

As far as regular order, I wish the Finance Committee had reported a bill. This legislation was first introduced in some form in 2001. As the chairman of the Finance Committee said, he had a hearing on part of it last year. That was good. The Commerce Committee had a hearing on almost this identical 11-page bill last August. There have been repeated requests of the chairman of the Finance Committee to report the bill. He has not. That is what rule XIV is about.

The majority leader said: If the committee is not going to hold a hearing and report the bill after that amount of time, then let's put it on the floor, let's debate it, let's amend it.

It has been thoroughly considered. It has been before this body and the American people for a good bit of time. The bill we were to move to today is exactly the bill that was introduced on February 14 of this year, this 11 pages—exactly the bill. It has been out there for everybody to see all that time.

I urge the 75 Senators who voted for this during the budget resolution to reaffirm their vote for States rights—at least vote tonight to move ahead, and let's debate it. Let's put it on the floor. If people have amendments or objections, let's bring them down here and let's debate them and vote on it. If we do not, as Senator HEITKAMP has said, who knows—

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. ALEXANDER. If I may use 30 more seconds?

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

Mr. ALEXANDER. Senator HEITKAMP has pointed out that if we do not act, it will be one big mess. Instead of having a handful of jurisdictions where a seller can simply—when you buy your ice cream over at Williams-Sonoma and put in your credit card and ZIP Code, automatically the tax is collected by the seller out of State and sent to the State. Instead of that, you will have thousands of jurisdictions to contend with. This simplifies the process.

This is States rights. This is an opportunity to debate a bill that has been around for more than a decade and that the country has been able to see for a couple of months.

I urge our colleagues on both sides to take the conservative point of view and vote yes and move forward.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I thank my colleague from Tennessee. If this is truly a bipartisan effort on both sides of the issue, Democrats and Republicans see it differently. The distinguishing feature of those who oppose this is that so far the leading opponents are from States with no sales tax—New Hampshire, Oregon, Montana. One other State in America does not have a sales tax—Delaware. They see it differently. They are supporting the bill.

Here is what it boils down to. If this bill passes as written, at the end of the day a resident of Montana still will not pay sales tax on any purchases they make in a store or on the Internet. Residents of Oregon will not pay a sales tax on any purchase they make in an Oregon store or over the Internet. The same holds true for New Hampshire. They are held harmless from the impact of this measure.

However, if an Internet retailer in any of those no-sales-tax States wants to sell in Maine or Illinois, the terms of doing business under here are that they will collect the sales tax that is owed in that State. It is that simple.

People have tried to make this more complicated. It is not. They have also suggested it is just going to be beyond anyone to calculate what the sales tax might be. That is just plain wrong. We are way beyond the quill pen and ledger days. We are now dealing with software easily available for a very small amount of money that can be given to any retailer to know exactly when Durbin of Bates Avenue in Springfield, IL, 62704, buys a product and what sales tax should be collected. And the bill provides that each State has to provide the retailer, free of charge, with the basic software so that they can use it to collect the appropriate sales tax.

They are trying to make this more complicated than it is. Thanks to computers and thanks to software, it is not that complex, and neither is the issue that is underlying this debate. The issue is this: How in the world can you expect the bricks-and-mortar businesses of America to compete with Internet competition when the bricks-and-mortar businesses have to collect sales tax and the Internet competitor does not? In my State, that is an 8-, 9-, or 10-percent advantage, and it is shifting more sales to the Internet and away from the local stores. I don't think that is fair.

We are asking for a level playing field. A level playing field says that if you want to sell to a consumer in Illinois directly over the counter or over the Internet, you collect the same sales tax. It is just that simple. If you don't want to, if your business in Montana or Oregon does not want to collect sales tax for sales in Illinois, it is simple: You don't sell in Illinois. It is their choice, their call. I think that is basic fairness.

Look at the groups that are supporting this. I could sit here for the rest of my time and read all the organizations supporting this—the obvious ones, the retailers across America, the men and women with the stores. The small businesses we venerate in speeches all the time on the floor of the Senate are begging us to do this so they have a fighting chance against Internet retailers. We are also getting a lot of support from Governors, from mayors, from labor unions. It is a diverse group—business and labor. They believe it not only is fair but it will raise revenue that is badly needed in a lot of these local units of government.

