

SENATOR HATCH'S CONSTITUTIONAL AMENDMENT ON UNFUNDED MANDATES SECTION-BY-SECTION ANALYSIS

This amendment would impose dramatic new limits on the federal government's power to subject States and localities to unfunded mandates. The amendment would bar direct unfunded mandates, except where Congress by a 2/3 vote has specified that States and localities should be subject to those mandates. It would also bar conditional mandates on the receipt of federal assistance by States and localities—e.g., in spending programs—unless the condition is directly and substantially related to the specific subject matter of the federal assistance (and again subject to a 2/3 override). The amendment would also codify the Supreme Court's 1992 ruling in *New York v. United States*, 112 S. Ct. 2408 (1992). The amendment would apply only prospectively—that is, only to statutes that become effective after it has been ratified.

Here is a section-by-section analysis:

Section 1. Section 1 has two parts. First, it provides that federal statutes cannot impose or authorize direct unfunded mandates on States and localities. Were this the only provision, Congress would then simply condition all of its mandates on assistance that States could not afford to reject. Accordingly, it is also necessary to limit Congress' power to impose conditional mandates (e.g., as part of a spending program). This is done through the second part of section 1. The requirement that a condition be "directly and substantially related to the specific subject matter of the assistance" is a significant improvement over existing constitutional case law, which requires only that conditions be "reasonably related" to the "purpose" of the assistance.

Section 2. Section 2 provides an exception to section 1: where Congress so specifies by a 2/3 vote, unfunded obligations or loosely related conditions may be imposed on States and localities. This provision ensures that in those cases in which mandates are truly warranted, they can be adopted.

Section 3. Section 3 codifies the Supreme Court's ruling in *New York v. U.S.*, 112 S. Ct. 2408, 2435 (1992), that under the Tenth Amendment the "Federal Government may not compel the States to enact or administer a federal regulatory program."

Section 4. Section 4 provides that the term "State" applies to State agencies and to cities and counties.

Section 5. Section 5 makes clear that the amendment would apply only prospectively.

Section 6. Section 6 is designed to make clear that courts could not order federal funding as a remedy for a violation of section 1. Instead, the consequence of a violation is that the obligation is not enforceable against the State or locality.

Section 7. Section 7 protects against the amendment somehow being misconstrued to expand federal power.

By Mrs. FEINSTEIN:

S.J. Res. 10. A joint resolution to designate the visitors center at the Channel Islands National Park, California, as the "Robert J. Lagomarsino Visitors Center"; to the Committee on Energy and Natural Resources.

THE ROBERT J. LAGOMARSINO VISITORS CENTER  
ACT OF 1995

Mrs. FEINSTEIN. Mr. President, today I am introducing a resolution to designate the visitors center at the Channel Islands National Park, California, as the "Robert J. Lagomarsino Visitors Center." I am pleased to say Congressman ELTON GALLEGLY is intro-

ducing the measure in the House of Representatives.

The legislation is identical to S.J. Res. 152 and H.J. Res. 67 which we sponsored in the 103d Congress. The House of Representatives passed the measure in 1993 as part of H.R. 3252, the West Virginia Conservation Act. The Senate Energy and Natural Resources Committee also approved the measure last year, but the full Senate was unable to act before the 103d Congress adjourned.

As some of my colleagues will remember, Robert Lagomarsino served in the House of Representatives for 18 years, from 1974 to 1992, representing the nineteenth district of California which then included Santa Barbara County and part of Ventura County. A member of the House Interior and Insular Affairs Committee and the Subcommittee on National Parks and Public Lands, Bob Lagomarsino was active on a wide range of natural resource issues, including the Alaska National Interest Lands Act, the Strip Mine Control Act, the California Wilderness Act, the Sespe Condor Rivers and Range Act, and hundreds of other bills.

But perhaps Bob Lagomarsino is most closely associated with protection of the Santa Barbara Channel and the establishment of the Channel Islands National Park. Even before his election to the House of Representatives, Bob Lagomarsino worked to protect the fragile Channel Islands and their remarkable scenery and wildlife. As a Member of the California State Senate, Bob Lagomarsino authored the bill creating a state sanctuary around the Channel Islands. As a Member of the House, Bob Lagomarsino sponsored the legislation which expanded the existing Channel Islands National Monument and redesignated the area as a National Park. He then worked hard to secure the funding necessary to complete the park. Additionally, as a Member of the House, he fought to protect the Channel Islands National Park from potential oil spills, successfully persuading oil companies not to ship Alaskan oil through the Santa Barbara Channel and opposing new federal oil leases in the area.

Given Bob Lagomarsino's long association with protection of the Channel Islands, I believe it is most fitting for us to designate the visitors center at the Channel Islands National Park as the "Robert J. Lagomarsino Visitors Center". I hope my colleagues in the 104th Congress will join me in recognizing the contributions of this distinguished Californian and enact this measure promptly.

