

government loan guarantee." But the issue is not confined to Mexico. It is Dr. Greenspan's judgment that the economies of the whole of the developing world are potentially at risk. The Senator from New York is not about to hear such testimony from Alan Greenspan and pay no heed.

Similarly, I was struck by the comment yesterday by my distinguished colleague, PAUL COVERDELL, not just incidentally former head of the Peace Corps, warning against demands for strict conditions on the loan guarantee which may "inflare" relations with Mexico. May, indeed. They most assuredly will. Then we shall have chaos on our hands; or rather, on our border.

In my view, it comes to this. We probably ought never to have entered a free-trade agreement with a polity so very different from our own. But we did. And we now face the consequences. They are nothing we cannot manage. As the headline from an editorial in the Buffalo News of January 26, 1995 explains:

It's risky, but U.S. has to try to rescue Mexico's economy

LOCATION AND TRADE LINKS LEAVE US LITTLE CHOICE

The true disaster would be to insist on conditions that would arouse all the hostility and hysteria of a nation of 93 million souls on our southern border who for almost the whole of the 20th century have defined themselves by what they loathed in us. Cuidado, amigos.

Thank you, Mr. President, for your patience. I yield the floor.

Mr. BYRD addressed the Chair.

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

THOUGHTS ON UNFUNDED MANDATES LEGISLATION

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

The Senate has just passed S. 1, the unfunded mandates legislation. Each of us has come to his own conclusion after weighing the pros and cons of the bill and deciding whether or not this bill is in the best interests of the Nation.

My point in speaking on this bill now, after the vote on final passage, is, No. 1 to explain my vote against the bill; and second, to offer a word of caution.

This bill has not produced a panacea, as I will address shortly. One of the reasons why I voted against the bill is that the Senate rarely imposes restraints upon itself by statute.

When the Senate addresses its procedures in statute it is usually to provide expedited procedures for the consideration of specified measures such as War Powers, Budget Act, Trade Act, or various provisions authorizing Congressional approval or disapproval of Executive proposals. In other words, Defense Base Closure Commission recommendations).

The Senate addressed its rules in the Legislative Reorganization Acts of 1946 and 1970, and imposed certain requirements and safeguards which may not have explicitly authorized points of order, but whose provisions could arguably be enforced by points of order on the Senate floor.

The Senate has imposed numerous restrictions on itself and provided for their enforcement by points of order in the Congressional Budget Act of 1974, which I had a great deal to do with writing, and the related laws such as the Balanced Budget and Emergency Deficit Reduction Act of 1985 and 1987 (Gramm-Rudman-Hollings) and the Budget Enforcement Act of 1990.

But the Senate usually establishes internal discipline by amending its rules or entering into unanimous consent agreements, agreements which can be objected to by any Senator. One objection and the proposed amendment does not go into effect.

Amendments to the rules almost invariably occur by the adoption in the Senate of a simple Senate resolution.

Establishing points of order in statutes is unnecessary, and should be avoided as much as possible.

To establish points of order in statutes is unnecessary, and allows the Senate to change its procedures (if not its rules per se) without one day's notice in writing, and also avoids the more stringent cloture requirement of two-thirds vote on proposals to amend the Standing Rules of the Senate.

This is one way of getting around the cloture requirement of two-thirds vote on proposals to amend the Standing Rules of the Senate.

Establishing points of order in statutes unnecessarily lengthens the process by involving consideration in the House of rules governing the Senate, involving consideration in committee, on the floor, in conference on the House and Senate floors during the consideration of a conference report, and also involves the President of the United States.

If the President should obtain a line-item veto at some point, God forbid, it is conceivable that a President could become involved in internal Senate discipline by vetoing some but not all of the provisions that deal exclusively with Senate procedure.

A point of order against unfunded mandates is a departure from previous changes to Senate procedure in that it can have the effect of precluding the consideration of a particular subject matter by the Senate. What other types of subject matters will be added to this list?

