

Federal Government to proceed with legislation of that type and where there has been a well-designed partnership between the Federal Government, State government, and local government to accomplish a recognized national purpose.

I am trying to make it clear that where there is such a circumstance in the view of an authorizing committee, then that authorizing committee should have the right to have its legislation, its reported legislation, considered on its merits without having to overcome procedural points of order to do so.

That is the intent of my legislation. It does not exempt any reported legislation from the requirements of reports or cost estimates by the CBO. I do believe those are appropriate, and clearly the failure to have those in some cases has worked a hardship on local governments, on State governments, on Indian tribes.

I wanted to clarify what the import of my legislation is. And with that clarification, I hope that the Senator from Idaho, and all other Senators, can support it.

I yield the floor, Mr. President, and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. CRAIG). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

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

#### IN BEHALF OF A CULTURAL CUTTING EDGE

Mr. BYRD. Mr. President, we live in an era of technological miracles—inventions, phenomena, and developments whose inventors and initiators might have been burned at the stake as witches and warlocks in the so-called "Dark Ages" for even suggesting, much less producing or conducting, such things.

Automobiles, jet aircraft, space vehicles, CD records, microwave ovens, telephones, artificial hearts, organ transplants—inventions, opportunities, and creations that some of our ancestors only a century ago might have found unbelievable, if not unimaginable.

But, Mr. President, perhaps the one modern invention that has had, and will have, the greatest impact on human life is television.

Imagine, if you will, the astonishment of George Washington, Thomas Jefferson, or even Benjamin Franklin if any one of those men were able to sit down with us today in front of that vast wasteland, as Newton Minow referred to it—a television set.

Imagine being able to tune in with them on a one-on-one conversation across the Atlantic with British Prime

Minister John Major or German Chancellor Helmut Kohl, to discuss Trans-Atlantic alliances or international trade issues, for example.

Or imagine the astonishment of U.S. Grant or Robert E. Lee had they been able in their time to sit before a television set and view the actual progress of the Siege of Vicksburg or the Battle of Gettysburg, as so many millions of everyday Americans viewed the progress of the Gulf War or the shooting down of "Scud" missiles incoming over Tel Aviv or Riyadh, Saudi Arabia.

Interestingly, perhaps even the Founding Fathers of the television did not foresee the scope of television or grasp the possibilities that this miracle offered in its earliest, fuzziest beginnings.

In those primeval days of television broadcasting—roughly, the late 1930's and pre-World War II 1940's—the biggest star attractions consisted primarily of telecast images of "Felix the Cat" and local station test patterns, which fascinated people even though they offered the crudest of images and practically no motion.

But following the end of the Second World War, several radio programs began "simulcasting"—that is, broadcasting both on infant television networks and on the established radio networks at the same time.

Thus, in time, millions of Americans were enabled both to see and hear "The Voice of Firestone," "The Bell Telephone Hour," and "The NBC Orchestra," conducted by Arturo Toscanini. Increasing numbers of American families were exposed to the music of Beethoven and Schubert, and to the considerable talents of the finest musical figures of the Metropolitan Opera or La Scala.

In time, NBC introduced plays by some of America's leading playwrights on "The Philco/Goodyear Playhouse," and CBS on "Studio One"—plays many of which went on to be reproduced into classic movies, and plays that introduced some of today's leading actors and actresses to millions upon millions of Americans who had been unable to witness their Broadway and off-Broadway debuts.

For children in those early days of television, "Howdy Doody," "Romper Room," "Miss Frances" on "Ding Dong School," and "Captain Kangaroo" provided often brilliant exposure to experiences and information unavailable to them anywhere else—experiences and information that conveyed values, taught serious while camouflaged knowledge, stretched tiny minds—tiny minds—and imaginations, and helped untold millions of preschool children prepare for the serious business of entering school and beginning their formal educations.

The apparent goal of television executives in those early days seemed to be to reach growing numbers of middle-class and upper-middle-class American consumers whom sponsors wanted to attract to buy their automobiles, bath

soaps, refrigerators, and dish detergents—consumers with high incomes and relatively good educations, and men and women of all income and educational levels who hungered for good music, compelling drama, and intellectually challenging entertainment and diversion.

Likewise in those days, sponsors were eager to have their names and trademarks associated with "quality culture," in hopes of winning and keeping consumer loyalty and gratitude, both valued intangibles in the supermarkets and department stores when viewers contemplated their purchases.

But as time passed, advertisers more and more craved only higher and higher audience numbers. In the search for those numbers, sensation drove out substance, and action cancelled out content.

