my hand. Let us suppose that a bird flew over Mount Everest carrying this handkerchief—once a minute—drawing this handkerchief across Mount Everest, just as I am drawing it across this microphone—and that that bird could live forever. When Mount Everest had been worn down to a level with the sands of the sea, by a bird dragging that handkerchief across the top of Mount Everest, eternity would have just begun.

I have some pretty strong opinions, but I am no religious rightist and I am no religious leftist. And I resented it when Joycelyn Elders—whose nomination I opposed—was reported to have made some snide comments about Christians.

No man is good. We all sin.

But I have some strong beliefs. I will not have anything other than the King James version of the Bible in my House. Why? Because that is the book that my foster mother and father read. I grew up with the King James version and I will stay with that version until I am laid beneath the sod.

I say all of that to say this. I have not signed any Contract With America, and I have not read it. But there is a great rush around here, there is a great stampede to enact the contract within the first 100 days.

I did not sign any Contract With America. I may like some parts of it. I may not. I am not a signatory.

I know that our distinguished leader, Mr. DOLE, with whom I have worked many years here in various capacities, is under pressure. I am not saying that he does not believe in the so-called Contract With America. I have not discussed it with him. But he is under great pressure. He is under pressure from the other body. That steamroller over there across the Capitol is coming our way.

And that Speaker, in my judgment, has more power than any Speaker since Sam Rayburn, under whom I served when I was in the House. I was also in the House when Joe Martin was Speaker.

But I am sure that Senator DOLE is also under pressure from people within his own ranks. So I try to understand—because I have been down that road—I try to understand his problems. And I can understand why he wants to move on to get this work done. I congratulate him for bringing in the Senate here during days when ordinarily we might have expected to be out following the swearing in of Senators. I applaud that.

I am glad he has kept us in. We ought to be here. We ought to be here debating this bill. We ought to know what is in this bill.

I am an old-time Senator, and I am also a brand-new model.

I say that I want to know how badly my State is going to be hurt by this so-called contract, if it is passed.

We have all this push to get these bills through, ram them through the Senate and House. What happened in the Budget Committee, I would assume, was an effort to get the bill to the floor in a hurry. The majority leader had asked to get those bills out of committee as soon as possible, which is a reasonable request. I understand that the chairman said, "Well, we are going to get this out and we are not going to have a committee report."

Well, it came out without a committee report. And then we were told, "Well, the statement is in the RECORD. The committee report is no different from the statement, so read the statement. Why wait on the committee report? All you are going to get in that committee report is that statement, plus this page," which says, "Unfunded Mandate Reform Act of 1995, Report of the Committee on the Budget."

Well, that is not quite the case. The statement is not exactly like the committee report. I understand that Mr. EXON's views had not been included in the statement, at least that is what I understood Mr. DOLE to say last night.

But, be that as it may, there are many other reasons why we need a committee report. And I can explain a few of those reasons later.

But, for now, I said I want to be a reasonable man. And I feel that I am on legitimate, solid ground when I ask for a committee report.

Why should I be up here asking for a committee report? I have a responsibility as a Senator. I want to protect my State.

I voted against the so-called Coverage Act, the only Senator to vote against it. I had good reasons. If Senators are still around here long enough, they will all understand some of those reasons. If Senators stay around here long enough, they will understand the kind of straitjacket the legislation will put the Senate into. I alone, voted against that bill and have no apologies.

But I am saying to my friends on both sides of the aisle, just because the House has rules that will allow it to ram bills through, does not mean that the Senate has to roll over and play dead. Let Members slow down a little bit here. This is only the 13th day of January, Friday the 13th. This is early in the session. We are not up against the fiscal year deadline. We are not up against a deadline to raise the debt limit. We are not up against any emergencies this morning. We will have, possibly, an emergency supplemental come along one day, but this bill is not an emergency bill. We have some time. Let Members slow down and look at what is in this bill. That is, as I see it, my duty as a Senator.

