

not do something about that. Where was that money going? It was going to the insurance company because Medicare Advantage is a fancy term for Medicare given through an insurance company and HMO.

What has happened? If we look all across the country at Medicare Advantage, enrollments are up and the premiums senior citizens pay are down. Look at the State of Florida in this last year. Enrollment was up by 6 percent, premiums decreased by about 10 percent. What is happening now in 2012? Enrollments are up almost 20 percent and the premiums are going down by a whopping 26 percent. That means more seniors are going to have access to higher quality care while paying less, and it is a win-win-win. It is clearly a win for the country that we are leveling out all of the excess bumps. It is clearly a win to the senior citizen and, in the process, the insurance companies are giving better quality care.

I wanted to bring this to the attention of the Senate, and I do thank my colleague from Tennessee for his generosity in allowing me to make these comments prior to his.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

MARKETPLACE FAIRNESS ACT

Mr. ALEXANDER. Madam President, we hear a lot about tax breaks and tax loopholes around the Senate. I wish to talk about a tax loophole, a big one, that is on its way out. It is a \$23 billion tax loophole. It is not a loophole in the tax code of Washington, DC. It is a loophole in virtually every State in the country. It is a loophole that prefers some taxpayers over other taxpayers. It subsidizes some businesses over other businesses. Because of that loophole, it causes tax rates in States to be higher, and it causes States to have less money to fund the universities or the State parks or the schools or the other expenses that are legitimate in the operation of a State.

I say it is a tax loophole that is on its way out because after 10 years, Senator ENZI of Wyoming and Senator DURBIN of Illinois have produced a piece of legislation that is rare in Washington, DC. It is only 10 pages long. It is very simple. It is a States rights piece of legislation that gives each State the right to decide for itself how to collect its State sales tax from everybody who owes it, whether that person buys a pair of cowboy boots in Nashville or whether that person buys a pair of cowboy boots online.

Senator ENZI and Senator DURBIN introduced the Marketplace Fairness Act 4 weeks ago. It has five Republican sponsors and five Democratic sponsors. I am one of those sponsors. This is the bill that solves the problem of the online sales tax loophole, the one I described a little earlier. I mentioned cowboy boots. Let me describe what I am talking about in practical terms.

I called the owner of the Nashville Boot Company a couple weeks ago. His name is Frank Harwell. He sold boots online, and he sells them to people who walk into his store in west Nashville. When he started the company, almost all of his boots were sold online. Here is what he says is happening to him today: People come into the store in Nashville and they try on cowboy boots. They find a pair they like and then they go home and buy the cowboy boots online in order to save the State sales tax.

They owe the sales tax. Many people don't know they owe it. They owe the sales tax as much as if they had bought the boots at the cowboy boot store in Nashville. They don't pay it. Why is that? Under the State law, when Frank Harwell sells a pair of cowboy boots in his store in Nashville, he collects the sales tax and sends it to the State.

But under the law, the Supreme Court said 20 years ago, the State of Tennessee or the State of Missouri or the State of Washington could not require an out-of-State seller to collect the same sales tax. They had a reason for doing so, and it was a good reason. They said it was so complicated to do that it put a burden on interstate commerce. But at the same time, the Supreme Court invited the Congress to fix the problem. By fixing the problem, that means the Congress could act in order to create a fair way for States to require retailers that are out-of-State to collect the same sales tax retailers on Main Street collect.

Over that 20 years, the online sales tax loophole got to be a big loophole. It subsidizes some businesses at the expense of others and, as I said earlier, prefers some taxpayers at the expense of others.

Last week, the Hudson Institute, a generally conservative organization, released a new report that explains how the subsidizing of out-of-State sellers works and how the Federal Government—those of us in Washington—are keeping States from closing this loophole. Hudson concludes that this online sales tax loophole is distorting the marketplace, and I urge my colleagues to take a serious look at the Hudson Institute report.