In time, in pursuit of ratings, television producers lost their nerve.

If a single "cowboy" show caught the public's fancy, dozens of cowboy shows appeared, crowding out most other programming. If the next season a single detective show garnered high ratings, off the television range fled the cowboys, and detective shows proliferated across the dial. The same held true of variety shows, quiz shows, "sit-coms," or spy shows.

In the process, children's programs with substance vanished, to be replaced, hour after hour, with crudely composed "action" cartoons, in which scarcely believable and primitively drawn comic book "heroes" exposed children to eternities of violence, mayhem, and pointless fantasy.

Expert television analysts assert that, by the time an American child reaches his or her late teens, commercial television has exposed that child to literally thousands of murders and other acts of violence, an exposure that predictably deadens that child to real-life violence and that overtly and subliminally teaches that violence, in itself, is an effective means of solving problems and getting one's own way in this world.

Should we, then, be surprised that here in the inner-city neighborhoods of Washington, or in Baltimore or New York or other great urban centers—and even in our comfortable suburbs—children are literally murdering other children over the possession of sneakers, team jackets, or over real or imagined slights? After all, again and again without number, these child-murderers have witnessed the effective use of such solutions on commercial television, and a few weeks later, they had seen the same guy who gets shot or stabbed or pushed out the window or strangled with a copper wire on some other show in perfectly good health.

From the beginning of the adulteration of television, thoughtful people have sought alternatives to the trash and vulgarity that have increasingly contaminated the airwaves of this miraculous medium of communication.

And, to the relief of millions of thoughtful Americans, in time, "educational television" laid the foundations for today's public broadcasting stations.

As a result, as the public television network grew, children in our inner cities and in rural States like West Virginia and eastern Kentucky could be reached by television images that stretched their imaginations, taught them stories by great authors, exposed them to initial concepts in science and arithmetic, and challenged them with mainstream values such as telling the truth, respecting other children, obeying their parents, and becoming good citizens.

At the same time, the Public Broadcasting System, the Corporation for Public Broadcasting, and National Public Radio increasingly filled the voids left by the commercial networks when they turned their backs on people in our society who crave good music, who hunger for good drama, who desire to hear and see good public debates on important questions of our time, who are eager for good documentaries, and who yearn for substance and challenge in their entertainment.

Indeed, the Public Broadcasting System has evolved into a kind of cultural cutting edge—the pioneering network—that carved the frontiers and plowed the first fields that have proved the market that such operations as the Arts and Entertainment network, the Discovery, and Learning Channels, the History Channel, Bravo, and other increasingly culturally oriented systems are now exploiting.

But even in these commendable enterprises, PBS has been the pioneer to which these new cultural channels must look for guidance. As welcome as their entry into the cultural scene is, so much of their offerings were first offered or grubstaked on public television.

The lamentable truth is that, in commercial television, the bottom line is money, and until certain kinds of programming prove themselves, most commercial cable networks are unwilling to take risks on most types of programming—that is, until public television demonstrates the existence of a market for that kind of programming.

Ken Burns' "Civil War" was an enormous gamble on which no one outside public television would have been willing to take a chance, until WETA made a leap of faith and underwrote a classic that will live for decades. Millions upon millions of Americans have seen "The Civil War," and millions upon millions more will see it in coming generations. As a result, countless millions of Americans yet unborn will understand in ways previous impossible the significance and the scale of the greatest conflict in American history—a conflict that still defines us in many ways roughly 130 years later.

Currently, the hunt dogs are baying at the heels of PBS and the public broadcasting network across our country.

We are informed that PBS is too liberal, too radical, too un-American, elitist, left-wing.

Do these critics mean to say that William F. Buckley's "Firing Line" is an example of liberal programming?

William Buckley has been appearing on "Firing Line," a program produced admirably by South Carolina public broadcasting for years. Indeed, to follow William Buckley is to be disarmed by one of the most rational, intellectually charming, and persuasive conservative personalities in American history, a man who has exploited "Firing Line" brilliantly in a committed effort to force millions of Americans to rethink, or to think for the first time, the seminal principles of their own political, economic, and social positions.

Or do the critics mean to include in their criticisms of the liberal and elitist descriptions of PBS the reruns of the "Lawrence Welk Show," reproduced by Oklahoma public television, to the absolute delight of millions upon millions of Middle Aged and Older Americans who await each week the replay of some of the most beautiful music ever composed and performed in America?

Or do they mean "Wall Street Week," presided over by one of the most urbane and persuasive capitalists ever to advocate the free enterprise system anywhere and at any time?