It sparked my notice when I heard that the minority on the Senate committee had been denied the right to file minority views in a committee report. It kind of got the adrenalin flowing; stimulated my blood pressure just a bit. So I came to the floor yesterday and suggested we have a committee report and an opportunity to study it a little bit so we could better understand what we are being asked to vote on. I have not yet had an opportunity to study that committee report. I know that the distinguished majority leader, when he comes to the floor, has the first right of recognition, which he should have. His party also has the chair, which I insist on.

The new Senators who are presiding are doing an excellent job. They are paying attention. They are not up there reading or signing mail. There used to be a telephone behind the Presiding Officer's chair. Senators would be in the chair and they would talk on the telephone. When I became majority leader, I took that telephone out.

Mr. President, is there something the Chair wishes to say?

The PRESIDING OFFICER. Is there objection to the request of the Senator from Iowa?

Mr. BYRD. Mr. President, I object.

Mr. President, am I recognized?

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

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

The minority does not have a right to that chair. If Republicans are in the majority, they should have that chair, and vice versa. So, when friends have asked, "Do you not think it would be a good thing to share the chair," I said, "No."

The majority leader, when he comes to the floor, will have that arrow in his quiver—the arrow—of first recognition. I may not have another chance today to say a few words on this.

Mr. President, the first item of legislation passed by this Congress was S. 2, the Congressional Accountability Act. The Senate now has under its consideration S. 1, the so-called unfunded mandates bill. When I think about the paradoxical effects of those two bills, I sincerely hope I am not the only one to marvel at the utter inconsistency of what we see going on.

On the one hand, when the Senate passed S. 2, it agreed to apply to the Congress and its employees many of the same worker protection and environmental safety laws currently enjoyed by the rest of the Nation. Yet here we are today debating the unfunded mandates bill, which, if enacted, could turn right around and endanger many of those same protections.

In principle, I am not opposed to the idea of requiring congressional funding for programs that we enact. I agree that in some cases we have passed along to the States the cost of increased benefits that we knew we could not fund. But dealing with the problem on a case-by-case basis, which I believe is a prudent course, is a completely different approach from that which we have in this bill. The plain truth is, Mr. President, the approach taken by S. 1 seems to me, at this point and until I have a better understanding of it, a little bit like using an elephant gun on a squirrel hunt.

As currently drafted, if I listen to my colleagues and some of the staff around here, and as I understand it—and I want to verify this—I fear that the bill may be too broad a solution to the problem. The answer to unfunded mandates is not going to be found through enactment of legislation that may irreparably quash important health, environmental, and quality-of-life measures already on the statute books.

I know that a good many Senators have problems with the Clean Air Act. When I was majority leader I would not bring it up. I had a lot of Senators on my side of the aisle, including the former majority leader, Mr. Mitchell, very much a supporter of that act. When I was majority leader I would not bring it up. As majority leader, I did not feel that I necessarily had to bring up every bill that some colleague on this side of the aisle wanted. I did not bring it up.

I ended up voting against the Clean Air Act. It had some good things in it and some things I did not like. Of course, the Senate took the hill country boy from West Virginia and ran over him.

I had an amendment which was called the "coal miner's amendment." I had the then majority leader, Mr. Mitchell, against me, and I had the then minority leader, Mr. DOLE, against me, and I had the President

against me. I had to go up against that vast array of formidable persons who were opposed to my poor little old coal miner's amendment.

But I worked hard, and I managed almost to win the fight. My problem was that three Senators who had committed to vote with me did not vote with me but voted against me. So I lost my amendment by 1 vote.

You might call that Clean Air Act an unfunded mandate. I voted against it. Many Senators here today who want this unfunded mandates legislation voted for that bill. They voted for that bill, and they have voted for most of the legislation—most of the legislation—that they now refer to as unfunded mandates legislation. Various Senators who are now pushing hard for this bill, voted for what is now attacked as unfunded mandates laws.

So I say, again, the answer to unfunded mandates is probably not going to be found through enactment of legislation that may irreparably quash important health, environmental, and quality-of-life measures already on the statute books.