I might also say that when you take a look at the impact of the current situation, you can understand why this is long overdue. MIKE ENZI was on the floor earlier. He has been for 12 years trying to change this. People say: Regular order; we ought to take a little more time. You can understand that our patience is wearing thin—MIKE's more than mine. I have only been at this for a few years. But we reached this point. We had a vote on the budget resolution. We asked the Members of the Senate: What do you think about this issue?

Forty-nine from the Democratic side and 26 from the Republican side said: We favor going forward on this issue.

That is the vote we will have in a few minutes. We should go forward on this too. Those who have constructive, relevant, germane amendments, bring them to the floor. Let's have a conversation. Let's get this issue done this week. Let's make sure we meet the challenge we have been given.

I thank the Senator from Tennessee for making this as clear as I think any former Governor can make it. If you want to do business in Tennessee, play by Tennessee rules and obey Tennessee law. If you don't, it is just that simple and fair. In terms of imposing a new tax, this bill does not create one new tax.

First, there are no Federal taxes in here—none. Second, we don't even have the power to impose a new State sales tax, nor would we try. There are no new taxes. It is simply a question of compliance and collecting the taxes already owed in the 46 States that currently have sales-and-use taxes.

I urge my colleagues to come forward tonight at 5:30 and vote for cloture on the motion to proceed. Let us engage in this important debate. Let us not put this off another day, another week, or another month. Let's bring this to a conclusion in the Senate with a good, wholesome debate on a bipartisan basis. Germane, relevant, and constructive amendments that address these issues are welcome. Bring those amendments forward. Let's not burn up the hours of the day and the hours of the week in quorum calls. Let's get down to the business in the Senate we were meant to do.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

#### BOSTON TRAGEDY

Mr. HATCH. Mr. President, before I begin, I want to take a moment to say my thoughts and prayers go out to the good people in Boston and other areas where they have had tremendously horrific events and attacks. I hope and pray that all those whose lives were impacted by these tragic events will have a swift and peaceful recovery.

I want to commend all of the law enforcement agencies involved in the investigation that brought the hunt for the perpetrators to a successful end.

## MARKETPLACE FAIRNESS ACT

Mr. HATCH. Mr. President, over the last few months I have come to the floor several times to discuss the need for the Senate to return to regular order. If the last several years taught us anything, it is that efforts to force legislation through the Senate without full and fair consideration tend to yield unsatisfying results.

Complaints about the lack of bipartisanship have more or less become the norm around here, and we hear all the time about the desire for the so-called grand bargains. Bipartisan agreements don't just happen. I think we would all agree grand bargains cannot be made out of thin air.

Luckily the Senate already has a system in place for fostering these types of agreements. It is called regular order. Yet today the Senate will vote on cloture on the motion to proceed to the so-called Marketplace Fairness Act, and in doing so, the Senate will once again abandon regular order in favor of the whims of the Senate Democratic leadership. This is a bill that falls under the jurisdiction of the Senate Finance Committee, but the committee has not had a markup on the bill. Instead the Marketplace Fairness Act is just the latest in a long line of bills brought before the full Senate without due consideration in the committee of jurisdiction.

This has become far too common. I understand there are those who feel strongly about this legislation, and I admire them and respect the sponsors of the bill who worked hard to address what they see as a major problem with our Nation's tax policy.

However, that simply is not enough to justify yet another abdication of the committee process here in the Senate.

The Senate is organized into various committees of jurisdiction so Members are able to develop and utilize their own expertise on specific issues. When a piece of legislation goes through the committee process, it is thoroughly vetted and examined. This provides an opportunity to resolve technical issues and address various concerns before the bill is brought to the floor for a vote.

Regular order is not a process designed to protect the power of committee chairmen and ranking members. We have regular order and our committee structure so we have an organized way of ensuring our constituents are fully represented and to make sure the legislation we pass is technically sound. The legislation we will be voting on today is a perfect example of the importance of regular order.

The Marketplace Fairness Act is a bill that will have a significant impact on millions of consumers and businesses throughout the country, and clearly, this is no trifling matter.