Or do those critics include among left-wing elitists the conservative Ben Wattenberg, whose weekly panels present a wide spectrum of challenging intellects, right and left, in a balanced discussion, in understandable terms, of some of the most arcane issues of our day?

Or are we to assume that "The Collectors," "This Old House," "Cats and Dogs," concerts by the Boston Pops Orchestra, LeVar Burton's "Reading Rainbow," or reruns of such classics as "Casablanca" or Marlene Dietrich's "Blue Angel" are examples of elitist programming?

Or what of "Washington Week in Review" which we see every Friday evening here in Washington, by tuning in at 8 o'clock?

Year after year after year we watched Paul Duke, and we still watch "Washington Week in Review." It provides some of the most perceptive, thoughtful, and penetrating analysis available anywhere.

To be sure, much on public television rankles me, as I am sure it rankles people who do not share my values and philosophy of life.

But to stifle, shut down, starve, emasculate, or cripple our public broadcasting system, by denying it the seed money that guarantees its very survival in some of our most isolated rural communities, would be to kill one of the finest golden-egg-laying geese on the American cultural scene.

To speak many truths is to risk making many enemies. Likewise, to speak many truths is to risk making many friends, as well. And because our public

broadcasting system provides such a variety of truths, it can boast mobs of both friends and detractors.

Mr. President, I hope that we will think long and sincerely before we punish, dismantle, or destroy one of the most valuable assets in our national cultural treasury, and risk reducing the Public Broadcasting System, the Corporation for Public Broadcasting, and National Public Radio to bad and ineffectual imitations of our commercial broadcasting networks, complete with underarm deodorant commercials and paeans to dog food and kitty litter.

I yield the floor.

[Disturbance in the visitors' gallery.]

Mr. BYRD. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senator will suspend for just a moment.

The gallery must not show approval or disapproval to actions on the floor of the Senate.

The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I ask unanimous consent we set aside whatever the pending business is. Is there a pending amendment?

The PRESIDING OFFICER. Amendment 191, The Senator's own amendment.

Mr. BINGAMAN. I ask unanimous consent my own amendment be set aside temporarily, while I offer another amendment.

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

#### AMENDMENT NO. 192

Mr. BINGAMAN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New Mexico [Mr. BINGAMAN] proposes an amendment numbered 192.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 25, add after line 25, the following new section:

"(4) APPLICATION TO REQUIREMENTS RELATING TO THE TREATMENT AND DISPOSAL OF RADIOACTIVE WASTE—

Notwithstanding any provision of paragraph (c)(1)(B), it shall always be in order to consider a bill, joint resolution, amendment, or conference report if such provision relates to a requirement for the treatment or disposal of—

(A) high-level radioactive waste, low-level radioactive waste, or spent nuclear fuel (as such terms are defined in section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101)); or

(B) byproduct material or transuranic waste (as such terms are defined in section 11 of the Atomic Energy Act of 1954, (42 U.S.C. 2014))."

Mr. BINGAMAN. Mr. President, the amendment I am offering here is an amendment to exempt measures concerning the treatment and disposal of

nuclear waste from S. 1. It is my understanding that the agency primarily responsible for this issue is the Nuclear Regulatory Commission. It is one of the agencies that is not covered by title II of this legislation.

This amendment I have offered here would have the effect of ensuring that both the NRC, the Nuclear Regulatory Commission, and the Congress can continue to have authority to take necessary action in this very important policy area. Without this amendment I have offered here, we are leaving the NRC with power to act in an area where it would also be out of order for this Congress itself to consider legislating. If a bill or an amendment is offered to increase the requirements to obtain a license under the Nuclear Regulatory Commission, that bill would be subject to a point of order. The NRC could do that by regulation without there being any objection raised.

But if the Congress tried by statute to raise the requirements on a licensee under the authority of the Nuclear Regulatory Commission, that would be subject to a point of order. As the bill now stands, my amendment would correct that. I believe it is important to look at this issue in a historical context.

Research on nuclear energy started without congressional approval and in fact in great secrecy, and only a few select Members of Congress were kept informed about the Manhattan project during World War II, even though a large amount of taxpayer money was being spent to build the facilities needed at Los Alamos in my own home State, in Hanford, and at Oak Ridge.

Moving quickly to assert its control over the nuclear program, Congress passed the Atomic Energy Act of 1946, which created both the Atomic Energy Commission in the executive branch, which was charged with managing the program, and it created a Joint Committee on Atomic Energy within Congress to oversee and direct the program. Moreover, because private ownership was prohibited in the 1946 act, the Federal Government maintained absolute control over nuclear materials and facilities. Consequently, the prospect of the nuclear program being transitional to the civilian sector was very faint, and, therefore, Congress was enforced to enact legislation to develop the civilian nuclear power program in 1954 with the Atomic Energy Act of 1954.

