

MARKETPLACE FAIRNESS ACT OF 2013—MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the motion to proceed to S. 743, which the clerk will report.

The assistant legislative clerk read as follows:

Motion to proceed to the consideration of Calendar No. 41, S. 743, a bill to restore States' sovereign rights to enforce State and local sales and use tax laws, and for other purposes.

The PRESIDING OFFICER. The Senator from Montana.

Mr. TESTER. Mr. President, I wish to speak on this bill. It is called the Marketplace Fairness Act. It will not do anything but damage to the marketplace, in my opinion.

This bill will impose new burdens on our small businesses. Let me repeat that. It will place new burdens on our small businesses. I have heard folks come to the floor and talk about how great this is going to be for small businesses. This is going to be terrible for small businesses. Small businesses are going to have to bring on more people. This is going to be more bureaucracy, with more accountants, more lawyers. This should be called the bill to employ more attorneys and more CPAs.

The fact is, I do not think the attorneys want this kind of work, nor do the CPAs want this kind of work, because what it will do is fundamentally alter the rights of States by allowing them to tax entities outside their borders.

Who is put at risk by this? Small businesses. If the small business screws up, by the way, they are the ones who are held accountable. We talk about this big old database out there that these folks are going to be able to dub into to determine what the sales tax is for a single entity of the 9,600 cities and States and municipalities that collect sales tax. If the business gets it wrong, they are the ones that have the penalty. I am going to tell you that small businesses are not that profitable to be able to go through this kind of an exercise.

In Montana we are in a little different situation. In Montana our budget has a surplus because we have handled our money wisely. Montanans do not pay a sales tax, we do not have a sales tax, and the people of the State of Montana have twice voted against having one. But our budget continues to operate with a surplus without that sales tax.

Now we are going to have other States balance their budgets on the backs of Montana's hard-working small businesses. It is wrong and, quite frankly, it is insulting. In fact, Virginia—right close here—has already counted these funds as part of their budgeting for a new transportation plan.

I would say this is bad policy that I hope—I know what the cloture vote was yesterday—people take a look at because this is not the direction this

body should be going. At a bare minimum, we should send this bill to committee and let the Finance Committee deal with it.

This has some real problems. It has real problems from an implementation standpoint. If we go down this road, it is a very slippery slope; it is going to create more bureaucracy; it is going to create more burdens for small businesses, including new liabilities for incorrectly collecting this sales tax, as I talked about before.

There are 9,600—let me say it again—there are 9,600 cities, States, and municipalities that collect taxes—different taxes: higher taxes on candy than in a different jurisdiction, sometimes no taxes on food. The list goes on and on and on.

It also leaves questions unanswered about how this could impose new taxes on financial transactions and 401(k) plans. It is bad policy.

What businesses will out-of-State tax collectors go after next? It is an aberration of States rights—rights which so many in this Chamber have supported.

It is a situation where we are going down a road that, quite frankly, we have not gone down before from a States rights standpoint. If we do this, I think it opens a Pandora's box, so to speak, as to new rules, new laws that potentially come down, using this as a basis for it.

As I said before, I empathize with the situation of States that have had their budgets underwater. But they ought not be looking at other States' small businesses—in our case Montana's small businesses—to get their budgets in balance.

I would urge my colleagues to vote against this bill. It would gut States rights. It would impose new tax burdens on small businesses and middle-class Americans. Quite frankly, this is bad policy, and we should not be passing bad policy around here.

I thank the Presiding Officer and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WARNER. 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. WARNER. Mr. President, I rise in support of the legislation that is on the floor, the Marketplace Fairness Act. I rise as someone who has spent 20 years in the technology business helping to fund and develop online businesses, understanding the importance they play to our economy, and applaud the enormous growth of Internet-based businesses.

But I also rise in support of this legislation, because in addition to being a technology investor, I also was a Governor and know the importance that sales tax plays in funding so many critical State and local functions. Unfortunately, under the current cir-

cumstances, we have an uneven playing field because local small businesses, oftentimes bricks and mortar, follow the law and collect sales taxes from customers who make purchases in their stores while, on the other hand, many large online businesses that may be located or domiciled in some other State do not collect the same sales taxes. I think on this floor already we have heard repeated stories of some online retailers that even encourage people to go to the brick-and-mortar store to look, go out and price a product and then go back and go online and purchase that product. Not only does that discriminate against the brick-and-mortar store, but from a public policy standpoint, if these sales taxes are not collected, it creates an unlevel playing field between the online vendor and the brick-and-mortar store.

This legislation will help level the playing field. It is about fairness. It is about having a level playing field for all types of retail outlets. Let me make clear, all it simply does is require every business to collect and remit an already legal sales tax that has been put in place at a State or local level.