Incidentally, I should alert my colleagues that there will be votes today. I hope that they do not leave under any impression or false hope that, now that I have the floor, I will be talking the rest of the day and the night. I do not intend to do that. I am not filibustering this bill. I am sure the majority leader will have a vote or two at some time.

I want my colleagues to be fully aware of that. This is not one of these Fridays we have become accustomed to around here in which we show up for an hour, and go out early. The custom that has grown up around here is, we get an agreement to finish up everything next Tuesday and we will not be in session on Friday. We need more debate around here, not less. But this is not one of those Fridays in which we will vote by 10:30 and then hie away to the four winds.

To my colleagues, I say we better learn how to be a minority again. The Senators over here on this other side of the aisle know how to act as a minority. I am going to tell you another bit of news: They also know how to operate as a majority. You watch that leader over there. He will not hesitate to use the rules. He will not hesitate to rock the boat.

I have to kind of get used to being in the minority again.

We do not need to put the Family and Medical Leave Act or the National Voter Registration Act or the OSHA Reform Act or the Clean Water Act, among others, on the chopping block in an effort to solve the problem of unfunded mandates.

In saying that, may I say that I have some sympathy with efforts to deal with these unfunded mandates. But this legislation would do that precisely, put them on the chopping block in an effort to solve the problem of unfunded mandates.

Any time one of those programs or any one of almost 200 other such mandates currently tracked by the National Conference of State Legislatures is reauthorized or amended, they could be put in jeopardy.

Mr. President, I am well aware that there are those in the Senate who would like to accomplish that goal, the goal of rolling back what has previously been accomplished. Some of what has previously been accomplished, I would like to roll back, but I am not sure that this bill, until I understand it better, is the way to do it.

For some—not all, of course, but some—this bill appears to me, from listening to others and some of those who have even “whispered in my ear,” I get the impression that the bill is simply a back-door way of gutting progressive legislation enacted over the past several years. I am not saying all the legislation that has been passed in the last several years has been progressive. I voted against some. Some may say the bill we passed earlier this week is progressive legislation, S. 2. I did not think so. I voted against it.

If that is what they want to do, then come forward and say so. Bring a bill to the floor that would repeal the minimum wage law. Bring a bill to the floor that would repeal the regulations relating to toxic waste disposal. If that is the agenda, bring a bill to the floor that repeals it. Lay it out on the desk in open view. Let us debate the merits of one of those bills if that is the intention of some. But we should not continue on this headlong rush to pass legislation whose impact is not completely known.

I am also concerned, as I listen to members of my staff, that S. 1 is simply impractical in its method of addressing the problem. The requirements placed on congressional committees and the Congressional Budget Office are totally unworkable. Now that is what I understand in talking to Jim English, who is the former director of the Appropriations Committee staff in the Senate, and others. I consider them the experts. I understand from them that the requirements placed on congressional committees and the Congressional Budget Office are totally unworkable. As an example, they point to the need of every piece of legislation reported out of an authorizing committee to include a report on the aggregate cost of that legislation to State, local, and tribal governments. Well, at least if we ever pass this legislation as it is we will get committee reports. We will not have that problem again. We will get committee reports that have minority views in it.

Mr. President, there are more than 80,000 governmental units in this country—80,000. How in the world is CBO going to survey each and every one of those organizations in their effort to determine a program's cost?

The fact is that it cannot be done. Dr. Reischauer, the Director of the Congressional Budget Office, even stat-

ed as much in a letter last month to our colleague who is in the Chamber, Senator LEVIN. Dr. Reischauer said it would be “very difficult, if not impossible, to determine with precision” the required cost estimates.

Mr. President, I have an impulse to suggest the absence of a quorum and make it a live quorum. I am not doing that yet, but why should I not do it? Here we are, debating this very important bill. We have only five Senators in the Chamber, including the Senator in the chair.

