

I asked him for advice before I talked to him. Can I do this or can I do that? I do not want to be embarrassed, and I know he would not do that.

In any event, I just suggest as the Republican leader that I know that we want to accommodate our friends on the other side of the aisle. So if there is an effort to give Members a real list of relevant amendments, maybe we can do business. But do not give me a list of five amendments for this person, five for this person, everybody take five. We had 78. Give me a list of relevant amendments, relevant to this bill, and germane amendments. I bet they would not total over 15 or 20. We will do the same on our side of the aisle, and maybe by 2 or 3 p.m., we will have it down to 30 amendments. Then we might do business. But not with 100 or some.

We may never get cloture, but we will continue to try. Maybe the Governors and the mayors and the county commissioners and the taxpayers of America will understand, maybe not today, maybe not tomorrow, maybe not next week, but sooner or later, we need to pass this bill. There are not that many amendments. We will have every nongermane, nonrelevant amendment anybody has ever thought of. They are cleaning out their wastebaskets trying to find amendments.

We are prepared to do business. We urge our colleagues on both sides of the aisle to support this cloture motion. That will reduce the number of amendments drastically, but they would all be relevant. They would all be germane to this bill. They would be important amendments. We will probably spend an hour and a half or 2 hours on the catalog amendments. We spent an hour last night. It has nothing to do with this bill. So we are a little bit frustrated. The American people are frustrated.

We promised the American people we would listen to them, and we have not listened to them. We listened to everybody else. The American people want Members to pass this bill. The Governors, Democrats, Republicans, mayors, commissioners, you name it, want the Senate to pass this bill. We are not going to do it because the minority party says, "No, we don't want to do it." There is no hurry; we do not normally do work in January.

This is not a normal year. We are trying to deliver on the message the voters gave us last November, all of us on both sides of the aisle; not just Republicans.

However, if we are thwarted from our effort to deliver, they will not blame us. So we will stand here every day, at every opportunity, and tell the American people why we could not pass unfunded mandates. Two days would have been plenty for this bill; 2 days.

So I hope we will invoke cloture and move on to pass this bill, and then try to accommodate the President's wishes on Mexico, and following that, the balanced budget amendment.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators in accordance with the provisions of rule XXII of the Standing Rules of the Senate do hereby move to bring to a close debate on S. 1, the unfunded mandates bill:

Bob Dole, Dirk Kempthorne, Don Nickles, Connie Mack, Trent Lott, Thad Cochran, Alfonse D'Amato, Al Simpson, Strom Thurmond, Pete Domenici, Ted Stevens, Bill Cohen, Christopher S. Bond, Frank Murkowski, Jesse Helms, Spencer Abraham, Bob Smith, Larry E. Craig, Mike DeWine, and Bill Frist.

CALL OF THE ROLL

The PRESIDING OFFICER. By unanimous consent, the quorum call has been waived.

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the bill, S. 1, the unfunded mandates bill, shall be brought to a close?

The yeas and nays are required.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. PELL (when his name was called). Mr. President, on this vote I have a live pair with the Senator from Louisiana [Mr. JOHNSTON]. If he were present and voting, he would vote "no." If I were permitted to vote, I would vote "yea." I, therefore, withhold my vote.

Mr. FORD. I announce that the Senator from Louisiana [Mr. JOHNSTON] is necessarily absent.

On this vote, the Senator from Rhode Island [Mr. PELL] is paired with the Senator from Louisiana [Mr. JOHNSTON].

If present and voting, the Senator from Louisiana would vote "nay" and the Senator from Rhode Island would vote "aye."

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

The yeas and nays resulted—yeas 54, nays 44, as follows:

[Rollcall Vote No. 27 Leg.]

YEAS—54

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

Specter
Stevens

Thomas
Thompson
Thurmond
Warner

NAYS—44

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

NOT VOTING—1

Johnston

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Pell, for

The PRESIDING OFFICER. On this vote, the yeas are 54, the nays are 44. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is not agreed to.

Mr. KYL addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, as an original cosponsor of S. 1, the Unfunded Mandate Reform Act, I rise in strong support of this legislation.

The unfunded mandate reform bill is not only important in its own right, but it is also important to ensure that the balanced budget amendment to the Constitution—an amendment which I believe will be approved by the Senate and House of Representatives in the coming weeks—will be implemented as the American people intend.

The ideal balanced budget amendment would do more than just require a balanced budget. It would, in my view, limit Federal spending as well as the ability of the Federal Government to impose unfunded mandates.

As the Washington Times editorialized recently, "the real problem," referring to the budget deficit, "is lawmakers' dipsomaniacal spending habits. This is what we must control, one way or another." The Times went on to note my balanced budget/spending limitation amendment Senate Joint Resolution 3, which includes an explicit spending limitation, saying, "this version has obvious appeal—it is simple and straightforward," and, as such, that "a spending limit may do the job better than a tax limit."

Mr. President, I would assert that a spending limit is more than just "simple and straightforward." Whether or not a spending limitation is included in the balanced budget amendment, the only way to comply with a balanced budget requirement will be to limit Federal spending.

Some will no doubt argue that tax increases must be part of the solution. But I believe that, if they were, the budget would be balanced by now. We have had record-setting tax increases in 1990 and 1993. The cold fact is, however, that tax increases do not work—

will not work—because tax increases ultimately change people's behavior. Higher tax rates discourage work, production, investment, and savings, so there is less economic activity to tax and less revenue than expected to the Treasury. Lower tax revenues, on the other hand, encourage people to work, produce, save, and invest, so more revenue flows to the Treasury as a result of increased economic activity.

As pointed out in a column which appeared in the *Wall Street Journal* in March 1993 by W. Kurt Hauser, a member of the board of overseers of the Hoover Institution, "no matter what the tax rates have been, in postwar America tax revenues have remained at about 19.5 percent of gross domestic product." Hauser went on to write that, "if history is any guide higher taxes will not increase Government's take as a percentage of the economy."

Hauser's observation is borne out in President Clinton's last budget, which reported revenues fluctuating around a relatively narrow band of about 18 to 20 percent of GDP for the last 40 years. That is despite tax rate increases and tax cuts, bull and bear markets, and Presidents of both political parties.

Over that same period, Federal spending has risen from 17.8 percent of GDP in 1955 to more than 23 percent in 1991 and 1992, and now stands at about 22.5 percent.

It is Federal spending that is the problem. Congress spends too much, and it will never be able to balance the Federal budget until it constrains spending. With that reality in mind, I believe the ideal balanced budget amendment to the Constitution ought to include an explicit spending limitation.

We will have that debate in the coming weeks. I suspect that the votes aren't there for an explicit spending or tax limitation in the balanced budget amendment, but as legislation to implement and enforce a balanced budget amendment is considered in the months ahead, I will vigorously pursue the issue.

Today, however, we are considering a second component of what it would take to implement what I consider to be the ideal balanced budget amendment. S. 1 represents the first step toward resolving the problem of unfunded Federal mandates. Without such legislation, a balanced budget amendment might merely encourage Congress to shift the burden of programs and policies it is unable to fund to State, local and tribal governments, as well as the private sector. That shifting of the burden is not what the American people intended when they overwhelmingly voted for change—and less government—last November.

Mr. President, I said that S. 1 represents a first step, a first step because it only applies to future mandates. It does not address the problem of existing mandates, which already impose a significant burden on State, local and tribal governments and the private sec-

tor. And, it is the burden of existing mandates that has so enraged the American people. I believe they care less about this Congress relieving them of future mandates which we have yet to conceive of or impose, than they do about relieving them of the burden they currently bear, the morass of Federal mandates and regulations that are strangling our economy.

According to the Clinton administration's own National Performance Review, the cost of private sector compliance with Federal regulations is at least \$430 billion a year, or 9 percent of our GDP. Other economists believe the regulatory burden imposed on the private sector and State, local and tribal governments is between \$500 to \$850 billion per year, more than the amount collected in personal income taxes in 1994. Add to that the indirect and cumulative productivity losses from Federal regulations, and the annual costs could double.

Let me talk for a moment about some of the existing mandates, which are discussed in a superb report prepared by the Goldwater Institute in Arizona, a report aptly titled, "Summary Orders from Distant Gods." Dr. Douglas Munro, in a preface to the Institute's report, characterized the problem of unfunded mandates very succinctly: that Federal mandating is rooted in the idea "that the Federal Government's solutions to all problems are preordained to be superior to others." They are not.

In Arizona, for example, the Salt River is fully regulated and monitored—at State expense—to be in compliance with standards set by the Clean Water Act for fishing and swimming. That is despite the fact that the Salt River is usually dry for 50 of the 52 weeks of the year, and when it's running, people do not fish or swim in it.

Citing testimony before the Arizona State Legislature by the president of the Water Utility Association of Arizona, Paul Gardner, the Goldwater Institute reports that as many as 200 to 500 small water businesses in the State are expected to go bankrupt over the next 5 years as a result of the costs of testing for contaminants which are very rarely present. The director of the Arizona Department of Environmental Quality, Ed Fox, further testified to the problems faced by small water companies under the Safe Drinking Water Act [SDWA], noting that those small companies must test for an additional 25 or so EPA-selected pollutants every 3 years, regardless of whether or not any pollutants are ever found as part of the regular testing process. But, the access by those small companies to the funds necessary to conduct such testing is severely limited.

According to Goldwater Institute data, the State of Arizona will pay at least \$184 million in direct, unfunded mandate costs. Add to this the \$693 million that the State will spend to secure matching grants and the \$145 million in maintenance of effort require-

ments, and the result is about \$1.2 billion, or 15 percent of Arizona own-source revenue is directly tied to Federal directives.

Probably the largest portion of costs to the State of Arizona—49.5 percent of the total—are associated with the provision of services to, or incarceration of, undocumented aliens. This, of course, is not the result of a Federal mandate per se, but rather the Federal Government's failure to adequately perform its responsibility to control the Nation's borders. That, in effect, has the same effect as an unfunded Federal mandate. That the Federal Government does not do its job foists additional costs on other levels of Government to fill the gap.

According to the National Conference of State Legislatures [NCSL], there are now 192 operative legislative mandates, an all-time high. The overall cost of mandates to the State, local and tribal governments is hard to pinpoint, but a report by the NCSL put estimates at between \$15 and \$500 billion. Price-Waterhouse reports aggregate fiscal year 1993 costs for just 10 mandates—mainly environmental—at over \$54 million for just the 4 Arizona cities of Gilbert, Phoenix, Scottsdale, and Tucson.

I would emphasize, as the Arizona Republic did in a January 11 editorial, that resolving the problem of unfunded mandates does not "mean, say, that environmental regulations would not be approved. Just that Congress will have to prioritize its spending to fund them."

Most of what S. 1 addresses relates to mandates imposed on State, local and tribal governments, but the burden of unfunded mandates is borne by the private sector as well. S. 1 merely requires reporting of the costs to the private sector of future mandates. It does nothing to make it harder for Congress to impose future mandates on the private sector except document their cost, nor does it require the Federal Government to help offset their cost.