Because that act was extremely vague in its efforts to define safety considerations and in its overall regulatory program, the AEC, the Atomic Energy Commission, was responsible for promulgating safety regulations, and they had broad discretion. In fact, the U.S. Court of Appeals for the District of Columbia noted years later that the 1954 act created—here is a quotation from one of their decisions:

The 1954 act created a regulatory scheme which is virtually unique in the degree to which broad responsibilities should pose in the administrative agency.

And it has a prescription in its character as to how it shall proceed in achieving the statutory objectives. Mr. President, today that same very broad discretion resides in the regulatory agency.

The initial administrative regulations parallel the 1954 act, and the two were very loose. Nuclear power has proven to be extremely complex and increasingly demanding. Nuclear power plants have grown larger and more sophisticated, and they are requiring capable safety systems and backups.

Very simply stated, the more complex these nuclear power systems have become and plants have become, the more things can go wrong. As a result, nuclear regulation has had to keep pace with industry advances in order to protect the public health and safety. Recent accidents only serve to remind us of the potential of not maintaining close scrutiny of this industry. Chernobyl raised the awareness of Russia and Eastern Europe where dozens of unsafe plants exist that fall way below the Western safety standards that have been promulgated by our own Federal Government.

Under the provisions of the pending unfunded mandates legislation, many of the valuable laws that were created specifically in response to the public health and safety concerns in this area would have been improper for consideration. For instance, the Low Level Radioactive Waste Policy Act could not have been considered by Congress absent the waiver of this unfunded mandates act. The low level waste act, passed in 1980, makes the States responsible for nuclear waste disposal; that is, waste that was generated within that particular State's borders. No Federal funding is provided in this program.

Moreover, I must note that the National Governors Association requested this legislation. Indeed, the National Governors Association provided much input into it. Essentially, the Governors believed that the States were in a better position to select disposal sites within those States. Nonetheless, under S. 1, the low level waste program would come under the definition of a Federal mandate and would be subject to the requirements of title I of the bill.

Additionally, in the Nuclear Waste Policy Amendments Act of 1987, we authorized the Office of Nuclear Waste Negotiator to find a State or an Indian tribe to host a permanent repository for a monitored, retrievable storage facility for nuclear waste.

This legislation we are considering today could frustrate his efforts if he were successful in identifying a potential host for such a facility. In my home State of New Mexico we are seeing an effort to site a nuclear waste repository facility on tribal land. And I feel strongly that we in the Congress must preserve our ability to legislate and regulate in this area to protect public health and safety.

The reasons for this amendment are self-evident. Although I believe that the Senate should always keep in mind the costs incurred by the private and the public sectors by any of its actions, I believe, as reporting committees apparently do, that in some areas of the law they are simply too important to create points of order against consideration of legislation. I further believe that the treatment and disposal of nuclear waste falls within that category.

Clearly, we have a responsibility to act and exert national leadership in an area that could have a profound impact on the health and safety of the American people, and in the future we may very well be called on to do so. We need to be sure that we will be able to do so and that procedural roadblocks cannot be raised.

For this reason, I urge my colleagues to adopt this important amendment. I understand that the managers of the bill are agreeable to a time limit for additional discussion of this bill prior to its being voted on.

I am glad to yield the floor or yield to questions.

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, I think I understand what the Senator from New Mexico is trying to do, but I am not sure I understand exactly how this would work. I would like to clarify. Let me make a statement. Then I would ask the Senator from New Mexico to respond.

If what the unfunded mandates bill is trying to do, of course, is to say where we are putting a mandate on a State, we will consider the costs up front, we will deal with those costs and either provide for it by passing those costs and saying, States you have to do it, or we would provide the money. That is the purpose of this, so we will not build up these huge bills and put all of these costs on the States occasioned by what we do here with legislation involving the States.

It would appear to me that if we exempt the nuclear industry from this process, you would set up the possibility that, if the proposal, whatever it is, is exempted from the point of order, that you might find the Federal Government is just going back and saying, States do it, with no money or no consideration of money required up front or anything else.

I cannot believe that is what the Senator from New Mexico would intend. Maybe I am wrong. But this would mean someplace like Hanford that has all the problems out there at Hanford in Washington, with all the problems of the so-called semiexplosive silos out there that we have been concerned about for a couple of decades now, and all the other problems from that area as well as some 17 major nuclear sites in the nuclear weapons complex in 11 different States, that we can in effect

say to those States, just take care of it. We put a mandate on you. You take care of it out there. Whether it is Hanford, or in my home State of Ohio, or wherever, we would just say, States, take care of it.