Governors and legislators are up in arms because they are being deprived of the right to enforce their own sales tax law. This is a little different loophole—actually, a little worse one. Usually, loopholes are written into the law. Those are the kind we are trying to change in our tax reform proposals in Washington. This is a tax that is already owed. This is a tax that is already owed that Governors and legislators want to collect. It is used to pay for the things States need to pay for or reduce a tax. In the State of Tennessee, which has a very high sales tax, if the State was allowed to collect sales tax from out-of-State retailers the same way it does from Main Street retailers, then we might postpone the day of a State income tax, which are probably

three of the most hated words in the tax vocabulary in Tennessee.

I said, when Senator ENZI and Senator DURBIN introduced their bill, that I believed they had solved the problem and that if I were an out-of-State retailer or an online retailer, I would begin to make plans to collect sales tax the same way Main Street collectors collect it today, and many have. For example, Amazon—which had opposed for a long time this kind of legislation because, in their view, it was too complicated for them to figure out what the tax might be—changed their mind, and said the Enzi-Durbin bill is a good bill and Amazon now supports it. That is not all. Mississippi Gov. Haley Barbour, a strong conservative Republican Governor and former chairman of the Republican Governors Association, wrote a letter on November 29 which I wish to quote:

In the early days of the Internet, the complexities of collecting State sales taxes across thousands of State and local sales tax jurisdictions were major obstacles. The technology simply didn't exist to expect startups to comply with the various tax compliance rules in every part of the country. But today, e-commerce has grown, and there is simply no longer a compelling reason for government to continue giving online retailers special treatment over small businesses who reside on the Main Streets across Mississippi and the country.

Governor Barbour continues:

The time to level the playing field is now, as there are no effective barriers to complying with state sales tax laws.

Here is what Governor Barbour is saying: Twenty years ago we didn't have the kind of software and information we do today. If I want to know what the weather is in Maryville, TN, where I live, I put in "weather" and my ZIP Code, 37886. Under this new bill and under the technology that exists today, States will be required to give out-of-State retailers or online retailers the software that will permit them to do the same thing. If I order a pair of cowboy boots, they can put in my name, the cost of the boots, and the ZIP Code, and the software will compute the tax and even find a way to send it on to the State. It will be just as easy, or maybe even easier, for the out-of-State retailers to collect the sales tax that is owed as it will be for a cowboy boots store selling it out of the front door in Nashville.

The National Governors Association sent a letter last week saying that the Enzi-Durbin bill represents a common-sense approach that will allow States to collect taxes they are owed, help businesses comply with different State tax laws, and provide fair competition between retailers that will benefit consumers.

Last week, the Judiciary Committee in the House of Representatives held an oversight hearing to discuss all three bills that have been introduced to address this issue and there was a lot of good discussion. I wish to share a few things that were said and I hope we can have a similar hearing in the Senate soon.

MIKE PENCE of Indiana, one of the leading conservatives in Congress and a fellow who knows a tax when he sees one, said:

I don't think Congress should be in the business of picking winners and losers. Inaction by Congress today results in a system that does pick winners and losers.

Congressman PENCE also talked about something I want to make sure my colleagues understand. The Enzi-Durbin bill is not talking about taxing the Internet. It is not talking about creating a new tax. As far as the Internet access tax goes, the Senate debated that a few years ago. I was in the middle of that debate and I was in the middle of the solution that imposed a moratorium on the Internet access tax. That law is still there. We are not talking about an Internet access tax. Neither are we talking about a new tax. We are talking about the plain old State sales tax that already exists. It is very hard to imagine how anyone can say collecting a tax that is already owed is a new tax.

Governor Barbour and Congressman PENCE are correct; 20 years ago the technology didn't exist. Today it does. About the only ones complaining are the taxpayers and businesses that enjoy being subsidized by other taxpayers and other businesses, and that, in our opinion, is not correct tax policy.

As Republicans, I believe our party should oppose government policies that prefer some taxpayers over others or some businesses over others. As Republicans, I believe we should support States rights, and our bill does that by giving the State the right to make the decision about how to collect its own taxes: Do you want to collect taxes from everybody who owes the tax, or do you not want to? Do you want to prefer some out-of-State businesses over in-State businesses, or do you not want to? Do you want to collect the tax, reduce tax rates, or spend the money on services? That is up to the States.