Most reasonable people would agree that a bill of this magnitude would benefit from full and fair committee consideration, including a markup with an open debate and an opportunity to vote on amendments before it is

brought to the floor. However, being reasonable doesn't appear to be part of the equation on the floor today.

I want to stress I am not fundamentally opposed to this legislation. My goal is not to stop it at all costs. Instead, I simply want to ensure it is fully vetted and examined. I know if all sides are able to look at this in a dispassionate way, we might find ways of bringing all sides together, and that is not going to happen the way it is being done now. Therefore, today's vote is, in my view at least, as much a vote on regular order as it is a vote on the underlying bill.

That said, I do have specific concerns about the legislation as it is currently drafted. To begin with, the Marketplace Fairness Act in its current form is a fairly short 11 pages long. This bill essentially provides two avenues for States to compel remote sellers or out-of-State businesses to collect and remit sales and use taxes. Under the bill, the State may either meet specified minimum requirements or be a member State under the Streamlined Sales and Use Tax Agreement, as long as the minimum requirements are met under the agreement.

The Streamlined Sales and Use Tax Agreement is a good deal more complicated than the Marketplace Fairness Act. For starters, at 203 pages, the agreement is about 18 times longer. Since its adoption on November 12, 2002, the Streamlined Sales and Use Tax Agreement has been amended 28 times, most recently last year. It is not a simple little problem here.

The streamlined sales tax governing board has done excellent work in bringing States together to cooperatively and voluntarily address the issues of sales and use tax complexity and administration, just to mention a few issues.

According to the streamlined sales tax governing board, 24 States have adopted the simplification measures in the agreement, representing 31 percent of the population.

The authors of the Marketplace Fairness Act hope to apply its measures to all 50 States and 100 percent of the population.

However, the bill is comparatively short on details. For example, the Streamlined Sales and Use Tax Agreement contains provisions on rules for the sourcing of sales, along with exclusions to those rules. In order to levy the appropriate sales tax, the location and subject matter of the transaction must be determined. This level of detail is not present in the Marketplace Fairness Act.

It is unclear if the floor established on sourcing requirements under this bill is sufficient to protect consumers from unintended consequences. For example, I have received a letter from the American Society of Pension Professionals and Actuaries which is worried that this legislation "would allow states to impose a financial transaction tax that would apply to Amer-

ican workers' 401(k) contributions and other transactions within workers' accounts."

Another concern I have with the current version of the Marketplace Fairness Act is that it contains a preemption clause which could make it possible for States to expand the reach of their sales taxes through creative legislating. The Streamlined Sales and Use Tax Agreement at least provides an avenue for the input of multiple States. The States that are not subject to the agreement would, under this bill, be able to legislate knowing that the Federal Government will compel enforcement of their tax law on non-residents.

I am concerned with the transition costs that will come with this legislation for retailers who have been operating in an environment where they have not been required to collect and remit sales taxes for States where they do not have a physical presence. This legislation would change that almost in an instant.

Before we enact a new sales tax system, we need to take into account the costs that system will impose on businesses of all sizes and the difficulties these companies will face as they adapt to the new regime.

For example, there is the issue of vendor compensation. The Streamlined Sales and Use Tax Agreement currently includes a provision giving States the opportunity to voluntarily compensate remote sellers "as a measure of good faith" for registering to voluntarily collect and remit sales taxes into States where the seller has no physical presence. This is included in the agreement because under the current law remote sellers are generally not required to collect and remit the sales tax, and they incur a cost when they do so.

The Marketplace Fairness Act does not include any provision for compensation of remote sellers. I believe this is something we must take into account and examine even more thoroughly. I am also concerned about the small-seller exemption in the bill which would exempt sellers with national remote sales of less than \$1 million from the new requirements to collect and withhold sales taxes. This seems like an important concession, but it is not without its problems.

First of all, the cap on the exemption is not indexed to inflation. I think anyone who has observed any part of the roughly 50-year process where the alternative minimum tax has grown from a fairness measure targeting the rich to an ever-increasing burden on the middle class should understand how inflation can radically distort policy outcomes over a period of time. In addition, there are many who argue that the \$1 million exemption may be too low. In my view, these are concerns we need to fully consider before bringing the bill to the floor.

Finally, I want to point out that the bill does not include a provision for a