Because of this unequal playing field, because of current circumstances, because there has been a failure amongst many of our online vendors to collect these sales taxes, this creates a direct and immediate impact on State and local governments. As a former Governor, I can tell you the inability of States and localities to gather uncollected revenues undermines dramatically their ability to invest in K-12 education, police and fire prevention, funding for roads and bridges, public safety, environmental causes. You name it, all the basic core services that State and local governments perform, so many of them are directly funded in a major way by local or State sales taxes.

I would also like to mention how important this bill is to the Commonwealth of Virginia. Most recently in the Commonwealth, Virginia's leadership, with a Republican Governor and a bipartisan legislature, finally enacted legislation to make significant investments in our outdated and overstressed transportation network. Many of the folks work on the Hill or those of my colleagues who happen to live in Virginia know that traffic in Northern Virginia is at an almost debilitating point. We have finally in Virginia passed a funding source to try to address the transportation needs of Virginia.

Part of this solution, though, anticipates revenue from this legislation. So if we are going to be able to solve the transportation crisis that confronts not just Northern Virginia but all of Virginia, Virginia has to have the ability to collect all of its sale tax revenue. This is a large amount. The current uncollected amount of sales tax revenue in Virginia is estimated to be \$422 million over the past year.

That number is going to continue to increase as more and more vendors go

online. Nationally, the amount is a staggering \$23 billion. Again, as I mentioned earlier, at a time when our States and municipalities are struggling to maintain essential core services or government, I think it is irresponsible of us at the Congressional level to, in effect, interfere or not allow these States and localities to collect sales taxes that they have put in place, that are collected from vendors that are in their communities but not certain vendors who operate online.

I would like to take a moment also to address a couple of the concerns I have heard from my community in Virginia. I say there are ways to improve this bill. I am grateful the Northern Virginia technology community is generally supportive of this legislation. They have raised some concerns, concerns I would like to address.

First, there is discussion about the small seller exemption. The current legislation says that those small sellers online that have less than \$1 million in sales will be exempted from this regulation. It is important that a startup business gets going online, that we do not put undue bureaucratic and other restrictions in place. There have been some suggestions that that \$1 million small seller exemption is too small. I think perhaps looking at a slightly higher number may make some sense.

But there have been some who suggested we would take this number all the way up to \$15 million. I have to tell you, I believe taking the small seller exemption up to \$15 million per year in revenues would dramatically undermine this legislation and dramatically cut back the \$422 million Virginia has left on the table and the \$23 billion that is estimated to be left nationally.

So, yes, we can look at something a little larger than \$1 million but to go up to \$15 million would be much too high.

Second, I think there have been reasonable questions about how to make sure, where we are going to create an audit trail, and where we are going to allow those vendors to remit back, not to the literally hundreds of jurisdictions that collect these kind of taxes but to be able to simply remit to a single point of contact.

I think the legislation moves forward in this direction. I again would look at other opportunities. On the issues of remittance, the legislation does put in place a requirement that every State would have a single point of remittance, which I think strikes the right kind of balance needed to not create an undue burden.

On the question of audits, I think there is more work that can be done. I believe there is an analogy here to the telecommunications industry I used to be part of. In the early days of the cell phone industry, there were clearinghouses that were allowed to, in effect, be the settlement agencies between a variety of competing cell phone systems when we were charged roaming

charges. I think we can look to some examples in that industry and others to make sure that in a look-back basis, there is an ability to have a single point of audit so those vendors, particularly small vendors, make sure they get a fair shake.

Finally, I think we need to make sure that, particularly for these smaller vendors, we do all we can to make it easy for them to comply with the law. I am pleased this legislation requires States to make available, at no cost to retailers, common software that will basically calculate the State and local sales tax requirements for any of these online vendors, as well as kind of build in some of the administrative services. I think this is an important step to make sure we continue to allow the entrepreneurial spirit to grow online as well as in the local community.

Again, I think it is terribly important to remember that all we are doing in this legislation is making sure there is a process in place to collect sales taxes that are already due.

Two final comments before I yield the floor. During the course of this debate, some opponents of the Marketplace Fairness Act have made statements about what this bill might possibly do that I do not think are reflected in the legislation.

Among those claims, there is a claim that this bill is the first step toward a State or local transaction tax on the purchase of stocks or derivative contracts. I have reviewed this legislation closely. There is nothing in this legislation that would make it be the first step on a slippery slope toward a transaction tax. There is nothing in this bill that would prohibit that kind of tax. States already have that ability. This legislation will do nothing to take a step toward that. So I think that claim being made by some is not accurate and does not reflect the legislation.