If one specific subject matter may be thus avoided in the future, then what other subject matters may be avoided, because they are made subject to statutorily imposed points of order?

So I view this with concern, Mr. President. We are going down a slippery slope from which there is no return when we impose points of order as a means of internal discipline in the

course of Senate deliberation on a bill. We impose those points of order by a law, by statute, as I say, bringing not only the Senate, as should be the case, but also the House and the President into the act.

S. 1 is not a cure-all for the problem of federally imposed mandates. And most importantly, it is not the safety net for the States that it has been characterized to be.

This legislation will not provide any State, local or tribal government a foolproof sanctuary against future mandates. Nor will it protect those governmental units against increased costs should the requirements of any current mandate be increased. All that S. 1 does in this regard is to establish a majority point of order against any bill or joint resolution reported by a committee without a CBO cost estimate. And obviously, as with any majority point of order, that is an additional hurdle to be overcome by those who may wish to enact a piece of legislation. But I would stress, in the strongest possible terms, that the point of order is merely a majority point of order. And as such, it takes the votes of no more than 51 Senators to waive, if all Senators are present and voting.

And if all Senators are not present and voting, it takes a majority of those who are present and voting. If only 60 Senators are present and voting, then only 31 Senators would be needed to waive.

Fifty-one Senators, or a majority of those who are present and voting, can say that the mandate contained in the bill or joint resolution is important enough to the health, safety, and welfare of the American public that they are willing to enact the mandate without an estimate. If only 51 Senators are present and voting, then only 26 are needed to constitute a majority.

Apparently forgotten by those who would make S. 1 out to be a protective shield against the whims of the Congress is that the number of Senators needed to waive the point of order is precisely the number of Senators needed to pass any bill containing a mandate.

The point must be emphasized, particularly to the Governors of this Nation—and to the mayors of cities who are meeting in this Capital City—that S. 1 will not with certainty protect them from the costs and responsibilities of future mandates.

Further, there is nothing in S. 1 which will provide any relief whatsoever to State and local governments for the costs of existing Federal mandates. No relief whatsoever, Governors. None. No relief whatsoever.

According to the report of the Budget Committee on S. 1, one study prepared for the GSA Regulatory Information Service Center in 1992 found the cost of Federal mandates to State and local governments and the private sector

was estimated to amount to \$581 billion, or roughly 10 percent of the gross domestic product.

Witnesses before the Budget and Governmental Affairs Committee at a joint hearing on January 5, 1995, from State and local governments testified about the damaging impact of existing Federal mandates on State and local governments.

The National League of Cities testified over the past 2 decades that the Congress has enacted 185 new laws imposing mandates on State and local governments.

The U.S. Conference of Mayors testified that 314 cities will spend an estimated \$54 billion over the next 5 years to comply with only 10 of those Federal mandates.

Mr. President, Governors and mayors should keep in mind that nothing in S. 1 will relieve them of compliance with a single one of these existing Federal mandates or provide them with one thin dime of reimbursement of their costs.

In addition, this bill will do nothing to protect the States against the harsh pain that they will be forced to endure if the biggest unfunded mandate of all—a constitutional amendment to balance the budget—is ever riveted into the Constitution.

So those Governors and mayors who have been supporting a constitutional amendment to balance the budget under the belief that the passage of the unfunded mandates bill today, if enacted into law, will relieve them of the burdens that are imposed upon them, they are going to be sadly and badly mistaken.

This bill will not safeguard one single State from that pain. Where are the States going to find the money to replace the hundreds of billions of dollars that currently flow from Washington to those State capitols when we start slashing the Federal budget promiscuously? Where are those Governors going to find the quarter trillion dollars that will cease to flow to their States in fiscal year 2002? A quarter trillion dollars, Mr. President, is the amount of money that will be lost to the States according to projections from the Treasury Department. Those are dollars that go for highways, additional police on our streets, housing, education, environmental cleanup, cleanup of toxic wastes, and myriad other programs.