That is why I believe S. 1 really represents just a first step. It is what is doable now, but bolder steps must follow to satisfy the public's demand for real change, for relief from the crushing burden of Federal mandates and regulations.

If the Federal Government's solutions to problems were indeed superior, then the Federal Government should be willing to back those solutions, those mandates—future as well as existing mandates—with the funds to implement them. That Congress has not, at least until now, been willing to fund the mandates it imposes on State, local and tribal governments, or the private sector, illustrates that either Congress has found a convenient way to elude budget constraints while still imposing its will on others, or that it does not believe the mandates are important enough to back them with Federal dollars.

Responsible budgeting is a matter of prioritizing. If the functions that the

Federal Government mandates on others are truly important, then they should be of high enough priority to warrant a commitment of Federal funds to pay for them. Congress and the President must be constrained in the amount of taxpayer dollars they are able to commit, either directly or indirectly in the form of unfunded mandates. That is the essence of responsible budgeting, and indeed responsible government.

Mr. President, we should support S. 1 now and immediately go to work to protect the private sector from Government mandates and determine effective ways to end inappropriate existing mandates on State, local and tribal governments and the private sector.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I rise to make a couple of comments about some of the discussion that was held prior to the last vote on the floor of the Senate. I am uncomfortable leaving that discussion where it was left.

It is interesting how, in the Senate, two different views of the same picture produce two different descriptions of where we are. This is a very important piece of legislation. Reforming unfunded mandates is not a small undertaking. This bill, which would substantially change the way that the Congress has behaved in recent decades, is not a small issue or a small matter.

Many of us believe that this legislation should move forward. And it will. It will with the votes of many of us on the Democratic side of the aisle, I am convinced. But we are told that at this moment on this side of the aisle Members are engaged in tactics to delay, to stall—dilatatory tactics, some say.

Let me again review where we are and why. It is the intention of some to move this legislation very, very quickly for their own reasons. The Committee on Governmental Affairs had a markup on this almost immediately when Congress reconvened. We were told in the committee that it was the intention of the majority to move this legislation to the floor without substantive amendments—and they did that. The majority assured us that amendments could then be offered on the floor. But S. 1 came to the floor from two committees, and the committee reports that were appropriate to go with the bill were not made available.

The Senator from West Virginia very properly indicated that they ought to be made available and that we ought not consider this legislation until they were. Dilatory? Hardly. He was simply asking for the sort of information we would expect as legislators.

When the reports were made available, a good many of us had amendments available to be offered on the floor of the Senate. Have we been able to offer those amendments? No, unfortunately not.

It seems to me that we will break this impasse when those who bring this legislation to the floor say all right, we

are ready to entertain your amendments. Offer them, debate them, and let us vote on them. Those are the assurances we were given in the committee when this legislation moved out of the committee.

I know some who have responsibility to run the train want the train to run on time. But others who are on the train want to understand which train it is, which track it is on, and where it is heading. These days, with all the reform ideas and new ideas, and, yes, some nutty ideas that are bouncing around the Halls of the Congress, I think we ought to at least slow down the train enough so we understand exactly what we are hauling and where we are headed.

Will we see legislation one of these days that provides for the nutty idea of providing tax credits to the poor to buy laptop computers? If it is in legislation, I hope it comes through here slow enough so I can see it and flag it.

Or the new idea from the Heritage Foundation, that maybe we ought to charge admission to the American people to tour the Capitol? That is a novel, nutty idea—let us charge people to tour the building they own?

It is one thing to try to run the train. It is another thing to want to do things right. This legislation in my judgment is going to pass and be signed into law by the President of the United States. But I find it ironic that the ranking member, Senator GLENN, who has been one of the coauthors of this legislation, who has amendments to offer to this legislation—even the ranking member now finds that we do not have time. Gee, we are stalling because we want to offer amendments.

I have great respect for my friend, the Senator from Idaho, who I think has done excellent work on this subject. As I have indicated before, this is a meritorious subject for us to be considering. In the end I hope to vote with the Senator from Idaho because I believe in the unfunded mandates bill. In fact, I helped write some of it during the last session. Some of the language I helped write with respect to the private sector is in this bill. But I say to those who are concerned about timing, I say to those: Let us do it. Open the bill up, allow us to offer amendments, allow us to debate the amendments, and allow us to vote on amendments and we will be through in my judgment.

Mr. KEMPTHORNE. Will the Senator yield?

Mr. DORGAN. But if the process is going to be let us do this in a way so when we offer amendments you second-degree them all, if we slam-dunk this bill—I am sorry, that is not the way this body works. Senators have certain rights. We have the right to offer amendments and we want them voted on. I would especially say on behalf of my colleague—I am sure the ranking member will say this on his own behalf—we have the right to do that and we intend to exercise that right. At the

end, I think this legislation will be better legislation and will ultimately pass this Congress.

I will be happy to yield to my friend.

Mr. KEMPTHORNE. I appreciate it very much.

Mr. President, I would like to reiterate—I appreciate what the Senator from North Dakota has said and also the leadership he provided in constructing many of the provisions in this legislation, in particular helping the private sector.

But I want to assure the Senator that invitation is there. I have repeatedly been offering that invitation to please bring your amendments to the floor, let us deal with them.

One of the impediments, apparently, is we have not been able to get through committee amendments yet. But yesterday and the day before I have been calling Senators on both sides of the aisle encouraging them, saying, I know you have an amendment that affects this legislation, and while I may or may not agree with it, please bring it to the floor now. Let us put it before the desk, and let us debate it. But again there have been other impediments.

Mr. DORGAN. I appreciate that. The Senator from Idaho operates in good faith, as do almost all of our colleagues, and understands the rules very well. I was here yesterday. I could not help but hear someone complain recently about nongermane amendments. We spent 4 hours yesterday on the amendment offered by Senator GORTON on this legislation. So it is all in the eyes of the beholder.

I was also here yesterday most of the day when Senator BOXER wanted to offer her amendment and finally got it, I guess, after 10 hours. I would simply say I have a couple of amendments. I would love to offer them very soon and have a debate and an up-or-down vote. If the Senator from Idaho is willing to let me do that, let us do that this afternoon. I am willing to agree with respect to time limits on my two amendments. I expect most other Members on the Democratic side of the aisle would say yes, give us the opportunity to have our amendments brought up and debated. And we will be plenty happy to do that. I know the ranking member, Senator GLENN, wants to speak on this as well. But that is all we ask for at this point.

Mr. KEMPTHORNE. Will the Senator yield? I would just say that I will take the Senator up on that offer.

Mr. DORGAN. I will be here.

Mr. President, I yield the floor.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. GLENN. Will the Senator yield?

Mr. BUMPERS. Yes. I will be happy to yield.

Mr. GLENN. Mr. President, I support this legislation. I know the necessity for it, and I want to see this legislation go through. I wanted to see its predecessor last fall go through, S. 993, also.

That got caught up in all the things we recall all too well of last fall when there was delay after delay after delay on the floor. And I would say, had there not been that kind of delay, perhaps we would have had time to bring up not only the congressional coverage bill that we finally got through this year, but also S. 993, and we would not have to be dealing with those matters in this particular Congress.

But more to the point right now, with all due respect, the statement was made that if cloture is invoked, we would still be able to offer amendments on the bill because we would have 30 hours of debate. But you go under a different set of rules, Mr. President. Different rules apply once cloture is invoked.

After cloture is imposed only germaneness amendments can be offered. The meaning of germaneness is not the same as you may look up in your office or look up in your home in the Webster's definition of "germaneness." The ordinary meaning of germaneness would mean "basically relevant." It has a technical meaning here in the Senate under Senate custom and Senate judgment of what that means. That is far more narrow than the word "relevant."

For example, if I were to offer an amendment to S. 1 that would expand CBO's responsibilities under the bill, which is basically what would happen if I tried to introduce S. 993, even though we all approved of that, 67 cosponsors last fall to S. 993, certainly that would not be relevant because, compared with the current legislation we are considering, S. 1, it would expand a little bit the CBO's responsibility.

So the definition under Senate rules is that it would not be germane because it expands that responsibility of the bill being considered. That would be the case if we went under cloture.

There are many Democratic amendments to this bill, ones that we wanted to offer in committee that would improve the bill and would have made it better coming out on the floor. Those were defeated in the committee by a straight party-line vote.

Let me say this. In committee I made a prediction. I said that if we did not take that up, take the relevant amendments up and try to make this as good a bill as we could to come out of committee, when it hit the floor it would attract other amendments like "flies to honey." I think that was the term I used. That has proven true in this case beyond anything that even I foresaw when I said that over in the committee room the other day.

What we have had now, this being the first couple of bills out, the congressional coverage and now this bill, S. 1, this is the first opportunity that people have to offer amendments on the floor. Under Senate rules they can offer those amendments. Cutting off debate, invoking cloture on this, would mean that a lot of those amendments would

no longer be germane, would no longer be germane and could not be offered.

Ordinarily, you may say that is OK. But the problem is we were not permitted to offer amendments in committee that would have improved the bill and some of them under cloture would be ruled nongermane now. So that is the reason that I voted to not invoke cloture just a few minutes ago.

I think this has been pointed out. The message of last November, I think, can be construed in a lot of ways. I think if you ask any two people out on the streets, you are liable to get three, four, or half a dozen answers from even two people. But I think there was no message that said we wanted to return a bill that is as important as this legislation.

I have said repeatedly that I believe that this is landmark legislation. We are literally changing, starting with this bill to make the first major changes in processes that have been in place in our Government for over the last 60 years, since the days of Franklin Delano Roosevelt. In those days the communities and States had lost control of being able to control their own destiny. Communities no longer were able to really do what had to be done to take care of the people in their communities. They lost control.

So for the first time the Federal Government came in and said, if States and local communities cannot do that, the Federal Government will play a role. So a lot of the programs that have developed over the last 60 years, many of which went to excess, many of which should not have gone to the excess that they went to—and I am the first to agree with that—but they filled a role that the States and local communities were not able to fill back in those days of the Great Depression. You remember the "Okies" heading west with the mattress on top of the car or whatever. Those States and local communities could not do the job. Did the Federal role then go too far? It may have; probably did.

This legislation is landmark in that for the first time now we say that we want to start putting some of those responsibilities back to the States and local communities. They are now able to do many of these things, and we do not need to do it from the Federal level. That is an enormous change, going in an enormous difference of direction.

While I am for this bill as a way of setting up a framework to say that we in the Congress, as a first step, are forced by our procedures here by a point of order to consider the costs up front and vote on it, if the demand is made, we will be forced to take cognizance of the costs up front. And then it does not say in this legislation that we have to furnish the money or the mandate will never be there. It says we have to consider it and have an outline of the money there to vote on it. And then we can even still say by vote of the Senate, yes, States, you do it; we

are not providing one nickle. But it would be a conscious up-front acknowledgment of the cost and then the vote, and we would say, yes, it is going to be good for the future of this country, for everybody, and that is it. States still have to do it. But we would be forced to take this into account up front.