Finally, this legislation comes about because at the beginning of the development of online sales, there was a belief, perhaps accurate at that moment in time, that this growing industry of online retailers needed an extra little benefit, an extra little head start, an ability to have this industry not be squashed at its outset. I think history has shown, as we have seen the growth of retail sales online go up dramatically, faster than the growth of retail sales in bricks and mortar, that whatever needed boost the online industry might have needed at some point, that they now have become an extraordinarily important and successful part of our economy.

I commend all those and many other companies I had the ability to help fund when I was in the private sector. I welcome their success. Online businesses continue to be one of the areas for most entrepreneurial activity. I commend those efforts. But I do believe, in 2013, we do not need to perpetuate what has become at this point an unlevel playing field.

I believe the Marketplace Fairness Act will correct that unfairness, cor-

rect this unlevel playing field. I was pleased to see the overwhelming bipartisan majority that voted to invoke cloture. I hope this week we will be able to finish considering this bill, get it passed, and get it sent over to the House.

I yield the floor and suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

BOSTON BOMBING

Mr. MCCAIN. Mr. President, there has been a great deal of misunderstanding about the position the Senator from South Carolina, I, and others have taken on the detention and interrogation of the suspect in the Boston bombing. None of us is saying the suspect should be indefinitely detained as an enemy combatant by the U.S. military or tried in a military tribunal. The suspect is a U.S. citizen and must be treated accordingly, and he will be. What we are saying is that the importance of treating the suspect in accordance with his rights as an American citizen must be balanced with our government's top national security priority, which is the lawful, effective, and humane interrogation of this subject for the purposes of gathering intelligence.

The Boston attacks were clearly inspired by the violent ideology of transnational Islamist terrorism. We need to learn everything we can about what foreign terrorists or terrorist groups the suspect and his brother may have associated with, whether they were part of additional plots to attack our Nation, and what other relevant information the suspect may possess that could prevent future attacks against the United States or our interests.

We need to delve further into this whole issue of the education some people who are motivated by these base ideologies obtain over the Internet and the effect it is having. We should at least know about this.

Our civilian justice system offers a responsible option for striking this balance with American citizens. It allows the Justice Department to delay reading a suspect his Miranda rights if doing so is in the interest of "public safety." The administration had rightly invoked this public safety exception in the case of the Boston suspect, which provided our national security professionals a discrete period of time to gather intelligence from the suspect without the presence of his lawyer.

However, soon after questioning him in this manner, the administration recently reversed itself and read the suspect his Miranda rights. In doing so, the administration gave up a valuable opportunity to lawfully and thoroughly

question the suspect for purposes of gathering intelligence about potential future terrorist plots. Whether we will be able to acquire such information has now been left entirely at the discretion of the suspect and his lawyer. Put simply, the suspect has been told he has the right to remain silent. If he doesn't want to provide intelligence, he doesn't need to.

Is this a responsible balance between a citizen's rights and our national security? The suspect had only been responsive for a couple of days before he was read his Miranda rights. Even then, he could not communicate verbally. Does anyone really believe our national security professionals were able to acquire all of the relevant intelligence possessed by a subject who couldn't speak in only 2 days? This is not a responsible balance between civil liberties and national security.

From the very beginning of this debate, the Senator from South Carolina, the Senator from New Hampshire, I, and others have maintained that the administration should reserve its right to hold the suspect as an enemy combatant for the purpose of gathering intelligence. This was not the only option or even the ideal option. In light of the administration's decision not to continue questioning the suspect under the public safety exception, the only option we are left with is lawfully questioning the suspect as a potential enemy combatant.

The full extent of whether the suspect is linked to al-Qaida or its associated forces remains unclear. The brother's trip to Russia certainly should be the subject of an inquiry. Additional questioning is critical to making it clear.

Today there is ample evidence that would allow the administration to question the suspect for key intelligence. The consequence of not doing so is that our need to question the suspect for such intelligence is left solely at his discretion and willingness to cooperate. This is not a responsible approach to the national security of this country.

Again, this is not to say that we must hold the suspect indefinitely in military detention, nor that the suspect must be or should be tried in a military tribunal. In both cases, there is plenty of precedence for holding a terrorism suspect as an enemy combatant for a limited time before moving him into the criminal justice system for the purpose of standing trial in civil court. What is more, the Supreme Court has consistently upheld the legality and constitutionality of this approach, as well as the ability to hold American citizens as enemy combatants. Ultimately, the broader question is whether one views the United States as part of the battlefield in the global fight against terrorists. I know some don't. I, however, do not see how we can avoid this fact. Those who seek to attack us certainly view the homeland as part of the battlefield—indeed, the central part.