Moreover, that amendment does not even count additional moneys that would need to be cut if the tax cuts called for in the Republican "Contract With America" are enacted. Under that scenario, the loss of Federal dollars to the States is even worse.

So to those Governors and those mayors who are in town—hopefully they are watching C-SPAN—who think that S. 1 will protect them, I say to you, Mr. Governor, Mr. Mayor, think again. This bill, with or without its points of order, will not screen them from the overwhelming hurt that they

are going to feel under that constitutionally sanctioned "unfunded mandate," the largest mandate of all, a colossal mandate—a constitutional amendment to balance the budget.

Much has been said about the fact that this bill, S. 1, is different from the bill which the Senate considered last year—and I voted today for the amendment by Mr. LEVIN to substitute the bill that was considered last year, which I believe was a better bill—the big difference being the creation of a point of order.

With respect to these points of order, left unsaid is the perverse political reality that Senators who do in fact vote to waive a point of order will undoubtedly find their procedural vote used against them in the next election. A point of order then, in a sense, that is nothing more than a brilliant political ploy directed at portraying any Senator who has the audacity to stand up for the health and well-being of the American people as some sort of "budget buster."

I can see the television ads already. I can see the demagoguery and depraved mischaracterization of a Senator's vote. Any of us who may be willing to waive the point of order, willing to do what is right and best for our constituents, will find the big guns of the 30-second ad men aimed at our heads. Those political hucksters will have a field day, and we all had better know it, if we do not know it already. It will happen, Mr. President, because that is what elections have become, I am sorry to say. As a result of our incessant desire to avoid thoughtful reflection and meaningful debate aimed at educating the public, we have sunk to the level of 30-second public policy—30-second public policy. If the answer to a problem does not fit on a bumper sticker, well, then the answer must not be correct.

Sadly, that truth will undoubtedly dissuade some from otherwise casting a vote they feel is all right on future legislation. I hope it will not dissuade many.

Mr. President, let me just try to emphasize to Governors of the States and the mayors of our cities again that, if they think that, with passage of this bill, with its eventual enactment into law, the way will then be paved for a constitutional amendment to balance the budget because, and by virtue of this unfunded mandates bill, the States will be protected, they are mistaken. It is my understanding that many of the Governors and mayors wanted, before the Congress debates the constitutional amendment to balance the budget, wanted the Congress first to pass an unfunded mandates bill. They wanted that first. But if they are counting on these points of order to protect them, they are in for a rude awakening.

We already have majority points of order, Mr. President, in the Senate Rules concerning appropriations bills. Let us turn in the Senate Rules to rule XVI. Rule XVI, paragraph 4—I will read this paragraph, as follows:

4. On a point of order made by any Senator, no amendment offered by any other Senator which proposes general legislation shall be received to any general appropriation bill, nor shall any amendment not germane or relevant to the subject matter contained in the bill be received; nor shall any amendment to any item or clause of such bill be received which does not directly relate thereto; nor shall any restriction on the expenditure of the funds appropriated which proposes a limitation not authorized by law be received if such restriction is to take effect or cease to be effective upon the happening of a contingency; and all questions of relevancy of amendments under this rule, when raised, shall be submitted to the Senate and be decided without debate; and any such amendment or restriction to a general appropriation bill may be laid on the table without prejudice to the bill.

Now, Mr. President, that point of order is honored mostly in the breach. We all know that when an appropriation bill comes to the floor, if a Senator makes a point of order against an amendment as constituting legislation on an appropriation bill, another Senator will immediately raise the point of germaneness, and without debate, the Chair will submit that question of germaneness to the Senate for its decision. And we all know what happens. We all know what happens. Senators pay no attention to that point of order. They look at the substance of the amendment and disregard the rule and the point of order and vote that the amendment is germane to the bill.

That point of order is a majority point of order and it is little heeded and it poses no obstacle. Senators simply wave it aside by voting on the question of germaneness.