That has been carefully crafted in this bill. It means that we could no longer act as in the past where we just pass something and say, States, take care of it. We are sure you guys can handle it.

There are a lot of things now the States cannot necessarily handle. There are a lot of examples of that. I gave some the other day. I live in Grandview, OH, a suburb of Columbus, a part of greater Columbus. The mayor, who was chairman of the National Council of Mayors for a while, has done a real study in Columbus. They have estimated that just 14 major environmental mandates, between 1991 and the year 2000 will cost the city of Columbus \$1.6 billion, not the biggest city in the country; \$1.6 billion. Obviously, if you multiply that by all the different cities in the country, there is no wonder the mayors and Governors are concerned about this whole problem.

So the point I am making is it is a mammoth problem. We for the first time are reversing the trend of the last 60 years. And the point is we had better do this very carefully in making sure that as many of these problems as can be worked out with regard to this legislation had better be worked out in advance and right here on the floor and not under the pressure of a cloture vote that would cut off debate after 30 hours.

I do not think that is fair. I do not know what the majority leader's plan would be if cloture is invoked. But one of his options is to run 30 hours right on the bill, right around the clock, and that is it. What gets in gets in and what is not gotten in at that point is out. That might be the way he would do this. I would not want to see that kind of pressure brought on what I view as landmark legislation. We were denied in committee the right to make those changes. I think technically, from the Republican side, frankly, that was a mistake because it removed the debate to the floor and did attract amendments like flies to honey, as I said in the committee room the other day. That is what happened on this particular piece of legislation.

Unfortunately, when you go under cloture, you foreclose not just the extraneous amendments, but a lot of good amendments that might not be worked in during that time period of 30 hours, which is all that is permitted after the vote.

I do not want to delay this. I want to see this legislation get through. But after having lived 60 years with the buildup of things being provided from the Federal Government, I do not think it is too much to ask that we have the opportunity, for just a few

days, to make sure we work our way through this. If we do not have cloture, is it still in order for other amendments to be brought up—which I wish would not be brought up, too—but is it legal under Senate rules? Yes, unfortunately, it is.

Unless cloture has been invoked, the germaneness rule is not applicable in the Senate as it is in the House. It is the right of any Senators on the floor here to bring up whatever amendments they want to. I would rather work through it that way, even though we may have to deal with a lot of things that people consider are not germane to the bill. I would rather do that and make sure everybody is dealt with fairly and where everybody that has a legitimate concern about this bill has an opportunity to get their corrections and their amendments in. I would rather see that happen and take the extra time to do it, to make sure this landmark legislation, which literally is changing the direction or starting to change the provisions of what the Federal Government role has been over the last 60 years, is fully considered. We better do that very, very carefully, or we will find States and local communities out there still that are not able to cope with this. We will find that our first moves are not satisfactory at this. I want to do this carefully.

The rush, it seems to me, has been pushed by the fact that somebody set up an artificial 100 days to do great and wondrous things. It may be fine to try and match that to the days of the New Deal where they, too, had there 100-day priority that Roosevelt had back then. We are supposedly having another 100 days to reverse some of that.

I think we better be very careful with this, and that is the reason I did not support the move to filibuster.

I know the Senator from Arkansas has basically been waiting. I appreciate his yielding to me. I wanted to put that into context before we had any offers of other amendments.

I yield the floor.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER (Mr. THOMPSON). The Senator from Arkansas is recognized.

AMENDMENT NO. 144 TO AMENDMENT NO. 31

Mr. BUMPERS. If I may continue on what the Senator from Ohio was saying, I am not a signatory to the contract. I was not asked to sign it, and, of course, would not have signed it had I been asked. It does not apply to me. What applies to me is to do what I think is best for the country and to make certain that these bills are not rammed through here before people who have legitimate interest in them, and who want to improve them, have an opportunity to do so.

I have never seen a time when the Senate, for the most part, was not better served when it slowed things down and forced the Members of this body to think about it, rather than to do what was political.

Last night, the senior Senator from Maine came over and said, first of all, he did not know I was going to bring the amendment up. He said he was at home and did not know it was coming up. Let me say to the Senator from Maine and everybody else, I am not in the habit of calling people, particularly people I think are going to be opposed to my amendments, to tell them when I am going to bring up an amendment. Nobody has ever done that with me, and I do not do it to anybody else. The way this works is, you hang around here until legislation and amendments are offered, and if you have an interest in them, you go over and talk on them.

The Senator from Maine also talked about "business as usual," "gridlock," and that my amendment was "non-germane." Let me make a couple of observations on that. Surely he has not forgotten that in the 103d Congress Democrats had to file, or vote on, 72 cloture motions—72.

Senator, after the Republicans brought this place to a standstill time and time and time again last year, and you won overwhelmingly on November 8, we decided we will try it if it works that well. Maybe in the election in 1996, people will reward us.

Mr. COHEN. If the Senator will yield, I assume the Senator from Arkansas is saying he is going to engage in the delaying tactics you think brought victory to the Republicans; is that what he is saying?

Mr. BUMPERS. I am saying that we have a perfect right to offer our amendments, and we are not going to be shut out if we can keep enough discipline to keep 41 votes in the saddle.

Mr. COHEN. I would agree with that. If we had a vote on cloture, the Senator's amendment would be ruled to be nongermane.

Mr. BUMPERS. The Senator from Maine and I both know that the germaneness rule in the Senate will take down almost any amendment. The Senator from Maine thinks my amendment is not germane. Let me just cover that for a moment. The Senator might want to be seated because I am going to wax eloquent here for a while.

Mr. COHEN. Well, he is going to wax.

Mr. BUMPERS. I am going to wax eloquent. I hope the Senator from Maine will pay close attention, because what I am talking about makes eminent common sense. Last night, somebody said on the floor of the Senate: "Call your Governor and see how he or she feels about this mandate bill. If you call your Governor, your Governor will say: Please vote for the Kempthorne bill."

I have a sequel to that: Call your Governor and ask him how he wants you to vote on the Bumpers amendment. All but about eight of them will say: Please, for God's sake, support the Bumpers amendment.

Every single Republican will vote the way their Governor wants them to on the first, and not one single Republican

will vote the way the Governor wants them to vote on my amendment.

When it comes to gridlock, we are pretty good students. We have watched the other side bring this place to a standstill time and time again. I do not want to bring it to a standstill. I want to vote on this. But one of the reasons I am not for cloture is—and it is not just my amendment, there are other amendments that will make this a better bill—the debate might dress it up to the point that I would vote for it. But when it comes to germaneness, how many times have you heard Senators stand on the floor of the Senate and make these great speeches about what a terrible burden the Congress places on the States, cities, and counties? Here is an amendment that would help the States to fund those burdens. It does not require a State to do anything.

So what happened? Because the Supreme Court says this is a burden on interstate commerce which only Congress can authorize, the burden of collecting the tax now falls on the person who buys the merchandise. Forty-five States have laws now obligating consumers to pay taxes on merchandise bought out-of-state.

I think the State of Arkansas collected \$10,000 last year. There is not 1/1,000th of one percent of the people in Arkansas that even know that bill is on the books.

In 1992, the Supreme Court said only Congress can permit a State to require out-of-State companies to collect the use taxes on goods they ship into the State. That was the case of Quill versus the State of North Dakota. The Court said, such a collection requirement no longer violates the due process clause and, although such a requirement imposes a burden on interstate commerce, Congress has the right to determine whether that burden will be allowed.

So if Congress wants to give the States the discretion—not the mandate, but the discretion—of requiring people who ship merchandise into their States to collect sales tax, Congress can do so. That is what the Bumpers amendment will do.

Last night, the junior Senator from Maine said, "Let the States decide." She ought to support my amendment. That is precisely what I am saying—let the States decide.

Where are all these States righters now? Everybody is talking about what a terrible burden Congress imposes on the States, and here is an amendment that says we are going to give the States discretion. And this amendment will not get a single Republican vote—not one.

The sum of \$3.301 billion is what the Advisory Commission on Intergovernmental Relations says this could give the States. This is the amount of money they could use to deal with landfills. I mean, after all, the 7,500 mail-order houses in this country contribute 3.3 million tons of garbage in

catalogs alone. There are places in this country where it costs \$100 a ton to dispose of that stuff. And what is their contribution to the State? Not one thin dime. And it is not just 3.3 million tons of catalogs. It is also those packages that your merchandise comes in. That has to be disposed of, too.

This mail-order business is growing like Topsy—\$100 billion a year. L. L. Bean in Maine is the second biggest mail-order house in the country, headed for \$1 billion in 1995. I am not criticizing the Senator from Maine; if I were from Maine, I would probably be making the same speech he is making.

But let me ask you this simple question: What if, instead of \$100 billion of retail sales a year, these mail-order houses represented about 50 to 70 percent of all the sales in this country and not one dime of sales tax or use tax was collected? How would you educate your children? Who is going to pay the policemen, the firemen? Who is going to take care of the landfills?

Wal-Mart, KMart, they have made their contribution, to the shuttering of Main Street. These mail-order houses are making their contribution, and they do not pay anything. And my amendment does not say they have to. It simply says, "Governor, if you and the legislature think they should, you can have that right."

That is what this amendment says. It is just that simple.

Mr. DORGAN. Will the Senator yield for a question?

Mr. BUMBERS. I am happy to yield.

Mr. DORGAN. As I understand it, the Senator is offering a proposal that does not involve a new tax of any kind.

Mr. BUMBERS. The Senator is absolutely right.

Mr. DORGAN. The Senator indicated, when I walked in the Chamber, that the question of whether this is a taxable kind of circumstance is not changed by anything he would propose. If someone makes a major purchase from a mail-order catalog somewhere and that item is shipped to them, they have a responsibility, under most State laws, to pay a use tax. The fact is almost none of it is ever paid and almost none of it is ever collected.

As I further understand the Senator's amendment, he is not suggesting that a State must do one thing or the other. He would simply change the law to comport with the Supreme Court decision in the Quill case that says the State will have the opportunity. This is an interstate commerce clause issue and the States are now prevented from the opportunity of making their own decision. The Senator would simply remove that prevention and say, "Give the States the right to decide." That is what I understand the Senator is doing.

I might say that I offered a piece of legislation like this in the House of Representatives when I was a member of the Ways and Means Committee. In fact, we voted it out of the subcommittee. Then it looked to me like it was

snowing in July, because the mail-order catalog companies began blizzarding the country and Capitol Hill with postcards, sending postcards out, asking people to sign them and send them in saying, "This is a proposal that would increase taxes." Of course, it was simply untrue. No one was proposing that, least of all myself.

So I understand, when you raise this issue, it has not snowed yet this winter in Washington, DC, but it may because literally millions of cards can be generated quickly by those who are engaged in this business.

My own view of it is they perform a real service and many of them offer some wonderful products and the American people ought to be able to take advantage of it.