Why are Senators not here talking about this bill, explaining it? I will sit down and listen to anyone who wants to explain the bill or the amendments. I will be happy to have anyone explain the amendments. I desire that somebody come and explain this bill and answer questions about it.

I know I am not the only Senator, other than the four who are in the Chamber besides me, who does not understand this bill.

Estimating the costs of various proposals on a State-by-State basis requires very detailed and comprehensive information on the issue under study. Such data are needed for each State, local, or tribal government. But the necessary data bases are not always available, and so developing a single methodology that can be used in the estimating process is not a viable option. Consequently, Mr. President, the staff of the CBO, I am told, would have to address each bill and each amendment that contained a mandate separately in order to identify and find the needed data. And obviously that is an extremely time consuming and costly endeavor.

Now, Senators and staff advise me that S. 1 mandates that the estimates be made for a full 5-year period. How ironic that is, Mr. President, since we have some in this body who have complained that they cannot provide the American people details of how they would comply with a balanced budget constitutional amendment because the data cannot be reliably projected that far into the future.

Now, that opens up an interesting subject. We have some in this body who have complained that they cannot provide the American people details of how they would comply with a balanced budget constitutional amendment because the data cannot be reliably projected that far into the future. What is going on here? This bill mandates that the estimates be made for a full 5-year period. There are some in this body who are proposing that we, that those who support the balanced budget amendment, provide the details, provide the roadmap that will point the way and tell us what the costs are, what the sacrifices are, what the burdens are, what is going to be cut. And the American people have the right to know. Other Senators have the right to know.

The American people do not know. I do not have the newspaper in front of

me, but I saw something in a newspaper recently to the extent that 80 percent of the American people favor a balanced budget amendment—80 percent favor it. But in reading the fine print as to what does this mean; what does this entail; does it mean cutting Social Security or does it mean cutting veterans pensions or veterans compensation or law enforcement, health care, Medicare; what does it mean—suppose that is the question: How do you feel about it?—well, no longer did 80 percent favor a balanced budget amendment. When they saw, “Oh, it means that they might cut my veterans pension; they might cut my Medicare; I am not in favor of it,” I began to see that the 80 percent came down to 59 percent in one case or some such, 53 percent, and 34 percent or 33.

Now, that was not 33 percent of the 100. That was 33 percent of the 80 percent. In other words, as I read it, all those who favor a balanced budget amendment—well, if 80 percent favored it, obviously 20 percent did not. That is what I assume. But of the 80 percent who favored it, who favored this if such was cut, and then when it said that 59 percent, only 59 percent favored it if a certain item was cut, they did not mean that 59 percent of the total pie, 59 percent of the 100 percent of those who were opposed to it. It meant 59 percent of the 80 percent who said they were for it.

So when people come to understand what the punishment is, affecting their particular circumstances, their particular lifestyle, or whatever it may be, then the 80 percent falls away.

That is why I voted for Mr. EXON's amendment the other day. He suggested that we know what the details are in connection with the balanced budget amendment. And our leader, Mr. DASCHLE, and the House Minority Leader, Mr. GEPHARDT, and others are seeking to know what is in this poke along with this pig that we are being asked to buy. I think that is a legitimate objective.

There are those who say, “Well, we can't provide the American people details on how they could comply with a balanced budget constitutional amendment because the data cannot be reliably projected that far in the future.” Others say, “Oh, if we do that, we won't be able to pass it, we won't be able to ram a constitutional amendment on the balanced budget through the Congress. No, we can't begin to pass it if we do that. Why, then the American people wouldn't be for it.”

Somebody has said, in essence: “We can't afford to let the American people know what's good for them; or what's bad for them. If we do, they won't buy it.”

So here, with S. 1, those who say that they cannot provide the American people with the details of how they would comply with such an amendment because the data cannot be reliably projected that far in the future, here they turn right around and say that CBO

will be required to do just that—provide 5-year estimates which, as I noted, the Director has said will be nearly impossible to determine.