The same thing will happen here. In the case of unfunded mandates, Senators will get to the point where they pay no more attention to a point of order than a hog does to Sunday.

Section 101 of S. 1, the Unfunded Mandate Reform Act of 1995, amends title 4 of the Congressional Budget and Impoundment Control Act of 1974, and adds a new section 408 to that title to create a point of order that precludes consideration of legislation in the Senate regarding unfunded mandates. Section 904(b) of the Congressional Budget Act currently authorizes a motion to waive points of order under titles 3 and 4 of the Congressional Budget Act by a majority vote, and would thus provide a waiver for this new point of order.

I have already mentioned Rule XVI of the Standing Rules of the Senate, which prohibits proposing amendments that are legislative in character to general appropriations bills.

I say it once again to you mayors and Governors who may be listening. Under Senate precedents, the Chair seldom gets to rule on this point of order because the proponent of the amendment may raise the defense of germaneness which is then submitted to the Senate for decision and decided by a majority vote. This procedural vote by the Senate should be based on whether the proposed Senate amendment is germane to some legislative language in the House

passed bill. However, it has now simply become a substantive vote on the Senate amendment. In many instances, those Senators who support the amendment vote that it is germane and those who oppose the amendment vote that it is not germane, despite the fact that they are being asked to resolve a procedural issue. In this way valid procedural constraints are frequently sacrificed for transient substantive ends.

Mr. President, since the beginning of the Republic, the Federal Government has imposed important and necessary requirements on the States. The Constitution requires the States to have elections, even though the Federal Government does not pay one penny for them. It requires States to allow defendants a fair trial. Those Federal requirements on the States transcend mere financial considerations. They fall into a higher category. They represent bedrock beliefs and sacred values held by all Americans to be of paramount importance. Fair elections, fair trails—each of these, Mr. President, lies at the very heart of what makes up the American tradition, and no point of order should deter us from continuing to uphold those values because we fear a 30-second spot or a misrepresentation of a procedural vote.

But the point of order in the bill will simply add to an already cumbersome process. It will be nearly impossible, as the Director of the Congressional Budget Office has said, to issue cost estimates in a time fashion. How can we expect CBO to canvas the 87,000 State, local, and tribal governments throughout the Nation with anything resembling efficiency? The answer, Mr. President, is that we cannot.

We will simply see a trampling over, a mad rush to put aside, to waive the points of order. That is one thing I think we can expect to see. We could very well see a situation whereby the agenda of this institution is set, not by the majority and minority leaders, but by a small group of budget analysts in the basement of the CBO. But here again I think that will be avoided by simply waiving points of order.

Senators need only think back to the closing days of the last Congress, when various health-care bills were waiting for CBO scoring data, to see how that situation could develop. Is that what Senators want? Do we really want the agenda of Congress set on the basis of how fast a budget analyst can do his job? Do we really want to be told that, despite our wishes, we cannot go to a particular bill because the cost estimate is not ready? That, Mr. President, is absurd.

Because of these problems, I was pleased to join my colleague, Senator LEVIN, in support of his substitute amendment. The Levin amendment was, in effect, a complete substitute based on the version of the bill that we considered last Congress. That version, as I have noted, did not contain the point of order. It was a good substitute, and one that should have been adopted.

Mr. President, as I have previously stated, and as my vote in favor of the Levin substitute showed, I am a supporter of an unfunded mandates bill. I believe that, under certain circumstances, if we in Congress require the States to carry out our laws, then we should pay.

We should not offload that financial burden on the States.

Notwithstanding the fact that I did not vote for this bill, I would like to compliment the efforts of those Senators on both sides of the aisle who worked hard to improve S. 1. Senator GLENN, of course, deserves more than a fair share of credit for the time and the energy he put into the bill in committee and here on the floor. Senator LEVIN, too, deserves an enormous amount of credit for the number of hours he has been here, lending us his expertise, and asking of the managers probing questions designed to get at the heart of the matter.