I do not believe that the Senator from New Mexico intends that be the situation. But I would submit, if I understand the amendment correctly, that would be a possibility under this. It would seem to me that the States are better protected by saying we stay under this point of order, if it lies, and then say we have considered the cost up front and here is how we will take care of those costs and help the States comply with Federal law, which is what we do with other environmental concerns, not just nuclear, clean air, clean water, and everything that we provide mandates for around here.

All these environmental mandates so far are the biggest thing under the unfunded mandates. What we set up is a point of order with regard to those where we either work out an arrangement where we share in the costs that we are imposing to accomplish that good end, or we say we are not going to do that up front. But we have to consider the costs up front on what our responsibilities are.

It would seem to me that in the nuclear industry in particular, and particularly the nuclear weapons program, that we are still trying to recover from all those secrecies that went into effect during the cold war that let us build up huge stocks of material that now need to be taken out and disposed of someplace. I would not think that we would want to have that out from under the Government saving in the cost of doing that. Yet, if I read the amendment correctly, that is exactly what it is. Am I wrong in my understanding?

Mr. BINGAMAN. Mr. President, let me respond to the question. I do think the Senator is wrong in his understanding.

First of all, let me make clear, my amendment does not exempt anything from the reporting requirements. The reporting requirements in the bill, where you have to estimate the costs and estimate where the costs would fall, remain in place. Those have to be obtained before any legislation comes to the floor, and none of that is changed under my amendment.

What my amendment does say, though, is that in this very important area related to treatment or disposal of nuclear waste, in that very important area, if the Federal Government determines that some action should take place, you cannot raise a point of order that says it is out of order to consider the legislation, absent full funding by the Federal Government. That is all my proposed amendment does.

The Senator was saying this would open up the possibility of the Federal Government saying to the States: Washington State, you are responsible for Hanford.

That possibility exists today. That possibility will exist in the future.

Theoretically, we could do that at any point, just to the same extent we do it today. That is the way the Constitution set up our Federal system. So that possibility is always there for the Federal Government to step in and do that kind of a thing. Clearly, though, that is not consistent with the way this country has viewed responsibility, sharing the responsibility for nuclear power.

Mr. GLENN. If the Senator will yield. I am not sure I understand yet what he is proposing, or if that is his interpretation, because the point of order is supposed to make certain that the Federal Government shares in the mandate they are sending to the State. If we do away with that point of order, and as your amendment says, "notwithstanding any other provision," paragraph 1(b), "it shall always be in order to consider a bill, joint resolution, amendment, or conference report, if it relates to the requirement for the treatment or disposal of," and it goes into radioactive waste and so on. That means a point of order would not lie dealing with nuclear waste or disposal. That means the States would have to pick up the bill. That is what we are trying to prevent, as there was too much in the past with clean air, clean water, and all the requirements we have put on the States without providing any Federal funding, if I understand this correctly.

Mr. BINGAMAN. Let me try to respond using another example which I raised, I believe, a week ago to the Senator from Ohio and the Senator from Idaho both. That is a circumstance we have in my home State, where you have an Indian tribe negotiating now with various utilities to put in a nuclear waste repository, a monitored retrievable storage site. Under the legislation as drafted and as presented here to the Senate, any effort by the Congress to impose requirements on an Indian tribe with regard to the running of a site, the way that a facility such as that would be conducted, if those requirements added up to more than \$50 million, it would be out of order for us to consider the legislation unless we paid for it.

In my view, it should not be out of order for us to consider that legislation. In my view, that is exactly the kind of legislation we ought to be considering.

Mr. GLENN. Mr. President, I respond to my friend that in a situation like that, where it obtains strictly to an Indian tribe that is trying to have some of this activity on their reservation, that should be brought up just like everything else, and the Senate, in considering that then would waive that requirement if it was appropriate in that case.

Mr. BINGAMAN. Mr. President, let me clarify that I think maybe the disagreement here is—I have an instinctive reaction against putting language in law that says a point of order can be raised against consideration of any bill which meets the following requirements.