Mr. President, I ask unanimous consent that the text of the joint resolution be printed at this point in the RECORD.

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

S.J. RES. 10

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. DESIGNATION.

The visitors center at the Channel Islands National Park, California, is designated as the "Robert J. Lagomarsino Visitors Center".

SEC. 2. LEGAL REFERENCE.

Any reference in any law, regulation, document, record, map, or other paper of the United States to the visitors center referred to in section 1 is deemed to be a reference to the "Robert J. Lagomarsino Visitors Center."

SENATE CONCURRENT RESOLUTION 1—PROVIDING FOR TELEVISION COVERAGE OF OPEN CONFERENCE COMMITTEE MEETINGS

Mr. DOLE (for himself and Mr. DASCHLE) submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. CON. RES. 1

*Resolved by the Senate (the House of Representatives concurring),* That it is hereby authorized to provide coverage by television cameras of all open conference committee meetings.

Mr. DOLE. Mr. President, on June 2, 1986, the Senate opened its doors to the American people through television cameras, a giant leap in increasing the access of Americans to their Government. However, in some areas, the Senate needs to take further steps to enter the 20th century when it comes to opening our proceedings to the public.

The American people sent a lot of messages to Congress on November 8, but certainly one was that they expect us to deliver on our promises. We heard that message loud and clear, and we expect the people to hold us accountable. As our employers, the American people have every right to observe their Government in action, and we have a responsibility to ensure that public access.

Today, along with my friend from South Dakota, Senator DASCHLE, I am introducing two resolutions to increase public access to the proceedings of Congress. The first is a Senate resolution which would permit the electronic media to cover the majority leader's and minority leader's so-called dugout briefings. These briefings, which have traditionally been open only to reporters with notepads, have been held on the Senate floor for a few minutes prior to the day's session. Senate rules currently do not permit broadcasting of the Senate floor while the Senate is not in session, but this resolution would allow it for these sessions.

The second resolution is a concurrent resolution which would permit coverage by television cameras of all open House-Senate conference committee meetings. These public meetings have been open to print reporters and journalists without television cameras. It is high time we permitted more of the American people to see with their own eyes this important part of the legislative process.

I ask that these resolutions be printed and referred to the appropriate committee.

News organizations have also asked that the cameras that cover the Senate floor, currently operated by Government employees, be operated by journalists. That is an idea which is in my view worthy of serious consideration. Clearly, while current coverage of the Senate has provided the public with a greater understanding of the legislative process, improvements can be made. I plan to consult with Senator DASCHLE on the formation of a bipartisan Senate working group to examine this issue, and all its implications. In the meantime, I will suggest to the Rules Committee that they consult with broadcast news journalists to consider appropriate changes to the procedures determining camera coverage of floor activity, with an eye towards making the coverage as complete as possible.

Mr. President, I ask unanimous consent that a letter from Brian Lamb, chief executive officer of C-SPAN, as well as my response to him, be included in the RECORD. I also note that I have had similar correspondence with Bill Headline, chairman of the executive committee of correspondents of the Senate radio-television gallery.

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

C-SPAN,

*Washington, DC, November 21, 1994.*

Re further opening up the Senate to C-SPAN cameras.

Senator ROBERT DOLE,  
*Republican Leader, U.S. Senate, Washington, DC.*

DEAR SENATOR DOLE: As you and your colleagues prepare to take the leadership of the Senate, we've noted with interest an increasing national discussion about how to expand public access to the legislative process.

We at C-SPAN are among those who have long been interested in expanding the public's access to Congress. As such, we would like to offer this proposal which we hope can contribute to this goal: Consider opening the 104th Congress fully to television cameras. Allow C-SPAN cameras into places where they've historically been excluded—most importantly, into the chamber of the U.S. Senate.

Here, more specifically, is what we propose:

(1) Allow C-SPAN cameras to cover Senate floor debates. Senate cameras currently give C-SPAN and the rest of the news media a restricted view of the floor. Under Senate rules, cameras cannot pan the chamber or take reaction shots; they must focus only on Senators who are speaking. These procedures were agreed to by a Senate which has greatly changed since the vote on Senate television in 1986. Only half of the Senators who were present then are still in office. Not only has the Senate changed, society has too—consider how much our country's appetite for and access to information has grown in those eight years.

Allow C-SPAN—a private, not-for-profit company to install its own cameras in the Senate. Since C-SPAN brings Congress into American living rooms, most Americans (and according to our last survey, as many as half the Senators) think that C-SPAN operates the cameras in the Congress. They don't know that the cameras in the Senate chamber are controlled by government employees using procedures established by the Senate Rules Committee. Allowing C-SPAN cam-

eras in the chamber will help end the confusion and create a more honest picture of Senate debates.