Illogical, too, is that the cost estimates are required before the legislation is enacted, even though the regulations to implement the law are proposed by executive branch agencies, and then only after enactment of the law. How on Earth can we expect CBO—or anyone else, for that matter—to come up with reasonable cost estimates before the precise regulations for implementing the law are available? The answer is, we cannot. The answer is that we cannot.

As I said, the only way that CBO can determine the cost of legislation is to rely on information from the various State, local and tribal governments. But those officials may not be familiar with all the details of a particular piece of legislation. The full ramifications may not be obvious to a county commissioner or a county manager or township clerk, notwithstanding the fact that they may otherwise be quite competent. Likewise, I question the wisdom of relying on those entities for input. If officials—particularly at the State level—know that the cost will be fully funded by the Federal Government, they clearly have an interest in inflating the potential cost. They have an interest in it, as I say, a basic self-interest. That is what I am talking about, basic self-interest. And basic self-interest will undoubtedly skew many of these estimates.

I also fear that one of the unintended consequences of this bill will be to set up a disparate system between the Government and the private sector—a disparate system between the Government and the private sector. For example, my staff tells me that a point of order can lie against any mandate directed at a governmental unit if we do not fully fund that mandate. I have heard some discussion of that here on the floor, I believe, on yesterday. But the same point of order would not be appropriate if the mandate is aimed solely at the private sector. That difference is especially troubling in those areas where the private sector competes with the Government.

What happens? What happens if, for instance, a publicly owned utility is exempt from additional clean-air regulations because the cost of those regulations have not been fully funded and a point of order could not be overcome, while a similar utility, wholly owned by a public company, must comply? Such a scenario could easily crop up, it seems to me. What happens then, Mr. President? In effect, we will have imposed an additional and costly burden on a private business.

My point is simply to suggest that while the intent behind S.1 may be laudable, the fact remains that this is a substantially different bill than what we considered last year. I heard that last night. My friend, the distinguished Senator from Michigan, I believe—I ei-

ther heard him say that on the floor or he said it somewhere within the reach of my hearing. I still have pretty good hearing. I do not have a hearing aid yet. I am doing very well without one. But I thought I heard him say that this is a substantially different bill than what we considered last year. I thought I heard that Senator say that. I see he is nodding his head in the affirmative. He is on the record with me that he did, he did say so.

It is a substantially different bill. And, as such, I do not believe we know enough about all its possible ramifications. Therefore, and until we have a fuller discussion, we cannot turn a blind eye to any potential problems in the apparent rush to pass as much legislation as soon as possible. There is no reason to expedite this bill to the extent the effort is being made to expedite it through the Senate. We are not in a race, here. I understand that no committees are meeting today, so some parts of the Senate, apparently, feel that we are not in a big rush on things. We certainly have no obligation to bow to the whims of those who have set false timetables.

I do not blame them for setting timetables. That is all right. Those who subscribe to the Contract With America, they have laid out a 100-day timetable. I am not part of that timetable. I did not subscribe to that. We have plenty of time. Let us see what is in these bills. Let us take a moment and dissect them. And the members of the committees, if they have an opportunity to fully debate these bills and explain them and offer amendments, then the rest of us will understand what is in them.

I do not have any obligation to say: Oh, yes, I will just roll over and play dead. I hear that a steamroller is coming, a steamroller is coming down the track. I want to know what is in that steamroller. We do not have the rules of the House. As long as this Senator is here we are not likely to have the rules of the House, if I can have anything to do with stopping any impulse to stam-pede in that direction.

If unfunded mandates are a genuine and unreasonable burden on State and local governments or private organizations—and I believe in some cases they may be; I don't have any doubt that they are—then we should deal with them directly. There is absolutely no need, it seems to me, to establish some elaborate new procedural scheme within the Congress in order to do that.

But if it comes to that, if we do establish such a scheme, let us know what it is about. I only represent one vote here and I have always said that, with respect to the filibuster, the filibuster will not eternally kill something, kill legislation that the American people really want. It may slow it down for a while. It may stop it for a while. But in the process of education of the American people through unlimited debate, the American people often

become more aware of what they are being asked to buy.