It seems to me that it should not be out of order to consider legislation in an important field such as the treatment and disposal of nuclear waste. That is what the Congress was constituted to do, to consider that kind of legislation. And here we are about to pass legislation, the unfunded mandates act, which says that it is out of order for us to consider it. It strikes me that, at least in this area, where clearly there is a Federal interest, clearly there is a history of responsible Federal action—maybe not as responsible as some would like, but at least the main action that has taken place here has clearly been Federal—I believe it is appropriate for us to say to do the reports, but if you are going to legislate in this area, go ahead and bring that legislation to the floor and let the Senate dispose of it, either pass it or defeat it.

Mr. GLENN. Let me address another concern I have here and that is this: This bill is designed to deal with Federal mandates imposed on other entities—State and local, whatever—to take care of those costs up front or say why we are not going to, and require the States or local communities to address what ever it is the proposal is we are making.

It would seem to me that what you are addressing is something else. Where an Indian tribe on a reservation is initiating a plan on their own, that does not really have anything to do with what we are imposing from the Federal level, is that correct?

Mr. BINGAMAN. No. Mr. President, let me respond that under the act as it now stands, as I understand it, the act does not apply to independent regulatory agencies. They are exempted from the unfunded mandates act.

The Nuclear Regulatory Commission is such an independent regulatory agency and, therefore, the Nuclear Regulatory Commission can impose obligations on a tribe, on a local government, on a State, by regulation, and the cost of that can exceed \$50 million, or whatever figure it has to exceed.

What we are doing, though, in the legislation as it now stands, is we are saying although the Nuclear Regulatory Commission is vested with authority to impose those kinds of obligations, we are denying ourselves that authority. We in the Congress are denying ourselves that authority, and that strikes me as totally illogical. It strikes me that if we are going to have that authority vested in the Federal Government, clearly Congress should retain its ability to deal with this in a responsible way.

Mr. KEMPTHORNE. Mr. President, the Senator from New Mexico stated that his amendment would in no way require anything other than the reporting requirements. They would still have to abide by the reporting requirements. The key point is that his

amendment would, again, disavow that a point of order could lie against the legislation.

In this very, very important issue of nuclear storage facilities—for example, spent nuclear fuel rods—we know that we have a number of commercial sites all over the United States. We know that there are certain repositories. We know that there are certain States that may be receiving the spent \*naval fuel, as is the case in Idaho. This sort of discussion, as you begin to get a flavor of it here, is exactly the sort of discussion that ought to take place on the floor of the Senate. So, again, this is another exclusion from the presumption that this legislation says we are in favor of State and local governments receiving the funds in order to carry out these Federal mandates. At any point, you can come and seek a waiver. It is a majority vote that would allow that waiver of the point of order at any point during the process.

But I really believe that if we send this sort of a signal, you will find that States are saying: If you are not going to abide by this, if we do not have any likelihood that there will be Federal funds to carry these things out, it will continue to be an unfunded Federal mandate in the area of nuclear storage. For example, I do not think you will see any States that will want to step forward and say they would like to be considered as a possible solution for the long-range storage or disposition of nuclear material. I would not blame them.

So, again, I just say let us not disavow the point of order. Let us allow not only the reporting requirements, the costs associated with that and the impact, but let us also have a discussion so that a point of order could lie and we would have this sort of discussion on the floor of the Senate instead of allowing the committee to have the jurisdiction to say we do not need to allow Congress to consider this any further.

Mr. BINGAMAN. Mr. President, I ask the Senator from Idaho this: One concern I have had here is under the language of the bill which he is proposing to the Senate, we exempt independent regulatory agencies from the purview of the bill. So we are saying that if the Nuclear Regulatory Commission wishes to impose expensive, onerous requirements on a State, town or tribal government, to ensure safety in the handling of nuclear waste, that is fine. We have no objection. No point of order can be raised. And we are certainly not suggesting one in this bill.

But Congress cannot do that. Congress cannot consider legislation to do that unless it is willing to waive a point of order. So we are essentially denying to the Congress the very powers that we are leaving in the independent regulatory agency at the Federal level.

I have great difficulty understanding the logic of denying Congress the very authority which the Constitution gives it to this area and requiring somebody

who comes to the Senate floor or some committee that reports legislation to the Senate floor requiring them to overcome a procedural hurdle before they can, in fact, have their proposed legislation considered on its merits.

Mr. KEMPTHORNE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. KEMPTHORNE. Mr. President, I appreciate the arguments that were made by the Senator. But drawing the distinction with Congress, he is dealing with legislation. With a regulatory agency, you are dealing with regulations. It may be that that regulatory agency is then, through those regulations, carrying out the will of Congress as established in that legislation.

Also, I know that Senator ROTH, chairman of the Governmental Affairs Committee, will be holding hearings on regulatory relief to determine if, in fact, there are some areas in which we should be making modifications.