I would only view it, when they come into a State to do business, that they simply be required to subscribe to the same kinds of burdens and obligations other people who are now doing business in that State must meet every day.

So I think the Senator from Arkansas is making some good points. And I do think that we need to underscore that you are not suggesting a new tax—that has nothing to do with this proposal—nor are you requiring or suggesting the States must do anything. Your proposal simply allows the States the opportunity to make their own judgments about certain tax obligations in cases like this.

I think the Senator's proposal is very worthwhile. I might suggest, if I were writing it—and I have written one in the past—a higher threshold than \$3 million which, as I understand it, is the threshold. But that is a technical issue.

The fundamental issue the Senator is raising, I think, is right on point. I appreciate the fact that he is raising it today in the Senate.

I thank him for yielding to me.

Mr. BUMBERS. I thank the Senator for his comments. He was perhaps even more eloquent than I have been and said more concisely and clearly what I have been trying to say.

Mr. KEMPTHORNE. Will the Senator yield?

Mr. BUMBERS. Yes.

Mr. KEMPTHORNE. I appreciate the courtesy of the Senator yielding to me. My question is only procedural. Would the Senator from Arkansas be willing to enter into a time agreement at this point, with time equally divided?

Mr. BUMBERS. Not yet. I am not trying to delay. I hope to be through here very shortly. I assume that the floor manager will wish to move to table. As I said, my design is not to try to impede the unfunded mandates bill. But 80 percent of the people who walk through that door when the rollcall buzzer goes off will not have a clue as to what this amendment is about in a sense that they fully understand. As the Senator from North Dakota has just stated, this amendment is discretionary. It does not require the States to do anything.

We have had 27 votes since we came back into session, and two Republicans defected on one vote. I do not expect any defections on this one. I am not anticipating a big vote. I am not anticipating prevailing, but this is an idea whose time, if it has not yet come, is coming.

The National Governors Association, the National League of Cities, National Conference of Mayors, and National Association of Counties, all have strongly endorsed this measure. I think we can conclude from that that we really do not care what people think unless it comports with what we think.

Now, Mr. President, last night, the senior Senator from Maine talked about what a burden this was. And I alluded to the fact that one of our very own Members, Senator BENNETT from Utah, was one of the founders of a business that ships catalogs of office supplies all over the country, over \$200 million a year in business. When they started out they made a conscious decision to collect sales taxes for every State they shipped into that had a sales tax. He tells me that virtually one press of the computer button at the end of each month does the whole thing. They have never had a minute's problem with it.

Now, why would the States maybe want to do this? Forty-five States have a use tax right now, but it is on the consumer. If I bought a computer and it was shipped across State lines to me from a mail-order house, in 45 States I would be obligated to pay use tax on that computer. Most consumers do not know that, but now some States are beginning to enforce the use tax.

Let me show you something. Here in Indiana, some people are getting rather rude awakenings. People from the revenue department are knocking on their door and saying, we know that you bought something from Lands' End or whoever. You owe us the use tax on that out-of-State product. In 1993, 10,500 people in Indiana were assessed for unpaid use taxes; in New Jersey, 10,000 people; in Ohio, 7,100 people.

Some comment was made last night about Maine having this very unique thing on their tax return. Know what it is? I will tell you how unique it is. On your State income tax return in Maine it says multiply .0004 times your adjusted gross income and that is how much you will pay for mail-order purchases that you made last year. If I lived in Maine I would contest the constitutionality of that. I did not buy anything from a mail-order house last year so why should I pay the State of Maine a percentage of my adjusted gross income? Other States are doing different things to collect use tax to help them comply with all these terrible mandates we have been putting on them.

Somebody else says this is going to be a terrible burden on mail-order companies. I have already alluded to Franklin Quest, the company that Senator BENNETT started, and the fact that

Franklin Quest collects taxes in every State where they ship products. Look, I have about 50 or 60 catalogs here. This is a 1-week stock at my house. Here is Franklin Quest, Senator BENNETT's firm. Franklin Quest says, "Add sales tax on the subtotal for all States except Alaska, Delaware, Montana, New Hampshire, Oregon, and Puerto Rico." Know why? Those States do not have a sales tax. So what does Franklin Quest say for the other 45 states? "Add sales tax." Is that complicated? Of course not.

Here is CW. CW is located in North Carolina. They say, "In California, North Carolina, New Jersey, and New York, add sales tax. In New York, add applicable sales tax to shipping and handling and express delivery charges, too." Complicated? Why, of course not. The reason they are saying add sales tax in those States is because they have a presence in those States. And that is all this amendment would do. If the State does not want to implement the legislation, it does not have to do so.

So, Mr. President, you must bear in mind, this is going to happen. It is just a question of when. The mail order business is burgeoning—L.L. Bean had a 17-percent increase in sales last year, whereas retail sales in the Nation were fairly static. You put all these mandates on the States and you say, "We want a point of order raised on every issue as to whether or not we are fully funding this mandate," but I come in with an amendment on behalf of myself and Mr. GRAHAM, of Florida, Senators DORGAN and CONRAD, of North Dakota, Senator HARKIN, of Iowa—we come in here and offer a real bill to help States comply with mandates and they say, "Well, that's not germane. It would be too big a burden."

They say:

Call your Governor and see how he wants you to vote on the mandate bill, but don't call him to ask him how he would vote on the Bumpers amendment. We don't want that. We want the Federal Government to belly up and pay all these mandates.

Mr. President, let me tell you, in closing, that I understand the concerns behind the unfunded mandates bill. I was a Governor in my State for 4 years, and we used to squawk continually about that bad old Federal Government, unless we were having a flood or a tornado. Did you see that cartoon in the Washington Post the other day, with the guy standing up on top of his house with flood waters up to the roof? Under the water you can see a sign in his front yard saying: "Get the Government off my back." And he sees this boat from FEMA coming and says, "Thank God the bureaucrats are coming."

As I say, as Governor, Federal mandates drove me crazy sometimes. But I never hesitated to come to the Federal Government for help when I was Governor, and I usually got it. I am not one of these people who think Government is the root of all evil. Here is an

opportunity for this place to stand up and do something responsible and reasonable and it will actually help.

I yield the floor, Mr. President.

Mr. COHEN addressed the Chair.

The PRESIDING OFFICER. The senior Senator from Maine.

Mr. COHEN. Mr. President, the Senator from Arkansas kept at least part of his pledge. He waxed eloquent but not for his usual length of time. I am sure he has a lot more in store for us this afternoon, but I commend him for the enthusiasm with which he is pursuing his particular amendment.

First, let me clarify that this amendment is not about whether or not mail order purchases are subject to State sales taxes. They are. Every State, other than the four that have been mentioned, impose taxes on mail order purchases.

The issue at hand is the method by which these taxes are collected. Under the current law, States cannot force out-of-State mail order companies to collect taxes for them, and the reason is simple: There are over 6,000 different tax jurisdictions in the country, and once you account for all of the various State, county, local taxes, it would be absurd to expect mail order companies to know and understand every tone and nuance of these various 6,000 tax jurisdictions. Maine has a snack tax it imposes. I have a copy of the Bureau of Taxation document from the State of Maine. It is only a summary, but it takes some seven pages to explain just the exemptions. And every State has exemptions from their sales tax.

Here is the Maine regulation dealing with fruit baskets, for example. It says:

Baskets or dishes filled with fruit or other grocery staples are not subject to tax. If the fruit basket is composed mostly of grocery staples, the addition of a minimal quantity of otherwise taxable items, such as a few small pieces of candy, does not affect the taxability of the fruit basket.

If the fruit basket contains nonfood items of a significant value, the seller must either collect sales tax on the price of the basket, or else separately and reasonably account for the taxable and nontaxable portions and collect tax on the taxable items.

This is proposed amendment would certainly create a lot of work for tax lawyers and accountants who advise mail-order companies on tax provisions in Maine and every other State in this country.

So this is an example of what would happen if the Bumpers amendment were to become law. The problem is not the rate of taxation. It is 6 percent in Maine. That is simple enough to understand. The complexity is in determining what the tax applies to? And that is the kind of burden we would be imposing on all of these mail order companies. Are we going to expect a fruit basket company in California or Florida or Wisconsin to understand the intricacies of the sales tax, snack tax, of the State of Maine?

The mail order industry for years has said, "Look, we are willing to work something out with the States in order

to satisfy their problems." They simply ask that taxes be simplified so they collect one simplified, uniform tax and not be expected to hire an army of tax lawyers and accountants.

Second, I point out that about 30 percent of all these purchases through mail order are paid by check. So if the people involved incorrectly make out their check or miscalculate the tax due, the mail order company is put in a difficult situation. They then have to go back to the consumer and say, "By the way, you miscalculated. Please send us another check." That would undermine one of the essential benefits provided by mail order companies—convenience.

The industry, as I indicated, and the revenue agencies in the States came very close to reaching an agreement in 1992. I respectfully suggest that they go back to the bargaining table to see if something can be worked out, but I think for the Senate to adopt this amendment would be a serious mistake. First of all, it is a tax bill. The Finance Committee has not held a single hearing on this issue—not this year, not last year or the year before. There has been no hearing before the Senate Finance Committee. As a matter of fact, I have a statement, which I will insert for the RECORD, from of the chairman of the Finance Committee where he indicates, "Whether to require out-of-State companies sales taxes is a matter within the jurisdiction of the Senate Finance Committee."

The chairman of the Finance Committee urges that we oppose the amendment offered by the Senator from Arkansas, at least until such time as the Finance Committee has an opportunity to examine this with some scrutiny.

I ask unanimous consent that the statement of Senator PACKWOOD be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. COHEN. I think it would be wrong and inappropriate for the Senate to pass judgment on an important matter that I believe deserves at least full-scale hearings before the Senate Finance Committee.

At a time when we are trying to put the brakes on the onslaught of regulations, the Bumpers amendment would in fact bring a new regulatory scheme on mail order companies. There is something in this particular amendment that caught my eye. Under this amendment, States requiring mail order companies to collect out-of-State taxes would be required to set up a 1-800 number.

It sounds to me like another unfunded mandate. And that is what we continue to do here. This is supposed to be a bill to reduce unfunded mandates. Yet this amendment appears to contain its own unfunded mandate.

The notion that mail order companies attract customers because they offer some great tax shelter is incorrect. I do not think people buy from L.L. Bean because they offer a great way to avoid taxes. They buy from L.L. Bean because they get a great product. They have great service. You call up and order something, or you mail in your order and often within 48 hours you have your product. They have a return policy that if you have a product you think is defective, whether you find it defective in 30 days or a year or 2 years or 5 years, you can return the product and have it replaced, no questions asked.

That is why L.L. Bean is so well renowned. That is why it is one of the biggest mail-order companies in the country. And that is why people order; not because they can buy a sweater from L.L. Bean and avoid taxes. As a matter of fact, if you buy a sweater and you have to pay the shipping and the handling charges, it will exceed any taxes you could save if you were inclined to avoid them. For the Senator from Arkansas to say only about 1 percent of the people of Arkansas even know that they have to pay a tax when they buy from out of State, the answer is why do we not simply educate the people or impose a collection mechanism like the State of Maine has where there is a presumptive amount of tax, based on your income?