Finally, I offer my congratulations to the distinguished Senator from Idaho [Mr. KEMPTHORNE], who, while we are not in agreement on most of the amendments offered, demonstrated throughout a high sense of purpose and immaculate fairness to all of us. He is a man of extraordinary good sense, a man of civility, a gentleman, and I have no doubt that he will go far in this institution.

Then I extend my congratulations to Senator BOXER, Senator MURRAY, Senator BINGAMAN, and others for the job they performed in coming forward with good, meaningful amendments.

I compliment the minority. This is a big minority. This is not a fledgling or small minority. There are 47 Senators on this side of the aisle. There were only 44 Senators in the minority on the other side of the aisle in the last Congress; 44. But in this Congress, the minority has 47 Members.

I think the minority played an important and meaningful role in slowing down this legislation—saying, "Let us hold on a bit; not so fast."—in amending it, in improving it, debating it, and exposing its weaknesses. The minority has refused to be run over by the majority steamroller, and that is as it should be. As a result, this legislation which has just passed has been improved, and it is better understood.

LORNA KOOI SIMPSON

Mr. BYRD. Mr. President, somebody once asked Ralph Waldo Emerson the secret to success. And after a brief pause, Emerson replied, "Make yourself necessary to somebody."

I know that I speak for all of our colleagues in expressing to our friend and colleague, Senator ALAN SIMPSON, from Wyoming, our most sincere sympathies on the death, on January 24, of his mother, Lorna Kooi Simpson. As we all know, Mr. President, God only gives us one mother.

Plutarch tells us that Alexander the Great made his mother many magnifi-

cent presents, and Antipater once wrote a letter to Alexander, a long letter full of heavy complaints against her. And when he had read it, Alexander said, "Antipater knows not that one tear of a mother can blot out 1,000 such complaints."

A little less than two years ago, Senator SIMPSON lost his father, former United States Senator Milward L. Simpson. The loss of loved ones is always a blow to us, but to lose one's parents over such a brief span of time is doubly hard, and I want Senator SIMPSON and his family to know that we understand something of their grief in these days.

But a degree of the sense of loss at the death of Mrs. Simpson is assuaged upon contemplating the life and accomplishments of this great lady.

Throughout her life, Lorna Simpson was dedicated to "making herself necessary" to others, in the words of Ralph Waldo Emerson—to hundreds and hundreds of other people—in practically everything that she did.

An accomplished musician at both the piano and the Hammond organ, and a masterful vocalist, through her music, Lorna Simpson enriched the lives of those around her. She played the organ and directed the choir at her church in Cody, Wyoming. Indeed, early in her marriage, her sister prevailed on Mrs. Simpson to enter a contest to compose an original "pep song" for the University of Wyoming. Reluctantly, Mrs. Simpson went to work, and succeeded in winning the contest with her original "Come on, Wyoming!"

Additionally, however, Mrs. Simpson was also a talented amateur sculptor and artist, and played an active role in promoting the arts throughout her entire life.

But that was not the limit of her contributions.

In 1940, Mrs. Simpson was appointed by the Mayor of Cody, Wyoming, to the Cody Planning and Zoning Commission. With other citizens, Mrs. Simpson engaged in a long and successful campaign, complete with a bond issue that passed in 1950, that rendered Cody "one of the most beautiful cities in Wyoming."

Moreover, Mrs. Simpson and her husband were co-owners of the local radio station KODI in Cody, at which Mrs. Simpson often did both programming and on-the-air work. During World War II, Mrs. Simpson was the acting editor of the Cody Enterprise newspaper.

And in her "spare time," as a co-owner with her husband of the Cody Inn, Mrs. Simpson oversaw the restoration of this hostelry to its original grandeur.

In fact, time here does not permit a full recounting of the full record of Mrs. Simpson contributions to the career of her husband and to her family, as well as to the people of Wyoming and the United States. Suffice it to add that she served as the First Lady of Wyoming during her husband's tenure