Of course, there will always be and should be differences in how we handle events in the United States and events overseas and differences in what rights are due to American citizens as opposed to foreign citizens. Yet we cannot afford to build a wall between the fight against terrorists abroad and the fight against terrorists who are trying to attack us here at home, including when American citizens are involved in this fight, as some clearly are, and will continue to be.

Just because some don't seem to want to grapple with the difficult, unprecedented legal issues this war presents does not mean they will cease to be real challenges. If we pretend the homeland, the United States of America, is not part of this battle, I believe it will only be a matter of time before we learn this lesson the hard way.

I say to many who are reporting on this issue, I hope it is clearly understood that we are not saying the suspect should be indefinitely detained as an enemy combatant by the U.S. military or tried in a military tribunal. The suspect is a U.S. citizen and must be treated accordingly, and he will be.

During the now-famous discussion of 13 hours on the floor of the Senate, there were certain comments made that I think are important to recall.

The battlefield coming to America or acknowledging that is an enormous mistake.

I am quoting from the debate that took place.

Alarm bells should go off when people tell you that the battlefield's in America.

I'm here to argue that we can't let America be a battlefield because we can't say that we're no longer going to have due process, that we're no longer going to have trial by jury, that we're no longer going to have presentment of charges in grand juries. It is impossible in a battlefield.

This is another quote:

[When people say, oh, the battlefield's come to America and the battlefield's every—where the war is limitless in time and scope, be worried, because your rights will not exist if you call America a battlefield for all time.

The Chair understands as well as anyone that the people of Boston and the people of Massachusetts, of the Commonwealth of Massachusetts, would clearly take exception to a statement such as "the battlefield coming to America or acknowledging that is an enormous mistake." The people of Boston are very well aware that the battle comes to the United States. There are many attempts for it to come to the United States. Tragically, it came to the United States of America in a most tragic and terrible way.

We need to have a larger debate here about the location of the battlefield. To somehow believe the ultimate target of these radical Islamic extremists and other extremist elements is not the United States of America is a gross misreading of what this fight against terrorism is all about.

Quoting from a Wall Street Journal editorial, as I have done in the past:

The Boston bombing also ought to chasten libertarians who keep insisting that the U.S. homeland is not part of the terror battlefield.

"It's different overseas than it will be here. It's different in the battlefield than it will be here," [one Member] told Fox News earlier this year. "Which gets precisely to the argument I have with some other Republicans who say, well, 'the battlefield is everywhere. There is no limitation.' President Obama says this. Some members of my party say the battle has no geographic limitations and the laws of war apply. It's important to know that the law of war that they're talking about means no due process."

Boylston Street looked like a boulevard on Monday, and so did Watertown on Thursday night. The artificial distinction [arises from undue] focus on geography. The vital distinction for public safety is between common criminals, who deserve due process protections, and enemy combatants at war with the U.S., wherever they are.

As for due process, the greatest danger to liberty would be to allow more such attacks that would inspire an even greater public backlash against Muslims or free speech or worse. The anti-terror types on the left and GOP Senators who agree that the U.S. isn't part of the battlefield are making the United States more vulnerable.

Americans erupted in understandable relief and gratitude on Friday with the rapid capture of the terrorist brothers. But we shouldn't forget that their attack succeeded, with horrific consequences for the dead, the wounded and their loved ones. The main goal now is to prevent the next attack.

How do we prevent the next attack? We find out as much information as possible as to what motivated this attack.

Mr. President, I ask unanimous consent that the Senator from South Carolina be included in the colloquy.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. MCCAIN. We wish to make sure our position is very clear. We are not saying the subject should be indefinitely detained by the U.S. military or tried in a military tribunal. The suspect is a U.S. citizen and must be treated accordingly, and he will be.

The tragic events we saw in Boston bring home again that this fight is far from over. I don't know if these young men were motivated by the information they received, whether it was overseas or whether it was due to the Internet and various influences there. What we do know is that while living in this country, they changed from apparently normal young people into terrorists who were willing to do anything to take the lives of their fellow American citizens.

The battlefield is the United States of America. Anyone who doesn't believe this ignores the events from which we are recovering.

I yield to the Senator from South Carolina, who has probably been more widely quoted than I have, and request that he clear up this exact situation we are calling for which, frankly, is being portrayed inaccurately in a great deal of the media.

Mr. GRAHAM. Very simply put, I have two goals. I think Americans

want two things to happen in this case. They want the surviving suspect to be brought to justice. I am glad he survived, as hopefully we may learn some information from him that will make us all safer in the future. I am pleased he survived so we may try him in a court of law, before a Federal court in Massachusetts, to hold him accountable for his crimes. In the trial, he will be given a lawyer. He has the right to remain silent. He will be tried by a jury. He will be given all the rights associated with a Federal court trial. He is an American citizen, and we have never suggested otherwise.