Mr. BUMPERS. Will the Senator yield for one observation?

Mr. COHEN. Please wait until I finish my statement, and I will.

Now, I know that the Senator last night was bemoaning the plight of small shops on Main Street America.

I might say that what has probably done more damage to those shops on Main Street America is Wal-Mart. If you want to hear complaints from people about what has happened to mom-and-pop stores on Main Street, be it Bangor, ME, or elsewhere, look at Wal-Mart.

I do not fault Wal-Mart. I think they provide great benefits for consumers. We have one in Bangor, in Portland, and elsewhere. They do a very fine job. But they put many small businesses out of business. I simply want to make the point that this amendment is not about defending small town America or small mom-and-pop shops.

In her own statement to the Small Business Committee last year, a spokeswoman for the International Council of Shopping Centers, supporters of the Bumpers bill, said that retailers were happy to collect sales taxes because they "realize that these sales taxes play an important role in financing important State and local services on which the shopping centers rely."

So I would say, if fairness is going to be the issue, is it really fair to ask a company some 3,000 miles away to collect another State's taxes? Some would say no. The mail order industry, to its credit, however, has never said no. As I

have pointed out, they have said: We are willing to reach an agreement with these State collection agencies, but let us make it a reasonable agreement. Do not expect us to calculate all the taxes and have different taxes and different exemptions, and figure out what Maine means versus Vermont or Massachusetts or Arkansas or California or Wisconsin or elsewhere.

The Senator from Arkansas suggests that this is really a small business bill. Well, last fall the National Federation of Business, NFIB, polled its members on the issue and found that 67 percent of the members opposed forcing mail order companies to collect out-of-State taxes, and I think it is probably the best window that we have into the soul of small business in this country.

If they oppose the measure so significantly, it is difficult to see how you can portray it as being helpful to small business. But that is debatable, I concede. That is debatable.

What I think is not debatable is to bring this tax-related amendment up on this bill. It is not germane to the bill. The Senator from Arkansas is correct. He has every right to bring it up under the Senate rules. But, if the Democratic response to what happened last November is going to be to stall legislation and think that holds the key to a Democratic victory in 1996, I suggest the Democrats have misread what happened in the elections.

I think the people want action to be taken. I think they want to have less regulation. I think they want to see both Houses of Congress move as expeditiously as possible. And if the Democrats' answer is, well, we are just going to stall this thing right into 1996, then I suggest there may be far more Republicans elected in 1996.

The success of Republican candidates in November not because Republicans were stalling in the 103d Congress. There was significant disagreement with the health care proposals that were coming before the bodies of this Congress. There was substantial reaction to what they saw as a massive centralization of the health care system in this country. And they saw a drift among Democrats away from the center back to the left.

That, in my judgment, accounts for what happened in November. And so if the answer of the Democratic Party is going to be to just simply slow everything down, to come up with whatever amendment they feel is important, no matter how relevant or germane to the bill at hand, then I suggest we are going to see a lot more Republicans in 1996 in the Senate and House than we did in 1994.

Mr. President, I yield the floor.

EXHIBIT 1

STATEMENT BY SENATOR BOB PACKWOOD ON BUMPERS' MAIL ORDER SALES TAX AMENDMENT

Whether to require out-of state companies sales taxes is a matter that comes within the jurisdiction of the Senate Finance Committee.

The conflict in this area is between states wanting to collect revenue, local merchants, mail order companies, like Norm Thompson and Harry and David located in my home state of Oregon, and consumers.

However, the conflict does not include the federal government. The American people want less government and fewer federal regulations. The unfunded mandates bill is directed at just this.

Currently, states collect their own sales tax without interference from the federal government. Ten states collect these taxes from consumers through a separate line on their state's income tax form.

For example, the State of Maine has found an effective solution for collecting mail order sales taxes. It included a default provision for these circumstances. If a taxpayer leaves the sales tax line blank on their income tax form, then the state automatically adds an amount equal to the average tax owed on out-of-state purchases. Maine calculates this amount at 0.0366 percent of the taxpayer's income. In other words, a taxpayer making \$30,000 per annum would pay a tax of \$11.00.

Obviously states are fully capable of dealing with the collection of their sales taxes without the interference of the federal government.

For these reasons, I oppose the amendment of the Senator from Arkansas.

Mr. KOHL addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. KOHL. Mr. President, I come here today to express my opposition to the amendment offered by my colleague from Arkansas [Mr. BUMPERS].

I would like to begin by noting the irony of our current situation; namely, that as we attempt to relieve the burdens imposed on State and local governments, we very well may, unless we reject this amendment, end up using the same legislation to impose new mandates on job-creating businesses across our country.

Mr. President, the proposed amendment would allow States to require companies that mail goods to their States to collect taxes on those goods. Under my colleague's proposal, mail order businesses would be saddled with the immense burden of complying with multiple sets of procedures and regulations, different tax rates, and various filing requirements. And in those instances where a State allows a company to collect local taxes according to a blended average local tax rate, consumers, in many cases, could end up paying more tax than they actually owe.

Mail order companies are part of a growing industry. They serve people who like the convenience of phone shopping or who are unable to leave their homes to shop. They also offer rural and small town consumers an unsurpassed variety of goods, many of which are simply unavailable in smaller markets. This industry also affords small specialty businesses, like the Pleasant Co. of Middleton, WI, the chance to grow into successful big businesses. And growing mail order business like Swiss Colony and Lands' End, also located in Wisconsin, account for 5

percent of U.S. employment or approximately 5 million jobs.

The last time that this measure was considered by Congress, over 500,000 mail order consumers wrote in to voice their strong objections to this measure. They did so because they are tired of the ever increasing mountain of federally mandated paperwork and taxes. I believe that we need to heed their message and move in the direction of eliminating, rather than increasing these burdens.

Moreover, Mr. President, I note that my colleague's proposal has not been reviewed by the Finance Committee. At a minimum—and certainly without presuming to speak for either Chairman PACKWOOD or Senator MOYNIHAN—I would urge my good friend to work with the Finance Committee to achieve a considered resolution to this matter.

In closing Mr. President, it is said that the only sure things in life are death and taxes. This amendment represents both: taxes for consumers and certain death—crushed under a load of tax rules, regulations, and requirements—for many mail order companies.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent that there be 20 minutes further debate on the Bumpers amendment, equally divided, and that will be controlled by the Senator from Arkansas and the senior Senator from Maine; that prior to the motion to table—and at the conclusion or yielding back of the time Senator COHEN or his designee be recognized to make a motion to table the Bumpers amendment.

The PRESIDING OFFICER. Is there objection?

Mr. BUMPERS. Mr. President, I must object to that at this point. Senator GRAHAM wants 10 or 15 minutes and I have 3 or 4 minutes of wrap-up I want to do.

Could the junior Senator from Maine give us some idea how much time she might wish?

Ms. SNOWE. Probably about 8 minutes.

Mr. COHEN. About 8 minutes.

Mr. BUMPERS. We would be willing to accept 20 minutes on our side and 8 minutes for her, which would be 28 minutes.

Mr. KEMPTHORNE. Mr. President, I again submit my unanimous-consent agreement: That we have 30 minutes, 20 minutes on the Democratic side and 10 minutes on the Republican side, at which point then Senator COHEN will be making a motion to table.

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

Several Senators addressed the Chair.

Mr. COHEN. Mr. President, I yield 8 minutes to the junior Senator from Maine.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Ms. SNOWE. Mr. President, I think the amendment pending before the Senate today is an example of why we should have invoked cloture, because it is nongermane to the pending subject of unfunded mandates.

As has already been mentioned during the course of this debate, this nongermane amendment has not had a hearing from the committee that rightfully would consider it and is responsible for tax legislation—that is, of course, the Finance Committee. There was one hearing on this issue in the last Congress that was held in the Small Business Committee.

Last night I joined the Senator from Maine [Mr. COHEN] in opposing this amendment because it not only oversimplifies an issue that should be properly discussed and analyzed by the Finance Committee, but it also disregards the true balance that exists between the mail order companies and local businesses with the already tested options and the viable options that are available to States and mail order companies, and certainly the options that have been pursued already by the State of Maine.

There is nothing that precludes any State in America from collecting these taxes. We have already demonstrated that in the State of Maine. Taxpayers in the State have a choice. They either can pay a flat tax percentage of their income on their income tax return, or they can pay for the specific tax on their out-of-State purchases.

No one questions the veracity of the citizens of the State of Maine with respect to submitting that information on their income tax return. In fact, it is interesting to note that in the last 2 tax years in the State of Maine, we have collected more than \$3.5 million on sales from out-of-State mail order companies or other kinds of purchases from other companies. So it can work. And it has worked. And it can work for other States as well.

What will be the impact of the amendment offered by the Senator from Arkansas? We have already held it is certainly going to exact more costs to companies. They will be required to contend with 46 sets of procedures and 6,000 different tax jurisdictions throughout the United States that will result in 6.5 times greater costs to the mail order companies in order to comply with this amendment. Who is that fair to? Should the consumer be denied a choice in ordering from a mail order company? No. I happen to live in a very rural State. People like to have choices in rural districts and they certainly should not be denied that choice. In Maine, taxpayers pay for those purchases by, again, placing it on their income tax return.

So it is not only going to result in more costs to the mail order companies, it is certainly going to result in lost jobs because of the increased costs

in terms of compliance and increased cost in taxes.

Some have suggested a blended tax rate. Who is that fair to, since many of the taxpayers then will have to pay a higher tax rate and some a lower tax rate than they would already be required to pay? The industry has worked in the past, as Senator COHEN mentioned—they had worked out a tentative agreement. I think we should encourage such an agreement between the mail order industry and their associations and tax administrators and the tax commission, so that we can encourage that kind of resolution to this issue that would be fair and not onerous and not be applying greater costs in terms of taxes and administrative burdens on the mail order companies. That is only fair.

This is a very complex issue. It does deserve the benefit of consideration, of hearings, and of different perspectives. It certainly is going to result in more costs to the mail order companies. In fact—we have mentioned L.L. Bean. Their compliance costs alone would be at least \$500,000 in order to hire additional workers for administrative, legal, and accounting costs.

So I do not think in the final analysis this benefits anybody. It does not prevent States right now from collecting this kind of tax.

I hope my colleagues here in the Senate will reject such an amendment because this deserves more consideration than this issue has been given here on the floor, in terms of the ramifications for not only the companies but also the consumers who live in the various States, who choose to make their purchases through mail order companies.

So I urge the defeat of this amendment and I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BUMPERS. Mr. President, I yield 12 minutes to my colleague from Florida.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Mr. President, the statement has been made that this is not a germane amendment. I suggest to the contrary, this goes to the very essence of why we are concerned about unfunded mandates. The basic concern is that the Federal Government has been imposing financial responsibilities on State and local governments without providing the means by which those responsibilities be discharged. What this amendment speaks to is enhancing the capacity of State and local governments to deal with those very responsibilities.