But I do not believe that, by saying what the Senator may be describing as a problem with the regulatory process, we, therefore, should make sure that Congress also follows that same process.

S. 1 is a process to give us accountability. Again, I believe that it will give us the information that we need up front, so that we can have these sort of meanings full discussion and not preclude that sort of discussion by agreeing to the Senator's amendment as proposed.

Mr. BINGAMAN. Mr. President, I am beginning to doubt that I am going to persuade the sponsor of the bill of the merits of my amendment.

But let me at least conclude by saying that again my amendment does not in any way take away the requirement that the information be obtained. It says the information must be obtained so that discussion can and should take place on the Senate floor. I just doubt the wisdom of us putting in a Federal statute that it is out of order for us to consider legislation dealing with the treatment and disposal of nuclear waste. It should not be out of order for us to consider that legislation. And a person who wants to consider legislation in that area should not have to come to the floor and overcome a procedural hurdle in order to have his proposed legislation considered on its merits.

Mr. President, I yield the floor, or I am glad to respond if there is further discussion of the amendment.

Mr. KEMPTHORNE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. KEMPTHORNE. Mr. President, I have the utmost respect for the Senator from New Mexico, and that is why I take very seriously his suggested amendment.

But I believe, in that last statement, I say to the Senator from New Mexico, maybe there is a semantics problem.

Because when the Senator says that he does not feel we should have some process that makes it out of order for Congress to be discussing potential legislation dealing with the nuclear issue, I agree with the Senator.

But this process does not just automatically say it is out of order. It says, here are the steps you must follow and if you follow those steps as prescribed there is nothing that says you will be out of order. And you will be dealing with that very important issue of nuclear material or storage.

If, however, you find that one of those steps is illogical, onerous, at that point, then you can come and seek a majority vote to say we agree with you. We now waive this point of order, but the Senator's amendment takes that away. It disavows the point of order, and that is my concern.

Mr. BINGAMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, just to make it clear, I am focused on the semantics and I think the Senator from Idaho is right. I am focused on line 16 and 17, page 21, where it says, "It shall not be in order in the Senate to consider" and then it goes on and says any bill or joint resolution, et cetera, et cetera, et cetera. That to me is not semantics. That is more than semantics to say "it shall not be in order in the Senate to consider."

I think the whole purpose of the Congress in our Federal system is to consider legislation of this type dealing with major national issues. Treating and storage of nuclear waste is just one of those. But I consider that to be an area of concern peculiarly in the purview of the National Government.

So I do think I have a concern when we pass legislation, as we are getting ready to do here, as I understand it, that says, "It shall not be in order for the Senate to consider" various pieces of legislation.

So there is a basic disagreement. I think it is more than semantics. I think it is the language of the statute.

Mr. President, I appreciate the chance to discuss it. I have another amendment. I know there is another Senator ready to offer an amendment.

I yield the floor.

Mr. KOHL addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. KOHL. Mr. President, I ask unanimous consent the pending amendment be set aside for the purposes of offering my amendment.

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

#### AMENDMENT NO. 193

(Purpose: To provide that any State, local, or tribal government that already complies with a new Federal intergovernmental mandate shall be eligible to receive funds for the costs of the mandate)

Mr. KOHL. Mr. President, I send an amendment to the desk and I ask that it be considered as offered for the purposes of the deadline tomorrow.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Wisconsin [Mr. KOHL] proposes an amendment numbered 193.

Mr. KOHL. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection it is so ordered.

The amendment is as follows:

At the end of title I, insert the following: Nothing in this Act shall preclude a State, local, or tribal government that already complies with all or part of the Federal intergovernmental mandates included in the bill, joint resolution, amendment, motion, or conference report from considerations for Federal funding for the cost of the mandate, including the costs the State, local, or tribal government is currently paying and any additional costs necessary to meet the mandate.

Mr. KOHL. Briefly, Mr. President, this amendment clarifies a possible problem in the bill that we are creating or will be creating a disincentive for States to take action. Some States may well decide to delay action on necessary and important measures in the hope that Congress passes a Federal law to do the same thing that they are considering doing and then provide some money to do it which otherwise would not be available. This amendment will ensure that States are not ineligible to receive funds if they are already meeting a Federal mandate under existing State law.

We are going to be discussing this tomorrow. I am not asking that the amendment be accepted at this time, of course, but I wanted to present it. I think it is important that we not provide clear disincentives to States to do things environmental or with regard to health care or welfare reform or in any way. Should we be giving the States a message that we want them to just sit around and not do anything if they anticipate that down the road a Federal mandate may be passed that would provide the money for them to do it? It seems to me that is not what we are trying to accomplish here with this bill.