As one of the primary authors of the 2009 Military Commissions Act, I expressly exempted American citizens from military commission trials. Why? I wanted to reserve that system for foreign terrorists. It doesn't mean I don't believe there will be domestic terrorism. It doesn't mean I don't envision an American citizen helping the foreign enemy. I do. Every war, unfortunately, we have been in during the history of our country, American citizens have joined forces and sided with the enemy. This is not an unusual event. What would be unusual is to say one could do so and not be treated under the law of war. We would be making history if we adopted that view.

Let me begin with a case in World War II. German saboteurs landed in Long Island. They had been planning for years an effort to come to our country. These were Germans who had lived in our country and went back to Germany and became Nazis. Because they spoke good English, they were recruited by the German intelligence service to come back and plan massive attacks on our homeland.

They had a cell here in America, some of whom were American citizens who joined the plot. Thanks to the great FBI work of this time and day, as soon as they landed the plot was foiled and the American citizens were captured. In 1944, 1945, and possibly as late as 1946, the American citizens who aided the German saboteurs were held as enemy combatants and tried in a military court. Three of them were hanged.

The case went to the U.S. Supreme Court, and the Supreme Court said: When you join the forces of our enemy, you are committing an act of war, not a common crime.

Tokyo Rose sided with the Japanese. She was tried and given a life sentence. Since 9/11, there have been three American citizens who have been involved with al-Qaida or the Taliban or affiliated groups. They have been held as enemy combatants. They have gone to trial in civilian court and the courts have blessed the holding of American citizens as enemy combatants.

Rumsfeld v. Hamdi was an American citizen captured in Afghanistan held under the law of war as an enemy combatant. He was eventually tried and the Court said, as in World War II, we

can hold one of our own as an enemy combatant, recognizing the difference between a common crime and the law of war.

Mr. Padilla was held 4 years by the Bush administration. His case went up to the Fourth Circuit and the Fourth Circuit said: Yes, you can hold enemy combatants off the battlefield. That is the power the United States possesses at a time of war.

When you are fighting a war, the goal is to win the war and to find out about what the enemy is up to. When you are fighting a crime, the goal is to convict someone or have them found innocent. They are two different systems.

This young man will be going to Federal Court and a jury will decide if he is guilty of his crimes. What we are asking of the administration is: How do you gather intelligence in that system? It is not meant to gather intelligence. We don't want to limit ourselves as a Nation to asking questions about future attacks in the criminal justice system because here is the way that works. If I am his lawyer, I am not going to let you ask him any question about anything until I get a benefit for my client. So intelligence gathering now is controlled by the terror suspect and his lawyer. Is that smart? Now you are having to plea bargain to get intelligence.

What we are saying is, conduct the trial in civilian court—the only form available—but because there are international terrorist connections here—clearly they killed people in Boston not because they wanted their property or they were mad with the Boston city government, they killed—they slaughtered a young boy and his family and others because they have adopted a radical jihadist view of us as a Nation. The older brother was quoted as saying we are infidels, we are a colonial Christian power, we have corrupted Islam. They are trying to kill us and destroy our way of life because of what we believe.

The sooner we understand that, the better off we will be.

Here is my view about defending ourselves as a Nation. A criminal court is about due process and giving the accused a fair trial. Military intelligence gathering is about defending the Nation at war. The question we all have to answer for ourselves is: Is America at war? The answer, to me, is yes. We are at war with a radical ideology that hates everything we stand for.

Bin Laden is dead. We celebrate that. But al-Qaida is very much on the march. As a matter of fact, radical Islam is regenerating, and the way they are coming after us is to find people in our own backyard and turn them against us.

How could we have missed this? How could the intelligence services in Russia tell the FBI: You need to watch this guy; we believe he is a radical Islamist coming to your country to hurt you? How could we miss him going to Russia and coming back? How could we miss

his YouTube videos where he is ranting and raving against us and threatening to take us down as a Nation?

These are questions to be asked and answered. And here is what we are suggesting: The surviving suspect, due to the ties these two have to radical Islamic thought, and the ties to Chechnya, one of the most radical regions in the world, the President should declare preliminarily that the evidence suggests this man should be treated as an enemy combatant. We could hold him for a period of time, question him without a lawyer, and none of the evidence could be used against him in the criminal proceeding. That is the best way to gather intelligence. The best way to gather intelligence is to have a rapport with him, take down the stories he is telling us and deconstruct them; spend time with him outside the criminal justice system.