It is particularly germane in the context of what I think is going to be a surprise and disappointment to many of the supporters of this bill, of which I am one. That is that the legislation before us only deals with actions which will occur in the future. Those Governors and mayors and commissioners who have calculated the current cost of unfunded mandates to their States, to

their communities, run the potential of having unrealized expectations if they think we are about to do something in this bill that is going to lower that current cost of current mandates.

What we are doing with this amendment is providing some revenue to State and local communities so they can discharge their responsibilities, including those responsibilities which we have in the past imposed upon them without funding and for which we do not have any intention to provide funding under this legislation.

This goes beyond, however, an issue of appropriateness to some issues of basic fairness. A constituent of mine in Bonita Springs, FL, is named Joyce Maloney. In 1994, at the hearing before the Small Business Committee that was alluded to a few moments ago, she testified and she talked about one aspect of unfairness. She talked about how when she had moved into her new home in Bonita Springs, she and her husband wanted to buy some furniture and they went down to the local furniture stores, they looked at the furniture, looked at the prices. Then someone called them up and said, "Could I come out and see you about possibly buying your furniture through a mail order house from out of State?"

In the course of making his presentation on the furniture he indicated to them that, "Since the furniture was to be delivered to our home in Florida, no sales tax would be applied to the sales. Beside that, he told us, the delivery charge which you are paying will offset the sales tax that you will not be required to pay."

Of course he was defrauding Ms. Maloney because she was responsible—not for a sales tax but for its exact equivalent, the use tax, upon her receipt.

In fact, she ended up being one of the people that the Florida Department of Revenue contacted about unpaid use tax on this large furniture order. Ms. Maloney received a bill from the Florida Department of Revenue for \$226.26 for unpaid use tax. She was misled. She not only was taken away as a potential customer from the local business, but she ended up having to pay a tax, a use tax, the equivalent of a sales tax, which she had been led to believe would not be her responsibility.

I will just quote, before submitting for the RECORD the full text of Ms. Maloney's concluding paragraph:

Mr. Chairman and members of the committee, it is time to correct this situation and bring about truth in the marketplace. I have no problem in paying sales tax that is due on any purchase I make. But what I despise is receiving inaccurate and fraudulent information regarding my obligation to remit sales taxes. It is time to shift the sales tax remittance burden from the consumer to the retailer so that everyone plays and pays by the same rules.

I agree with Ms. Maloney.

Mr. President, her letter also indicates the other major area of unfairness, and that is unfairness to the local retail community. It is very difficult

for the small business person, whether they are selling furniture in Bonita Springs or whether they are selling men's garments in Hot Springs, AR, to compete when your competition starts by being able to sell 5, 6, or 7 percent below you because they are not being required to collect and remit the sales tax.

Why we would countenance a system that would allow that degree of inequality and unfairness in the marketplace is beyond me, except I know why we did it up until 1992. We did it because there was an assumption that under the U.S. Constitution, test of reach of one State to assess tax in another, it was unconstitutional and unconstitutional in a form that was not susceptible to remedy for a State to require an out-of-State mail order house to remit sales taxes on items sold.

But in 1992, in the case of Quill Corp. versus North Dakota, the Supreme Court held that States may not require out-of-State companies to collect use tax because to do so would impose a burden on interstate commerce. But the court went further by saying that Congress could authorize such a burden on interstate commerce, and that if it did so, States would then be allowed to make such collection.

So it has been since 1992 that the U.S. Supreme Court has extended to us the opportunity to do what Senator BUMPERS proposes that we do today. I hope that we will follow his leadership; that is, to authorize States, if they choose to do so, to utilize this new authority to apply their sales taxes to sales made by firms which solicit business within a State which mail items into the State but which today are not required to collect and remit the sales tax on those items.

Mr. President, this is not an insignificant issue. Senator BUMPERS has distributed the estimate of the Advisory Commission on Intergovernmental Relations on what the total potential additional revenue to the States and local communities would be from mail order sales using 1994 numbers. In my State of Florida alone, it is estimated that \$168.9 million of sales currently is not subject to our State sales tax because they are sales from out-of-State mail order houses selling into the State of Florida. That \$168 million would go a long way to funding the mandates that the Federal Government has made on the State of Florida and its communities, for which there will be no compensation under this legislation; \$168 million would allow the State to better meet those standards of expectation which the Federal Government has set in transportation, in law enforcement, in environmental protection, and in a whole array of areas in which we have seen fit to impose these burdens on States and communities.

I believe that this is an extremely important and germane amendment. It speaks to fundamental issues of fairness and to our responsibility as the Federal Government to treat fairly our

partners in government at the State and local level, and more importantly, to treat fairly our citizens, citizens whether they are the small merchants trying to survive in an increasingly competitive market or whether they are the misled purchasers, the Ms. Maloneys of America, that they would also be treated fairly.

This will provide to our communities a greater capacity to be able to accept the obligations that we have forced upon them in the past, and will continue to apply to them whether this underlying legislation is adopted or not.

For those reasons, Mr. President, I commend the Senator from Arkansas for his commitment, his wisdom, and his tenacity in advocating this position. I urge my colleagues to follow his leadership.

Thank you, Mr. President.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. First, Mr. President, let me thank very sincerely my distinguished colleague, Senator GRAHAM, for his very fine statement, very accurate statement, and very heartfelt statement. Like me, he is a former Governor. He understands precisely what we are talking about.

Mr. President, I ask unanimous consent that Senators GRAHAM, DORGAN, CONRAD, and HARKIN be added as original cosponsors.

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

Mr. BUMPERS. Mr. President, let me address one of the things the Senator from Maine, Mr. COHEN, said about 6,000 different tax jurisdictions in the country. Our bill would involve only 45 different tax rates because it provides for a blended rate within each state.

As for the exemptions on food, which the State revenue department of Maine told the Senator would be an impossible chore, I want to point out to you that I believe the biggest seller of food by mail order houses in the country is Harry and David. They ship fruit and they ship nonfood articles. What do they say on their order form? "Please add sales tax. See page 2." Page 2, "Sales tax information. We collect State and local taxes on all nonfood items delivered to the following States."

Then they have stars and asterisks, and so on. They have about 30 States listed here. Then, down below, it says, "These States also require sales tax on all candy items." Illinois requires 1 percent tax on all food items. Then there is a pound mark. "These States require sales tax on all items."

If Harry and David can handle it with one hand behind them, why is that such a big impediment?

The truth of the matter is that is just another smokescreen. The truth of the matter is, there is absolutely no trick to it. Otherwise, dozens of companies would not be doing it. If the Boy Scouts of America can collect sales tax

on their catalogs, surely L.L. Bean and Lands' End can.

Then, Mr. President, bear in mind, there are 7,500 mail-order houses in this country. My amendment would exempt all with sales less than \$3 million a year. So there are no mom-and-pop operators that are going to suffer under this amendment. How many does that leave? It leaves 825, and 6,675 are exempt under my amendment. We have a 1-800 number for every State revenue department so any catalog house that has any question can call toll free to the States and find out what they are supposed to do, if they have any question.

The Senator from Maine has very appropriately raised the question about what Wal-Mart—which he knows well is in my home State. We are proud of them. We have a lot of billionaires in Arkansas, and we are proud of every one of them. But I will tell you what Wal-Mart does. They collect sales tax. They collect sales taxes that go to the local schools and other purposes. Their sales in 1994 were over \$100 billion, and they collect sales tax on every dime of it. You see, Wal-Mart alone does about the same amount of business that all these mail-order houses do. And the big difference is Wal-Mart is a good citizen, collecting taxes to keep the schools going, to keep the fire department going, to keep the police department going, to keep the landfill going. And many mail-order companies collect nothing.

It is an elemental question of fairness. I have letters from all over the United States. Here is a woman I happen to know, Debbie White, Benton, AR. It says: We have "a small retail furniture business. I have personally lost individual sales in my area for \$15,000 to \$20,000. They go out of State. They come in here and pick out what they want and they go to the catalog and order it. We support the schools. We have the merchandise here that they can feel and touch. We carry a big inventory and we employ nothing but Arkansas people. We lose thousands of dollars of business every year to people who pay nothing."

Here is a letter from a little 75-year-old woman in Portland, TN, Mr. President: "I buy several hundred dollars' worth of mail-order merchandise per year. I am 75 years old and can no longer drive to the city to shop." She said she knows there are a lot in her situation. "Since I have always tried to be a law-abiding citizen, I added up all my records—because the other day I found out that our State has a tax that I am supposed to pay on anything I buy from a mail-order house." She said she once ordered many Christmas gifts through catalogs. She said, "I believe it is the duty of the mail-order companies to collect sales taxes due just as other stores and grocers do. Modern computers certainly make it easy for them."

Here is a letter from a man in Hilton Head, SC. Just briefly, paraphrasing, he says: "We bought thousands of dol-

lars' worth of North Carolina furniture to furnish our new home in South Carolina because we were told if we bought it in North Carolina and had it shipped in, we would not have to pay any sales tax. So we went up to North Carolina and bought all this merchandise and what happens? Four years later, we got a letter from the South Carolina Department of Revenue, saying we have to pay sales tax on this, and because of the penalties, it cost us \$700."

I ask unanimous consent that all three of those letters be printed in the RECORD at this point.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

WHITE FURNITURE CO.,
Benton, AR, January 19, 1994.

Senator DALE BUMPERS,
Dirksen Building-229,
Washington, DC.

DEAR SENATOR BUMPERS: I want to make you aware of an unfair tax situation that has been occurring for years in the furniture business. For quite some time we tried to ignore this, but when you see or hear the results every day of the week you have to finally stop and take notice.

My family has a small retail furniture business in Arkansas. We have paid taxes in the same small town for years. Now we have customers who are being educated by advertisers to shop their local retail stores for model numbers and prices—then call North Carolina and order and avoid paying our state sales taxes.

I have personally lost individual sales in my area for fifteen to twenty thousand dollars. We have found that the larger sales are the ones that people do out of state because of the high percentage of tax.

I'm not crying about the prices; I would just like to have a level playing field. We service our clients with free delivery; we furnish the showrooms where they can touch and feel the merchandise; we finance the merchandise locally, and we employ Arkansas people to sell and deliver the furniture.

Last year NBC did a travel segment and, on over 200 stations across our country, showed people how to take their vacations in North Carolina, shop while they are there and save enough in sales tax to pay for their vacation. Then CBS did a week long special on "Good Morning America," devoting one day to furniture, one to cars, and another to clothes, etc.

I don't know about the other 49 states, but I do know that our state could use the revenue from those lost sales taxes for our schools, roads, and local government.

I will be proud to support you in any effort you can make to help our state collect these unpaid taxes.

Thank you.

DEBBIE WHITE.

PORTLAND, TN,
September 8, 1994.

Senator DALE BUMPERS,
Russell Senate Office Building, Washington,
DC.