If you do allow our cameras into the chamber, we will commit to covering Senate floor debates in the same style we've established during 16 years and 25,000 hours of Congressional committee coverage. We'll present a complete, honest, and accurate picture of each day's events, and make our telecasts available to others in the news media, following accepted pooling practices. We hope you'll agree that allowing our cameras in the Senate chamber is simply a way to use technology to extend Congress' public galleries. It allows 35 million C-SPAN2 homes the same opportunity to see their Senators that 611 citizens can have by sitting in the Senate gallery.

(2) Open the Leader's "dugout chatter" to television. Established practice has kept cameras out of these on-the-record briefings between reporters and the Majority Leader. Let cameras in and allow the public to hear and see these sessions for themselves. We can commit to televising these briefings on C-SPAN2 each day; we would also extend a similar opportunity to the Minority Leader.

(3) Allow C-SPAN to install a permanent camera position just off the Floor. Our viewing public regularly tells us they need more context for the debates they watch. Create a permanent camera position near the floor so that we can interview Senators during quorum calls, votes, and before and/or after C-SPAN2's gavel-to-gavel coverage of Senate sessions.

(4) Open all House-Senate conference committees to cameras. Cameras are often excluded from this important, final step in the legislative process. Budget Conferences are one important example. We propose that the public be allowed to witness—via television—the debate and decision making that finally determines how their tax dollars are being spent.

As you can imagine, going forward with all of these proposals would require considerable additional resources from C-SPAN. You should know that the cable television industry, which is responsible for creating and funding C-SPAN and C-SPAN2, is committed to providing the additional resources necessary to expand our coverage of Congress.

It took many years for the Senate to agree to televise its sessions. Since then, other democracies have followed suit—several of them allowing more complete television pictures than American citizens now get. We hope you'll agree that after eight years, it's time for the Senate to take the next step—consider allowing C-SPAN cameras into the chamber and open up the other venues we've suggested. Expand what American citizens can see of their national legislature; make the television picture of Congress more complete, and therefore, more honest.

As you consider our proposals we are, of course, happy to provide any details or technical information you may need.

Sincerely,

BRIAN LAMB,

*Chief Executive Officer.*

P.S.—A similar letter is being sent today to leaders of the House; we will also be releasing copies to our colleagues in the news media.

U.S. SENATE,

OFFICE OF THE REPUBLICAN LEADER,

*Washington, DC, December 27, 1994.*

Mr. BRIAN LAMB,  
*Chief Executive Officer, C-SPAN, Washington, DC.*

DEAR BRIAN: As you know, I have been a strong supporter of C-Span, broadcast coverage of the proceedings of the United States Senate, and media access in the United

States Capitol. I am very interested in the ideas outlined in your letter of November 21st, and I appreciate the time you spent with my staff last week to discuss your suggestions for further opening up coverage of the Senate. While I do not have the personal authority to make many of the changes you propose, I want to do what I can to increase public access to Congress.

I am prepared to immediately open to television cameras the Majority Leader's so-called "dugout" briefings for reporters. Because allowing broadcast coverage from the Senate floor when the Senate is not in session would require a Senate resolution, I may hold these briefings at a location off the Senate floor at least until such a resolution is approved. I assume you will provide a similar opportunity for the Democrat Leader, and I will consult with Senator Daschle before introducing a resolution.

I also support opening all public meetings of Senate-House conference committees to television cameras. As you know, this would require a concurrent resolution passed by both houses of Congress, and I will consult with Senator Daschle and Speaker Gingrich on initiating such a resolution.

While I believe the current coverage of the Senate has provided the public with a greater understanding of the legislative process, improvements can clearly be made. Your suggestion that we permit cameras operated by new organizations to provide coverage of the Senate is worthy of serious consideration. I will consult with Senator Daschle on forming a bipartisan Senate working group to examine this issue and all its implications, including feasibility, cost effectiveness, and the interests of other broadcast news outlets. In the meantime, I will suggest to the Rules Committee that they consult with C-Span and your colleagues from the other network news divisions to consider appropriate changes to the procedures determining camera coverage of floor activity, with an eye towards making the coverage as complete as possible.

As Republicans prepare to assume majority status in the Senate, we look forward to working with you. Thanks again for your constructive suggestions.

Sincerely,

BOB DOLE,

*Senate Republican Leader.*

#### SENATE RESOLUTION 1—INFORMING THE PRESIDENT OF THE UNITED STATES THAT A QUORUM OF EACH HOUSE IS ASSEMBLED

Mr. DOLE submitted the following resolution, which was considered and agreed to:

S. RES. 1

*Resolved*, That a committee consisting of two Senators be appointed to join such committee as may be appointed by the House of Representatives to wait upon the President of the United States and inform him that a quorum of each House is assembled and that the Congress is ready to receive any communication he may be pleased to make.

#### SENATE RESOLUTION 2—INFORMING THE HOUSE OF REPRESENTATIVES THAT A QUORUM OF THE SENATE IS ASSEMBLED

Mr. DASCHLE submitted the following resolution, which was considered and agreed to: