

Testimony



Testimony of Representative Rob Portman Senate Committee on Government Affairs

June 3, 1998

Thank you, Mr. Chairman, and members of the Committee for the opportunity to testify in support of S. 389, the Mandates Information Act introduced by Senator Abraham. Last month, I was very pleased to join the sponsor of this legislation in the House, Gary Condit of California, and 276 of our colleagues in passing H. R. 3534, the House version of this bill to provide more debate and accountability when Congress considers unfunded mandates on the private sector.

As you know, Mr. Chairman, with Mr. Condit's leadership, 394 Members of the House and, with the leadership of Senators Kempthorne and Glenn, 91 Members of the Senate voted to pass the Unfunded Mandates Reform Act -- which, for the first time, ensured that before the House voted on measures that imposed unfunded mandates, (1) we understood the costs to state and local governments and the private sector, (2) we had a separate debate on funding issues and whether to consider the legislation, notwithstanding the unfunded mandate on the public sector; and 3) we had a separate recorded vote on whether to impose such a mandate on the public sector. As you know, this doesn't mean we never mandate - but it ensures we do so with complete information, a separate debate, and full accountability.

We now have a good track record. The practical impact of the Unfunded Mandates Reform Act has generally been to force committees to address the mandates issues long before bills reach the House Floor. In the first key test case -- the Telecommunications Act -- we used the leverage of the point of order to ensure the Commerce Committee did not impose significant unfunded mandates on local governments. Knowing that the Act would be subject to a point of order on the Floor that would highlight the mandates issue, the Committee worked with us and local governments to address their concerns. The process worked, and without it, the Committee would have gone forward with provisions that would have imposed significant costs on local governments without that specific issue ever being effectively debated or voted on.

In other cases, such as the minimum wage increase, the point of order was raised on the floor simply to highlight the fact that such legislation imposed significant costs on the public and private sectors, and the legislation was passed, notwithstanding the point of order. We went through the right process on the Yucca Mountain bill - and decided to proceed. The point is simple -- the Unfunded Mandates Act has given state and local governments leverage to get the mandates issues thought about and addressed at the committee level before they reach the Floor. And, the Act is also flexible enough to permit the Congress to pass legislation imposing unfunded mandates where the merits can override the negative effects.

Unfortunately, due to the political realities of passing such precedent setting legislation, we were unable to offer the same procedural protections for private sector mandates. I commend Gary Condit and Senator Spence Abraham for the months and months of hard work they have put into this bill to offer that protection.

I want to take a minute to describe how these procedures work in the House. This bill would enable a Member to raise a point of order against legislation that imposes a private sector mandate in excess of \$100 million. Like the provision that applies to public sector mandates, it would enable a Member to force one 20 minute debate on the question of whether the House should continue to consider the legislation, notwithstanding this unfunded mandate on the private sector. It also gives the private sector some additional leverage to make its best case to committees that do not want that issue highlighted on the House Floor. This is far more significant, as the Act has already proven with public sector mandates, than simply requiring committees to include a CBO estimate in the committee report, which the Act already does with respect to both public and private sector mandates.

The procedure is simple. In the House, if the Rule waives the mandates point of order, a member can raise a point of order against the Rule and highlight the mandates issue then with a 20 minute debate. The House votes and that's it -- the rule can pass and the bill moves forward without the ability to raise the mandates question again with a point of order. Or, as is the case most of the time, the Rule does not waive the point of order and a Member can raise a point of order against a provision in the bill that imposes a public sector mandate in excess of the \$50 million threshold. The Abraham bill would make that point of order apply to bills that impose a private sector mandate in excess of \$100 million.

It seems fair to me that the House not only can get cost information, but has the procedural framework to permit a Member to force a separate debate and require a separate vote on private sector mandates as well as public sector mandates.

Mr. Chairman, there are a lot of debates that are going to take place as this Committee moves forward, as was the case in the House, on various amendments and on various interpretations of the bill. There were debates about the impact this legislation might have on labor laws, environmental laws, ect.... The answer to these concerns is simple, I want to be very clear about this, all this bill says is that we in the House have a debate on it. If in the end, because a majority in Congress supports the mandate, the legislation passes.

Another debate is bound to take place about a provision added at the Committee level in the House passed version of the legislation which exempts legislation that results in a net tax decrease. I think this provision, known as the Dreier Amendment, really comes down to a philosophical debate in some regards as to tax versus spend, but let me just make one logical distinction which is why I supported the Dreier language in the House bill.

Under the budget rules that we live under, in the House, we essentially discriminate against tax cuts. How do we do that? If we want to reduce taxes under our rules we have to mandate. In other words, we have to come up with tax increases somewhere else. The other choice is to decrease entitlement spending, which I do not think anyone particularly wants to do, to offset those tax cuts.

So we are in a position now where if we want tax relief, say the capital gains relief we passed last

year, we have got to go into the Tax Code and we have got to find loophole closures in that Tax Code that are essentially revenue raisers, which are, under the terms of this legislation, as was said earlier, new mandates. In other words, tax increases are new mandates. So it would be, it seems to me, illogical to say every time we want to give any kind of tax relief we have to mandate, as rule number one; and then on the other hand step in and say, and if we mandate, we are then subject to this mandate exercise.

And finally, there may be a debate about creating additional points of order against legislation that weakens benefits. While I certainly understand the goal and would support efforts to provide the most accurate independent information on the effect the legislation has with respect to benefits, I don't think it works in the context of this legislation. The amendment offered during the House debate by Mr. Waxman, which would have added these additional points of order, had some very serious problems - - first, the burden it would place on CBO would substantially increase its workload and also degrade its ability to do its core functions of budget analysis and mandate analysis. Also, CBO cannot do "benefit analysis" -- they analyze cost information and do not do non-economic benefit analysis.

Second, if the goal here is to prevent efforts to weaken or remove mandates, then Members should simply vote against such proposals on the floor. The purpose of the point of order in Mandates Information Act is to give Members the opportunity to consider private sector mandates, hidden mandates in the legislation, and to get objective information on those mandates from the experts at CBO.

Again, Mr. Chairman, this bill will not end private sector mandates, just as the Unfunded Mandates Reform Act has not ended public sector mandates. The minimum wage increase is one example of a bill that imposed significant costs on the public and private sectors and the point of order was roundly defeated. Congress still has the ability to impose mandates on the public and private sectors, but the original Act and this bill will force Congress to make a much stronger case on the merits than it has had to in the past. It will force Congress to consider the effects of mandates on consumers, workers, small businesses and to work cooperatively with the private sector to accomplish our public policies in the most efficient manner.

Let me be clear, H.R. 3534 is not about the merits or demerits of individual mandates, it's about having accurate information on their cost, about having a separate debate where Congress is encouraged to consult with the private sector on how best to address our nation's problems and yes, it's about accountability -- about going on record on the separate mandate issue.

I sincerely appreciate all the cooperation and assistance we have received from this Committee and staff both this year and in the past two years during consideration and implementation of the Unfunded Mandates Reform Act. And I thank you, Mr. Chairman, and members of the Committee for including me this afternoon.

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