DEAR SENATOR BUMPERS: When I moved from Nashville to a small town a number of years ago, I discovered the convenience of mail-order buying. I buy several hundred dollars worth of merchandise per year. I am 75 years old and can no longer drive to the city to shop. I know there are probably thousands in my situation.

Several months ago I heard on our local news that people purchasing goods from mail order catalogs must pay State sales and use

tax on these items. That was news to me. I, and I know many others, have always thought that merchandise purchased outside our state was not subject to sales tax unless such a vendor had a store within our state.

Since I have always tried to be a law-abiding citizen, I added up from my records all purchases made in recent years, figured the sales tax, and mailed a check to the State Department of Revenue. But what about those many people who still do not know they are liable for these taxes? This situation makes it unfair to those who are paying.

I once ordered many Christmas gifts from catalogs. Now I am inclined to send money to my out-of-town relatives, avoiding the hassle of tax-record keeping.

I believe it is the duty of mail order companies to collect sales taxes due, just as other stores and grocers do. Modern-day computers certainly make it easy for them.

I understand you are working on legislation to correct this situation. I hope you will succeed.

Sincerely yours,

MAMIE R. WILLIS.

HILTON HEAD, SC,
September 12, 1994.

Hon. DALE BUMPERS,
Chairman, Committee on Small Business, U.S.
Senate, Washington, DC.

DEAR SENATOR BUMPERS: While on a trip to North Carolina a few years ago, my wife and I visited a furniture store to look for items for our winter home in Hilton Head, South Carolina. As you are no doubt aware, North Carolina is the furniture center of America. People come from all over America to buy furniture in North Carolina, drawn by word of mouth and various means of advertising.

As we shopped at one store in High Point, my wife and I found a number of furniture pieces that we were interested in buying. While considering the purchase, we were told by the sales staff that if this furniture were delivered to our home in South Carolina, no sales tax would be collected. This represented a savings of several hundred dollars, and became one factor in our decision to make the purchase. Subsequently, we concluded the purchase agreement, and the furniture was delivered to our home in South Carolina a short time later.

Approximately four years after making that purchase, we were surprised to receive a letter from the South Carolina Department of Revenue informing us that the furniture we had purchased in North Carolina was subject to South Carolina's use tax. (South Carolina had learned about the purchase when North Carolina audited the furniture company and shared the audit information with South Carolina.) In addition to the 5 percent tax, we owed interest and penalties because we had failed to pay the tax promptly. On our furniture purchase of some \$10,000, the total amount we owed for tax, interest and penalties was approximately \$700.

As you can imagine, we were shocked and upset at this news. We had no idea that we owed tax on this purchase. Like most consumers, we were accustomed to having sales taxes collected at the time of purchase, and it seemed odd to expect the customer to know when, where and how much tax to pay. And because the furniture salesman had told us that no tax would be "collected," we assumed that no tax existed.

I am not complaining about the tax itself. I certainly do not enjoy paying taxes, but had we known about this tax at the time of purchase, it wouldn't have been so bad. In that case, we could have considered the tax

as part of the cost of the transaction and then made an informed decision about whether to make the purchase or not. Indeed, it's quite possible that we would still have bought the furniture. But we were blindsided. We were led to believe that there was no tax, then told four years later that there was a tax. That simply is not fair.

The worst part of this situation is that we were expected to pay interest and penalties. As I told the South Carolina Department of Revenue, I felt that this was particularly unreasonable since we didn't even know we owed the tax—and they didn't know we owed the taxes for four years. In the end, I won half the battle: they agreed to waive the penalties, but we still had to pay the interest.

I understand that the State of South Carolina cannot control what North Carolina merchants tell their customers. But the United States Congress can and should do so. I urge you to pass legislation immediately correcting this situation so that other consumers do not have the same bad experience we had.

In my opinion, you should require merchants who ship goods to other states to inform those customers that taxes may apply. The disclosure should be in writing, and the customer's signature should be required. Any merchant who fails to give the disclosure should have to pay 50 percent of any penalties or interest that occur. I believe this would discourage companies from failing to share important information with the consumer.

Thank you for the opportunity to share my thoughts with you on this issue. I hope that you will move quickly to ensure that other consumers aren't misled the way my wife and I were.

Sincerely,

JOHN DIX.

Mr. BUMPERS. How would you like to be Debbie White? She also sells wallpaper. How would you like to be Debbie White, paying State sales taxes, privilege taxes, every tax under the shining sun the State can impose on you, working just to keep your head above water, and have somebody walk in and take your time for an hour looking through wallcoverings, and they walk out saying nothing, and suddenly you realize that they saw this ad that said: "Shop in your neighborhood, write down the pattern number, and then call us."

Who here thinks that is fair? Or here, a boat company. I put a letter in the RECORD last night where a woman and her husband in the boat business in California spent all kinds of time and thousands of dollars trying to make a \$250,000 boat sale. After spending all that money and time trying to sell this boat, the customer says, "Thank you very much for your time, but we have just discovered we can go to Oregon and buy this boat and keep it out of the State of California for some prescribed period of time and bring it here and save ourselves \$19,000." And here, what does this boat company's ad say? "No sales tax added outside of North Carolina."

Who here thinks this is fair? Not one. Not one. I would love to debate this, as I did before the National Governors' Conference last year. I think there were seven Governors in that room who objected to this—the Governor of Wisconsin and others who have big mail order houses in their states. This

amendment, I promise you, will provide more relief, by far, to the States than the mandates bill ever will. The problem with the mandates bill is, by the time we debate a point of order on every single bill we pass in the future, that is all we will have time to do. You talk about gridlock. You wait until these points of order start being raised.

Mr. President, when Senator PRYOR and I were Governors, we used to condemn the Federal Government for its mandates. If I were Governor today, I would condemn the Federal Government for not passing this amendment.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Maine controls 4 minutes 3 seconds.

Mr. COHEN. Mr. President, I was intrigued with the comments made by the Senator from Florida. He indicated that this was an important subject matter. He said it was not an insignificant issue. I agree. That is precisely my point. This is not an insignificant issue. This is something that deserves a hearing before the appropriate committee.

He also said that \$168 million in Florida is not subject to sales tax. I do not believe that is correct. It is subject to a sales tax. The State has a right to collect it from its citizens.

As my colleague from the State of Maine has indicated, 10 States now, since the Supreme Court decision, have adopted statutes that impose a collection burden upon their own citizens. Other states can do the same. It is not unreasonable to ask the States to educate their own citizens somehow, perhaps with a notice with their income tax forms saying "If you have made purchases out of State, mail order or otherwise, a sales tax is owed."

The Senator from Arkansas said, "If Harry and David can handle the sale of candies and sweets through interstate commerce, why cannot everybody else?" I say, what about Thelma and Louise? Harry and David may be able to do it, but maybe the smaller companies cannot. That is the problem with this approach. Again, this is why a thorough hearing before the Senate Finance Committee is necessary.

I quoted earlier from the Senator from Oregon, chairman of the Finance Committee. He said:

Currently States collect their own sales tax without interference from the Federal Government. Ten States collect these taxes from consumers from a separate line on the State's income tax. Obviously, States are fully capable of dealing with the collection of their sales taxes without the interference of the Federal Government.

Mr. President, if Mrs. Maloney was defrauded, she has a legitimate complaint. But we ought not paint the entire industry with the same brush. No reputable mail-order company is out there willfully defrauding their customers.

But again, those are serious matters that deserve to be fully aired before any legislation is adopted. The Senator mentioned his testimony before the

Governors' Conference, and I respectfully say to him he should bring his debate before the Finance Committee. That is the appropriate jurisdiction to argue the merits and equity and seek a proper resolution of this issue, not with an amendment to an unfunded mandates bill that we are currently considering.

For those reasons, Mr. President I move to table the amendment of the Senator from Arkansas and I ask for the yeas and nays.

The PRESIDING OFFICER. Does the Senator yield back his remaining time?

ADDITIONAL COSPONSOR

Mr. COHEN. Before yielding back my time, Mr. President, I ask unanimous consent to add Senator DOMENICI to the bill that I introduced earlier this morning, the health care fraud bill.

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

Mr. COHEN. I yield back the remainder of my time.

The PRESIDING OFFICER. Time has been yielded back.

Mr. COHEN. I renew my motion to table the amendment and I ask for the yeas and nays.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Maine [Mr. COHEN] to table the amendment of the Senator from Arkansas [Mr. BUMPERS]. 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 Kansas [Mrs. KASSEBAUM] is necessarily absent.

Mr. FORD. I announce that the Senator from Louisiana [Mr. JOHNSTON] is necessarily absent.

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

The result was announced—yeas 73, nays 25, as follows:

[Rollcall Vote No. 28 Leg.]

YEAS—73

Abraham	Feinstein	Mikulski
Ashcroft	Frist	Moynihan
Baucus	Glenn	Murkowski
Bennett	Gorton	Murray
Biden	Gramm	Nickles
Bond	Grams	Nunn
Boxer	Grassley	Packwood
Breaux	Gregg	Pell
Brown	Hatch	Pressler
Burns	Hatfield	Reid
Campbell	Helms	Rockefeller
Chafee	Hutchison	Roth
Coats	Inhofe	Santorum
Cochran	Jeffords	Shelby
Cohen	Kempthorne	Simpson
Coverdell	Kerrey	Smith
Craig	Kerry	Snowe
D'Amato	Kohl	Specter
Daschle	Kyl	Stevens
DeWine	Lautenberg	Thomas
Dole	Lott	Thompson
Domenici	Lugar	Thurmond
Exon	Mack	Warner
Faircloth	McCain	
Feingold	McConnell	

NAYS—25

Akaka	Bradley	Bumpers
Bingaman	Bryan	Byrd

Conrad	Hollings	Pryor
Dodd	Inouye	Robb
Dorgan	Kennedy	Sarbanes
Ford	Leahy	Simon
Graham	Levin	Wellstone
Harkin	Lieberman	
Heflin	Moseley-Braun	

NOT VOTING—2

Johnston Kassebaum

So, the motion to lay on the table the amendment (No. 144) was agreed to.

Mr. COHEN. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. DOLE. Mr. President, let the RECORD show that we have now completed action on another nongermane amendment. We had a cloture vote at 12:15. So we have consumed half the day on a nongermane amendment. We have not had a germane amendment yet to this bill. We are on the fifth day. If anybody can tell me with a straight face that they are serious about passing this bill on the other side, then I would be happy to entertain such thought.

We are not getting anywhere with this bill. We are getting calls in our office from mayors and county commissioners and Governors: "Why won't you pass this bill?" I am prepared to pass the bill. We are prepared to listen to real amendments. We have not had any real amendments. Then we get some nongermane amendment and took an hour last night and 2 hours today—3 hours on an amendment that does not even belong on this bill.

So I guess the question is, are we going to have any real amendments or are we going to continue this game of nongermane, nonrelevant amendments just so we can eat up the time and suddenly just let this bill go away, I guess.