My amendment simply indicates that States will not be ineligible to be considered for funding if, in fact, they are acting in a way that is progressive and that, if a mandate then is passed, they will be eligible to be considered for any money that they may have spent in complying with that mandate.

Mr. KEMPTHORNE addressed the Chair.

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

Mr. KEMPTHORNE. Mr. President, I had some discussion with the Senator from Wisconsin about this, and I understand the intent and I appreciate the intent of this.

It sounds to me like it may be an incentive for States to continue to be progressive and know that there may be ways of doing things in their particular State that do not apply to other States and they ought to proceed.

I would like to have the opportunity later to have a meeting with the Senator from Wisconsin and with the Senator from Ohio and see if we could not work out some language that we could all agree to.

Mr. KEMPTHORNE. Mr. President, again, I think the intent is very appropriate.

Mr. KOHL. Mr. President, I thank the Senator. As the Senator from Idaho and I both know, we have been working together and will continue, I am sure, to work together along with Senator GLENN and Senator ROTH, Senator EXON, to find language that clarifies the purpose and that satisfies all of our needs. I simply want to bring that to the floor. I appreciate your consideration and willingness to work with me on this.

Mr. KEMPTHORNE. I thank the Senator from Wisconsin. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. CRAIG. Mr. President, I ask unanimous consent to proceed as if in morning business for a period 5 minutes.

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

#### CRISIS IN IDAHO

Mr. CRAIG. Mr. President, last Friday at about this hour I stood on the floor of this Senate to describe a crisis that my State of Idaho and its citizens were at the brink of, a crisis that had resulted from a Federal judge's order to immediately halt all economic activity on nearly 14 million acres of my State.

At the time I spoke, Idaho families and communities stood on the brink of financial ruin, through, frankly, no fault of their own, but because the Federal Government had failed to perform its responsibilities in a framework that was required by the law. Since I spoke on Friday many of my colleagues have asked me about the situation in my State.

I rise this afternoon to give Members a status report to the Senate and, frankly, to the Nation. I say to the Nation, because we will not find this story reported on the front page of any newspaper outside the State of Idaho, probably because nobody would believe the magnitude of the potential catastrophe that was at hand in my State.

This action was taken in the name of saving an important Idaho resource—the salmon, three species of salmon—on the Snake and Columbia River systems of the Pacific Northwest, an anadromous fish that spawns in the headwaters of my State of Idaho and listed as threatened or endangered under the Endangered Species Act.

But surely it was not necessary to shut down virtually all activities on six national forests with only 1 day's warning to save these species of fish. This action occurred because a Federal agency, National Marine Fisheries, had not finished its review of another Federal agency's work. The so-called consultation process was being mired down inside the bureaucracy, whether it was because of staff time or inadequate funding or simply they just had not gotten to it. The bottom line was that it had not been done and a Federal judge reacted.

I received from local officials worried about a situation of nearly 2,000 people being put out of work, a population frightened that on Monday morning, this day, they would not have the jobs to go to that they had demanded immediate action. That injunction was to go through on Friday.

Now our problem was to be, what would happen? So on Friday I got in touch with National Marine Fisheries, Rollie Schmitten at his agency and he assured me the work would be completed on January 31—that is a week from now—that it would satisfy National Marine Fisheries concerned about Forest Service activities and that it might well address the consultation process in its conclusion.

What is important to remember is that the court injunction issued over a week ago was not issued because salmon were being endangered by folks at that moment in time. They were not being placed in jeopardy at that moment in time. But a judge reacted with an injunction that could have stopped jobs in the area and would have threatened thousands of families at this moment in time. In other words, the bureaucratic gridlock could have put my State of Idaho out of business and put thousands of people's jobs on the line.

This brings to the forefront, I think, the most recent example of the balancing act we must pursue when saving a species of plant or animal. Unfortunately, I believe it is the Endangered Species Act that is out of balance, not the people of my State of Idaho, and not their actions, inside the law, inside the Federal rules and regulations of the Forest Service of course now being examined by the National Marine Fisheries.

In the coming days and weeks I will be working with Members of the Senate, and the Idaho delegation will be working to try to resolve this issue. Here is what the problem is in the short-term: National Marine Fisheries must expedite that consultation, accepting the decision of the Forest Service on some of these areas. I have asked the Clinton administration to enact emergency regulations to resolve the problems between the two departments, the National Marine Fisheries and the Forest Service. Rollie Schmitten is going to live up to his