We have gathered so much good intelligence from enemy combatants at Guantanamo Bay. You won't send him to Guantanamo Bay, but during the last decade we have exploited intelligence from enemy combatants—people who have joined the other side—and it has helped us figure out how to defend ourselves and find bin Laden.

All we are saying is when it comes to defending against future attacks, we want to talk to him without a lawyer. That is all we are saying. We want to talk to him without a lawyer so we can find out what he may know about what we face in the future, and when it comes to prosecuting him, we won't use anything we found against him. A first-year law student could convict him, but, my God, look what we are losing as a Nation by using this model. Instead of taking time out to interrogate him without the presence of counsel to learn about what did happen, we are now stuck in a criminal justice system where we can't ask him one question his lawyer won't allow.

I am not blaming the lawyer. My goodness, if I were his defense lawyer, no one would ask him one thing without my permission, and they would have to give a lot to get an answer to anything. All I am suggesting is we are at war, these two people fit the profile of folks who are trying to kill us, they are tied to overseas organizations potentially, so why in the world can't our country have some time with this person in the national security legal system to find out about what he knows and how they planned this attack, to make the rest of us safer.

I believe in due process. And he, in that system, can go to a judge and say, I am not an enemy combatant, and the government would have to prove he is. So he has due process there. But here is what I believe deeply, and then I will turn it over to Senator AYOTTE of New Hampshire. I believe the closer one gets to our homeland, the more rights we have as a people to defend ourselves. I don't want a police state. I don't want to live in a country where

we can't express who we are and what we believe in and to argue and have a different view of religion. But, by God, given the times in which we live, I don't want to become deaf and blind to the threats that are real in our own backyard. I want a system that can find out about guys like this before they kill us.

Let me tell you, ladies and gentlemen, if we don't gather good intelligence and we don't hit them before they hit us, there is more to come.

Mr. McCAIN. Mr. President, I ask unanimous consent that the Senator from New Hampshire be included in the colloquy.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. McCAIN. I ask my colleague for a comment on the issue of whether the United States of America is a battlefield. Does my colleague agree with the quote, "The battlefield coming to America or acknowledging that is an enormous mistake"?

Mr. GRAHAM. Not only do I agree, who picked the battlefield? I didn't pick America to be the battlefield. I don't want to be at war with anybody. They chose the battlefield.

Where do you think they want to hit us most, I ask Senator McCAIN? If you could get the top leadership and give them one shot at America anywhere, where would they take that shot? Would they hit us in France? They would hit us here. Why? Because they want to destroy our way of life. They are trying to come here to kill us. All I am suggesting is we should be able to defend ourselves. And the closer they get to us, the more rights to defend ourselves we should have.

Let me say I asked the Judge Advocates General of the Army, Navy, Air Force, and Marine Corps: Is the authorization to use military force against al-Qaida, the Taliban, or affiliated groups limited to outside the United States? They said: No, there is no geographic limitation. So if somebody hijacked a plane tomorrow trying to fly it into the Capitol, our military could shoot it down. We are not going to restrict ourselves to the battlefield being everywhere else but in our own backyard.

Mr. McCAIN. Finally, again, if there were information of an imminent attack, such as the aircraft that crashed in Pennsylvania that might have been headed for the Capitol, we would take whatever measures necessary to prevent it from happening. To somehow say we would not use every capability in our arsenal to prevent that goes back again to this fundamental error, fundamental misconception about the nature of radical extremists where the battlefield clearly is the United States, and we should be most prepared.

And, by the way, if there is some good news that came out of Boston, it was that some of the measures that had been taken since 9/11 contributed significantly to our ability to track down and eliminate this threat far

more rapidly than we would have prior to 9/11.

Mr. GRAHAM. Yes, if I may, hats off to the Boston, MA, police officers, to the Presiding Officer's town. Our heart breaks for the victims. Bostonians made us proud. They show us how to stay brave. The FBI and everybody did a great job, but how we missed this I still want to know.

The Senator from New Hampshire was the former attorney general of New Hampshire. She knows the difference between fighting a war and fighting a crime.

I have been a military lawyer, I have been a civilian lawyer, and I am all very much for the idea of due process being given to everyone charged with a crime, including this man. He deserves to be presumed innocent, to have a lawyer, and a jury to find him guilty or innocent. He deserves all that because it makes us better and safer. But what we should not give up as a Nation is the ability to find out about future attacks in a logical way. We are at war, and in the law of armed conflict, national security applies here, in my view, because of the type of incident involved and the threats we face.

I wish to hear from Senator AYOTTE, who has become one of the most knowledgeable people on the topic. She has tried people in New Hampshire—death penalty cases—and if she doesn't mind, perhaps she can share with us her view of where the battlefield is, what kind of laws to apply to a situation such as this.