But, again, I urge the President of the United States, who supports this bill, maybe to call some of his colleagues and say, "Why don't you pass the bill?" The Governors want it, the President wants it, Democrats, Republicans. Why do we have to have 78 amendments? What is wrong with the U.S. Senate? Why can we not move?

My view is the American people, whether they are watching or not, know what is happening—nothing; nothing is happening. If it is not going to happen today, it is going to happen tomorrow, it is going to happen Monday. It is going to be late, late, late tonight, late, late, late tomorrow night, if we have to go through the amendments one at a time and waste 3 hours on a nongermane amendment. If we cannot get time agreements on some of these amendments, that is fine; we understand the game that is being played. The American people do not, but they will before it is over. This is day No. 5, and we have yet to have a germane amendment to this bill.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The minority leader.

Mr. DASCHLE. Mr. President, with great respect, let me rise to clarify what I think the situation is. We had a Levin-Kemphthorne amendment this morning. As I understand, it was germane. If people are now coming to the floor offering their nongermane amendments, in part it may be because they are worried about invoking cloture and again not having the ability to offer amendments, whether they are relevant or germane or not.

But I will say again to all of my colleagues that we are prepared to work through the pending amendments, maybe in some cases come to some time agreement, whittle away some of the amendments that may not be necessary. I have already been able to get an agreement from some of our colleagues that they will not offer some of the amendments that were on the list that I presented to the distinguished majority leader yesterday.

So let there be no mistake, this may be day five, but this was only the fourth or fifth amendment that we have had the ability to debate.

So I hope that we can continue to work away in good faith on these amendments. I hope that before the end of the day, we might again have another list which will give both the majority leader and myself the opportunity to see where we are realistically and certainly move ahead with this legislation. There is no one on this side who does not want a vote on final passage at some point on this bill. We simply want our ability to offer amendments and to raise legitimate concerns protected.

I hope we can work together to accomplish that. I know we can. And I hope that in the not-too-distant future, we can find an agreement and ultimately come to some meaningful conclusion of this legislation.

Several Senators addressed the Chair.

Mr. DASCHLE. I yield to the distinguished Senator from Ohio.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, I will propose maybe a different line here. Last year, we brought out S. 993, and for reasons we are all familiar with and I will not go back over again, we were not able to get it through last year. It was a good bill. We worked on it very hard. Senator KEMPTHORNE had taken the lead on that and did a terrific job in putting that together. I worked with him. We brought it out of committee.

We had 67 cosponsors, I will tell the majority leader. On S. 993, we had 67 cosponsors, and I think almost all those people would still be available if we proposed S. 993. That was supported by the big seven groups of State, local, and county officials, and so on. Under cloture, I guess there might be a germaneness rule against that only because our provisions in that bill for

CBO had some additional requirements that S. 1 does not now have.

S. 1 was to be an improvement over S. 993, but what it does basically is it changes some of the ways the points of order are administered. But S. 993 is still a basic bill, a little simpler than this. It still would draw major support on our side. I would think we could get an early vote on that. Maybe that would be one option here.

Let me just add while we have the majority leader on the floor that I said in committee that I hope we could consider all these different things that would improve S. 1 in committee because when we got to the floor, it was going to draw amendments like flies. I did not know how true that was going to be.

But maybe going back to S. 993 would be a very rapid way to get out of this because we had 67 cosponsors last year. I doubt we would lose many of them now. I think we would gain back some of the people who are objecting to some of the procedures on S. 1.

Mr. DOLE addressed the Chair.

Mr. GLENN. I ask the majority leader's opinion as to whether we should go back to S. 993.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. I do not have an opinion on that. I think we have a good product before us, if we could just move on it. S. 993 may have been good. This may be even a little better.

I think it is still a bipartisan effort, the last I understood. It was not a partisan effort. We do not want to make it a partisan effort, but we want to finish the bill. I want to propound a unanimous-consent request when the Senator from Ohio—

Mr. GLENN. I yield the floor.

The PRESIDING OFFICER. The majority leader has the floor.

UNANIMOUS-CONSENT REQUEST

Mr. DOLE. Mr. President, I made this request last night. Again, I will say generally it is just routine around here that we adopt the committee amendments. Any former chairman or present chairman knows that we adopt the committee amendments. Now and then—rarely—you get an objection. We are only on, what, No. 11, 5 days. We had to table some. Just to get action, we tabled some of the committee amendments.

So I ask unanimous consent that all remaining committee amendments be agreed to en bloc and treated as original text for the purpose of further amendment.

The PRESIDING OFFICER. Is there objection?

Mrs. BOXER. I object.

Mr. DASCHLE. Reserving the right to object. What is the pending order of business, Mr. President?

The PRESIDING OFFICER. The Gorton amendment No. 31, as amended, is the pending question.

Mr. DASCHLE. I suggest the absence of a quorum.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. A unanimous-consent request has been propounded. Is there objection?

Mr. BIDEN. I object.

Mrs. BOXER. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. BAUCUS addressed the Chair.

Mr. KERRY. The absence of a quorum was suggested.

Mr. DOLE. I suggest the absence of a quorum.

Mr. BAUCUS. Will the majority leader yield while I give a statement on another matter? Perhaps he can work this out while I give a statement on another matter, 10 minutes total? Thank you.

Mr. DOLE. Maybe you can talk some of your people out of objecting to these routine requests while we are at it.

Mr. BIDEN. Will the Senator yield for 2 seconds?

Mr. BAUCUS. I yield.

Mr. BIDEN. The reason I objected was I thought—more appropriately, I would like to reserve the right to object, but since the minority leader asked for a quorum call—I assume to talk with the majority leader—that is why I objected. I have no intention of objecting, if they can agree, and I would just like to point out, as back in the bad old days when I was chairman of the committee, this floor never agreed to the amendments from the Judiciary Committee on a bill.

So it is a practice that maybe we should establish, but in my experience in 6 years as chairman of that committee I can never remember one single occasion when I came to the floor where we routinely agreed to the committee amendments from the Judiciary Committee.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I first want to commend the majority leader, who I know is trying to get a very important bill passed, as well as the distinguished manager of the bill, Senator KEMPTHORNE from Idaho, who I think has done yeoman's work, a very good job of managing this bill, as well as the Senator from Ohio.

I think all of us in the Chamber know that this bill is going to be enacted, it is going to pass. I think all of us want it to be a good, solid piece of legislation, and in putting it together, I urge my colleagues, those on the other side of the aisle, to give Senators who have legitimate amendments time to offer their amendments.

It is a very important bill. It is very complicated. It is not at all understood. Speaking for myself, I could tell the majority leader that I support the underlying legislation and I think a lot of Senators do. We would just like to have legitimate time to get the amendments. This is not a filibuster to kill a bill. It is not a filibuster to kill a bill. It is just an opportunity to offer amendments so we can vote on final

passage on a bill that is probably improved upon.

BRINGING MICRON TO BUTTE

Mr. BAUCUS. Mr. President, I rise today to pay tribute to the citizens of Butte, MT, and other Montana communities, in their efforts to bring Micron Technology, Inc., a major U.S. semiconductor manufacturer, to Montana.

Butte-Silver Bow County is a finalist for a \$1.3 billion Micron manufacturing plant. The plant would create 3,000 to 4,000 jobs with an annual payroll of \$200 million. Good paying, high technology jobs that would bring a better standard of living to both Butte and Montana. Micron would also propel Butte forward on its journey as a major U.S. technological center.

The possibility of Micron locating to Montana has banded the citizens of Butte together—in fact, the entire State together—in a very inspiring way. I wish you could see it, Mr. President. It has been exciting and heartening for me to experience and be part of the enthusiasm and vigor by which Montanans have gone after this golden opportunity.

For those of you who have never been to Butte—and I guess that would include most of you—Butte is truly a unique, all-American city. It is known throughout Montana as the Can Do City, and if ever a city in this country could do it, it is Butte.

There was a time, after the Anaconda Co. shut down its mines, that Butte was believed to be destined to join the many ghost towns dotting the Rockies. Yet, through hard work, loyalty, determination, and a very strong entrepreneurial spirit, the people of Butte-Silver Bow fought their way back.

They have made Butte a national center for the development, testing, and application of revolutionary environmental technologies. They are making the Port of Butte a major hub for intermodal shipping across the Nation. And they created a top educational institution—Montana Tech—voted by college presidents in a U.S. News & World Report poll as the top-ranked science program in the United States among smaller comprehensive colleges.

Newsweek has described Butte as the "bright spot amidst the tumbleweed" in the West and commended the community for "engineer[ing] the most dramatic turnaround."

See this poster behind me? The local newspaper in Butte printed it up so thousands, and thousands, of Butte citizens could hang it in their windows, displaying to Micron—and Micron, I hope you are watching this—their enthusiasm and support. And see this stack of papers? They are editorials and articles from all over Montana, written in support of Micron. Editorials have been pouring in on a daily basis.

Take the editorial from the Missoulian, for example. As the editorial board penned:

The people of Butte are survivors proud and passionate about their community * * *. If Micron's managers have any yearning to be adored and supported by an entire community in their every endeavor, they will build in Butte.

Similarly, the editors of the Independent Record in Helena write, "it is difficult to think of a town in the country that deserves as much admiration as Butte, a city that doesn't know how to quit."

And the Billings Gazette board stated last week that "Butte, MT, can offer everything that Micron seeks and more. It also offers an intense desire to attract companies such as Micron, to treat them well and to provide incentives for relocation."

I think Daniel Berube, chairman and CEO of the Montana Power Co. in a guest editorial in the Montana Standard sums it up right: Butte is "a good place to live, a good place to work, and a good place to raise a family." I strongly share his belief that there cannot be a better matched city for Micron than the city of Butte.

Like Butte, Micron based its phenomenal growth and success on the Western ideals of working hard and thinking big.

Like Butte, Micron has become a leader in its field, serving as a shining light for the rest of the Northwest.

And like Butte, Micron is preparing itself for the 21st century, while at the same time, maintaining the unique quality of life and scenic location found only in Montana and the Northwest.

I cannot think of a better home for Micron than in Butte. And I commend the community and the State of Montana in their efforts to deliver this message to Micron.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. KEMPTHORNE. Mr. President, I must respond to this statement by the Senator from Montana. He is so correct in pointing out that Micron is worth attracting to your State. Micron is an outstanding industry, and I know that because Micron is located in Boise, ID, of which I was mayor for 7 years. There are a number of communities in Idaho that also are desirous of the expansion of Micron. So I commend my colleague from Montana. He knows something good. I just say that we certainly intend to keep an eye on it.

Mr. BAUCUS. Mr. President, I, too, would like to commend the distinguished manager of this bill, a former mayor of Boise, ID, home of Micron. We all are together. We very strongly support and are enthusiastic admirers of Micron and what they have done over the years. It is a good competition going on here to get Micron. The depth of competition indicates the quality of the company. And I just say to my friend, may the best city win. And we very much hope that Butte, MT, is the finalist in the plant location.

I thank my good friend.