These sentiments are also shared by the late William F. Buckley and Al Cardenas, chairman of the American Conservative Union. Ten years ago William Buckley, who many people see as the father of the modern conservative movement, wrote in the *National Review*:

The mattress maker in Connecticut is willing to compete with the company in Massachusetts, but doesn't like it if out-of-State businesses are, in practical terms, subsidized; that's what the non-tax amounts to. Local concerns are complaining about traffic in mattresses and books and records and computer equipment which, ordered through the Internet come in, so to speak, duty free.

That is William F. Buckley.

Then Al Cardenas, the chairman of the American Conservative Union, a distinguished man from Florida, and the head of an outfit that is arguably as strong and influential as any conservative organization in Washington, said in his recent essay:

There is no more glaring example of misguided government power than when taxes or

regulations affect two similar businesses completely differently.

As I have said many times before, I believe the Enzi-Durbin legislation solves the problem. I believe it is going to happen. I hope that out-of-State sellers and online sellers will move ahead to work with States to make voluntary agreements as, for example, Amazon has in Tennessee, and begin to allow States to enforce their tax policy properly.

Our bill is a remarkable feat in Washington, DC. I have mentioned it before and I wish to emphasize it again. It is only 10 pages long. It is only about allowing States to make a decision about whether they want to close a tax loophole. It is about stopping the subsidization of some taxpayers over others. It is about stopping the subsidization of some businesses over others. I am glad others are starting to share this view, and as more Senators learn about the Marketplace Fairness Act and look at the options it gives each State, I hope and I believe we will have more cosponsors.

Ten years ago the bills introduced weren't adequate to solve the problem. Fortunately, today, Senator ENZI and Senator DURBIN have solved the problem. I agree, Democratic Senators agree, the chairman of the American Conservative Union agrees, a former chairman of the Republican Governors Association agrees, Congressman MIKE PENCE agrees: It is a matter of marketplace fairness.

I ask unanimous consent to have printed in the RECORD the letter to which I referred from Mississippi Governor Barbour, a letter from the National Governors Association, and the *National Journal* article published last week regarding the House Judiciary Committee hearing on this subject.

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

STATE OF MISSISSIPPI,
OFFICE OF THE GOVERNOR,
Jackson, MS, November 29, 2011.

Hon. MIKE ENZI,
U.S. Senate, Russell Senate Office Building,
Washington, DC.

Hon. LAMAR ALEXANDER,
Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR ENZI AND SENATOR ALEXANDER: I am writing to congratulate you on the introduction of the Marketplace Fairness Act and offer my support for its timely passage.

Fifteen years ago, when e-commerce was still a nascent industry, it made sense to exempt startups like Amazon.com from collecting and remitting sales taxes in states where they had no facilities. As chairman of the Republican Party, I was there when discussions surrounding the Internet commerce tax moratorium took place, and this was only to last until e-commerce had truly taken root. I supported this effort then, because I believed this budding industry needed every opportunity to thrive and grow. Looking back, I think it's clear we made the right call as America is home to the largest and most dynamic e-commerce companies in the world.

In the early days of the Internet, the complexities of collecting sales taxes across

thousands of state and local tax jurisdictions were major obstacles. The technology simply didn't exist to expect startups to comply with the various tax compliance rules in every part of the country. But today, e-commerce has grown, and there is simply no longer a compelling reason for government to continue giving online retailers special treatment over small businesses who reside on the Main Streets across Mississippi and the country. The time to level the playing field is now, as there are no effective barriers to complying with states' tax laws.

As Governor of Mississippi, I value the important role that our Main Street retailers play in our communities. Failure to level the playing field threatens to, and in fact has, run many of them out of business, taking with them jobs and the sizable contribution they make to not just our community culture, but to the Organizations who have long benefited from their charitable involvement.

States should not be deprived of their right to establish and collect taxes as they see fit. I've stood for lower taxes and smaller government my entire career in public life, but I've also stood for the authority of states to devise their own tax laws without being overridden by the federal government for no existing purpose.