Ms. AYOTTE. I thank my colleague from South Carolina and very much thank my colleague from Arizona for, obviously, their leadership on this issue.

I have great confidence in our criminal justice system, having both defended and tried criminal cases in that system. The purpose of that system, of course, is to bring people to justice. There is no question in this case, in light of what Boston has gone through—and I know the Chair knows all too well the crimes that were committed and the acts of terrorism committed—that we need to make sure the criminal justice system holds that individual, the terrorist who survived, accountable in the Federal criminal system.

I am confident, based not only on what we have seen with video evidence but the great work done by our law enforcement officials, both at the local level in Boston, along with the cooperation of our Federal agencies—they did phenomenal work—that evidence will be used against this terrorist in the Federal court system and he will be found guilty. In fact, with the overwhelming evidence, this is not a difficult case to prosecute, and we should hold him fully accountable.

But our criminal justice system, which I have great respect for, was not set up to gather intelligence to protect our Nation. In fact, protections such as the right against self-incrimination,

when an individual is given their Miranda rights, that is intended to tell people they have the right to a lawyer, they have the right to remain silent so they can't be coerced into confessing to something and then having that confession used to convict them later in a court of law, that doctrine was not intended to stop this Nation from gathering intelligence, to make sure when we have a terrorist attack, such as what occurred in Boston, which was so horrific—and let me say my thoughts and prayers are with the victims of those terrorist attacks—we cannot in the national security context hold that individual for a sufficient period while still being respectful of his constitutional right—which we can be—and gather intelligence.

If we cannot do that, what are we saying about our Nation? What are we saying here? Let us go back to 9/11.

What if we had captured one of those individuals before the second plane hit the second tower or before the plane went down in Pennsylvania. Are you telling me we couldn't hold them for a longer period of time?

Our law enforcement officers relied on what is called the public safety exception to Miranda in this case with the Boston terrorist, but that exception expired very quickly. It expired so quickly that yesterday, while our law enforcement spoke with him, by noon he was being advised by a Federal court judge he had the right to remain silent. Is that enough time to find out whether he has any ties to any foreign terrorist organizations, given that his brother traveled to Dagestan, with ties to Chechnya—with known ties in those areas of the world to al-Qaida? Is that enough time to know whether somebody else or some other organization was funding them or there are other attacks that America can expect? Because that was a very brief period of time, and that is what we are talking about—respecting our values in the criminal justice system but also protecting our Nation.

In this instance, this individual was very quickly advised that he had the right to remain silent. When he came to consciousness, it was a matter of hours that were given to gather all this information. Is that enough, given what happened in Boston, to make sure we know everything this individual knows to protect this Nation from future attacks, if he has ties to al-Qaida or some other foreign terrorist group? That is a very limited time.

What we are saying is, yes, try him in Federal court, and he is entitled to due process in that system as well. But he should have been held initially to make sure we have the maximum information in our national security system to protect our Nation.

Is America the battlefield? We all remember too well 9/11. Unfortunately, the goal is to come to America, and we have to acknowledge we are at war with radical Islamic jihadists who are seeking to kill us—not for anything we

have done but for what we believe in and for what we stand.

I want to show an individual whose name is Anwar al-Awlaki. Anwar al-Awlaki was an American citizen, just like this individual who committed the terrorist attack in Boston whom we are holding right now. This American citizen became an influential leader in al-Qaida in the Arabian Peninsula, advocated for violent Jihad against the United States, used the Internet to recruit followers and inspire attacks, and was linked to dozens of terrorist investigations in our country and with our allies. He was in Yemen, and on September 30, 2011, our administration took him out with a drone strike, and I applaud them for that.

But if Anwar al-Awlaki, a U.S. citizen under the constructs we are under right now, came to the United States of America and was involved in an attack against our country—we can take him out with a drone strike if he is in Yemen. But if he actually gets to the United States of America to carry out the attacks he wanted to as a terrorist and we capture him here, we have to give him Miranda? No. We need to be able to hold individuals such as he, and anyone who is seeking to commit a terrorist attack against our country, in the national intelligence context, to find out what they know to make sure we can disrupt these terrorist networks around the world. That is what we are talking about, and we can do both within our values.

To those who have been writing inaccurate pieces about this, we understand that if someone is an American citizen, they cannot be tried in a military commission; they can only be tried in a Federal court. And we will do that here. If we had caught him, we would have tried him too. But before we do that, we had better know what he knows about the terrorist network to be able to know whom he is involved with and to prevent future attacks on this country because people like him—and unfortunately what we saw in Boston—do want to come here to attack us. We have to be in a position to protect this country.