That is the case with the balanced budget amendment. As I have read in the newspapers, there are some groups, now, that are raising some questions about that balanced budget amendment. I even see that some Governors are beginning to have second thoughts, who are beginning to wonder if this thing is all it is cracked up to be. So that is the way these things happen. But I have maintained that if the American people really understand a question, if they really understand it and they really want it, they will get it regardless of the filibuster.

Sadly, though, erecting these "process" fixes is symptomatic of an extremely bad habit into which the Congress has fallen over the past several years. When confronted with a difficult problem for which there is no easy or painless solution, the tendency is to resort to some sort of procedural fix rather than dealing with the problem head-on.

So here we have a procedural fix. The balanced budget constitutional amendment is a procedural fix. The balanced budget constitutional amendment is the greatest unfunded mandate that was ever imposed since Adam and Eve were driven from the Garden of Eden, the greatest unfunded mandate ever imposed.

So here we are going in two different directions meeting ourselves head on. Here we have this bill dealing with unfunded mandates. But behind it is the so-called "balanced budget constitutional amendment." You talk about an unfunded mandate. Wait until that thing settles its claws into legislative bodies throughout the land. Wait until that thing settles its roost on the Government's doorstep. It will peck on the windows; and unfunded mandates. If they think that this bill is going to relieve their concerns about the balanced budget amendment, they had better think twice, three times and more, as we will have an opportunity to discuss in due time. Just mark that down. The balanced budget constitutional amendment, contrary to what it is being purported to do, is not only the biggest hoax that is perhaps about to be perpetrated on the American people but it is the largest unfunded mandate. I will not take the time of the Senate today to explain what I mean by that.

I want to repeat this word "caution" for those who think that S. 1 is some kind of cure for mandates. They need to think about it. S. 1 does nothing to protect any State or local government as I understand it—I may understand it better later—but as I understand, it will do nothing to protect any State or local government from the costs of Federal budget cutting of any program that is not presently mandated. How about that? They just say it applies prospectively. It does not protect any program that is not presently mandated. Therein lies the tale. For example, S. 1 would not apply to Federal

programs whereby the Congress provides grants for use in housing programs, programs that provide social services for the homeless, child immunization, Federal aid to States and localities for education, or even transportation grants.

Mr. President, I ask unanimous consent that I may be permitted, although I have the floor, to ask a question of the distinguished Senator from Michigan [Mr. LEVIN].

Is Federal aid to education a Federal mandate or is that simply a grant to the States? Is that a mandate?

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

Mr. LEVIN. I thank the Chair.

To the best of my knowledge, that is not a mandate. That is just a grant to the States.

Mr. BYRD. Very well. Then, if in this budget-cutting fever that is so infectious, Federal aid to education is cut—and I might be one who would support such a cut. Here we are pouring billions of dollars into Federal aid to education for our poorer students on the whole, more than the other industrialized countries. So I have some second thoughts about the way we handle Federal aid to education.

But that is, according to Mr. LEVIN, not a mandate. So the cost of replacing Federal dollars which may be cut by the Congress in the future will be dumped directly on the States by cuts in grants to the States. This bill does not cure that. If any of the dollars that go to the States to help those areas are reduced, the States will still be stuck with the problem and, most importantly, the expense of the homelessness or poor transportation system. This legislation does nothing to protect the States from increased costs which are caused by future actions of the Federal Government; in other words, cuts in grants and other Federal programs.

Think about that possible scenario, Mr. President. I hope that the proponents of the bill will stop the mad rush to pass this legislation now and go back to the drawing board and come up with a workable and practicable piece of legislation.

Mr. President, I hope the Chair will momentarily indulge me as I have the right to the floor.

The PRESIDING OFFICER. That is correct.

Mr. BYRD. I thank the Chair.