Finally, government shouldn't be picking winners and losers. In this area, at least, the Marketplace Fairness Act will end that practice, and that's something conservatives should be proud to support.

I again applaud you for addressing this important issue and I look forward to working with you to end the special treatment for online retailers and give everyone the opportunity to compete fairly.

Sincerely,

HALEY BARBOUR,
Governor.

NATIONAL GOVERNORS ASSOCIATION,
Washington, DC, November 28, 2011.

Hon. RICHARD DURBIN,
U.S. Senate, Washington, DC.

Hon. TIM JOHNSON,
U.S. Senate, Washington, DC.

Hon. MICHAEL ENZI,
U.S. Senate, Washington, DC.

Hon. LAMAR ALEXANDER,
U.S. Senate, Washington, DC.

DEAR SENATOR DURBIN, SENATOR ENZI, SENATOR JOHNSON AND SENATOR ALEXANDER: The National Governors Association applauds your efforts to level the playing field between Main Street retailers and online sellers by introducing S. 1832, the "Marketplace Fairness Act."

As you know, years ago the Supreme Court opinion in *Quill Corp. v. North Dakota* stated that Congress has the authority to require out-of-state sellers to collect sales taxes. At present, states are unable to collect more than \$22 billion in sales taxes annually from remote sales made through catalogues or over the Internet. This also creates a price disparity between goods bought from the corner store and those bought online, effectively giving a continuing and growing subsidy to Internet sales.

Since the *Quill* ruling, at least two facts have changed: (1) the proliferation of computers to calculate taxes due on sales—just as shipping costs are determined based on Zip Code—and (2) a state agreement on streamlining and simplifying sales taxes so that it is easier to collect and remit sales taxes wherever a company does business.

The Marketplace Fairness Act recognizes these changes and uses them to grant authority to states that simplify their tax systems to make it easier to do business. This common sense approach will allow states to collect the taxes they are owed, help businesses comply with different state laws, and

provide fair competition between retailers that will benefit consumers.

NGA looks forward to working with you as you work to enact the Marketplace Fairness Act and create a more level playing field for all sellers and consumers.

Sincerely,

GOVERNOR BILL HASLAM,
Tennessee.

GOVERNOR CHRISTINE O. GREGOIRE,
Washington.

[From the National Journal Daily, Nov. 30, 2011]

STATES TELL CONGRESS ONLINE TAX LOOPHOLE COSTLY

(By Juliana Gruenwald)

State officials and some retailers urged Congress on Wednesday to finally close a loophole that they say benefits online retailers by allowing them to avoid collecting sales taxes from out-of-state customers.

The issue the House Judiciary Committee examined relates to a 1992 Supreme Court decision in *Quill v. North Dakota* that found catalog and other retailers do not have to collect sales taxes from customers in states where they do not have a physical store or other facility. Since then, online retailers have exploited the loophole to the tune of billions in lost tax revenue, according to state officials.

"It is estimated that currently in the state of Texas between \$600 million and \$800 million is not collected on out-of-state sales. . . . That points out to me the unfair competition that my storefronts are competing against," Texas state Rep. John Otto, a Republican, told the committee.

Even some tax-averse lawmakers such as Rep. Mike Pence, R-Ind., said congressional action is warranted.

"I don't think Congress should be in the business of picking winners and losers," Pence said. "Inaction by Congress today results in a system today that does pick winners and losers."

State calls for congressional action on the issue got a big boost earlier this month when Amazon, after years of battling efforts to address the loophole, endorsed bipartisan online-sales-tax legislation introduced by Sens. Michael Enzi, R-Wyo., Dick Durbin, D-Ill., and others. That bill would authorize states that meet certain minimum standards to require online retailers to collect sales taxes from customers even in states where those firms have no facility. A similar bill has been introduced in the House by Reps. Steve Womack, R-Ark., and Jackie Speier, D-Calif.

Mr. ALEXANDER. Madam President, I yield the floor, and I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Ms. KLOBUCHAR.) Without objection, it is so ordered.

Mr. DURBIN. Madam President, I ask unanimous consent to speak as in morning business.