What concerns me most of all is the construct that this administration has put together. Here we have a construct where even foreigners who are terrorists—not American citizens—are being brought into our civilian system and are being advised of their Miranda rights without giving the maximum opportunity to gather intelligence.

This is a picture of Osama bin Laden's son-in-law sitting next to Osama bin Laden, Abu Ghaith, the day after our country was attacked on September 11. Osama bin Laden's son-in-law, Abu Ghaith, was captured overseas. He spent time in Iran. Instead of being brought to Guantanamo or held for a lengthy period to be interrogated, he was brought right to a Federal court in New York City to be tried there.

This is the construct this administration is using, where they are not treat-

ing this like we are at war even with foreign terrorists. Osama bin Laden's son-in-law, not held as an enemy combatant, tried—just like this individual who was captured committing the terrorist attacks against us in Boston—in the Federal civilian court system.

We are at war, ladies and gentlemen, and we owe it to our Nation to protect our country. The only way we can do that is when we capture individuals who are foreigners who are members of al-Qaida or when we capture individuals who are American citizens who commit terrorist attacks against this country—who may or may not have ties to foreign organizations—we had better find out. If they do, we need to understand what they know to protect our Nation and then hold them accountable, as we will in this case, and make sure they never see the light of day. I hope in this case we seek the death penalty for what that suspect in Boston did in terrorizing those who were there at the Boston Marathon on such a wonderful day.

Mr. GRAHAM. Would the Senator yield for a question?

The ACTING PRESIDENT pro tempore. We have an order for a recess at this hour.

Mr. GRAHAM. I ask unanimous consent for 1 minute.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. GRAHAM. I thank the Chair.

I would ask the Senator from New Hampshire, how do we get the death penalty when the only way we can get information out of the suspect is to go through his lawyer? If we can't have this national security interrogation, where there is no lawyer, to get information to protect against a future attack that can't be used in a trial, don't you think the lawyer is going to say: I am not going to have my client talk to you unless you promise not to seek the death penalty?

Ms. AYOTTE. I would say to the Senator from South Carolina, I don't know how that isn't possible in this case. Any defense lawyer—as they should—to defend their client, there is no way they will allow that individual who committed the terrorist attack in Boston to speak to one investigator now, if we get additional information or we have followup questions, without taking the death penalty off the table.

That is the defense lawyer's job. I respect them for that. But it puts our Nation in an awkward position to have to negotiate with a defense lawyer when we have questions for someone who has committed a terrorist attack against our Nation.

RECESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:39 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Ms. BALDWIN).

MARKETPLACE FAIRNESS ACT OF 2013—MOTION TO PROCEED—Continued

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Madam President, are we in regular order?

The PRESIDING OFFICER. We are considering the motion to proceed.

Mr. REED. Madam President, I rise today in support of the Marketplace Fairness Act. I am pleased to join Senators ENZI and DURBIN and many of my colleagues in this bipartisan effort to pass this bill that will help small businesses in my State expand and create jobs by ending a tax loophole that benefits out-of-State remote sellers. I want to particularly commend Senator ENZI and Senator DURBIN for their long-time leadership on this issue. They have been relentless in trying to find an effective way to allow States to collect sales taxes on items that are actually delivered into their States.

This is a huge issue in my State of Rhode Island where businesses are having a very difficult time competing against out-of-State retailers because of, frankly, the outdated rules that require shops on Main Street to collect taxes while their out-of-State online competition does not. When you go to the stores in Rhode Island you'll see that they are facing this with increasing frequency. And small business men and women are demanding help.

When Internet commerce was in its early stages, online companies were basically exempted by what is now, by all accounts, an out-of-date Supreme Court decision, from collecting State and local sales taxes for sales in States where they do not have a physical presence—despite the fact that there was still an obligation to collect sales taxes on those purchases. That obligation was shifted to consumers, who are often unaware they have an obligation. This loophole puts Main Street businesses at a competitive disadvantage, hurts the ability of Rhode Island to keep jobs in the State, and strains State budgets all across the United States.

In order to address this inequity, the bill before us today would give States the ability to enforce their own sales tax laws and, by so doing, relieve consumers of the legal burden to report to State tax departments the sales taxes they owe on online purchases—since they would be paying sales taxes as a matter of course at the time of purchase, just as they would in a regular store.

Essentially it levels the playing field. If you walk into a store in Rhode Island and there is a sales tax charge, you would pay it. If you receive an item you ordered off the Internet, you would pay a sales tax as part of the bundled price of the item. It is what people would expect to do.

The legislation would also ensure that the rules for collecting sales tax from out-of-State retailers are clear and consistent. States can enter into