Mr. President, as I stated earlier, it is not my desire to hold the floor inordinately today. I have accomplished most of what I had hoped to do; namely, have a report by the Committee on the Budget and an opportunity to understand what is in the report. The report is available. I have not had an opportunity to study it, but it is not my desire to hold the floor. Senators know if I wanted to filibuster the bill—and the Senator from Arizona knows full well—I could talk for the rest of the day. That is not my intention. So I intend to yield the floor shortly.

Let me say, again, that the distinguished Senator from Idaho has ex-

tended every act of cooperation and courtesy to me, and I appreciate his decency and his spirit of good will. I did not want to give up the floor until he returned.

Mr. President, I yield the floor.

Mr. KEMPTHORNE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho [Mr. KEMPTHORNE] is recognized.

Mr. KEMPTHORNE. Mr. President, I appreciate the comments that the Senator from West Virginia has made and, of course, I have great respect for him and for his understanding of legislation. I know that he will be an integral part of the overall discussion of this Senate bill No. 1. I know, also, Mr. President, that it will be my intention that on final passage—I have full intentions of having the Senator from West Virginia vote for this bill because—I think he used the terms he was “not sure how it could hurt his State.” I think he will learn that it will not hurt the States. This is what States are asking us to do in reestablishing and reaffirming the federalism that is intended.

Also, Mr. President, this issue is tied with the Contract With America that the Senator from West Virginia pointed out. I would like to just comment about that. When I took the oath of office here 2 years ago, the day that I took the oath of office as a Senator was the day that I resigned as mayor in Boise, ID. One of the items that I was very intent on doing was to somehow deal with these unfunded Federal mandates. So the first bill that I ever introduced in my Senate career was a bill dealing with these unfunded Federal mandates. Ultimately, that bill, Senate bill No. 993, which gained bipartisan support and which went through the Governmental Affairs Committee last session on a vote of 16 to 0—much of what is in today's bill, S. 1, was derived from Senate bill No. 993. The definitions are the same and, again, much of it is the same, but there are changes to it. I say that so that you see a bit of a history here.

The Contract With America, which happened a few months ago, took place after we had been moving this legislation. And so while the issue of unfunded mandates—dealing with that is part of the Contract With America in the House of Representatives, and while I am delighted and proud that they have included that issue to be part of the things discussed and dealt with in the Contract With America, really this issue in the Senate, this legislation, precedes that.

Also, the Speaker of the House agreed to take that element of the Contract With America dealing with unfunded mandates and to pull it out of the Contract With America so that it could be freestanding and so that we could deal with this issue and have this sort of discussion.

So I assure the Senator from West Virginia that this is not part of just some large package that we have to

hurriedly get through. It is a critically important issue, the impact of which has been taking years, and our cities and States and the private sector has heard about it.

The Senator also referenced the Congressional Budget Office. I wish to assure the Senator from West Virginia that through the Budget Committee we have stayed in close contact with the Congressional Budget Office, so that as modifications from S. 993 were made to S. 1 they were able to tell us every step of the way what their needs would be in order to accomplish the responsibilities that this legislation would assign to them, including the funds to carry that out. So we have dealt with that issue.

I believe that, at some point later, we are going to be coming up with possible amendments dealing in this area, and so I will withhold further comment on that. By the fact that there has been objection to that unanimous-consent request, it would be my understanding that we have before us the next committee amendment; is that correct?

The PRESIDING OFFICER. The pending question is the ninth reported committee amendment.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. COVERDELL). Is there objection?

Mr. FORD. There is an objection. I apologize to the Senator, but I have been asked to protect the rollcall and, if the Senator will allow me, I will see if I can give him the time.

The PRESIDING OFFICER. Objection is heard.

Mr. SPECTER. Mr. President, if I might amplify.

The PRESIDING OFFICER. The clerk will continue the call of the roll.

The bill clerk continued to call the roll.

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

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

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

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

VIOLENCE AT HEALTH CLINICS

Mr. SPECTER. Mr. President, in the absence of any other pending business in the Senate, I have sought recognition to comment briefly about violence at clinics, with respect to two principle issues.