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

THE DREAM ACT

Mr. DURBIN. Madam President, it has been 10 years since I introduced the DREAM Act, legislation that will allow

a select group of immigrant students with great potential to contribute to America. The DREAM Act would give these students a chance to become legal in America. They came to the United States as children. They have to be long-term residents of our country, have good moral character, graduate from high school, and complete 2 years of college or military service in good standing. Those are the basic standards we apply.

I think if we enacted the DREAM Act, as I have tried to for many years, it would make America a stronger country, giving these talented young immigrants a chance to serve in our military and make us a stronger nation. Tens of thousands of highly qualified, well-educated young people would enlist in the Armed Forces if the DREAM Act becomes law. We have the support of the Department of Defense and the President. They understand that these young people could make us a stronger and safer nation by serving in our military. And they are willing. Many of them are willing to risk their lives for this country.

Studies have also found that these DREAM Act participants could literally build our economy in years to come with their talent.

Remember, these students we are talking about were brought to America as children and as infants. They grew up here believing they were Americans. They went to class every day, pledged allegiance to the only flag they knew, and sang the only national anthem they had ever heard. They are American in their hearts, and they should not be punished because their parents made a decision to bring them here.

These young people are tomorrow's doctors, engineers, soldiers, teachers. They are the people with whom we can build an America on. We should not squander their talent by deporting them to countries they may not remember at all.

Last year, Republican Senator RICHARD LUGAR of Indiana joined me in asking the Department of Homeland Security to suspend the deportation of these DREAM Act students. Now, for the record, if there is any evidence of wrongdoing by these students, they are completely disqualified from this conversation. We are talking about students of good moral character who are in the United States basically without a country.

Earlier this year, Senator LUGAR and I were joined in our request by 21 other Senators, including majority leader HARRY REID, Judiciary Committee chairman PATRICK LEAHY, and Senator BOB MENENDEZ, asking that these DREAM Act students be given an opportunity to stay and not be deported. In response to our letters, John Morton, the Director of Immigration and Customs Enforcement, issued a memo in June of this year establishing new priorities for deportation. The Morton memo says: It is a high priority to deport those who have committed serious

crimes or those who are a threat to public safety, while it is a low priority to deport individuals who have been in the United States since childhood, like those who are eligible for the DREAM Act.

During hearings this summer on the DREAM Act, Homeland Security Secretary Janet Napolitano told me and my subcommittee that the Department of Homeland Security would establish a process to implement the Morton memo. Under this new process, high-priority cases will be expedited, and low-priority cases will be closed in many instances.

Recently, the Department of Homeland Security announced the next step in the process. Immigration and Customs Enforcement officers and attorneys will receive comprehensive training on the new deportation policy. By January, all ICE officers and attorneys will have the training they need. ICE attorneys will review all new deportation cases to identify low-priority cases that should not be placed in the immigration court.

A review of the cases currently in immigration court is also underway. Department of Homeland Security attorneys will review pending deportation cases in Baltimore and Denver to identify low-priority cases that should be removed from the docket. This trial review of new and pending cases will be completed by mid-January and then expanded nationwide.

Let me commend the President and his administration for these thoughtful and humane steps to implement this new deportation policy.

Today, there are approximately 11 million undocumented immigrants in the United States. It would take billions and billions of dollars to deport all of them. It would likely lead to the collapse of many parts of our economy. You can't go to a hotel or restaurant in the city of Chicago—I have been told this by restaurant owners—and not find at least some place in that establishment an undocumented person doing the tough, hard work immigrants do.

DHS has to set priorities about which people to deport—and not deport—using its limited resources. Some of my Republican colleagues have claimed that this is kind of a backdoor amnesty. That could not be further from the truth. This is simply a temporary decision not to use limited government resources to deport low-priority individuals who are no threat to the United States of America. Individuals whose cases are closed will not receive any permanent legal status. So there is no amnesty involved.

Ironically, some Republican critics of the administration's new policy called on the Clinton administration to establish deportation guidelines—exactly what the Obama administration has done here. In response to this request from some Republicans in Congress, the Clinton administration established a policy on prosecutorial discretion.